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**THE HONORABLE DAVID TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i**

February 27, 2024

RE: H.B. 2183; RELATING TO SEXUAL EXPLOITATION.

Chair Tarnas, Vice Chair Takayama, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) offers the following **comments** on H.B. 2183:

(1) This bill may provide a safe harbor for prostitution activity, rather than simply permit survivors of sex trafficking to access emergency and health services.

Some background legal principles are relevant to this analysis. First, by the rule of *corpus delicti aliunde*, a defendant cannot be convicted where there is no proof that a crime occurred other than his or her own statement.¹ Second, lay witnesses may only testify to facts within their personal knowledge.² Third, with several exceptions,³ the hearsay rule generally excludes out-of-court statements offered for the truth of the matter asserted.⁴ Finally, where the statement itself constitutes the offense, it is admissible into evidence.⁵ Some examples illustrate how these rules might operate under the proposed law.

¹ See *State v. Yoshida*, 44 Haw. 352, 356-61, 354 P.2d 986, 989-92 (1960); *State v. Fields*, 120 Hawai'i 73, 93, 201 P.3d 586, 606 (App. 2005).

² Hawai'i Rules of Evidence (HRE) Rule 701.

³ HRE Rules 802-806.

⁴ HRE Rule 801-802.

⁵ *State v. Iwasaki*, 59 Haw. 401, 401-02, 581 P.2d 1171, 1171-72 (1978); *State v. Connally*, 79 Hawai'i 123, 125-27, 899 P.2d 408-10 (1995).

Scenario A: Acting in good faith, Mary calls police after a pimp assaults her. Mary tells the officer that she works as a prostitute. Absent independent evidence to corroborate Mary's admission, she could not be convicted for prostitution under the current law. The safe-harbor provision would not change this.

Scenario B: Acting in good faith, Jane calls the poison control center because her friend Mary has overdosed. Jane tells the first responders that Mary met a john shortly before her poisoning. While *corpus delicti* has been met, prosecuting Mary would require direct testimony from Jane or the testimony of a first responder under a hearsay exception. Under the circumstances described, this seems an unwise use of police and prosecutorial discretion. The safe-harbor provision would grant Mary immunity.

Scenario C: Acting in good faith, Mary accompanies Jane to a reproductive health center. While at the center, Mary uses her phone to call commercial sex buyers, soliciting and accepting offers to exchange sex for a fee. Ordinarily, Mary would be liable to prosecution for prostitution based on the testimony of any witness to these offers.⁶ The safe-harbor provision would grant Mary immunity while she remained at the reproductive health center.

(2) This bill may encourage pretextual requests for medical or law enforcement assistance as a shield for prostitution activity.

Proving an offense beyond reasonable doubt requires the prosecution to negative standard defenses.⁷ This bill applies the safe-harbor provision to persons seeking medical or law enforcement assistance in good faith. The prosecution would bear the burden of excluding good faith beyond a reasonable doubt. Eliminating reasonable doubt is the highest legal burden of proof. This may encourage some pretextual requests for medical or law enforcement assistance as a shield for prostitution activity.

(3) This bill would be vulnerable to constitutional challenge on equal protection grounds.

When a law neither burdens a fundamental right nor targets a suspect class, equal protection requires disparate treatment reasonably relate to a legitimate government purpose.⁸ This standard, called rational-basis review, carries a strong presumption of validity.⁹ But it still requires some reasonable link between the classification and the government objective.¹⁰

Three laws are relevant to this analysis. HRS § 712-1200 prohibits prostitution and applies only to sellers.¹¹ HRS § 712-1200.5 prohibits commercial sexual exploitation and applies

⁶ *Connally* at 410, 899 P.2d at 127.

⁷ HRS § 702-205 (elements of an offense defined to include conduct, attendant circumstances, results of conduct that negative a defense); § 701-114(1)(a) (conviction requires proof beyond reasonable doubt for each element of the offense).

⁸ *Romer v. Evans*, 517 U.S. 620, 631 (1996).

⁹ *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314-15 (1993).

¹⁰ *See Heller v. Doe*, 509 U.S. 312, 324 (1993).

¹¹ *See* HRS § 712-1200(1).

only to buyers.¹² HRS § 712-1207 prohibits street solicitation and commercial sexual exploitation in Waikiki: it applies to both buyers and sellers.¹³

H.B. 2183 creates a disparity between johns in Waikiki and those outside Waikiki. Section 2 of this bill extends the safe-harbor provision to HRS § 712-1200, which refers exclusively to sellers. But Section 4 extends the safe-harbor provision to HRS § 712-1207, a law that includes commercial sex buyers. So the safe-harbor provision only applies to commercial sex buyers in Waikiki. This raises an equal protection challenge because the location of the buyer's activity lacks an apparent rational relationship to the safe-harbor provision.

A defendant claiming the safe-harbor under HRS § 712-1207 would also probably be immune from prosecution for commercial sexual exploitation under HRS § 712-1200.5. Both HRS § 712-1200.5 and HRS § 712-1207 reach substantively identical conduct. Under the rule of lenity,¹⁴ the phrase "any other criminal offense" under HRS § 712-1207 would probably not extend to HRS § 712-1200.5. Thus, the bill would create a unique immunity for commercial sex buyers within Waikiki. This appears contrary to the stated purpose of the legislation.

Thank you for the opportunity to testify.

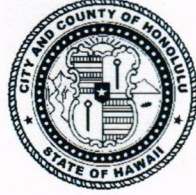
¹² HRS § 712-1200.5

¹³ HRS § 712-1207(1)(a) (sellers); § 712-1207(1)(b) (buyers).

¹⁴ *State v. Guyton*, 135 Hawai'i 372, 380, 351 P.3d 1138, 1146 (2015) ("This longstanding precept of statutory interpretation states that where a criminal statute is ambiguous, the statute must be strictly construed against the government and in favor of the accused.")(cleaned up).

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OUR REFERENCE **ML-HR**

February 28, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

Dear Chair Marten and Members:

SUBJECT: House Bill No. 2183, Relating to Sexual Exploitation

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

The HPD supports House Bill No. 2183, Relating to Sexual Exploitation.

Victims of sexual exploitation often struggle with repeated traumatic events over time which leads to prolonged negative impacts. The effects of sexual exploitation consist of physical and emotional trauma that can be persistent and devastating.

Addressing this trauma by seeking help or assistance is critical to preventing the victim from being sexually exploited and providing them with the service they need to escape sexual exploitation. Oftentimes victims are afraid to seek help or cooperate with law enforcement because of the trauma they have endured or the fear that they will be prosecuted for sexual acts they have committed.


Establishing laws, such as safe harbor protections for survivors of sexual exploitation, will assure victims that they will not be prosecuted by law enforcement. Victims seeking professional help for sexual trauma can be life-changing.

The Honorable David A. Tarnas, Chair
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The HPD urges you to support House Bill 2183, Relating to Sexual Exploitation.

Thank you for the opportunity to testify.

Sincerely,



Mike Lambert, Major
Narcotics/Vice Division

APPROVED:



Arthur J. Logan
Chief of Police



HB 2183, RELATING TO SEXUAL EXPLOITATION

FEBRUARY 28, 2024 · JHA HEARING

POSITION: Support.

RATIONALE: Imua Alliance **supports** SB 2183, relating to sexual exploitation, which establishes safe harbor protections for survivors of sexual exploitation who seek medical or law enforcement assistance.

Imua Alliance is a victim service provider for survivors of sex trafficking. Over the past 15 years, we have provided comprehensive direct intervention (victim rescue) services to over 200 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. **During the pandemic, demand for victim services to our organization has skyrocketed by 330 percent, driven in part by a fivefold increase in direct crisis calls from potential trafficking victims.**

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. Imua Alliance, 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 Imua Alliance 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 fight against sexual servitude, including this bill's extension of safe harbor protections for survivors of sexual exploitation who seek medical or law enforcement assistance.** Survivors of sex trafficking should not be held legally responsible for the trauma they have endured. Over 30 states have enacted safe harbor protections for sex trafficking victims. Hawai'i should join that list.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org

HB-2183

Submitted on: 2/26/2024 4:54:53 PM

Testimony for JHA on 2/28/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I strongly support HB2183. Please pass this important measure.

HB-2183

Submitted on: 2/27/2024 9:13:33 PM

Testimony for JHA on 2/28/2024 2:00:00 PM

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

Comments:

Stand in SUPPORT