



Hawaii State Legislature H.B. 1902 pertaining to the inclusion of sex trafficking into Prostitution Coercion Liability Act

Statement by Amnesty International USA

The Hawaii state legislature is considering a bill (H.B. 1902) which aims to include sex trafficking into the state's statute on coercion of prostitution. Amnesty International welcomes the bill's provisions that expand the Department of the Attorney General's Statewide Witness Program to include sex trafficking and provide victims with access to criminal injury compensation. In particular, Amnesty International supports the provision that allows human trafficking victims to file a "motion to vacate" their convictions for "prostitution," "loitering for the purpose of engaging in or advancing prostitution," "street solicitation of prostitution in designated areas," or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207 of the Hawaii Revised Statutes.

It is Amnesty International's longstanding position that human trafficking for the purposes of sexual exploitation must be criminalized as a matter of international law. In addition to ensuring that such grave crimes are prosecuted by states, it is essential that resources are sufficiently allocated to identifying victims and to ensuring their human rights to access to support services, medical care and remedies. Along those lines, Amnesty International supports H.B. 1902's increased focus on victims' rights and introduction of the option to vacate convictions which are in line with international legal standards which call for ensuring the realization of trafficking victims' human rights, including ensuring that they are not criminalized.

However, while laws are an important first step to remedying violations, the Hawaii government should work to change laws and policies to ensure that victims of trafficking are not arrested in the first instance and that they have access to adequate and appropriate remedies and services. To that end, the Hawaii Legislature should consider amending its law which criminalizes consensual adult prostitution as this likely serves as the basis for convictions of trafficking victims in the first place. Evidence shows that criminalizing the sale and purchase of sex between consenting adults (as distinct from sex trafficking) leads to human rights violations against sex workers.

To the extent that H.B. 1902 incorporates sex trafficking into an existing law on "prostitution" and "coercion into prostitution," and specifically, replaces the offense of "promoting prostitution in the first degree" with "sex trafficking," the bill potentially runs the risk of enabling law and policy makers to conflate sex trafficking with coerced prostitution and prostitution; the two latter existing crimes which do not meet the threshold of human trafficking. As human trafficking is a distinct crime under federal and international law, for purposes of legal clarity and accountability, distinctions should be made between human trafficking and prostitution and coerced prostitution. The bill's provisions should also be analyzed to ensure that the definition of "sex trafficking" aligns with international legal



standards, particularly with regard to the definition of the crime and the threshold of evidence required to prove the crime. Additionally, the bill should provide clear guide posts for state officials responsible with the law's enforcement to distinguish between the three crimes (human trafficking, coerced prostitution and prostitution). Furthermore, there should be safeguards in place to ensure that the provisions on human trafficking are not enforced against consenting adults engaging in commercial sex.

Amnesty International opposes the provision of the bill that criminalizes people younger than 18 for engaging in prostitution (§712-1200, 1(a)). As a matter of international law, minors should not be criminalized for involvement in commercial sex.

Finally, Amnesty International questions the efficacy of the provision that makes it a class C felony "if the person who paid, agreed to pay, or offered to pay a fee to engage in sexual conduct with another person did so in reckless disregard of the fact that the other person was or is a victim of sex trafficking" (§712-1200, 3). It is unclear whether such criminal sanctions effectively reduce human trafficking. Individuals who purchase sex from another consenting adult may be in the position to report victims of human trafficking, but threats of criminal penalties could effectively dissuade this and push prostitution underground, to the detriment of sex workers' health and safety. Along those lines, the Hawaii legislature should ensure that this provision is supported by evidence.



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SENATE COMMITTEE ON JUDICIARY AND LABOR

TESTIMONY—HB 1902, HD2, Relating to Sex Trafficking

TUESDAY, MARCH 22, 2016

Jeanné Kapela, UNITE Hawaii Executive Director

POSITION: STRONG SUPPORT

Chair Keith-Agaran and committee members,

Hawai'i is home to over 150 high-risk sex trafficking establishments, with the average age a victim is first exploited being only 13-years-old. We are also a target for "cybertrafficking," with over 110,000 ads for local prostitution posted online each year. Yet, the numbers fail to fully capture the human toll of the commercial sex trade, a tragedy we witness each day in the eyes of the survivors we serve.

UNITE is an educational nonprofit devoted to ending sex trafficking in Hawai'i, created by Miss Hawai'i 2015 Jeanné Kapela. Through outreach and awareness in local schools, we provide students with the skills necessary to prevent exploitation by building healthy relationships and learning communities. Our program, "It Ends With Us," explains how trafficking works in the 21st Century, preparing students to recognize threatening situations and respond to potential abuse. To date, we have provided anti-trafficking education to thousands of keiki in our state's public schools. Working with UNITE's strategic partner, IMUAlliance, we have also helped to emancipate sex trafficking victims from local brothels in the Ala Moana area. For both victims who self-identify at schools we visit and those for whom we've provided direct intervention services, sexual abuse is often noted as a precursor to sex trafficking.

Sex trafficking is the compulsion of a person into prostitution by force, fraud, or coercion. Traffickers often use intermediate and high school students to build their fortunes, preying upon teenage insecurities, sexual impulses, socioeconomic impoverishment, and, more recently, social media access to recruit, groom, and “break in” our youth for the sex trade. Victims of sex trafficking are highly traumatized to the point that they lose their sense of identity, sometimes becoming so dehumanized that they can no longer understand the concept of rape. Moreover, modern technology has made it easier to reach and threaten victims, as information is readily available on the internet. Online technology can also be weaponized to humiliate individuals through the rapid distribution of nonconsensual pornography.

Last year, I worked with a young woman who was exploited for three years, from the time she was 13-years-old, in Honolulu brothels and on the streets of Waikiki. When I first met her, she went by the name Mini. She had been so abused by thousands of men that she had no concept of rape. Her exact words to me were, “My boyfriend says I can’t be raped. Only good girls can be raped. He says I’m not a good girl. If I want to be raped, I have to earn it.” She is now free, but must live with AIDS as a daily reminder of the men to whom she was sold. We got her out, but there are still, by some counts, as many as 2,500 victims who are still being raped and sold on our shores.

We must stop giving victims jail cells and, instead, give them justice. Passage of this bill is an essential part of that move. Thank you for the opportunity to testify in support of this bill.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for HB1902 on Mar 22, 2016 09:00AM*
Date: Monday, March 21, 2016 4:53:23 PM

HB1902

Submitted on: 3/21/2016

Testimony for JDL on Mar 22, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Subject: *Submitted testimony for HB1902 on Mar 22, 2016 09:00AM*
Date: Monday, March 21, 2016 1:48:27 PM

HB1902

Submitted on: 3/21/2016

Testimony for JDL on Mar 22, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Poulos	Individual	Support	No

Comments:

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Joshua Crowe

LATE TESTIMONY

FIN Testimony

Subject: HB 1902

22 March 2016

Opposition to HB 1902

As a sex worker's rights advocate, Sociology major, and former sex worker, I have a lot of input and reasoning for my opposition to HB 1902. Although the bill has good intentions I can say, being a former sex worker myself, that the negative outcomes will outweigh the good.

Firstly, renaming the offense from, "promoting prostitution" to "sex trafficking," is a mistake. Because very few people know the difference between what prostitution and sex trafficking are, it's easy to confuse the two terms or consider them the same. Sex trafficking only occurs when a person has been put into prostitution against their will by ways or means of: threat, coercion, abduction, fraud, deceit, deception, or abuse of power. If none of these ways/means have been used, then it simply remains prostitution, which is indeed a victimless crime and not violent. Proposing this unnecessary name change seems to be a method to further confuse the public and many others about the difference between prostitution and sex trafficking.

Secondly, this bill essentially legalizes prostitution by minors. As a former sex worker and sex worker's rights advocate, I am highly against decriminalizing sex work for minors. If a person has been a victim of sex trafficking, then they should easily be able to provide information about the person, who was forcing them to perform prostitution or other sexual acts against their will, to the police for the reward of immunity to charges. Under HB 1902, minors will know, "I can now sell sex and not be held responsible for it, nor will I have to testify against

anyone.” This bill will even promote minors, especially who are runaways in need of money, to work in the sex industry simply because they know no punishment will exist for them.

Hawaii’s current law already establishes that a sex worker, weather a minor or adult, will have immunity so that they may testify against their trafficker as well as services to recovery from damages. Hawaii needs to retain its current laws so that minors will be promoted to assist law enforcement in the pursuit of the traffickers.

Lastly, as I stated earlier, most are unaware of the difference between sex trafficking and prostitution. Some would say, “There are over 150 brothels in Hawaii filled with sex trafficking victims.” As a sex worker’s rights advocate, I have spoken with and interviewed over 100 sex workers currently working here, in the brothels, in the state of Hawaii, and I can say that none are “filled with victims of sex trafficking,” but instead voluntary workers. While forced labor does occur in many industries, the use of the internet (backpage.com) and being able to work together in brothels has removed the need and power of traffickers/pimps, making sex trafficking not as common as most have been told through media. Proposing this unnecessary bill seems to be a method of making the problem of sex trafficking seem bigger than what it really is.

If the anyone wishes to help sex trafficking victims or to reduce sex trafficking, they should consider sex worker’s rights and legal protection for sex workers who are consenting adults. I also recommend interviewing sex workers who are currently working and not during the state of fearing arrest; they would quickly realize that the majority of information displayed by anti-trafficking organizations is questionable.

LATE TESTIMONY

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To: JDL Testimony
Cc: [REDACTED]
Subject: *Submitted testimony for HB1902 on Mar 22, 2016 09:00AM*
Date: Monday, March 21, 2016 3:21:55 PM

HB1902

Submitted on: 3/21/2016

Testimony for JDL on Mar 22, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments:

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