

HB1926

HD1

LATE

TESTIMONY



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

March 21, 2014

Committee on Judiciary and Labor
Hawaii State Senate
415 South Beretania Street, Conference Room 016
Honolulu, HI 96813

Dear Senator Clayton Hee, Chair and Senator Maile S.L. Shimabukuro, Vice Chair,

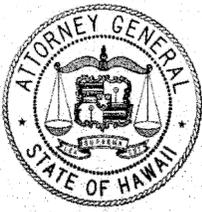
House Bill 1926, HD 1, includes a provision which allows police officers to have sexual relations with prostitutes as long as the act falls within the "scope of their duty." This section is unnecessary and will undoubtedly lead to sexual abuse without repercussion. Other states manage to prosecute prostitution at a high rate without allowing law enforcement to use sexual penetration during investigations.

When your Committee hears HB1926, HD1, please eliminate Section 4, (4) on p. 8, 1-3, which exempts police officers from prosecution for the solicitation of a minor for prostitution.

With warm aloha,

Representative Cynthia Thielen
50th District (Kailua, Kaneohe Bay)

Representative Della Au Bellati
24th District



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 1926, H.D. 1, RELATING TO CRIME.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 21, 2014

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General provides the following comments and recommendation.

Section 4 of this bill, on page 8, lines 4-6, amends section 712-1209.1, Hawaii Revised Statutes (HRS), regarding the offense of solicitation of a minor for prostitution, to add the following provision:

It shall not be a defense to a prosecution for solicitation of a minor for prostitution that the defendant did not know the minor was under the age of eighteen.

This proposed amendment appears to be an attempt to eliminate the state-of-mind requirement as to the material element that the person solicited was a minor. The proposal is unclear and possibly insufficient. For the reasons set forth below, the Department recommends an alternative provision that will provide for strict liability. To make the intent for strict liability clear, the Department recommends the following amendment on page 8, lines 4-6, so that it reads as follows:

(5) The state-of-mind requirement for this offense is not applicable to the fact that the person solicited was a minor. A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor under the age of eighteen.

The bill sets forth the offense of solicitation of a minor for prostitution in section 4, page 7, lines 10-14, of the bill as follows:

A person eighteen years of age or older commits the offense of solicitation

of a minor for prostitution if the person offers or agrees to pay a fee to a minor or to another person who represents that person's self as a minor to engage in sexual conduct.

There being no specified state of mind for the offense, the following provision in section 702-204, HRS, applies:

When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly. [Emphasis added.]

For the solicitation offense, the prosecution has the burden of proving that the defendant acted intentionally, knowing, or recklessly with respect to the fact that the person solicited was a minor. In other words, the reckless state of mind applies to the current offense.

Therefore, the proposed amendment, "It shall not be a defense to a prosecution for solicitation of a minor for prostitution that the defendant did not know the minor was under the age of eighteen," does not address the reckless state of mind. The prosecutor may still have the burden to prove that the defendant acted recklessly as to the age of the person solicited. The proposed amendment may not completely establish strict liability as to the person's age.

Furthermore, by providing that "it shall not be a defense" may be confusing with respect to the prosecution's burden of proof. The prosecution would have the burden of disproving a defense, but the phrase "it shall not be a defense" is different and does not clearly impact the prosecutor's burden of proof.

Section 702-207, HRS, provides guidance on establishing strict liability with respect to age of the person solicited. The section reads:

When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears. [Emphasis added.]

To establish strict liability with respect to a particular element, the legislature should make this intent clear.

Because the current offense does not specify a specific state of mind, a specific state of mind should be inserted into the law to make section 702-207 applicable to the offense instead of section 702-204. The Department recommends inserting "intentionally or knowingly," into the offense so that it reads as follows:

A person eighteen years of age or older commits the offense of solicitation of a minor for prostitution if the person intentionally or knowingly offers or agrees to pay a fee to a minor or to another person who represents that person's self as a minor to engage in sexual conduct.



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary & Labor**

March 21, 2014, 10:00 a.m.

H.B. No. 1926, HD1: RELATING TO CRIME

Chair Hee and Members of the Committee:

The Office of the Public Defender opposes Sections 2, 4 and 6 of this measure.

Section 2 adds the offenses of promoting prostitution in the first and second degree and solicitation of a minor for prostitution to the list of offenses subject to an extended term of imprisonment under the repeat violent and sexual offender law (§706-606.6, HRS). While we can understand classifying promoting prostitution in the first degree as a violent sexual offense in that it can involve the use of force, threat, fraud or intimidation to induce another person into prostitution, we do not believe that promoting prostitution in the second degree and solicitation of a minor for prostitution qualify as violent sexual offenses. For that reason, we ask this committee to delete the offenses of promoting prostitution in the second degree (§712-1203) and solicitation of a minor for prostitution (§712-1209.1, HRS) on page 5, lines 11, 15 and 19 and on page 6, line 6 and 18 of this measure.

Subsection (2) of §706-606.6, HRS lists the time periods within which a specified offense would be considered a prior offense for the purpose of enhanced sentencing under the section. The time periods are twenty years for class A felonies, ten years for class B felonies and five years for class C felonies. We ask this committee to consider moving the offense of promoting prostitution in the second degree from subsection (a) to subsection (b), with the other class B felony offenses and solicitation of a minor to subsection (c) with the class C felony offenses.

Section 4 makes two significant changes to the law, which this legislature passed just last year. The first change is found on page 7, line 12,

which prohibits the solicitation of a minor or another person representing themselves as a minor to the defendant. We testified about this scenario last year in hearings before this committee. We believe this change is being requested in order to allow police officers pose as prostitutes under the age of eighteen. The state should be required to prove beyond a reasonable doubt that the defendant intentionally, knowingly or recklessly offered or agreed to pay a fee to a minor to engage in sexual conduct. A prostitute or undercover police officer may tell a defendant that she is a minor, and not believe her claim. It may be obvious to the defendant, who would never engage in sexual conduct with a minor, that the other person is not under the age of eighteen. While the defendant may offer or agree to engage in sexual conduct with the other person believing that the person is not a minor, under this measure, he will have committed the offense of soliciting a minor for prostitution.

The second change proposed to Section 4 is found on page 8, line 4, which makes the state of mind of a defendant irrelevant. In other words, if the prostitute claims to be an adult, and even if she produced false identification to the defendant proving she was eighteen or older, the defendant could not claim that he believed the prostitute was not a minor. This law should be directed at individuals who prey on minors, not those that are mistaken, and would not have any intent to engage in sexual conduct with a minor.

In Section 6, the change proposed on page 14, line 9 is to disallow a deferred acceptance of no contest or guilty plea for the offense of solicitation of a minor for prostitution. While we understand that the misdemeanor offense of prostitution was added to the list of offenses which are not eligible for deferred prosecutions, we believe that because this offense is classified as a class C felony, and requires a person convicted of this offense to register as a sex offender, a deferral should be one of the sentencing options the court should have at its discretion. It is very possible that an eighteen year old high school senior could be convicted of a felony and be required to register as a sex offender for offering or agreeing to pay a fee to a person a year or less than his junior. If this committee is intent on denying a defendant the opportunity to defer the charges, solicitation of a minor for prostitution should be removed from the list offenses requiring sex offender registration.

We understand and appreciate the House Judiciary committee amending this bill by exempting a person “not more than two years older

than the minor at the time of the offense” from the requirement of registering as a sex offender. However, due to the damaging and lasting impact on a person’s reputation, we believe that a person convicted of soliciting a minor for prostitution should not be required to register as a sex offender. If this committee is intent on requiring some form of registration, we ask that the exemption mirror the language in §707-730(1)(c)(i) HRS, which states, “the person is not less than five years older than the minor.”

Our version of subsection (f) on page 9 of this measure would read:

(F) Solicitation of a minor for prostitution in violation of section 712-1209.1 unless the perpetrator was not less than five years older than the minor at the time of the offense;

While the change we propose is not ideal, we believe that it is better than what is proposed in HD1.

Thank you for the opportunity to be heard on this matter.

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: k.carson@hoolanapua.org
Subject: *Submitted testimony for HB1926 on Mar 21, 2014 10:00AM*
Date: Thursday, March 20, 2014 8:27:55 PM

HB1926

Submitted on: 3/20/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kim Carson	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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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: jpriewer@hotmail.com
Subject: Submitted testimony for HB1926 on Mar 21, 2014 10:00AM
Date: Thursday, March 20, 2014 9:18:27 PM

HB1926

Submitted on: 3/20/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Riewer	Individual	Oppose	No

Comments: This law must be overturned...Law enforcement officials have other means of catching perpetrators other than engaging in unlawful acts with prostitutes. Prostitution is illegal in Hawaii...Why is this even a law?...

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March 19, 2014

Date: March 21, 2014

Time: 10am

Place: Room 16, State Capitol, 415 South Beretania Street

RE: TESTIMONY IN STRONG SUPPORT OF HB1926 WITH AMMENDMENTS

Aloha, my name is Katie Caldwell and I am a resident of Honolulu, HI. I have been working with victims of domestic violence, sexual violence and human trafficking for nearly 10 years. In a decade of working as a social worker in multiple capacities, I have come to learn that sexual abuse is one of the most profoundly damaging experiences a person can endure. It doesn't just cause physical pain, it strips one of all dignity, as they are no longer seen as a human being, but as an object. Hawaii has a major human trafficking problem that so far, has not been addressed by the state. It has been largely ignored and downplayed, in fact. VICTIMS NEED SERVICES. Many are still children, many are foreigners without family or support here in the islands, many are suffering from extreme mental duress because of the abuse and torment they've suffered. Now, Hawaii has made *national news* because of their policies regarding penetration and police enforcement. I was truly sickened to of Hawaii's laws surrounding penetration (before arrest or prosecution). More victims than I can count have divulged the numerous ways in which they've been further victimized by police...many times the *only* people they think might actually help them. Being a prostitute or trafficking victim in Honolulu often means you will be a victim of police brutality and violence, as well. This is a wild abuse of power and profoundly embarrassing for Hawaii. Frankly, I cannot believe it even has to be discussed. We need to do better.

Mahalo nui loa kindly for taking the time to hear this testimony.

Sincerely,

Katie Caldwell

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: tim@timorden.com
Subject: Submitted testimony for HB1926 on Mar 21, 2014 10:00AM
Date: Thursday, March 20, 2014 11:21:49 PM

HB1926

Submitted on: 3/20/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Tim Orden	Individual	Comments Only	No

Comments: Aloha Committee Members, As I understand it, this bill relating to law enforcement of prostitution has been amended to continue to allow our police to engage in sex as a part of their investigative process. I am writing as a matter of conscience and serious concern. I am appalled that Hawaii law allows such abhorrent behavior by law enforcement. We must send a clear message that we will not only protect (mostly) women who are sex workers from possible law enforcement abuses, but that we do not want to continue to allow the possibility of such abuse to be without public scrutiny. Yes, let's vigorously go after the manipulative promoters who, at the expense of (mostly) women, profit from abusive families, lost souls and needy hearts. Let us use all the tools that are legally available to us to pimps and cons to justice. But please, do not tell law enforcement, or anyone else that they can entrap (mostly) women by deception. These women have seen enough deception. Please, let's think of a better way than tricking them into sex. Hawaii needs to take the high road here. mahalo for your kind consideration Tim Orden

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To: [JDL Testimony](#)
Cc: mauibrad@hotmail.com
Subject: *Submitted testimony for HB1926 on Mar 21, 2014 10:00AM*
Date: Thursday, March 20, 2014 11:45:48 PM

HB1926

Submitted on: 3/20/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Brad Parsons	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: noahsark808@gmail.com
Subject: Submitted testimony for HB1926 on Mar 21, 2014 10:00AM
Date: Friday, March 21, 2014 1:52:46 AM

HB1926

Submitted on: 3/21/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
noah purington	Individual	Oppose	Yes

Comments: It seems that the House Bill 1926 was drafted in the year 1926 with the lack of ethics to the exemption in state law that allows undercover officers to have sex with prostitutes during investigations. My first concern is protection of the officer that is in a position that needs to demonstrate an illegal act at the expense of a victim. Secondly, what if the officer gets a STD or contracts HIV from "doing his job". Law suits against the state for work related injury could be mean high compensation settlements. We need to address the laws that make agreements to prostitution stronger so police officers are not out in harms way and destroying our society's ethics. Thank you

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: e.sollars@courageworldwide.org
Subject: Submitted testimony for HB1926 on Mar 21, 2014 10:00AM
Date: Friday, March 21, 2014 8:11:45 AM

HB1926

Submitted on: 3/21/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Ellyn Sollars	Individual	Comments Only	No

Comments: I strongly support the passage of HB 1926

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Testimony in Support of
H.B. 1926
A Bill for an Act Relating to Crime

Simone Terstegge
March 20, 2014

To whom it may concern:

I, Simone Terstegge, submit the following testimony in support of H.B. 1926, particularly the provisions relating to preventing sexual penetration from undercover law enforcement.

Sexual penetration by a law enforcement official victimizes the sex worker and damages any trust that may have been had between the sex worker and law enforcement. As a state official, it is your duty to protect these victims of sex work, and sexually penetrating them will traumatize them further.

For this reason, I support H.B. 1926. Thank you very much for the opportunity to provide testimony for this bill.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: mkyching@gmail.com
Subject: *Submitted testimony for HB1926 on Mar 21, 2014 10:00AM*
Date: Friday, March 21, 2014 8:49:28 AM

HB1926

Submitted on: 3/21/2014

Testimony for JDL on Mar 21, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Ching	Individual	Oppose	No

Comments:

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