

Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Ke Kōmike Ho'okolokolo

In Support of SB2643 With Amendments

Thursday, February 20, 2019, at 9:15 a.m. in Room 016

Aloha e Luna Ho'omalua/Chair Rhoads a Hope Luna Ho'omalua/Vice Chair Keohokalole,

The Hawai'i State Commission on the Status of Women writes in **support** of SB2643 with recommendations for amendments. The bill removes the criminal statute of limitations for sex trafficking and promoting prostitution. The bill, if passed, would also specify that sex trafficking of a minor is a strict liability offense and repeal the offense of "solicitation of a minor for prostitution."

Hawai'i law is currently inconsistent with federal law on sex trafficking, which leaves demand untouched and the concept of child prostitution unchallenged. There is prostitution crime for minors in Hawai'i. Commercial sale and purchase of minors, regardless of the age of consent, is an act of exploitation and abuse. This measure would also create more accurate terms and definitions.

Further, sex trafficking is a class A felony in Hawai'i, and prosecution must be commenced within six years after it is committed. This expectation is unrealistic. Sex trafficking victims face significant barriers to disclosing their victimization to legal authorities and in seeking support. Most trafficking victims are unable to disclose or prove there are trafficking victims due to fear of retaliation from a trafficker or buyer, physical harm inflicted by the trafficker, economic dependency upon the trafficker, family connections with their trafficker (children, parents), emotional manipulation, trafficker-controlled finances or legal documents, language barriers, fear of police, unawareness of their legal status as a "victim," and stigma.

Suggested Amendments:

1. Change “fee” to “anything of value,” to create consistency with the federal definition of sex trafficking.
2. Cover buyers who negotiate with a third party to engage in sexual conduct with a minor. As written, a buyer can only be charged for offering or agreeing with a minor or law enforcement officer. The intent should be to penalize any person who is trying to provide something of value in exchange for having sex with a minor, regardless of who they thought they were negotiating with. This is important because a recent report by the Arizona State University and the Hawai'i State Commission on the Status of Women found that 23% of 97 sex trafficking victims in Hawai'i surveyed in 2019 were initially trafficked under age 18, and 25.8% were trafficked by a family member. The current draft would prevent a buyer from being charged if they negotiated with a family member or pimp. The Commission is cognizant that it is common for a pimp to arrange dates with buyers, rather than the child.

Therefore, the Commission offers the following language:

~~(c) Offers or agrees to pay a fee~~ Solicits, offers, requests or agrees to provide anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with them, 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,

Accordingly, the Commission requests that the Committee pass SB2643 with the requested amendments.

Sincerely,
Khara Jabola-Carolus

**STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER**

LATE

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

February 17, 2020

S.B. No. 2463: RELATING TO SEX TRAFFICKING

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 2463.

S.B. No. 2463 makes several major changes to the sex trafficking laws. We oppose passage of Section 1 which removes the statute of limitations for sex trafficking and promoting prostitution. Statutes of limitations have been established to allow for timely prosecution of criminal offenses. With the passage of time, a criminal charge becomes more difficult to defend against and wrongful convictions are more likely to occur. The memories of witnesses become more inaccurate, witnesses are more likely to become influenced by persons who have interests in the case, and relevant evidence is more difficult to obtain. Thus, under the law, criminal charges must be brought within certain time periods following their commission.

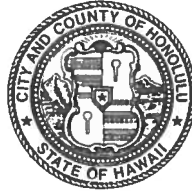
Sex trafficking (HRS § 712-1202) is a Class A felony for which there is currently a six-year statute of limitations. Promoting Prostitution is a Class B felony for which there is currently a three-year statute of limitations. These time periods are sufficient for timely and just prosecutions in these types of cases.

Finally, we oppose passage of section 4 of the bill on pages 4 and 5 which, under the sex trafficking law, establishes a strict liability Class A felony for someone who offers to pay a fee for sexual conduct to a minor or to a law enforcement officer posing as a minor. It would not be a defense that the minor represented himself or herself as an adult. It is not uncommon for minors, including those involved in the sex industry, to hold themselves out at an age older than they are. It would be draconian and unjust to punish someone with a 20-year prison term who possessed the state of mind to commit simple prostitution with someone who he/she legitimately believed to be an adult.

Thank you for the opportunity to provide testimony in this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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OUR REFERENCE PJ-FG

February 20, 2020

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 2643, Relating to Sex Trafficking

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

The HPD supports Senate Bill No. 2643, Relating to Sex Trafficking.

Many victims of sex trafficking are subjected to severe mental abuse. They are not aware of the extent of their victimization until years later, and only with counseling and maturity are they able to address the trauma of their abuse. Removing the statutes of limitation for offenders of sex trafficking and promoting prostitution will increase the likelihood of holding predators of these offenses accountable for their actions. As one of our most vulnerable populations, children must be afforded the highest level of protection.

The HPD urges you to support Senate Bill No. 2643, Relating to Sex Trafficking. Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Susan Ballard in cursive script.

Susan Ballard
Chief of Police

Handwritten signature of Phillip Johnson in cursive script.

Phillip Johnson, Acting Major
Narcotics/Vice Division



SB 2643, RELATING TO SEX TRAFFICKING

FEBRUARY 20, 2020 · SENATE JUDICIARY
COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: IMUAlliance supports SB 2643, relating to sex trafficking, which removes the criminal statute of limitations for sex trafficking and promoting prostitution, specifies that sex trafficking of a minor is a strict liability offense, and repeals the offense of solicitation of a minor for prostitution.

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 stop sexual slavery, including this measure's effort to increase sanctions for sex buyers who prey upon our keiki. **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 soliciting a minor for prostitution a form of sex trafficking.** Making 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 stricter 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 victim 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, 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).

Finally, we fully support authorizing a prosecution for sex trafficking to be commenced at any time. As indicated above, sex trafficking victims are typically trauma bonded to their abusers. **Trauma-attached coercion is like Stockholm Syndrome, involving a powerful emotional dependency on the abusers and a shift in world- and self-view that results in feelings of gratitude and loyalty toward the abusers and a denial, dismissal, or minimization of the coercion, violence, and exploitation that victims have suffered.** Trauma-attached victims require placement in a coordinated continuum of care to “break” their trauma bonds, receive rehabilitative services, and reintegrate into society in a healthy manner. It is common for victims

to need long-term care before recognizing the extent of the trauma they've suffered, much less feel emotionally and physically secure enough to participate in criminal investigations. Thus, to fully respect the needs of survivors and ensure that all victims of sexual exploitation may receive justice, we believe that the statute of limitations on sex trafficking cases should be eliminated.

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



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SENATE COMMITTEE ON JUDICIARY

TESTIMONY—SB 2643, Relating to Sex Trafficking

THURSDAY, FEBRUARY 20, 2020

Jeanné Kapela, UNITE Hawaii Executive Director

POSITION: SUPPORT

Chair Rhoads and committee members,

Hawai'i is home to over 150 high-risk sex trafficking establishments, with the average age a victim is first exploited being only 13-years-old. We are also a target for “cybertrafficking,” with over 110,000 ads for local prostitution posted online each year, even after the passage of the federal FOSTA law to curb online prostitution activity. Yet, these numbers fail to fully capture the human toll of the commercial sex trade, a tragedy we witness each day in the eyes of the survivors we serve.

UNITE is an educational organization devoted to ending sex trafficking. Through outreach and awareness in local schools, we provide students with the skills necessary to prevent exploitation by building healthy relationships and learning communities. Our program, “It Ends With Us,” explains how trafficking works in the 21st Century, preparing students to recognize threatening situations and respond to potential abuse. To date, we have provided anti-trafficking education to thousands of keiki in our state’s public schools. Working with UNITE’s strategic partner, IMUAlliance, we have also helped to emancipate sex trafficking victims from local brothels in the Ala Moana area. For both victims who self-identify at schools we visit and those for whom we’ve provided direct intervention services, sexual abuse is often noted as a precursor to sex trafficking.

Sex trafficking is the compulsion of a person into prostitution by force, fraud, or coercion. Traffickers often use intermediate and high school students to build their fortunes, preying upon teenage insecurities, sexual impulses, socioeconomic impoverishment, and, more recently, social media access to recruit, groom, and “break in” our youth for the sex trade. Victims of sex trafficking are highly traumatized to the point that they lose their sense of identity, sometimes becoming so dehumanized that they can no longer understand the concept of rape. Moreover, modern technology has made it easier to reach and threaten victims, as information is readily available on the internet. Online technology can also be weaponized to humiliate individuals through the rapid distribution of nonconsensual pornography.

UNITE employs a standards-based anti-trafficking curriculum that includes a post assessment and service learning component. **At each school we visit, students have identified themselves or their peers as in danger or in the midst of being trafficked.** Our endangered keiki deserve complete access to justice and restorative services. Accordingly, we fully support the measure, **especially in its effort to immunize children from prosecution for prostitution, a “noncriminalization” step that has already been taken by 25 other states and Washington D.C.** We are also **strongly supportive of this proposal’s action to make buying sex from children a form of sex trafficking,** since sex buyers provide the financial motivation that allows sexual exploitation to prosper and proliferate on our shores.

Thank you for the opportunity to testify in support of this bill.

SB-2643

Submitted on: 2/15/2020 4:49:12 PM

Testimony for JDC on 2/20/2020 9:15:00 AM

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

Comments: