



GOV. MSG. NO. **668**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 6, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2045 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2045 SD1 HD1 CD1

A BILL FOR AN ACT
RELATING TO CRIME.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2045

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2045, entitled "A Bill for an Act Relating to Crime."

The purposes of this bill are to create two new criminal offenses of Sexual Human Trafficking in the First Degree and Sexual Human Trafficking in the Second Degree, and to add Sexual Human Trafficking to the list of offenses covered under the government witness protection program.

This bill is objectionable because the proposed new offenses seek to prohibit conduct that is already prohibited under Hawaii law, and because the proposed new offenses do not clearly define prohibited conduct in such a way that they can be enforced and prosecuted in court.

The language in this measure is poorly drafted, overly broad, redundant, and inaccurate so as to make it virtually impossible to bring to trial and convict those who engage in human trafficking. The bill also fails to establish clear standards for a person knowingly or intentionally engaging in this behavior, thus jeopardizing the case that a prosecutor would have to present in a court of law.

In addition to the inadequately defined terms, the proposed offenses of sexual human trafficking do not clearly establish prohibited conduct that can be reasonably understood.

This bill is also objectionable because most of the conduct that the proposed offenses attempt to prohibit is already

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covered by existing statutes.

Advancing or profiting from the prostitution of a minor is prohibited by section 712-1202, Hawaii Revised Statutes, Promoting Prostitution in the First Degree. Under section 712-1202, the State need only prove that: (1) the actor knowingly advances or profits from prostitution, and (2) the prostituted person is less than eighteen years old. In contrast, proposed section 707-B of this bill would impose additional elements (enticement, fraud, or coercion; maintenance, management, supervision, or control; and transportation) that the State must prove. The additional elements would make it more difficult to obtain convictions in cases involving prostitution of minors. There is no logical reason to add them.

The proposed offenses refer to prostitution or sexually-explicit activity obtained or maintained through coercion. The use of coercion is prohibited by existing statutes. Section 712-1202, Promoting Prostitution in the First Degree, prohibits knowingly "[a]dvanc[ing] prostitution by compelling a person by force, threat, or intimidation to engage in prostitution, or profit[ing] from such coercive conduct by another." Section 707-764, Hawaii Revised Statutes, Extortion, prohibits obtaining, or exerting control over, the property, labor, or services of another with intent to deprive another of property, labor, or services by threats of word or conduct; and prohibits intentionally compelling or inducing another person to engage in conduct from which another has a legal right to abstain, or to abstain from conduct in which another has a legal right to engage, by threats of word or conduct.

I support the goals of preventing human trafficking and bringing its perpetrators to justice. Unfortunately, those goals

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will not be achieved by the enactment of this bill and this bill will make it more difficult to achieve the objectives of penalizing those who engage in sexual human trafficking.

For the foregoing reasons, I am returning Senate Bill No. 2045 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Chapter 707, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . SEXUAL HUMAN TRAFFICKING**

5 **§707-A Definitions.** For purposes of this part:

6 "Advances", with respect to prostitution or sexually-
7 explicit activity, occurs if a person, acting other than a
8 prostitute or sexually-explicit activity performer, knowingly
9 causes or aids a person to commit or engage in prostitution or
10 sexually-explicit activity; procures or solicits patrons for
11 prostitution or sexually-explicit activity; provides persons for
12 prostitution or sexually-explicit activity purposes; permits
13 premises to be regularly used for prostitution or sexually-
14 explicit activity purposes; operates or assists in the operation
15 of a house of prostitution or a prostitution or sexually-
16 explicit activity enterprise; or engages in any other conduct
17 designed to institute, aid, or facilitate an act or enterprise
18 of prostitution or sexually-explicit activity.



1 "Coercion" means to use or threaten to use any form of
2 domination, restraint, or control for the purpose of causing an
3 individual to engage in or remain in prostitution or sexually-
4 explicit activity, as applicable, or to relinquish earnings
5 derived from prostitution or sexually-explicit activity, as
6 applicable. Coercion exists if the totality of the
7 circumstances establish the existence of domination, restraint,
8 or control that would have the reasonably foreseeable effect of
9 causing an individual to engage in or remain in prostitution or
10 sexually-explicit activity, as applicable, or to relinquish
11 earnings derived therefrom.

12 "Enticement" includes the use of a computer or any other
13 electronic device to intentionally or knowingly communicate with
14 another person, with the intent to promote or facilitate the
15 trafficking of the other person under this part.

16 "Fraud" means making material false statements,
17 misstatements, or omissions to induce or maintain the person to
18 engage or continue to engage in prostitution or a sexually-
19 explicit activity, as applicable.

20 "Maintain" means to secure continued performance of
21 prostitution or sexually-explicit activity regardless of any



1 initial agreement on the part of the trafficked person to
2 perform such prostitution or sexually-explicit activity.

3 "Profits" with respect to prostitution or sexually-explicit
4 activity, as applicable, means, if, acting other than as a
5 prostitute or sexually-explicit activity performer, receiving
6 compensation for personally-rendered prostitution or sexually-
7 explicit activity services, as applicable, the person accepts or
8 receives money or other property, in any form or manner,
9 pursuant to an agreement or understanding with any other person
10 whereby the person participates or is to participate in the
11 proceeds of prostitution or sexually-explicit activity, as
12 applicable.

13 "Prostituted person" means a person who is aided or caused
14 to commit or engage in prostitution or sexually-explicit
15 activity.

16 "Prostitution" means the activity of engaging in, or
17 agreeing or offering to engage in, sexual conduct with another
18 person for a fee.

19 "Sexual conduct" means the conduct defined in section
20 712-1200(2).

21 "Sexually-explicit activity" means engaging in activity as
22 an erotic or nude massager or exotic or nude dancer, as defined



1 by section 712-1210, or in the production of child pornography,
2 as defined in section 707-750.

3 "Transport" means to move any distance, however slight, and
4 shall not require proof of any specific minimum distance.

5 **§707-B Sexual human trafficking in the first degree. (1)**

6 A person commits the offense of sexual human trafficking in the
7 first degree if the person knowingly:

8 (a) Advances or profits from prostitution or sexually-
9 explicit activity through any business, enterprise, or
10 activity involving the prostitution or sexually-
11 explicit activity of one or more prostituted persons
12 under the age of eighteen that is established,
13 conducts activities, or engages in conduct for the
14 purpose of advancing or profiting from the
15 prostitution or sexually-explicit activity;

16 (b) Which prostitution or sexually-explicit activity by
17 the prostituted persons is obtained or maintained
18 through enticement, fraud, or coercion; and

19 (c) The person, either alone or in association with
20 others:

21 (i) Maintains, manages, supervises, or controls; and

22 (ii) Transports,



1 any prostituted person.

2 (2) Sexual human trafficking in the first degree is a
3 class A felony.

4 **§707-C Sexual human trafficking in the second degree. (1)**

5 A person commits the offense of sexual human trafficking in the
6 second degree if the person knowingly:

7 (a) Advances or profits from prostitution or sexually-
8 explicit activity through any business, enterprise, or
9 activity involving the prostitution or sexually-
10 explicit activity of one or more prostituted persons
11 eighteen years old or older that is established,
12 conducts activities, or engages in conduct for the
13 purpose of advancing or profiting from the
14 prostitution or sexually-explicit activity;

15 (b) Which prostitution or sexually-explicit activity by
16 the prostituted persons is obtained or maintained
17 through enticement, fraud, or coercion; and

18 (c) The person, either alone or in association with
19 others:

20 (i) Maintains, manages, supervises, or controls; and

21 (ii) Transports,

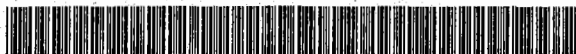
22 any prostituted person.



1 (2) Sexual human trafficking in the second degree is a
2 class B felony."

3 SECTION 2. Section 28-101, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The attorney general shall establish a statewide
6 witness program through which the attorney general may fund or
7 provide for the security and protection of a government witness
8 or a potential government witness in an official proceeding or
9 investigation where the attorney general determines that an
10 offense such as those described in [~~sections~~] section 710-1071
11 (intimidating a witness), 710-1072 (tampering with a witness),
12 or 710-1072.2 (retaliating against a witness) is likely to be
13 committed or which involves great public interest. The attorney
14 general may also fund or provide for the security and protection
15 of the immediate family of, or a person otherwise closely
16 associated with, such witness or potential witness if the family
17 or person may also be endangered. In determining whether such
18 security and protection or funds are to be provided, the
19 attorney general shall give greatest priority to official
20 proceedings or investigations involving pending or potential
21 organized crime, racketeering activity, sexual human
22 trafficking, or career criminal prosecutions."



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

4 SECTION 4. If any provision of this Act, or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act, which can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 5. In codifying the new sections added by section
11 1 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2010.

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