



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2272, RELATING TO SEXUAL OFFENSES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 12, 2020 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Albert Cook Deputy Attorney General

Chair Lee and Members of the Committee:

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

The purpose of this bill is to amend section 712-1209.1, Hawaii Revised Statutes (HRS), for the offense of solicitation of a minor for prostitution, to clarify that the state of mind requirement does not apply to the material element that the person solicited was a "member of a police department, a sheriff, or a law enforcement officer," to provide that the person may offer or agree to provide anything else of value, not just payment of a fee, to the minor or law enforcement officer, and to increase the grade of offense from a class C felony to a class B felony.

Children, especially runaways, who are forced into sexual exploitative situations are often compelled to exchange sex for things other than money, such as housing, food, etc. This bill broadens the statute to allow for prosecution of those who victimize minors by offering or agreeing to provide something other than money for sexual conduct with a minor.

On page 3, line 5, of the bill, the Department proposes that rather than replacing "pay a fee" with "provide any type of consideration," the bill should add "or provide anything else of value" after "pay a fee," for further clarity and to avoid the term "consideration," which is not defined in the bill.

Subsection (1) of section 712-1209.1, HRS, which sets out the offense of solicitation of a minor for prostitution, includes the solicitation of a minor or “a member of a police department, a sheriff, or a law enforcement officer who represents that person’s self as a minor.” The latter was left out of subsection (5), the state of mind section. The bill adds “a member of a police department, a sheriff, or a law enforcement officer who represents that person’s self as a minor” to subsection (5) at page 3, lines 14-16. The Department would also add “a member of a police department, a sheriff, or a law enforcement officer who represents that person’s self as a minor” after the last line of subsection (5), which would then read: “A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor or a member of a police department, a sheriff, or a law enforcement officer who represents that person’s self as a minor.”

The Department proposes to amend subsection (3) of section 712-1209.1, HRS, to clarify that the \$5,000 fine shall be ordered “along with any other appropriate sentence” that the court may order.

The Department also proposes to amend subsection (4) of section 712-1209.1, HRS, to include the proposed language of “pay a fee or provide anything else of value” to subsection (4).

Lastly, in subsection (2) of section 712-1209.1, HRS, the bill raises the penalty of soliciting a minor for prostitution from a class C felony, to a class B felony. This will provide just punishment for those who seek to exploit children by offering or agreeing to sexual conduct with children for a fee or anything else of value.

The Department proposes the following amendments to solicitation of a minor for prostitution.

Section 712-1209.1, Hawaii Revised Statutes, is amended to read as follows:

"§712-1209.1 Solicitation of a minor for prostitution.

(1) A person eighteen years of age or older commits the offense of solicitation of a minor for prostitution if the person intentionally, knowingly, or recklessly offers or agrees to pay a fee or provide anything else of value to a minor or 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.

(2) Solicitation of a minor for prostitution is a class [C] B felony.

(3) A person convicted of committing the offense of solicitation of a minor for prostitution shall be ~~[imposed]~~ ordered to pay a fine of not less than ~~[\$5,000; provided that \$5,000 of the imposed fine shall be credited to the general fund.]~~ \$5,000, along with any other appropriate sentence.

(4) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer who offers or agrees to pay a fee or provide anything else of value to a minor while acting in the course and scope of duties.

(5) The state of mind requirement for this offense is not applicable to the fact that the person solicited was a minor~~[-]~~ or a member of a police department, a sheriff, or a law enforcement officer who represented that person's self as a minor. A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor~~[-]~~ or a member of a police department, a sheriff, or a law enforcement officer who represented that person's self as a minor.

(6) For purposes of this section:

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

"Sexual conduct" has the same meaning as in section 712-1200(2)."

For the foregoing reasons, the Department of the Attorney General supports this bill with amendments.



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411



TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 11, 2020

LATE

The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
and Members of the Committee on Judiciary

House of Representatives
Hawaii State Capitol
Honolulu, Hawaii 96813

RE: House Bill No. 2272 – Relating To Sexual Offenses

Dear Chair Lee and Members of the Committee:

The Maui Police Department SUPPORTS the passage of H.B. No. 2272.

Child sex trafficking is a worldwide epidemic which exploits minors, both girls and boys for various reasons to include forced labor and sex. Child trafficking is a lucrative business and often linked with criminal activity and corruption.

According to Save the Children organization, there are 215 million children engaged in child labor, with 115 million of those children in hazardous work. Some of the children are sold by a family member or acquaintance, sometimes lured by false promises of a "better" life; however, the reality is that these children are trafficked and exploited and are held in slave-like conditions without adequate food, shelter, and are often abused and prohibited from all contact with their families. Many of these victims are girls. Statistics show that 98% of sexually abused survivors are women and children.

According to a recent February 4, 2020, HawaiiNewsNow article, Hawaii is not immune to this issue and is more widespread than many believed. Child and Family Services administered a survey to 363 participants in their programs. Of those identified as survivors, approximately 25% related that the first person who preyed on them was a family member, whether a parent, guardian, sibling, grandfather, or uncle. The study also determined that the average age of victims are just under 12 years old. Over 75% of all victims reported being homeless and 64% were identified as being part Native Hawaiian.

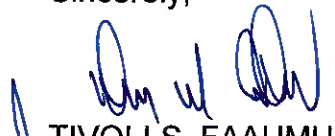
The Honorable Chris Lee, Chair
February 11, 2020
Page 2

Addressing this widespread problem in addition to more collaboration between law enforcement and social services providers and advocating for stronger penalties and laws for those who commit these heinous acts against the most vulnerable individuals in our society are steps in the right direction

The Maui Police Department asks that you SUPPORT the passage of H.B. No. 2272.

Thank you for the opportunity to testify.

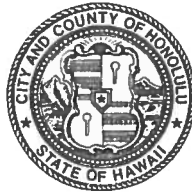
Sincerely,



TIVOLI S. FAAUMU
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • INTERNET: www.honoluluupd.org



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE PJ-LS

February 12, 2020

LATE

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 2272, Relating to Sexual Offenses

I am Acting Major Phillip Johnson of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2272, Relating to Sexual Offenses.

Passage of this bill will assist law enforcement in stopping child predators, and individuals who offer minors for sex.

The HPD urges you to support House Bill No. 2272, Relating to Sexual Offenses, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,

A handwritten signature in cursive script that reads "Susan Ballard".

Susan Ballard
Chief of Police

A handwritten signature in cursive script that reads "Phillip Johnson".
for Phillip Johnson, Acting Major
Narcotics/Vice Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



LATE

**THE HONORABLE CHRIS LEE CHAIR
HOUSE COMMITTEE ON JUDICIARY**

**Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i**

February 12, 2020

RE: H.B. 2272; RELATING TO SEXUAL OFFENSES.

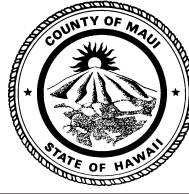
Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, supporting the intent of H.B. 2272.

The Department supports the bill's intent, to expand the current offense of Solicitation of a Minor for Prostitution to include other forms of payment or "consideration." Nevertheless, we do have some concerns about the potential inconsistency that would be created by deleting the word "fee" (page 3, line 5), as that same term is also used in the offenses of prostitution (Section 712-1200(1)(a), Hawaii Revised Statutes ("HRS")), sex trafficking (HRS §712-1200(1)(b)), and other related statutes.

In addition, H.B. 2272 does not define the term "consideration." According to Merriam-Webster's Dictionary (a common fallback for courts, when a term is not defined in the statute or supporting statutes), the word "consideration" has many definitions, to include "payment" or "recompense" or "kindness," among others. While use of the term "consideration" here—as proposed in H.B. 2272—seems to suggest a legal definition of "anything of value," it could ultimately be construed as vague, if there is no further clarification, which would make it difficult for prosecutors to satisfy their obligation to provide the accused with sufficient notice of the charge and what he/she must defend against. If needed, our Department is more than willing to discuss this matter further with other stakeholders, and the Committee, to draft revised language.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of HB 2272.

MICHAEL P. VICTORINO
Mayor



DON S. GUZMAN
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

ANDREW H. MARTIN
Second Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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LATE

TESTIMONY
ON
H.B. 2272 - RELATING TO
SEXUAL OFFENSES

February 12, 2020

The Honorable Chris Lee
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members of the Committee on Judiciary

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning H.B. 2272, Relating to Sexual Offenses. Specifically, we would like to express our strong support for H.B. 2272, which amends the state of mind and payment requirements for H.R.S. 712-1209.1 - Solicitation of a Minor for Prostitution.

As noted in the bill itself, the expansion of the compensation element in H.R.S. 712-1209.1 to include non-monetary forms of compensation is a substantial aid in prosecuting offenders who directly target poor, homeless or runaway minors. These children are already extremely vulnerable due to their circumstances and should not have to deal with the additional danger of a predatory adult proposing a sex-for-necessities transaction.

Our Department also strongly supports the clarification that the intent requirement for this offense does not apply to undercover operations. This unintended element is an obstacle in prosecuting these offenses, and its removal will improve the safety of our communities.

For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly supports the passage of H.B. 2272. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

HAWAII YOUTH SERVICES NETWORK

677 Ala Moana Boulevard, Suite 904 Honolulu, Hawaii 96813

Phone: (808) 489-9549

Web site: <http://www.hysn.org> E-mail: info@hysn.org

Rick Collins, President

Judith F. Clark, Executive
Director

Bay Clinic

Big Brothers Big Sisters of
Hawaii

Big Island Substance Abuse
Council

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of
West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action
Network

Hawaii Health & Harm

Reduction Center

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Kokua Ohana Aloha (KOA)

Maui Youth and Family Services

Na Pu'uwai Molokai Native

Hawaiian Health Care
Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together
(PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the

Great Northwest and
Hawaiian Islands

Residential Youth Services
& Empowerment (RYSE)

Salvation Army Family
Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community
Center

The Catalyst Group

February 10, 2020

To: Representative Chris Lee, Chair
And members of the Committee on Judiciary

Testimony in Support of HB 2272 Relating to Sexual Offenses

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 2272 Relating to Sexual Offenses.

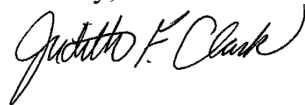
Runaway and homeless youth who are living on their own on the streets without support or guidance from their families are the most vulnerable segment of our homeless population. They are children who have not completed their education and lack employment experience.

While on the streets they have few options for meeting their basic survival needs. Homeless youth often trade sex for food, money or a place to sleep. In a recent study on sex trafficking in Hawaii, a quarter (24.7%) of the victims stated that they exchanged sex for a place to sleep (Sex Trafficking in Hawaii; Arizona State University and Hawaii Commission on the Status of Women; 2020).

Soliciting sexual acts in exchange for basic survival needs is abuse and exploitation of these vulnerable minor and should be addressed in the same way as exchanging sexual favors for money.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director

HB-2272

Submitted on: 2/12/2020 9:24:25 AM

Testimony for JUD on 2/12/2020 3:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Munoz	Ho'ola Na Pua	Support	No

Comments:

Dear Judiciary Committee,

Ho'ola Na Pua is in support of House Bill 2272 that amalgamates the promise of a sex act with a minor for any type of incentive with the electronic enticement of a child as a class B felony.

There are many children, especially those who are homeless and desperate for food, shelter, or a ride, who may be required to provide a sex act in order to receive their basic needs. This is egregious behavior on the part of the solicitor requiring acts of these children.

It makes sense to align the two offenses so that the charge is the same.

Mahalo for allowing us to testify on behalf of this bill.

Jessica Munoz

President, Ho'ola Na Pua



HB 2272, RELATING TO SEXUAL OFFENSES

FEBRUARY 12, 2020 · HOUSE JUDICIARY
COMMITTEE · CHAIR REP. CHRIS LEE

POSITION: Support of the intent, with amendments.

RATIONALE: IMUAlliance supports the intent of and proposes amendments for HB 2272, relating to sexual offenses, which amends the offense of solicitation of a minor for prostitution by specifying that the act of offering or agreeing to any type of consideration, rather than payment of a fee, constitutes solicitation of a minor; makes solicitation of a minor a class B felony; clarifies that the offender's state of mind is not required when the person solicited is a law enforcement officer who holds themselves out as a minor.

IMUAlliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention (victim rescue) services to 150 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims and individuals at risk of sexual exploitation. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name. Yet, sadly, many of the victims with whom we work are misidentified as so-called "voluntary

prostitutes” and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.

Sex trafficking is a profoundly violent crime. At least 23 percent of trafficking victims in Hawai‘i report being first exploited before turning 18, according to a recent report, with the average age of trafficked keiki’s initial exposure to exploitation being 11. Based on regular outreach and monitoring, we estimate that approximately 150 high-risk sex trafficking establishments operate in Hawai‘i. In a recent report conducted by the State Commission on the Status of Women, researchers from Arizona State University found that 1 in every 11 adult males living in our state buys sex online. When visitors are also counted, that number worsens to 1 in every 7 men walking the streets of our island home and a daily online sex buyer market of 18,614 for O‘ahu and a total sex buyer population for the island of 74,362, including both tourists and residents.

ASU’s findings are grim, but not surprising to local organizations that provide services to survivors of sex trafficking. IMUAlliance, for example, has trained volunteers to perform outreach to victims in high-risk locations, like strip clubs, massage parlors, and hostess bars. More than 80 percent of runaway youth report being approached for sexual exploitation while on the run, over 30 percent of whom are targeted within the first 48 hours of leaving home. With regard to mental health, sex trafficking victims are twice as likely to suffer from PTSD as a soldier in a war zone. Greater than 80 percent of victims report being repeatedly raped and 95 percent report being physically assaulted, numbers that are underreported, according to the United States Department of State and numerous trauma specialists, because of the inability of many victims to recognize sexual violence. As one underage survivor told IMUAlliance prior to being rescued, “I can’t be raped. Only good girls can be raped. I’m a bad girl. If I *want* to be raped, I have to *earn* it.”

Accordingly, we support measures to advance our state’s ability to crack down on sexual slavery, including this measure’s intent to elevate criminal penalties for sex buyers who prey upon our keiki. That said, **we note that Hawai‘i’s prohibition of solicitation of a minor for prostitution under HRS §712-1209.1 does not align with 22 U.S. Code Chapter 78, the Trafficking Victims Protection Act, which makes solicitating a minor for prostitution a form of sex trafficking. Accordingly, we urge you to amend this measure by repealing HRS §712-1209.1 and,**

instead, incorporating solicitation of sexual conduct from children as a form of sex trafficking under HRS §712-1202 using the language included in SB 2643.

Amending this measure to make soliciting a minor for prostitution a form of sex trafficking would ensure that the sex buyers who finance the commercial sexual exploitation of children are held fully accountable for the trauma they cause. This, alone, would be a tremendous step forward in our state's anti-trafficking code. Currently, HRS §712-1209.1 fails to properly identify child victims of sexual exploitation as victims of sex trafficking, preventing them from being properly identified as trafficking victims and impairing their ability to receive trauma-informed services that are reserved for survivors of sex trafficking. It also fails to hold sex buyers fully responsible for this trauma under the harsher penalties encapsulated in our state's sex trafficking section under HRS §712-1202, which makes sex trafficking a class A felony. Furthermore, **the crime of "solicitation of a minor for prostitution" legally attaches the term "prostitute" to child victims of HRS §712-1209.1, which contradicts the modern legal and services perspective of eliminating statutory references that directly or inadvertently label children as prostitutes, a designation that can produce a long-lasting social stigma that impedes a victim's ability to receive housing, education, scholarships, employment, and other services necessary to successfully recover from the prolonged trauma of sexual exploitation.**

Federal law has long recognized soliciting a child for prostitution as a form of sex trafficking under the Trafficking Victims Protection Act, which defines child sex trafficking as the "recruitment, harboring, transportation, provision, obtaining, patronizing, **or soliciting** of a minor for the purpose of a commercial sex act." Thus, as previously stated, we strenuously encourage the committee to move the important elements of HRS §712-1209.1 into HRS §712-1202, including language allowing law enforcement to perform undercover sting operations, ensuring that the state of mind requirement for trafficking a minor does not apply to the minor's age (making sex trafficking of minors a strict liability offense), and eliminating consent to sexual conduct as a defense to sex trafficking (a defense we are sadly seeing used with increasing frequency throughout the United States).

Slavery has no place in paradise. Together, we can end exploitation on our shores.

91-1841 Fort Weaver Road
Ewa Beach, HI 96706
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Email cfs@cfs-hawaii.org
www.childandfamilyservice.org

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Hawaii Island United Way



February 12, 2020

LATE

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Members of the Committee on Judiciary

Testimony on behalf of Child & Family Service to Support HB2272

Child & Family Service (CFS) strongly supports HB2272 to amend the offense of solicitation of a minor for prostitution by specifying that the act of offering or agreeing to any type of consideration, rather than payment of a fee, constitutes solicitation of a minor and makes solicitation of a minor a class B felony. Additionally, the amended will clarify that the offender's state of mind is not required when the person solicited is a law enforcement officer who holds themselves out as a minor.

In partnership with Arizona State University and the Hawaii State Commission on the Status of Women, Child & Family Service conducted research on service-seeking individuals in CFS Programs statewide. Our data confirmed unfortunate findings – that Hawaii's children are vulnerable to traffickers. Our data demonstrated that of our participants, 1 in 4 reported they were children when they were first sex trafficked.

Furthermore, of those who participated in the survey, the most common reason identified by the sex trafficking victims for their being forced or coerced to exchange sex was for 1) drugs (26.8%); 2) money (24.7%); and 3) a place to stay (24.7%). This clearly demonstrates that among victims who are trafficked there is more than just an exchange of money that may influence trafficking a minor.

Although our study certainly does not speak for all youth within the State of Hawaii, we believe it does speak to the broader need to increase our response collectively to the matter of trafficking here in Hawaii.

We at CFS strongly believe that it is an ethical imperative to amend the classification of solicitation to prevent trafficking across the State of Hawaii.

Sincerely,

Karen Tan

Karen Tan, LCSW
President and CEO

"We're All About FAMILY"

Mission: Strengthening Families and Fostering the Healthy Development of Children

HB-2272

Submitted on: 2/10/2020 3:28:44 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

HB-2272

Submitted on: 2/10/2020 5:15:24 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

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

Comments:

I definitely support the intent of HB2272.

Mike Golojuch, Sr.

HB-2272

Submitted on: 2/11/2020 4:41:49 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

LATE

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

Comments: