



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1312, RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 6, 2025 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) strongly supports this bill.

The purpose of this bill is to clarify the offenses of sex trafficking, section 712-1202, Hawaii Revised Statutes (HRS), and promoting prostitution, section 712-1203, HRS, by: (1) clarifying the definition of "profits from prostitution", (2) inserting the definitions of "advances prostitution" and "profits from prostitution" into the statutes establishing the substantive offenses of sex trafficking and promoting prostitution; and (3) repealing section 712-1201, HRS, where those definitions currently reside. It also proposes restructuring provisions that define terms or establish exemptions for part I of chapter 712, HRS.

In State v. Ibarra, 153 Hawaii 50, 526 P.3d 575 (2023), the Hawaii Supreme Court held that "profits from prostitution" did not include repayment of a loan, thereby creating a safe harbor when a trafficker extends a loan or a service and categorizes proceeds received from prostituting the victims as a repayment. In fact, one of the more common recruitment methods human traffickers use is to extend a loan to victims that force them into prostitution and can never be fully repaid. In his dissent, Chief Justice Recktenwald, joined by Justice Nakayama, explained:

While the majority's interpretation of HRS § 712-1701(2) [*sic*] would result in Ibarra's acquittal, that approach risks making it more difficult to prosecute traffickers who coerce their victims using loans. Traffickers

employ a variety of business models to keeping [*sic*] their victims tethered to them financially. Often, the targets of traffickers have a pressing need for money, lodging, for illicit substances, or to cross a border. The trafficker provides funds or assistance, and the trafficked victim agrees to repay the trafficker from the proceeds of the victim's prostitution. However, the loan proves prohibitively difficult to repay, and the victim is trapped in a coercive dynamic.

Id. at 62, 526 P.3rd at 587.

This bill is necessary to close the loophole created by State v. Ibarra by making clear that "profits from prostitution" includes money, things of value, or other property received even if related to an agreement or understanding or a repayment of debt. Additionally, it will incorporate the definitions of "advances prostitution" and "profits from prostitution" into the applicable HRS sections that outline the offenses of sex trafficking and promoting prostitution and repeal section 712-1201, HRS, to further clarify the laws on sex trafficking and promoting prostitution.

The Department respectfully requests the passage of this bill. Thank you for the opportunity to provide testimony.

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February 4, 2025

SB1312: RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee on Judiciary:

The Office of the Public Defender (OPD) **opposes SB1312**. Specifically, the OPD opposes the amendment to the definition of the term “profits from prostitution” under HRS § 712-1201.

As stated in Section 1 of the bill, the proposed amendment to the definition of the term “profits from prostitution” is in response to the holding of the Hawai‘i Supreme Court in State v. Ibarra, 153 Hawai‘i 50, 526 P.3d 575 (2023). In Ibarra, the defendant (Ibarra) was alleged to have “profited” from prostitution where another prostitute repaid Ibarra for her share of expenses on a joint trip to Hawai‘i. Ibarra and another prostitute (CW) flew from Oakland to Hawai‘i for the specific purpose of engaging in prostitution activities. Ibarra paid for all of the travel expenses, including hotel and airfare, and it was their understanding that CW would repay Ibarra when they reached Hawai‘i. In Hawai‘i, Ibarra also paid for and posted advertisement for her and CW on “Backpage.” Ibarra did not receive any money from CW other than the repayment of CW’s share of her expenses pursuant to their agreement.

The Hawai‘i Supreme Court held that the circuit court’s interpretation of “profits from prostitution,” which included the repayment of CW’s share of expenses to Ibarra, was “overbroad because it does not account for the ordinary definition of the term ‘profit.’” Ibarra, 153 Hawai‘i at 54, 526 P.3d at 579. The Supreme Court cited the ordinary meaning of the term “profits” which included “a valuable return,” “gain” or “the excess over expenditure in a transaction or series of transactions.”

Put another way, a person “accept[ing] or receiv[ing] money or other property” must be benefitting or obtaining something of value, in order to

come within the scope of the statute. HRS § 712-1201(2). Otherwise the term “profit” itself would be meaningless. Indeed, there is no ordinary definition of “profit” which includes mere reimbursement.

Id. at 54-55, 526 P.3d at 579-80. The Supreme Court recognized that penalizing Ibarra, a fellow prostitute who was neither a sex trafficker or pimp and who merely sought reimbursement of money she fronted to CW was not the evil the promoting prostitution statute sought to address.

The bill in this case seeks to unnecessarily expand the definition of “profits from prostitution” to situations where the person receiving funds does not make any profit receive any valuable return, gain or excess over expenditure. It was undisputed in Ibarra that Ibarra did not receive any funds from CW in excess of what she had spent on CW’s expenses – Ibarra did not make a profit. However, under the definition proposed by this bill, Ibarra would be guilty of promoting prostitution simply because CW paid her back using funds that CW earned from prostitution. The fallacy in this result and unintended consequences were addressed by the Hawai’i Supreme Court.

Ibarra notes that if her conduct falls within the scope of HRS § 712-1201(2), then if CW paid Ibarra back for a pack of gum, it would constitute “profiting from prostitution” as well. The dissent dismisses this argument, contending that it “ignores the language specifying that the receipt of money must be ‘pursuant to an agreement or understanding.’ ” The fact that “there must be a preexisting agreement or understanding wherein both parties agree that one party will engage in prostitution and that some or all of the proceeds will go to the other party” does not refute the point. As an example, person X and person Y are long-time friends that both engage in prostitution. X does not have money for lunch, so Y agrees to pay for X's meal, pursuant to an understanding that X will reimburse Y from the proceeds of the prostitution date that X independently scheduled for later that day. Under the dissent's interpretation of HRS § 712-1201(2), Y would be guilty of promoting prostitution.

Ibarra, 153 Hawai’i at 57, n.10, 526 P.3d at 582, n.10.

The OPD understands the Legislature's concerns in addressing the issue of sex trafficking and its desire to protect those being victimized by prostitution. However, the measures taken to address these issues should not cast so wide a net that they result in unintended and unjust consequences. Persons such as Ibarra and the hypothetical person in the Supreme Court's example are not sex traffickers or pimps that profit from prostitution and exploitation of other individuals yet under the proposed amendment Ibarra and the hypothetical person who merely sought reimbursement not gain would be prosecuted and punished as if they had engaged in the same exploitation for profit as pimps and sex traffickers.

Thank you for the opportunity to comment on this measure.

SB-1312

Submitted on: 1/31/2025 4:37:15 PM

Testimony for JDC on 2/6/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in support