

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

**LATE
Testimony**

ON THE FOLLOWING MEASURE:

S.B. NO. 2576, S.D. 1, RELATING TO PROSTITUTION.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, March 15, 2012

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General (the "Department") appreciates the intent of this bill in trying to protect people forced into prostitution, but must oppose it due to significant legal concerns.

The purpose of this bill is to authorize a person convicted of a prostitution-related offense to file a motion to vacate the judgment of conviction under certain circumstances. It also establishes procedures for the motion to vacate judgment.

The criminal justice system already has in place processes that allow convicted defendants to appropriately challenge judgments of conviction. A convicted defendant has a right to appeal the conviction to an appellate court and challenge the lower court proceedings. After that, a convicted defendant also has the ability to challenge a conviction in a post-conviction relief proceeding, such as the one set up by Rule 40 of the Hawaii Rules of Penal Procedure. These processes have been developed and established to ensure fairness and justice for all in the criminal justice system. The process in this bill, however, to vacate prostitution convictions, is inconsistent with our criminal justice system and invites misuse and abuse.

The proposed justification for this special relief is that "the defendant's participation in the offense was the result of the person having been a victim" of promoting prostitution or a trafficking offense. The implication is that the defendant committed the offense under duress and, therefore, should not be held responsible for the crime.

PROCESS INVITES MISUSE AND ABUSE

This is a scenario that could result from this bill. A defendant is arrested for the crime of prostitution and taken into police custody. During the course of the criminal investigation, the defendant has an opportunity to tell the police investigator that the defendant was being forced to engage in prostitution by another person. If the defendant discloses this information during the

investigation and the investigator is able to confirm the information, the defendant would likely be treated as a victim and witness in a case against the one promoting the prostitution activity. The defendant would likely not be prosecuted for prostitution. Under section 702-231, Hawaii Revised Statutes (HRS), duress is a defense to a penal charge. If the defendant does not disclose the information, then the investigator would have no reason to treat the defendant as a victim or witness, and would not be able to investigate the promoting prostitution offense. Defendant would be investigated and prosecuted for the prostitution activity, and could ultimately be convicted based on evidence that proves the commission of the offense beyond a reasonable doubt. Possibly a year or more later, defendant files a motion to vacate the conviction alleging that defendant participated in the prostitution conduct because defendant was forced to do so by somebody. Defendant does not even name the person involved but merely alleges being forced to engage in the activity. But the prosecutor and investigator, having had no opportunity to investigate and corroborate defendant's allegations of forced prostitution or trafficking at the time of defendant's arrest and prosecution because of defendant's failure to disclose any of these allegations at that time, have no evidence to rebut defendant's allegations. That being the case, the court would grant the motion to vacate the judgment and dismiss the matter.

The prosecution, despite following all the laws and procedure, and proving defendant's guilt beyond a reasonable doubt, is left with no ability to challenge defendant's late allegations and defend the judgment of conviction. The process is unfair, unjust, and invites misuse and abuse.

UNCERTAINTY OF THE REQUIRED PROOF

The bill provides that a defendant's judgment of conviction for a prostitution offense may be vacated if:

[T]he person'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 in persons as defined in title 22 United States Code section 7102 (13).

But the bill is not clear as to what burden of proof would be required to prove that the defendant was a victim of one of these specified crimes. It appears that the bill simply requires the defendant, a year or more after conviction, to allege that the defendant was forced to engage in prostitution by another person, an allegation that the prosecution could not contest. The bill does not appear to require much more than a statement from defendant. It does not appear to require that a prosecution of one of these specified crimes needs to have taken place, that someone was convicted of one of these crimes, and that the person's victimization, at the time of the conduct

that resulted in the prostitution conviction, was brought out and proven in the prosecution of a specified crime. It is not even clear that the identity of the alleged perpetrator of the promoting prostitution or trafficking offense needs to be disclosed or established.

THE TIME PERIOD WITHIN WHICH THE MOTION MUST BE MADE

On page 2, at lines 10-17, the bill requires that the motion to vacate judgment of conviction:

Be made within a reasonable period of time after the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the person, family members of the person, 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[.] [Emphases added.]

This provision contains a significant amount of vague and ambiguous wording. A “reasonable period” subject to “reasonable concerns” or “other reasons consistent with the purpose of this section,” is unclear. A “reasonable period of time after the person ceases to be a victim” is also vague and ambiguous. It is unclear when a person ceases to be a victim of prostitution or trafficking. It is unclear, if the person leaves the alleged trafficker, but continues to engage in prostitution on their own or while working for someone else, whether the person ceased to be a victim. It is unclear, if the person who engaged in the promoting prostitution activity stopped using any force or coercion on the person, and the person continued to engage in prostitution activity, whether the person ceased to be a victim.

OFFICIAL DOCUMENTATION TO CREATE A PRESUMPTION

On page 3, at lines 1-8, the bill provides:

Official documentation of the defendant's status as a victim of trafficking or a victim of a severe form of trafficking from a federal, state, or local law enforcement agency shall create a presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking or a victim of a severe form of trafficking, but shall not be required for granting a petition under this subsection.

The Department is concerned that this provision does not clearly establish a required nexus between the defendant's status as a victim and the prostitution crime for which defendant was convicted. The fact that the defendant may have been a victim of trafficking in an unrelated instance does not mean that defendant's participation in the offense for which defendant was convicted was due to the defendant being a victim of trafficking.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that this bill be held. The Department notes that if the motion to vacate conviction was allowed only if the case prosecutor

consented to the motion, the Department's concern of misuse and abuse of the motion would be greatly reduced.

LATE Testimony

DATE: March 15, 2012

ATTN: COMMITTEE ON HUMAN SERVICES

Rep. John M. Mizuno, Chair
Rep. Jo Jordan, Vice Chair
Rep. Della Au Belatti
Rep. Jessica Wooley
Rep. Faye P. Hanohano
Rep. Ryan I. Yamane
Rep. Chris Lee
Rep. Corinne W.L. Ching
Rep. Dee Morikawa
Rep. Kymberly Marcos Pine

DATE: Thursday, March 15, 2012

TIME: 10:30am

PLACE: Conference Room 329, State Capitol, 415 South Beretania Street

RE: TESTIMONY IN SUPPORT OF SB2576 SD1 - RELATING TO PROSTITUTION

Dear Committee on Human Services:

I am a parent, retired military member and citizen with a strong belief that second chances are often the best chances. Sometimes a second chance is truly another person's first real chance when they are victims of sex-trafficking. This committee is in a position to give victims a second chance, a true new lease on a life that was once held by a nefarious other.

This bill allows survivors who have been intimidated, forced, or defrauded into prostitution to file motions to petition the court to vacate convictions of prostitution offenses suffered while under the control of their trafficking pimps. Help give these victims a second chance and pass this bill.

Once rehabilitated, victims of sex-trafficking have significant hurdles to overcome when they reenter the work force or return to school. Shame, discrimination, harassment are just a few of the difficulties facing those who just need an opportunity to recover from a very dark past. Instead they currently must expose the worst, most degrading time in their lives each time they go for a job. How many of these rehabilitated victims will be able to use the tools taught through state and charitable groups when they cannot even get the job at which they could succeed? The victimization continues for these survivors in a way uncommon to other survivors. They are criminals "on paper" while they are revictimized in reality.

As a retired Airman, I've known military members with criminal records who started their military careers as a second chance to change their lives. Many were later deemed heroes. Many have guided others to success on *their* second chance. All served their country. Why shouldn't sex-trafficking victims who have been arrested for prostitution have the same opportunity? What if sex-trafficking victims wanted to serve in the military where they could continue to grow in an environment of loyalty, camaraderie, and fairness? Due to the nature of an offense such as

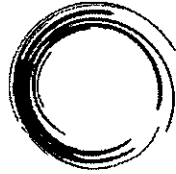
prostitution, they would more than likely not be allowed to enlist or obtain a security clearance. What kind of job can these victims expect with such a record that was not of their own doing, but the doing of a pimp/trafficker? Are they doomed to work entry-level jobs and forego schooling because, "What's the point?" Are they doomed as victims to stay at a social/financial level only slightly above that from which they were rescued? This committee can help change that.

I believe, like our own children to whom we implore to do well in school and stay out of trouble so they can have a good future, we act of these victim's behalf. Let's give them another chance to make a good future for themselves. You can help ensure they have an opportunity to get on a path that leads far away from a life not of their choosing toward a good life of vast potential, filled with hope.

Thank you for taking the time to listen to my testimony.

Sincerely,

Gina M. Snowden



POLARIS PROJECT
FOR A WORLD WITHOUT SLAVERY

TESTIMONY IN SUPPORT OF SB 2576
PRESENTED TO THE HUMAN SERVICES COMMITTEE
MARCH 15, 2012

Mr. Chairman and members of the Human Services Committee:

On behalf of the more than 40,000 supporters of Polaris Project thank you for providing us with an opportunity to speak about the crime of human trafficking. My name is James Dold and I am Policy Counsel for the Polaris Project.

Polaris Project is a leading national organization dedicated to combating human trafficking within the United States by serving victims, raising public awareness, and engaging in policy advocacy at both the State and Federal level. We have been selected by the U.S. Department of Health and Human Services to be its training and technical assistance provider and have operated the National Human Trafficking Resource Center and Hotline since December 2007. During this time our human trafficking call specialists have fielded over 48,000 calls from across the nation. We have also provided victim services to more than 500 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices.

I would like to take a moment to specifically thank Senator Chun Oakland for introducing SB 2576. We greatly appreciate the Hawaii Legislature's concern for and willingness to address the crime of human trafficking, a grave violation of human rights.

Human Trafficking National and Global Perspective

Human trafficking is the modern-day slavery, and it is one of the fastest growing criminal industries in the world, consisting of the subjugation, recruitment, harboring, or transportation of people for the purpose of forced labor or services or commercial sexual exploitation. Victims of human trafficking in the United States include children and adults, as well as foreign nationals and U.S. citizens.

The United States Government estimates that between 600,000 to 800,000 people are trafficked across international borders for forced labor and sexual servitude each year, 70 percent of whom are women and over 50 percent are children. This does not include those trafficked within their own countries, which is as high as 2 to 4 million

persons. Of those trafficked across international borders, up to over 60,000 individuals at a minimum are trafficked into the United States each year. These numbers suggest that the actual figure for the scope of human trafficking is much higher. Experts also estimate that between 100,000 to 300,000 American children are at high risk of being trafficked within the United States for sexual exploitation each year. The State Department estimates that there are roughly 12.3 million slaves in the world today, more than at any other time in the history of the world. Another estimate, by renowned human trafficking expert Kevin Bales, puts the total number of people trapped in modern-day slavery at an estimated 27 million. Most victims suffer a horrific life in which they are repeatedly beaten, raped, starved, chained or locked up, and psychologically tortured. For many, the only way of leaving is by means of escape, rescue, suicide, or murder.

There have been trafficking investigations in all 50 States and incidence of trafficking have been reported in 91 U.S. cities. Human trafficking is a crime that thrives in secrecy and is fed by the insatiable greed of those who see human beings as a commodity to be profited off of. Globally, human trafficking generates over \$32 billion in annual revenue.

In the United States, the crime of human trafficking is so profitable that in recent years we have seen the emergence of organized criminal syndicates and street level gangs implicated in sex trafficking rings. I cannot impress upon members of the Human Services Committee enough, that human trafficking is alive and well in the United States and it affects every corner of our nation. It is also prevalent in Hawaii.

Human Trafficking in Hawaii

Every day we receive calls through the National Human Trafficking Resource Center referencing situations where women and young children are subjected to violence, coercion, and fraud in order for their pimps or traffickers to profit. While we do not know how many victims there are in Hawaii, we do know that the National Hotline has received calls referencing trafficking situations in cities throughout the state of Hawaii. Some of these calls were classified as tips that human trafficking was occurring in different cities, including Honolulu, Hilo, and Wakiki Beach.

Human trafficking is a scourge that preys on the most vulnerable among us and exploits those who are in need of protection. And while it may be easy at times to pretend that human trafficking is not a crime that affects every day Americans, I can tell you with absolute certainty that it does. It is a crime of absolute evil.

SB 2576 – Vacating Convictions for Sex Trafficking Victims

SB 2576 is a critical component of Hawaii enacting a comprehensive legal framework to combat human trafficking. It will allow victims of human trafficking who were forced into prostitution to file a motion to have unjust convictions for prostitution vacated from their record.

Often times, victims of sex trafficking are held in conditions of slavery for months or even years. During that time they are likely to have come into contact with law enforcement and be arrested for prostitution-related offenses. Because they are not always identifiable once picked up off the street, sometimes these victims can go through the system and be convicted or even plead guilty to having engaged in prostitution. These convictions inhibit the ability of these victims to move forward with their lives because they can no longer can apply for certain jobs, loans, or go back to school as a result of the stigma that is attached to having to report a conviction for prostitution. This bill will permit these victims to seek redress in Hawaii's courts and ultimately allow them a clean slate once they have been rescued from their trafficking situation.

Polaris Project initially began working on these Vacating Convictions bills as we came to realize that the victims of trafficking we were serving in the D.C., Virginia, and Maryland areas had difficulty seeking employment or going back to school as a direct result of these convictions. This is a new, innovative tool we have to enable victims of human trafficking to move forward with their lives once they've been rescued. New York was the first state to pass this legislation in 2010 and it received strong support by the legal community. In 2011, Polaris Project helped to successfully pass additional laws in Illinois, Maryland, and Nevada. In 2012, several states have similar bills pending.

The need for this legislation cannot be over stated as we seek to create a comprehensive, victim-centered, legal framework to combat human trafficking in the great state of Hawaii. The 2007 Trafficking In Persons Report put out by the U.S. State Department endorsed this victim-centered approach that is captured by SB 2576:

“Confirmed trafficking victims should not be punished for crimes that are a direct result of being trafficked—such as not holding proper immigration documents or violation of prostitution, labor, or begging statutes. Trafficking victims should not be detained in criminal detention facilities, except in extreme circumstances. They should be treated as victims.”

It is our hope that the House Human Services Committee feels the same way about victims who have been forced into prostitution. That we should seek to allow those

victims redress for unjust convictions rendered against them and endeavor to ensure that their transition to living a full and healthy life is met with understanding and compassion toward the situation and horrific crimes to which they have survived.

Attorney General Concerns

Polaris Project has spoken with the Attorney General's Office and is aware of their previous concerns with this legislation. As a result, we proposed several amendments that were adopted in the Senate that hopefully will alleviate their concerns.

We believe that our prior amendments adequately addressed many of the concerns raised by the Attorney General, as similar language has been adopted in Nevada, Illinois, and New York. Some of the language has been left intentionally broad so that judges can make the ultimate determination in granting a motion under this section. For instance, in *New York vs. G.M.*, 2011 NY Slip Op 21176 – NY, a case in which the District Attorney of Queens joined the petitioner in her motion to vacate her conviction, the petitioner had been a victim of trafficking in the late 1990's, but was unable to seek redress until this law was passed. Thus, the need to emphasize a "reasonable period of time" after the person ceases to be a victim of trafficking, taking into consideration the petitioner's safety, as well as the safety of others, is an important component of the bill especially for those persons who were victimized several years ago.

In the *G.M.* case, the petitioner had been beaten and permanently disfigured by her trafficker, raped repeatedly, and imprisoned against her will. Because her trafficker was also her husband and she was a foreign national from the Dominican Republic, she was vulnerable to becoming a sex trafficking victim and going through the criminal justice system undetected as a victim of a crime. Indeed, the factual background of her case stated:

"He exercised complete control over her, physically and psychologically, such that her every move was tracked by [DS] and she was not allowed to leave the room or apartment without him."

This type of control is typical in domestic pimp controlled sex trafficking where the pimp or trafficker controls every aspect of the victim's life, as indicated by notorious pimp Iceberg Slim:

"Fast, I got to find out the secrets of pimping. I really want to control the whole whore. I want to be the boss of her life, even her thoughts. I got to con them that Lincoln never freed the slaves."

-Ice Berg Slim (pimp/sex trafficker)

This is the mentality of pimps/traffickers and the reality facing victims of sex trafficking. It is likely that in many instances victims of sex trafficking will go undetected by law enforcement and prosecutors because they don't self-identify as victims and identify more with their trafficker. In these instances, where victims of sex trafficking are in fact slaves as a result of violence, isolation, and psychological and emotional manipulation that their traffickers use to control them, this remedy is absolutely paramount to allowing a victim to be able to move on with their life after they have been rescued or escape.

We believe that the changes that were made in the Senate address the Attorney General's concern and that this bill is essential to victims of sex trafficking in Hawaii.

Recommended Amendments

Polaris Project is in full support of this bill. However, we urge the Committee to consider an amendment that would give judges broader discretion to take additional action as is necessary or as justice requires. We have included the proposed amendments at the end of our testimony.

Support SB 2576

Therefore, we strongly ask you and other members of the Human Services Committee to vote favorably upon SB 2576 and bring justice to victims who have been denied it. If you should have any questions, please feel free to call me at (202) 745-1001, ext. 132. Mahalo.

-James L. Dold, J.D.
March 15, 2012

PROPOSED AMENDMENTS TO SB 2576

Additions appear in all CAPS and are **bolded**; deletions appear with a ~~strike~~ mark.

In Section 2, add the following language:

(5) If the court grants a motion filed under this section, the court shall vacate the conviction and dismiss the accusatory pleading **AND MAY TAKE ADDITIONAL ACTIONS AS IS APPROPRIATE IN THE CIRCUMSTANCES OR AS JUSTICE REQUIRES.**

NEW BILL LANGUAGE

The bill should now read:

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

SECTION 1. The purpose of this Act is to authorize a person convicted of committing the offense of prostitution to file a motion to vacate the judgment under certain circumstances and to establish procedures for the motion to vacate.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Prostitution; motion to vacate judgment. (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 made within a reasonable period of time after 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; and

(c) Describe the evidence and provide copies of any official documents showing that the defendant is entitled to relief under this section.

(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) Official documentation of the defendant's status as a victim of trafficking or a victim of a severe form of trafficking from a federal, state, or local law enforcement agency shall create a presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking or a victim of a severe form of trafficking, but shall not be required for granting a petition under this subsection.

(5) If the court grants a motion filed under this section, the court shall vacate the conviction and dismiss the accusatory pleading and may take additional actions as is appropriate in the circumstances or as justice requires.

(6) A person making a motion to vacate pursuant to this section has the burden of proof by a preponderance of the evidence.

(7) This section shall not apply to a motion to vacate a conviction under this chapter for:

(a) Promoting prostitution; or

(b) A person who offers a fee to engage in sexual conduct with another person.

(8) For the purposes of this section:

"Official documentation" includes a police report, court record, or affidavit generated from a federal, state, or local law enforcement agency.

"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."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2050.

LATE Testimony

Good Morning,

I am writing in support of SB 2576 and come here today as a social worker and a concerned citizen.

From my work with person's who have experienced trauma, I understand the long process of healing. In cases of human trafficking, each time a person applies for a job or housing and a background check is needed, they face possible revictimization in the form of prostitution charges listed on their record. Each time, as you can imagine, the process of healing is interrupted and prolonged.

From a strengths perspective, finding the courage to escape forced prostitution is not a small deed. To help these persons integrate wholly and effectively back into the community, I strongly suggest the passing of this bill.

Thank you,

Dana Constable

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*Dana Constable
Hawai'i Pacific University '12
Master of Social Work
Old Dominion University '10
Bachelor in Human Services*

Testimony for HUS 3/15/2012 10:30:00 AM SB2576

LATE
Testimony

Conference room: 329

Testifier position: Support

Testifier will be present: No

Submitted by: V L

Organization: Individual

E-mail: vl@traffickjamming.org

Submitted on: 3/15/2012

Comments:

SB2576 SD1 - In Support

Vacating convictions of victims who have helped in the prosecution of their pimps is essential to helping these victims move on with their lives. As a mentor to many young women & girls who have come out of forced prostitution situations I can tell you that one of their biggest fears is filling out a job application and an potential employer finding out on a background check that they were once involved in prostitution. Not only does it bring up the past and all the shame & guilt that they internally struggle with daily, it also creates a very real potential of them facing sexual harassment in the workplace. It is not simply having to explain the force, coercion, and violence that they went through. It's not even the reliving of the worst days of their lives that scares them the most. It is the fear that the employer, the boss, the manager, the other employees will not only learn of the victims involvement in prostitution but that these individuals will take advantage of a vulnerable situation and harass the victim even more. Our victims have experienced sexual harassment in the workplace. They have been cornered. They have been threatened and abused even in the workplace. These are not unwarranted fears.

If the victim helps put away the pimps by working with law enforcement and the judicial system to relive the worst days of their lives, to recount the abuse, threats, coercion, fears, violence, etc...proving that the pimp was controlling them. Why should they have to relive these moments every time they fill out a job or loan application for the rest of their lives? How can we expect them to move forward with college & careers when at every step they have to yet face another fight with the past? Why should they continue to be punished when they have helped prove that the pimp was in control & the pimp profited from their exploitation? There is no logical reason that a victim of a crime should also carry the punishment of the crime.