



SB2757 SD1
RELATING TO SEX TRAFFICKING
House Committee on Judiciary & Hawaiian Affairs

March 13, 2024

2:00 pm

Conference Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS SB2757 SD1**, which would align sex trafficking laws in Hawai‘i with federal laws regarding the exploitation of a minor. This crucial initiative represents a significant step towards combating the heinous crime of sex trafficking and providing justice for victims, particularly Native Hawaiians who are disproportionately impacted by this form of exploitation.

Sex trafficking is a pervasive and devastating crime that preys on the most vulnerable members of our society, including minors. By aligning Hawai‘i's sex trafficking laws with federal standards regarding the exploitation of minors, we can ensure that perpetrators who exploit children for commercial sex are held accountable to the fullest extent of the law. This alignment would streamline prosecution efforts and provide law enforcement agencies with the necessary tools to effectively investigate and prosecute cases of child sex trafficking.

Aligning Hawai‘i's laws with federal standards sends a clear message that our state is committed to protecting the rights and well-being of all individuals, especially our most vulnerable populations. Native Hawaiians, in particular, are disproportionately affected by sex trafficking due to a combination of factors such as socioeconomic disparities and historical trauma. Studies have shown that Native Hawaiian women are especially vulnerable to trafficking. The majority (43%) of sex trafficking cases are k naka maoli girls trafficked in Waik k i, O‘ahu.¹ 57% of participants served through the Mana‘olana Program at Child & Family Services are Native Hawaiian females who have experienced human trafficking. Therefore, enacting legislation to strengthen sex trafficking laws is especially critical for protecting Native Hawaiian communities and ensuring that they receive the support and resources they need to combat this issue.

¹ Office of Hawaiian Affairs and Commission on the Status of Women, Missing and Murdered Native Hawaiian Women and Girls Task Force Report p.5 (2022)



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Furthermore, aligning our state laws with federal standards can facilitate greater collaboration and coordination between state and federal law enforcement agencies, enhancing our ability to address sex trafficking across jurisdictional boundaries. This collaboration is essential for effectively dismantling trafficking networks and bringing perpetrators to justice. It is important to note that while aligning state laws with federal laws is beneficial, it should be part of a comprehensive approach that includes prevention, education, victim support, and community engagement. Additionally, cultural sensitivity is crucial in addressing the unique needs and experiences of Native Hawaiians who may be affected by sex trafficking.

In conclusion, the Office of Hawaiian Affairs urges this committee to **PASS SB2757 SD1**. By doing so, we can strengthen protections for victims, hold perpetrators accountable, and provide much-needed support to Native Hawaiian communities who are disproportionately affected by this crime.

Mahalo piha for the opportunity to testify on this measure.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

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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**

March 13, 2024

RE: S.B. 2757 SD 1; RELATING TO SEX TRAFFICKING.

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 S.B. 2757 SD 1:

This bill repeals H.R.S. Section 712-1209.1 (Commercial Sexual Exploitation of a Minor) and reclassifies the offense under H.R.S. Section 712-1202 (Sex Trafficking). The bill also modifies the state of mind for the Sex Trafficking statute from “knowingly” to “intentionally, knowingly, or recklessly.”

Defining “recklessness” as the requisite state of mind will complicate effective prosecution of sex trafficking by eliminating promoting prostitution as a lesser-included offense. Under the current law, promoting prostitution is a lesser-included offense of sex trafficking.¹ In other words, sex trafficking cannot be committed without also promoting prostitution, just as any murder also includes an assault.² So even if the jury cannot unanimously convict on every element of a sex trafficking charge, it might still find enough evidence to convict for promoting prostitution. But by lowering the state of mind to recklessness, sex traffickers no longer face the prospect of a lesser-include conviction for promoting prostitution.

¹ Compare H.R.S. § 712-1202(1) with H.R.S. § 712-1203(1). See also H.R.S. § 701-109(4)(a) (defining lesser-included offense).

² See *State v. Alston*, 75 Haw. 517, 532-35, 865 P.2d 157, 166-67 (1994) (explaining the doctrine of lesser-included offenses).

Redefining commercial sexual exploitation of a minor as a form of sex trafficking also complicates judicial interpretation of the sex trafficking statute. The bill intends to track the statutory language of the Trafficking Victims Protection Act (TVPA). But federal laws like the TVPA have been interpreted by the federal courts.³ State courts remain free to depart from these precedents, striking down laws for reasons that would not prevail in federal court. For example, in recent years, Hawai‘i courts have experienced significant litigation around the degree of specificity required from a charging instrument.⁴ Similar challenges will likely follow when previously separate offenses are combined within a single statute.

In present form, commercial sexual exploitation of a minor and sex trafficking offer distinct prosecution strategies. The first targets the demand-side, focusing on the most heinous of commercial sex buyers who specifically seek to abuse minors. Commercial sexual exploitation of a minor does not require testimony from a victim, only proof of the illegal offer. It can be efficiently charged by information, rather than through grand jury or a preliminary hearing. Conviction requires registration as a sex offender.⁵ Because these prosecutions can be swiftly implemented with a higher likelihood of conviction, it offers a credible deterrent.

Sex trafficking targets the supply-side, focusing on the organized trafficking activity. These prosecutions often require victim testimony, as well as sustained commitment through a long court process that could last as long as a decade. But upon conviction, the enhanced penalties available for sex trafficking can substantially incapacitate these offenders. This strategy is appropriate when confronting systemic criminal activity.

Preserving commercial sexual exploitation of a minor and sex trafficking as separate offenses mirrors the federal approach. When passing the TVPA,⁶ Congress did not repeal or substitute other laws aimed at sex trafficking.⁷ Federal prosecutors can still use the Mann Act⁸ or immigration offenses⁹ with the trafficking statute. Rather than combining all trafficking crimes into a single law, Congress preserved different statutes as options for prosecuting this offense.

Thank you for the opportunity to testify.

³ See, e.g., *United States v. Marcus*, 560 U.S. 258, 263-64 (2010) (declining to find structural error based on omission of jury instruction regarding TVPA enactment date); *United States v. Basa*, 817 F.3d 645, 648-49 (9th Cir. 2016) (survival sex prosecution); *United States v. Cook* 782 F.3d 983, 987 (8th Cir. 2015) (rejecting challenge that TVPA applied only to suppliers).

⁴ See, e.g., *State v. Jardine*, 151 Hawai‘i 96, 100-01, 508 P.3d 1182, 1186-87 (2022); *State v. Pacquing*, 139 Hawai‘i 302, 308, 389 P.3d 897, 903 (2016); *State v. Wheeler*, 121 Hawai‘i 383, 391-93, 219 P.3d 1170, 1178-80 (2009). Cf. *United States v. Williamson*, 903 F.3d 124, 130-31 (D.C. Cir. 2018) (rejecting similar challenge); *United States v. Quinn*, 359 F.3d 666, 670 (4th Cir. 2004) (same).

⁵ See H.R.S. § 846E-1 (defining “covered offense” to include a “sexual offense” and “sexual offense” to include commercial sexual exploitation of a minor); § 846E-2 (registration requirement for covered offenders).

⁶ Pub. L. 106-36, 114 Stat. 1464 (2000).

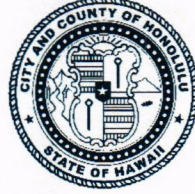
⁷ See Developments in the Law—Jobs and Borders, *The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2198 (2005) (“Specifically, the TVPA does not replace the previously used statutes, it supplements them: its function is not meld existing laws into one all-purpose statute, but to add another piece to the “patchwork” of trafficking-related criminal violations. This is evidenced by the fact that not all trafficking cases are brought under the new provisions.”).

⁸ Pub. L. 61-277, 36 Stat. 825, *codified as amended* at 18 U.S.C. §§ 2421-2424.

⁹ See, e.g., 8 U.S.C. § 1328.

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OUR REFERENCE **ML-HR**

March 13, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
The Honorable Cedric Asuega Gates, Chair
and Members
Committee on Agriculture
and Food Systems
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chairs Tarnas and Gates and Members:

SUBJECT: Senate Bill No. 2757, S.D.1, Relating to Sex Trafficking

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

The HPD supports Senate Bill No. 2757, S.D.1, Relating to Sex Trafficking.

According to the Hawai'i Revised Statutes, commercial sexual exploitation of a minor and sex trafficking are considered two separate crimes. Commercial sexual exploitation of a minor is when a person 18 years or older, solicits, offers to engage in, or requests to engage in sexual conduct with a minor for anything in return. Sex trafficking is when a person advances prostitution or profits from the prostitution of a minor.

Sex trafficking and commercial sexual exploitation of a minor are overlapping terms. Both describe crimes of a sexual nature committed against children and adults that involve exploitation for financial or other gain. Sex trafficking is defined by the Trafficking Victims Protection Act of 2000 as "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." It involves the use of force, fraud, or coercion to make an adult

The Honorable David A. Tarnas, Chair
The Honorable Ceric Asuega Gates, Chair
and Members
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engage in commercial sex acts. However, any commercial sexual activity with a minor, even without force, fraud, or coercion is considered trafficking.


Federal law, Title 18 U.S. code 1591 recognizes offering to engage in sexual activity with a minor for anything of value as a form of sex trafficking.

Aligning our state trafficking laws with federal law by making commercial sexual exploitation of a minor a form of sex trafficking will deter these heinous crimes and set a strong stance that Hawai'i will vigorously punish offenders convicted of these crimes.

The HPD urges you to support Senate Bill No. 2757, S.D.1, Relating to Sex Trafficking.

Thank you for the opportunity to testify.

Sincerely,


Mike Lambert, Major
Narcotics/Vice Division

APPROVED:

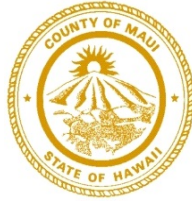


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TESTIMONY ON S.B. 2757 SD1
RELATING TO SEX TRAFFICKING

TO: Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary and Hawaiian Affairs

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: March 12, 2024

SUBJECT: **SUPPORT OF SB 2757 SD1, SEX TRAFFICKING**

Thank you for the opportunity to testify in **SUPPORT** of SB 2757 SD1. This bill amends Hawai's Penal Code to align it with federal law regarding the sex trafficking of minors by, *inter alia*, repealing the Commercial Sexual Exploitation of a Minor offense under HRS § 712-1209.1 and creating an equivalent offense within HRS § 712-1202 and related statutes. We support this measure because it recognizes the severity of child sexual exploitation by making the sex trafficking of minors a Class A felony offense, on par with the penalty for the sex trafficking of adults.

For this reason, the Department of the Prosecuting Attorney, County of Maui supports the passage of SB 2757 SD1. 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.

SB-2757-SD-1

Submitted on: 3/8/2024 8:43:08 PM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Stonewall Caucus of the Democratic Party of Hawai'i	Support	Remotely Via Zoom

Comments:

Aloha Representatives,

The Stonewall Caucus of the Democratic Party of Hawai'i; Hawai'i's oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 2757 SD 1.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr. (he/him)
Chair and SCC Representative
Stonewall Caucus for the DPH

SB-2757-SD-1

Submitted on: 3/8/2024 6:24:34 PM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch	Rainbow Family 808	Support	Written Testimony Only

Comments:

Rainbow Family 808 supports SB2757. Please pass this bill.

Mike Golojuch, Sr., Secretary/Board Member



HAWAI`I YOUTH SERVICES NETWORK

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

Vonnell Ramos, President
Cyd Hoffeld, Vice President
Sione Ford Naeata, Treasurer
Greg Tjapkes, Secretary

Judith F. Clark, Executive
Director

Network Membership

*Big Brothers Big Sisters Hawai`i
Big Island Substance Abuse
Council*

*Bobby Benson Center
Child and Family Service
Coalition for a Drug-Free Hawai`i
Collins Consulting, LLC
Domestic Violence Action Center
EPIC `Ohana, Inc.*

*Family Programs Hawai`i
Family Support Hawai`i
Friends of the Children's Justice
Center of Maui*

*Get Ready Hawai`i
Hale Kipa, Inc.*

*Hale `Opio Kaua`i, Inc.
Hawai`i Children's Action
Network*

*Hawai`i Health & Harm
Reduction Center
Hawai Island Community`
Health Center*

*Ho`ola Na Pua
Ho`okele Coalition of Kaua`i*

*Ka Hale Pomaika`i
Kahi Mohala*

*Ko`ua Kalih Valley
Kaua`i Planning and Action
Alliance*

*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
PHOCUSED*

*PFLAG - Kona, Big Island
Planned Parenthood of the
Great Northwest, Hawaii
Alaska, Kentucky, Indiana*

*Residential Youth Services
& Empowerment (RYSE)*

*Salvation Army Family
Intervention Services*

*Sex Abuse Treatment Center
Susannah Wesley Community
Center*

The Catalyst Group

March 9, 2024

Representative David Tarnas, Chair
And members of the Committee on Judiciary and Hawaiian Affairs

TESTIMONY IN SUPPORT OF SB 2757 SD 1 RELATING TO SEX TRAFFICKING

Hawaii Youth Services Network (HYSN) supports SB 2757 SD 1 Relating to Sex Trafficking.

Homeless youth who are living on their own on the streets have few options for meeting their basic survival needs. Homeless youth often trade sex for food, money or a place to sleep. They are vulnerable to being recruited into prostitution and other forms of commercial sex work by adults.

I would like to share the story of one of these victims., When Maile (name changed to protect privacy) was 13, she ran away from home. She told me, "I met an older man, he was like an uncle to me. He put me up in a hotel room and I thought I was safe. . . But then I found out the true meaning of 'Nothing in life is free.'"

Minors who engage in sex work do it out of desperation or because they were deceived by someone they trusted.. They are victims, not criminals. And the people who recruit and exploit them are truly engaged in sex trafficking.

Thank you for this opportunity to testify.

Sincerely,

Judith F. Clark
Executive Director



SB 2757, SD1, RELATING TO SEX TRAFFICKING

MARCH 13, 2024 · JHA HEARING

POSITION: Support.

RATIONALE: Imua Alliance supports SB 2757, SD1, relating to sex trafficking, which aligns state sex trafficking laws with federal law by making the commercial sexual exploitation of a minor a form of sex trafficking.

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 skyrocketed by 330 percent, driven in part by a fivefold increase in direct crisis calls.

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 alignment of state law with federal law by making buying sex from a minor a form of sex trafficking, something that will significantly help with the proper identification of child survivors.**

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

SB-2757-SD-1

Submitted on: 3/8/2024 3:21:10 PM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chanara Casey Richmond	Individual	Support	Written Testimony Only

Comments:

I Chanara Richmond support SB2757

SB-2757-SD-1

Submitted on: 3/9/2024 11:45:52 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

YES to aligning state sex trafficking laws with federal law by making the commercial sexual exploitation of a minor a form of sex trafficking.

SB-2757-SD-1

Submitted on: 3/9/2024 11:49:25 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

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

Comments:

Stand in Support

SB-2757-SD-1

Submitted on: 3/9/2024 4:13:55 PM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brett Kulbis	Individual	Support	Written Testimony Only

Comments:

I STRONGLY SUPPORT.

Our keiki are our most precious resource and they need to be protected at all ages.

SB-2757-SD-1

Submitted on: 3/12/2024 7:46:04 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

SUPPORT. MORE, SIMILAR BILLS NEEDED.

MAHALO!