

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of Hawaii’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.<sup>1</sup>



## ISSUE 1: Criminal Provisions

**Policy Goal 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking) specifically excludes buyers from criminal liability based on the definition of “advances prostitution.” Haw. Rev. Stat. Ann. § 712-1202(1)(b) states, “A person commits the offense of sex trafficking if the person knowingly . . . [a]dvances or profits from prostitution of a minor.” Although Haw. Rev. Stat. Ann. § 712-1201(1) (Advancing prostitution; profiting from prostitution; definition of terms) defines “advances prostitution” broadly enough to include a “person [who] knowingly causes . . . a person to commit or engage in prostitution,” Haw. Rev. Stat. Ann. § 712-1201(3) specifically excludes buyers, stating, “[The definition] in subsection[] (1) . . . do[es] not include those engaged in conduct outlined in . . . section 712- as the person engaged in commercial sexual exploitation.” Accordingly, this exception precludes buyers from being charged as sex trafficking offenders.

1.1.1 Recommendation: Amend Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking) to make the statute applicable to the actions of buyers of commercial sex with minors.

**Policy Goal 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Haw. Rev. Stat. Ann. § 712-1209.1(1) (Commercial sexual exploitation of a minor) expressly criminalizes both purchasing and soliciting commercial sex with a minor; it states,

A person eighteen years of age or older commits the offense of commercial sexual exploitation of a minor if the person intentionally, knowingly, or recklessly:

<sup>1</sup> Evaluations of state laws are based on legislation enacted as of August 1, 2022.

- (a) Offers or agrees to provide anything of value 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;
- (b) Provides anything of value to a minor or third person as compensation for having engaged in sexual conduct with a minor;
- (c) Agrees to provide or offers to provide anything of value to a minor or third person for the purpose of engaging in sexual conduct with a minor; or
- (d) Solicits, offers to engage in, or requests to engage in sexual conduct with a minor.

**Policy Goal 1.3**      Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Haw. Rev. Stat. Ann. § 707-756 (Electronic enticement of a child in the first degree) applies to traffickers but requires use of a computer or electronic device; it states,

- (1) Any person who, using a computer or any other electronic device:
    - (a) Intentionally or knowingly communicates:
      - (i) With a minor known by the person to be under the age of eighteen years;
      - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
      - (iii) With another person who represents that person to be under the age of eighteen years;
    - (b) With the intent to promote or facilitate the commission of a felony:
      - ....
      - (ii) That is a class A felony; or
      - (iii) That is another covered offense<sup>2</sup> as defined in section 846E-1 [Definitions], agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and
    - (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time,
- is guilty of electronic enticement of a child in the first degree.

1.3.1    Recommendation: Amend Haw. Rev. Stat. Ann. § 707-756 (Electronic enticement of a child in the first degree) to protect all minors regardless of the mode of communication.

**Policy Goal 1.4**      Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Hawaii law prohibits a mistake of age defense in prosecutions for child sex trafficking and CSEC. Pursuant to Haw. Rev. Stat. Ann. § 712-1202(4) (Sex trafficking), “The state of mind requirement for the offense under subsection (1) (b) is not applicable to the fact that the victim was a minor. A person is strictly liable with respect to the attendant circumstances that the victim was a minor.” Similarly, Haw. Rev. Stat. Ann. § 712-1209.1(5) (Commercial sexual exploitation of a minor) provides, “The state of mind requirement for the offense under subsection (1) (a) is not applicable to the fact that the victim was a minor. A person is strictly liable with respect to the attendant circumstance that the victim was a minor, provided that the person had a reasonable opportunity to observe the victim.”

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<sup>2</sup> Haw. Rev. Stat. Ann. § 846E-1 defines “covered offense” to include “[a] crime within the definition of ‘sexual offense’ in this section.” In turn, Haw. Rev. Stat. Ann. § 846E-1 defines “sexual offense” to include sex trafficking and CSEC crimes.

**Policy Goal 1.5** Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Hawaii's criminal attempt statute, Haw. Rev. Stat. Ann. § 705-500 (Criminal attempt), could provide prosecutors with an alternative avenue to prosecute those cases. Haw. Rev. Stat. Ann. § 705-500(1) states,

A person is guilty of an attempt to commit a crime if the person:

- (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or
- (b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense despite the use of a law enforcement decoy.

**Policy Goal 1.6** The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Hawaii's trafficking law does not expressly allow for business entity liability.

- 1.6.1 Recommendation: Amend state law to ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

**Policy Goal 1.7** State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Hawaii law levies financial penalties on sex trafficking and CSEC offenders; although the mandatory fee will be directed into a victim services fund, a percentage of forfeited assets is not.

Regarding mandatory fees, Haw. Rev. Stat. Ann. § 706-650.5(1)–(4) (Human trafficking victim services fee) requires offenders convicted under state trafficking and CSEC laws to pay a fee, which is to be deposited in the human trafficking victim services fund. It states,

- (1) In addition to any disposition authorized by chapter 706 [Disposition of convicted defendants], any individual who is:
  - (a) Convicted of an offense under part VIII of chapter 707 [Labor trafficking]; or
  - (b) Convicted of an offense under part I of chapter 712 [Prostitution, promoting prostitution, and sex trafficking]; shall be ordered to pay a fee under subsection (2).
- (2) Fees for individuals subject to subsection (1) shall not exceed the following:
  - (a) \$5,000 when the offense is a class A felony;
  - (b) \$2,500 when the offense is a class B felony;
  - (c) \$1,000 when the offense is a class C felony;
  - (d) \$500 when the offense is a misdemeanor; or
  - (e) \$250 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 trafficking related to crimes under part I of chapter

712. 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.

Regarding asset forfeiture, Haw. Rev. Stat. Ann. § 712A-4(b) (Covered offenses) provides for forfeiture in cases involving “promoting child abuse; promoting prostitution; sex trafficking; commercial sexual exploitation of a minor; habitual commercial sexual exploitation; or electronic enticement of a child that is chargeable as a felony offense under state law.”

Under Haw. Rev. Stat. Ann. § 712A-5(1)(A) (Property subject to forfeiture; exemption), assets subject to forfeiture include the following:

- (a) Property described in a statute authorizing forfeiture;
- (b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;
- ....
- (e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;
- (f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;
- (g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;
- (h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

Disposition of forfeited assets is governed by Haw. Rev. Stat. Ann. § 712A-16(2) (Disposition of claims by court), which states,

All forfeited property and the sale proceeds thereof, up to a maximum of three million dollars per year, not previously transferred pursuant to [subsection] (1)(a) of this section, shall, after payment of expenses of administration and sale, be distributed as follows:

- (a) One quarter shall be distributed to the unit or units of state or local government [whose] officers or employees conducted the investigation and caused the arrest of the person whose property was forfeited or seizure of the property for forfeiture;
- (b) One quarter shall be distributed to the prosecuting attorney who instituted the action producing the forfeiture; and
- (c) One half shall be deposited into the criminal forfeiture fund established by this chapter.

As noted above, however, a percentage of those forfeited assets is not directed into a victim services fund.



## ISSUE 2: Identification of & Response to Victims

### **Policy Goal 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim does not include all commercially sexually exploited children. Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking) specifically excludes buyers from criminal liability.<sup>3</sup> Accordingly, third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

- 2.1.1 Recommendation: Amend state law to remove third party control requirements that narrow the definition of child sex trafficking victim.<sup>4</sup>

### **Policy Goal 2.2** State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Hawaii law does not provide policy guidance that facilitates appropriate responses to foreign national child sex trafficking victims.

- 2.2.1 Recommendation: Statutorily provide policy guidance that facilitates access to services and assistance for trafficked foreign national children.

### **Policy Goal 2.3** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Hawaii law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

- 2.3.1 Recommendation: Statutorily require child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

### **Policy Goal 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Hawaii law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

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<sup>3</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Haw. Rev. Stat. Ann. § 712-1202.

<sup>4</sup> See generally Shared Hope Int'l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

2.4.1 Recommendation: Statutorily require juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

**Policy Goal 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest.

Hawaii law does not prohibit the criminalization of minors for prostitution offenses, nor does it establish a protocol requiring law enforcement to refer impacted children to a direct services organization or child-serving agency in lieu of arrest. Pursuant to Haw. Rev. Stat. Ann. § 712-1200 (Prostitution),

(1) A person commits the offense of prostitution if the person engages in, or agrees to engage in, sexual conduct with another in return for a fee or anything of value.

(2) As used in this section:

....  
“Minor” means a person who is less than eighteen years of age.

(3) Prostitution is a petty misdemeanor; provided that if the person who commits the offense under subsection (1) is a minor, prostitution is a violation.  
....

(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),<sup>5</sup> including for the purpose of custody, detention, diversion, and access to services and resources.

Additionally, commercially sexually exploited minors may face punitive responses and criminal liability under Haw. Rev. Stat. Ann. § 712-1206(2) (Loitering for the purpose of engaging in or advancing prostitution), which states,

Any person who remains or wanders about in a public place or 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 [Prostitution], shall be guilty of a violation.

Consequently, Haw. Rev. Stat. Ann. § 712-1200 and Haw. Rev. Stat. Ann. § 712-1206 make clear that minors engaged in commercial sex can be treated as offenders of prostitution and loitering and subject to punitive responses, including arrest, detention, charges, prosecution, and adjudication.

2.5.1 Recommendation: Enact legislation to prohibit the criminalization of all minors for prostitution offenses and establish a services-referral protocol in response to minors engaged in commercial sex.

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<sup>5</sup> Pursuant to Haw. Rev. Stat. Ann. § 571-11(1) (Jurisdiction; children),

Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

(1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any federal, state, or local law or county ordinance.

Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred;

**Policy Goal 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Hawaii law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

2.6.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

**Policy Goal 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Hawaii law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

2.7.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

**Policy Goal 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Hawaii law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

2.8.1 Recommendation: Amend state law to provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

**Policy Goal 2.9** Juvenile court jurisdiction aligns with international human rights standards.

Hawaii law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While juvenile court jurisdiction extends to all minors under 18 years of age, Hawaii law does not establish a minimum age for jurisdictional purposes, permits direct file and automatic transfers to criminal court in cases involving minors previously transferred in a prior matter, and fails to require courts to consider the impact of trauma or past victimization in making discretionary transfer determinations.

	Minimum Age of Juvenile Court Jurisdiction	Maximum Age for Charging Youth in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	None. "Child" is defined as "a person less than	17	Yes. Upon transfer to criminal court, juvenile court jurisdiction is	Yes. Minors: (1) 14+ years of age who are charged with a felony; (2)	No.

	eighteen years of age.”		terminated for any subsequent offenses.	any minor who is charged with 1 <sup>st</sup> or 2 <sup>nd</sup> degree murder or attempted murder.	
<b>Relevant Statute(s)</b>	Haw. Rev. Stat. Ann. § 571-2 (Definitions); Haw. Rev. Stat. § 571-11(1)	Haw. Rev. Stat. Ann. § 571-11(1) (Jurisdiction; children)	Haw. Rev. Stat. Ann. § 571-22(e) (Waiver of jurisdiction; transfer to other courts)	Haw. Rev. Stat. Ann. § 571-22(a)–(b), (d) (Waiver of jurisdiction; transfer to other courts)	Haw. Rev. Stat. Ann. § 571-22(c) (Waiver of jurisdiction; transfer to other courts)

Consequently, Hawaii law fails to provide age-appropriate juvenile court responses to all minors, including child sex trafficking victims, as governing state statute: (1) does not establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allows minors to be subjected to direct file and automatic transfers; and (3) does not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Statutorily require age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

**Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.**

Hawaii law defines child abuse to include child sex trafficking under Chapter 587A (Child Protective Act) for purposes of child welfare intervention and services<sup>6</sup> and under Chapter 350 (Child Abuse) for purposes of mandatory reporting. Specifically, Haw. Rev. Stat. Ann. § 587A-4 (Definitions) defines “harm” to include the following:

[D]amage or injury to a child's physical or psychological health or welfare, where . . . [t]he child has been the victim of sexual contact or conduct, including . . . prostitution . . . or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b) [Sex trafficking].

Further, Haw. Rev. Stat. Ann. § 350-1 (Definitions) defines “child abuse or neglect” to include:

(1) The acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:

....

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<sup>6</sup> Pursuant to Haw. Rev. Stat. Ann. § 587A-2 (Purpose; construction),

This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.

(B) When the child has been the victim of sexual contact or conduct, including but not limited to . . . prostitution . . . or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b) [Sex trafficking] . . .

....

(2) The acts or omissions of any person that have resulted in sex trafficking or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 [Labor trafficking] or section 712-1202 [Sex trafficking].

## EXTRA CREDIT



Child labor trafficking is expressly included in the definitions of “harm” and “child abuse or neglect” under Haw. Rev. Stat. Ann. § 587A-4(6) and Haw. Rev. Stat. Ann. § 350-1(1)(F), respectively.

**Policy Goal 2.11** State law allows for child welfare involvement in non-familial child sex trafficking cases without hingeing involvement on caregiver fault and provides for an alternative, specialized investigation in those cases.

The child welfare response process provided for under Chapter 587A (Child protective act)<sup>7</sup> does not allow for a child welfare response in non-familial child sex trafficking cases despite child abuse and neglect reporting requirements codified under Hawaii Rev. Stat. Ann. § 350-1(2) (Definitions) and Haw. Rev. Stat. Ann. § 350-1.1 (Reports), mandating a report when “[t]he acts or omissions of any person . . . have resulted in sex trafficking or severe forms of trafficking in persons,” and the definition of “harm” codified under Haw. Rev. Stat. Ann. § 587A-4 (Definitions), which includes child sex trafficking victimization. Further, a specialized investigation is not statutorily required for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

2.11.1 Recommendation: Statutorily allow for child welfare involvement in child sex trafficking cases regardless of parent or caregiver fault and provide for a specialized investigation in those cases.

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<sup>7</sup> Pursuant to Haw. Rev. Stat. Ann. § 350-2(a) (Action on reporting), “Upon receiving a report concerning child abuse or neglect, the department shall proceed pursuant to chapter 587A (Child Protective Act) and the department’s rules.” Under Haw. Rev. Stat. Ann. § 587A-5 (Jurisdiction),

[T]he court shall have exclusive original jurisdiction . . . In a child protective proceeding concerning any child who is or was found within the State at the time specified facts and circumstances occurred, are discovered, or are reported to the department. These facts and circumstances constitute the basis for the court’s finding that the child’s physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child’s family . . . .”



## ISSUE 3: Continuum of Care

### Policy Goal 3.1 State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

Hawaii law does not mandate a process for coordinating access to specialized, community-based services for child sex trafficking victims; however, the Office of Youth Services is required to establish and operate youth services centers,<sup>8</sup> including the Kawaiola youth and family wellness center, which may include a crisis shelter for victims of human and sex trafficking. Pursuant to Haw. Rev. Stat. Ann. § 352D-7.5 (Kawaiola youth and family wellness center; creation),

The Kawaiola youth and family wellness center services and programs may include but shall not be limited to mental health services and programs, substance abuse treatment programs, crisis shelters for homeless youth, crisis shelters for victims of human and sex trafficking, vocational training, group homes, day treatment programs, aftercare, independent and family counseling services, educational services, and other services and programs that may be required to meet the needs of youth or young adults.

<sup>8</sup> Haw. Rev. Stat. Ann. § 352D-7 (Youth services centers; creation) states,

- (a) Beginning July 1, 1991, the office of youth services shall create, develop, and operate youth service centers throughout the State, including one or more in each county and including the Kawaiola youth and family wellness center created pursuant to section 352D-7.5. This may be done either directly or by contract with private parties. Delinquency prevention shall be a primary objective of these centers. The population eligible for services at the centers shall be all youths in need of services and all young adults at risk. All referrals and admissions to a youth services center shall be voluntary. Centers shall also develop individualized intake capabilities, program plans, delivery of services, and a comprehensive referral network. The objectives of the youth service centers shall be to:
- (1) Develop and implement programs in delinquency prevention;
  - (2) Provide a wider range of informal dispositions, particularly alternatives to the juvenile justice system;
  - (3) Develop an improved system of intake, assessment, and follow-up for youths including youth at risk, and for young adults at risk; and
  - (4) Provide better coordination of juvenile justice and nonjuvenile justice services in order to reduce overlaps and gaps in services.
- (b) Each center shall:
- (1) Be responsible for coordinating all services, justice system or non-justice system, both public and private, to the youth and young adults referred to it; and
  - (2) Be responsive to the needs of its immediate community and offer an array of services that are tailored to the needs of its constituents.
- (c) Every youth and young adult referred to a youth services center shall be appropriately placed with a service provider and provided services as soon as possible. The center shall develop procedures that will ensure that appropriate service providers are available on a twenty-four hour basis for each youth and young adult. The center may contract with service providers for provision of services.
- (d) Each youth service center shall maintain a registry of every youth and young adult referred to it and shall monitor and supervise the follow-up services that are provided to the youth or young adult. Each center shall be primarily responsible to ensure that each youth is fully diverted from the juvenile justice system.

This center will be operated by, and on the site of, the Hawaii youth correctional center, but admittance is voluntary and “persons committed to the Hawaii youth correctional facilities shall be segregated from youth and young adults admitted to the Kawaihoa youth and family wellness center.” Haw. Rev. Stat. Ann. §§ 352D-7, 352D-7.5(a), 352-32(b).

- 3.1.1 Recommendation: Strengthen existing law by mandating a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

**Policy Goal 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response, Hawaii law does not require a specialized MDT response specific to child sex trafficking cases. Pursuant to Haw. Rev. Stat. Ann. § 588-1<sup>9</sup> (Children’s justice program; establishment, purpose),

- (a) There is established a children’s justice program within the judiciary. The mission of the program is to provide for the special needs of children as witnesses by promoting coordination for appropriate investigation, treatment, and legal processes, thereby reducing and preventing unnecessary trauma to children and ensuring justice for children and their families.
- (b) The purposes of the program shall be to:
- (1) Develop, achieve, and maintain interagency and interprofessional cooperation and coordination in the investigation of and management of cases involving suspected or confirmed:
    - (A) Victims of child sex abuse, serious physical child abuse, child sex trafficking, commercial sexual exploitation of children, and other child maltreatment; and
    - (B) Child witnesses to crime or violence;
  - (2) Facilitate in an impartial manner the professional gathering of information by public and private agencies and their providers for court proceedings involving child victims and witnesses;
  - (3) Reduce to the absolute minimum the number of interviews of child victims and witnesses so as to minimize revictimization of the child;
  - (4) Coordinate the therapeutic and treatment program for child victims and witnesses and their families;
  - (5) Provide for a multidisciplinary team and case management approach that focuses on the needs of, first, the child victim or witness; second, family members who are supportive of the child and whose interests are consistent with the best interests of the child; and third, law enforcement and prosecuting agencies;
  - (6) Provide for the training and continuing education of skilled professional interviewers of child victims and witnesses; and
  - (7) Serve as the focus of information and referral for child victim and witness programs.

Further, Haw. Rev. Stat. Ann. § 588-1.5 (Coordination function) provides,

- (a) The program shall promote the sharing of information among agencies providing services to the child and family, for purposes of implementing this chapter [Child Protective Act].
- (b) All agencies and their providers that have information regarding the mental, physical health, or other information relating to the best interest of the child shall share the information among the agencies working with the child unless otherwise prohibited by federal or state statute or rule. No agency shall

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<sup>9</sup> The text of Haw. Rev. Stat. Ann. § 588-1 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2114 during the 2022 Regular Session of the Hawaii state legislature (effective April 27, 2022).

further disclose any confidential information unless written consent expressly authorizing further disclosure is obtained from the person who is the subject thereof, or disclosure is permitted by law.

- 3.2.1 Recommendation: Statutorily require a multi-disciplinary team response specific to child sex trafficking victims.

**Policy Goal 3.3** State law requires child welfare to provide access to specialized services for identified sex trafficked children and youth.

Hawaii law does not require child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims.

- 3.3.1 Recommendation: Statutorily require child welfare to provide access to specialized services for child sex trafficking victims.

**Policy Goal 3.4** State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

While commercially sexually exploited children are referred to the delinquency process for access to services and resources,<sup>10</sup> Hawaii law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

- 3.4.1 Recommendation: Statutorily require the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

**Policy Goal 3.5** State law extends foster care services to older foster youth.

Hawaii law extends foster care services to youth under 21 years of age. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>11</sup> Haw. Rev. Stat. Ann. § 346-391 (Purpose) states,

The purpose of this part is to establish the young adult voluntary foster care program, to care for and assist eligible foster youth until their twenty-first birthday. The young adult voluntary foster care program will support former foster youth in the transition to adulthood and in becoming independent and self-sufficient.

Haw. Rev. Stat. Ann. § 346-395 (Eligibility) further provides,

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<sup>10</sup> Haw. Rev. Stat. Ann. § 712-1200(6) (Prostitution) states,

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 subsection (1)(a) [Prostitution]. The minor shall be released, referred, or transported pursuant to section 571-31(b) [Taking children into custody; release; notice]. The minor shall be subject to the jurisdiction of the family court pursuant to section 571-11(1) (Jurisdiction; children), including for the purposes of custody, detention, diversion, and access to services and resources.

<sup>11</sup> For more information, see Shared Hope Int'l, *Issue Brief 3.5: Continuum of Care*, <https://reportcards.sharedhope.org/wp-content/uploads/2022/10/2022-Issue-Briefs-3.5.pdf> (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

A young adult may continue to receive services under this part if the young adult meets the following criteria:

- (1) The young adult was:
  - (A) Under the permanent custody, foster custody, voluntary foster custody, or court-ordered temporary foster custody of the department at the time the young adult attained the age of eighteen;
  - (B) A child who was placed in guardianship after attaining the age of sixteen and the legal guardians are no longer willing to provide emotional and financial support; or
  - (C) A child who was adopted after attaining the age of sixteen and the adoptive parents are no longer willing to provide emotional and financial support;
- (2) The young adult voluntarily consents to participate in the young adult voluntary foster care program and meets the program requirements;
- (3) The court finds that exercising jurisdiction under this part is in the young adult's best interest; and
- (4) The young adult is:
  - (A) Completing secondary education or a program leading to an equivalent credential;
  - (B) Enrolled in an institution that provides post-secondary or vocational education;
  - (C) Participating in a program or activity designed to promote or remove barriers to employment;
  - (D) Employed for at least eighty hours per month; or
  - (E) Incapable of doing any of the activities described in subparagraphs (A) to (D) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the young adult.

- 3.5.1 Recommendation: Strengthen existing statutory law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

**Policy Goal 3.6 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.**

The Hawaii state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

- 3.6.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.



## ISSUE 4: Access to Justice for Trafficking Survivors

### Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

While civil orders of protection exist under Hawaii law, this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Amend state law to expressly allow victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

### Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Although Hawaii's crime victims' compensation laws define "victim" broadly enough to include victims of child sex trafficking and CSEC, ineligibility factors may prevent a commercially sexually exploited child from accessing an award.

For purposes of accessing crime victims' compensation, Haw. Rev. Stat. Ann. § 351-2(1), (2) (Definitions) defines "victim" to include the following:

- (1) A person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State;
- (2) Any resident of the State who is injured or killed in another state by an act or omission of another person, which act or omission is within the description of any of the crimes<sup>12</sup> specified in section 351-32 [Violent crimes];

However, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Haw. Rev. Stat. Ann. § 351-31(c) (Eligibility for compensation),

In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused the victim's injury or death and the commission shall reduce the amount of compensation in proportion to the amount of responsibility for the crime which caused the victim's injury or death; provided that if the proportion is greater than the responsibility of the person who committed the act or omission or, in the case of more than one person, the aggregate responsibility of such persons because of whom compensation is sought, the commission shall not award any compensation to the victim.

Further, Haw. Rev. Stat. Ann. § 351-62(a) (Limitations upon award of compensation.) requires compensation to be denied "unless the application has been made within eighteen months after the date of injury, death, or property damage." Exceptions to this restriction are only provided for "good cause." Because child sex trafficking and CSEC victims are not expressly exempt from the ineligibility factors noted above, however, some commercially sexually exploited children may not have access to an award.

<sup>12</sup> Haw. Rev. Stat. Ann. § 351-31 (Violent crimes) includes violations of Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking) but not violations of Hawaii's CSEC offenses. However, CSEC victims would still be included within the definition of "victim" if their offender "com[es] withing the criminal jurisdiction of the State." Haw. Rev. Stat. Ann. § 351-2(1).

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation.

**Policy Goal 4.3** Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Although Hawaii law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to Haw. Rev. Stat. Ann. § 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(2), street prostitution and commercial sexual exploitation in designated areas under section 712-1207(1)(a) or (2)(a), or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206(2), or 712-1207(1)(a) or (2)(a), may file a motion to vacate the conviction if the defendant is not subsequently convicted of any offense under the Hawaii Penal Code within three years after the date of the original conviction.
- (2) The court shall hold a hearing on a motion filed under this section to review the defendant's record over the three years after the date of the original conviction under section 712-1200, 712-1206(2), or 712-1207(1)(a) or (2)(a) or conviction of a lesser offense when originally charged with a violation of any of those sections, and if the court finds that the defendant has not been convicted of any offense under the Hawaii Penal Code within this three year period, the court shall vacate the conviction.

However, Haw. Rev. Stat. Ann. § 712-1209.6 applies specifically to convictions, and Haw. Rev. Stat. Ann. § 571-1 (Construction and purpose of chapter) states, "no adjudication by the court of the status of any child under this chapter [Family Courts] shall be deemed a conviction." Accordingly, a child sex trafficking victim would be unable to vacate a delinquency adjudication under this law. Further, vacatur is limited to prostitution offenses, which fails to recognize the array of crimes trafficking victims are charged with and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: Strengthen existing law to allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

**Policy Goal 4.4** State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Hawaii law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Haw. Rev. Stat. Ann. § 706-646(2) (Victim restitution), "The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim . . . ."

In determining the amount of restitution, Haw. Rev. Stat. Ann. § 706-646(3) states,

[T]he court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order . . . . Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

- (a) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;
- (b) Medical expenses, which shall include mental health treatment, counseling, and therapy;
- (c) Funeral and burial expenses; and

(d) Lost earnings, which shall include paid leave.

## EXTRA CREDIT



Hawaii law mandates restitution for victims of child labor trafficking under Haw. Rev. Stat. Ann. § 706-646(2), which applies broadly to any offense.

### Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Hawaii law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Haw. Rev. Stat. Ann. § 663J-3 (Cause of action for coercion into prostitution or sex trafficking) states,

An individual has a cause of action against a person who:

- (1) Coerced the individual into prostitution or to remain in prostitution, or subjected the individual to sex trafficking;<sup>13</sup>
- (2) Used coercion to collect or receive any of the individual's earnings derived from prostitution or from being the subject of sex trafficking; or
- (3) 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 or was being subjected to sex trafficking.

Damages are assessed pursuant to Haw. Rev. Stat. Ann. § 663J-5 (Damages), which states,

An individual 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 or being the subject of sex trafficking;
- (2) Noneconomic damages proximately caused by coercion into prostitution or being the subject of sex trafficking;
- (3) Exemplary damages;
- (4) Reasonable attorney's fees; and
- (5) Costs of suit, including reasonable expenses for expert testimony.

Further, Haw. Rev. Stat. Ann. § 663J-9 (Other remedies preserved) provides,

The remedies provided under this chapter do not restrict the right of any individual to bring an action under other law, including common law, to recover damages arising out of the use of the individual in prostitution, or subjecting the individual to sex trafficking, or the coercion incident to the individual being used in prostitution or sex trafficking; nor does this chapter limit or restrict the liability of any person under other law.

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<sup>13</sup> Haw. Rev. Stat. Ann. § 663J-2 (Definitions) defines "sex trafficking" to have the same meaning as the criminal offense, Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking).

## **EXTRA CREDIT**

**18+**

Hawaii law provides sex trafficked youth with a trafficking-specific civil remedy under Haw. Rev. Stat. Ann. § 663J-3, which allows an individual who is subjected to sex trafficking to bring a civil action against their exploiter. Haw. Rev. Stat. Ann. § 663J-2 (Definitions) defines “sex trafficking” to have the same meaning as the criminal offense, Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking), which criminalizes sex trafficking of both minor and adult victims.

**Policy Goal 4.6** **Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.**

Prosecutions for child sex trafficking may commence at any time; however, CSEC prosecutions are subject to statutes of limitation as are civil actions. Pursuant to Haw. Rev. Stat. Ann. § 701-108(1) (Time limitations), “A prosecution for . . . sex trafficking . . . may be commenced at any time.” Otherwise, Haw. Rev. Stat. Ann. § 701-108(2)(b), (d) generally provides,

Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

- ....
- (b) A prosecution for a class A felony must be commenced within six years after it is committed;
- ....
- (d) A prosecution for any other felony must be commenced within three years after it is committed;

Regarding civil actions, the statute of limitation for a civil claim filed under Haw. Rev. Stat. § 663J-3 (Cause of action for coercion into prostitution or sex trafficking) is set forth in Haw. Rev. Stat. Ann. § 663J-7 (Statute of limitations), which states,

- (a) A claim under this chapter may not be brought against a person more than six years after an act of promoting prostitution by coercion or sex trafficking by that person.
- (b) The limitation period provided for in this chapter is tolled:
  - (1) During the minority of the individual who engages in prostitution; or
  - (2) Any time there is a criminal offense investigation being actively conducted against the defendant by a governmental agency or there is a criminal offense charge, information, or indictment pending against the defendant.

Notably, the general civil statute of limitation for personal actions is also 6 years. Haw. Rev. Stat. Ann. § 657-1(4) (Six years) provides, “Personal actions of any nature whatsoever not specifically covered by the laws of the State” must be “commenced within six years after the cause of action accrued, and not after.”<sup>14</sup> Accordingly, Hawaii law

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<sup>14</sup> Notably, Haw. Rev. Stat. Ann. § 657-13 (Infancy, insanity, imprisonment) provides for tolling as follows:

does not lengthen or eliminate the civil statute of limitation for trafficking-related actions under Haw. Rev. Stat. Ann. § 663J-7(a) as both it and the general statute of limitation under Haw. Rev. Stat. Ann. § 657-1(4) are 6 years.

- 4.6.1 Recommendation: Strengthen existing law to allow prosecutions for CSEC offenses to commence at any time and eliminate the statute of limitation for filing trafficking-specific civil actions.

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If any person entitled to bring any action specified in this part (excepting actions against the sheriff, chief of police, or other officers) is, at the time the cause of action accrued, either:

- (1) Within the age of eighteen years; or,
  - (2) Insane; or,
  - (3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than the person's natural life;
- such person shall be at liberty to bring such actions within the respective times limited in this part, after the disability is removed or at any time while the disability exists.



## ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

**Policy Goal 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Hawaii law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Statutorily provide a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

**Policy Goal 5.2** State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Although Hawaii's closed circuit television (CCTV) law does not expressly apply in trafficking cases, it applies to criminal conduct that encompasses the abuse experienced by child sex trafficking victims. Pursuant to Haw. R. Evid. 616 (Televised testimony of child),

In any prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than eighteen years of age at the time of the testimony, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by two-way closed circuit video equipment to be viewed by the court, the accused, and the trier of fact, if the court finds that requiring the child to testify in the physical presence of the accused would likely result in serious emotional distress to the child and substantial impairment of the child's ability to communicate. During the entire course of such a procedure, the attorneys for the defendant and for the State shall have the right to be present with the child, and full direct and cross-examination shall be available as a matter of right.

5.2.1 Recommendation: Strengthen existing protections to expressly allow all commercially sexually exploited children to testify by an alternative method regardless of the child's age and the offense charged.

**Policy Goal 5.3** Child sex trafficking victims have access to victim protections in the criminal justice system.

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims' identifying information is protected from disclosure in court records</b>
<b>Summary</b>	Not statutorily required.	Child victims of sex and labor trafficking can have one adult present with them at court. Also, a child less than 14 years of age, involved in a judicial proceeding, shall have the right to be accompanied by a victim-witness counselor. The court is also required to control the mode and order of	Not statutorily required.

		interrogation to protect witnesses from harassment or undue embarrassment.	
<b>Relevant Statute(s)</b>	None.	Rule 505.5 (Victim-counselor privilege); Haw. Rev. Stat. Ann. § 621-28 (Accompaniment of children at judicial proceedings); Rule 611 (Mode and order of interrogation and presentation)	None.

- 5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate and their identifying information is protected from disclosure in court records.

**Policy Goal 5.4 State law provides for privileged communications between caseworkers and child sex trafficking victims.**

Hawaii law does not provide for privileged communications between caseworkers and child sex trafficking victims.

- 5.4.1 Recommendation: Statutorily provide child sex trafficking-specific caseworker privilege to protect a child sex trafficking victim's communications with a caseworker from being disclosed.



## ISSUE 6: Prevention & Training

**Policy Goal 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Hawaii law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

**Policy Goal 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Hawaii law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

**Policy Goal 6.3** State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Hawaii law does not mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

**Policy Goal 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Hawaii law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

**Policy Goal 6.5** State law mandates child sex trafficking training for school personnel.

Hawaii law does not mandate training on child sex trafficking for school personnel.

6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

**Policy Goal 6.6** State law mandates child sex trafficking prevention education in schools.

Hawaii law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

# KEYSTONE STATUTES

## State Laws Addressing Child Sex Trafficking

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1. Haw. Rev. Stat. Ann. § 712-1202(1), (2) (Sex trafficking) states,

- (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, coercion, or intimidation to engage in prostitution, or profits from such conduct by another; or
  - (b) Advances<sup>15</sup> or profits from prostitution<sup>16</sup> of a minor.
- (2) Sex trafficking is a class A felony.

A class A felony is punishable by an indeterminate imprisonment term of 20 years, “without the possibility of suspension of sentence or probation,” and a possible fine up to \$50,000. Haw. Rev. Stat. Ann. §§ 706-659, 706-640(1)(a).

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<sup>15</sup> Haw. Rev. Stat. Ann. § 712-1201(1) (Advancing prostitution; profiting from prostitution; definition of terms) defines “advances prostitution” to include an individual who does any of the following:

[C]auses 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;

However, Haw. Rev. Stat. Ann. § 712-1201(3) states, “The definitions in subsection (1) and (2) do not include those engaged in conduct outlined in section 712-1200 as the prostituted person or section 712- as the person engaged in commercial sexual exploitation.”

<sup>16</sup> Haw. Rev. Stat. Ann. § 712-1201(2) defines “profits from prostitution” to include an individual who “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.” However, Haw. Rev. Stat. Ann. § 712-1201(3) states, “The definitions in subsection (1) and (2) do not include those engaged in conduct outlined in section 712-1200 as the prostituted person or section 712- as the person engaged in commercial sexual exploitation.”

## State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

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1. Haw. Rev. Stat. Ann. § 712-1209.1(1)–(3) (Commercial sexual exploitation of a minor) states,
  - (1) A person eighteen years of age or older commits the offense of commercial sexual exploitation of a minor if the person intentionally, knowingly, or recklessly:
    - (a) Offers or agrees to provide anything of value 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;
    - (b) Provides anything of value to a minor or third person as compensation for having engaged in sexual conduct with a minor;
    - (c) Agrees to provide or offers to provide anything of value to a minor or third person for the purpose of engaging in sexual conduct with a minor; or
    - (d) Solicits, offers to engage in, or requests to engage in sexual conduct with a minor.
  - (2) Solicitation of a minor for prostitution is a class B felony.
  - (3) In addition to any other authorized disposition, a person convicted of committing the offense of commercial sexual exploitation of a minor shall be sentenced to pay a fine of no less than \$5,000.

A class B felony is punishable by imprisonment for up to 10 years and a possible fine up to \$25,000. Haw. Rev. Stat. Ann. §§ 706-660(1)(a), 706-640(1)(b).

2. Haw. Rev. Stat. Ann. § 707-756 (Electronic enticement of a child in the first degree) states,
  - (1) Any person who, using a computer or any other electronic device:
    - (a) Intentionally or knowingly communicates:
      - (i) With a minor known by the person to be under the age of eighteen years;
      - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
      - (iii) With another person who represents that person to be under the age of eighteen years;
    - (b) With the intent to promote or facilitate the commission of a felony:  
....  
      - (ii) That is a class A felony; or
      - (iii) That is another covered offense<sup>17</sup> as defined in section 846E-1 [Definitions], agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and
    - (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time,
  - (2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, a person convicted of electronic enticement of a child in the first degree shall be sentenced to an indeterminate term of imprisonment as provided by law.

A class B felony is punishable by imprisonment for up to 10 years and a possible fine up to \$25,000. Haw. Rev. Stat. Ann. §§ 706-660(1)(a), 706-640(1)(b).

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<sup>17</sup> Haw. Rev. Stat. Ann. § 846E-1 defines “covered offense” to include “[a] crime within the definition of ‘sexual offense’ in this section.” In turn, Haw. Rev. Stat. Ann. § 846E-1 defines “sexual offense” to include sex trafficking and CSEC crimes.