



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:
S.B. NO. 1041, RELATING TO CRIME.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 11, 2021 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Farshad M. Talebi, Deputy Attorney General

Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General (Department) strongly supports this bill.

The purpose of this bill is to amend Hawaii's sex trafficking laws to (1) create a separate offense for sex buyers; (2) eliminate the statute of limitations for the crime of sex trafficking so the offenses can be prosecuted at any time; (3) make a person strictly liable as to the knowledge of the victim's age for the crime of sex trafficking of a minor; (4) change the name of the crime of solicitation of a minor for prostitution to commercial sexual exploitation of a minor, (5) close a legal loophole that allows child exploiters to escape criminal liability when the offer or acceptance is with a third party; (6) change "solicitation of a minor for prostitution" from a Class C to a Class B offense; and (7) change "a fee" to "anything of value" for crimes involving prostitution, commercial sexual exploitation, and sex trafficking.

Section 2 of the bill, at page 3, line 1, through page 4, line 21, adds a new section to chapter 712, Hawaii Revised Statutes (HRS) that creates a separate crime for sex buyers. Currently, the crime of "prostitution" includes both the criminal conduct of those engaged in prostitution and those buying sex. A separate crime for buyers will shift the primary focus from prostituted people to those who victimize them by creating a commercial market of sexual exploitation. Having two separate offenses will allow the State to track arrest and conviction data for sex buyers and use that data to determine

whether law enforcement efforts are effectively combating and reducing sexual exploitation.

Section 3 of the bill, at page 4, line 22, through page 5, line 7, amends section 701-108, HRS, to add sex trafficking to offenses that can be prosecuted at any time. This section eliminates the statute of limitations for sex trafficking so that delays by victims in reporting the offenses will not preclude the prosecution of the offenses. Data shows that victims and survivors of sex trafficking are less likely to seek help from law enforcement while they are under the control of their trafficker and may only be able to report the offenses after they have escaped to a safe and stable situation.

Section 6 of the bill, amends section 712-1202, HRS, by adding a subsection at page 10, lines 3 through 6, which eliminates the state of mind requirement for an offender if the victim was a minor, creating strict liability for the crime of sex trafficking where the victim is a minor. Like other sex offenses involving minors (e.g., sexual assault of a minor), the crime of sex trafficking should not require knowledge of the minor victim's age.

Section 9 of the bill, at page 15, line 1, through page 16, line 20, amends section 712-1209.1, HRS, by changing the name of the crime of "solicitation of a minor for prostitution" to "commercial sexual exploitation of a minor." It is not a crime for a minor to engage in prostitution, because by definition a minor is a victim. Therefore, the name of the offense should be consistent with the criminal act by the offender, which is commercially sexually exploiting a minor. By amending section 712-1209.1(1), it also closes a legal loophole that allows child exploiters to escape liability when the offer or acceptance of a sex act has been made by a third party. A trafficker, pimp, or another third party is often the one selling a child victim to the sex buyers. Currently, section 712-1209.1, HRS, does not penalize a child sex buyer if the offer or agreement is made by a third party – the offer or agreement must be made directly to the child victim or a member of law enforcement posing as a minor. The amendment to section 712-1209.1, HRS, corrects this omission and criminalizes offenders who offer or agree to pay to have sex with children even if the offer or agreement is made by a third party.

An additional amendment to section 712-1209.1, HRS, at page 15, lines 20 through 21, changes the classification of “solicitation of a minor for prostitution” from a Class C to a Class B offense to appropriately reflect the seriousness of the crime, which in other jurisdictions, and in federal law, is included in the crime of sex trafficking as a more serious offense.

Throughout the affected statutes, the bill adds the wording “anything of value” to the fee required for a transaction for commercial sexual conduct. Currently, our sex trafficking statutes only criminalize a transaction for “a fee,” which does not encompass many commercial sexual exploitation scenarios in which other things of value are provided, including drugs, goods, food, and housing. “Anything of value” is used in the federal definition and most state jurisdictions.

The Department has made the fight against human trafficking a priority, including by appointing a State Human Trafficking Coordinator and investing resources to improve the statewide response. This bill will enhance the Department’s ability to combat commercial sexual exploitation.

We respectfully ask this Committee to pass this bill.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

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

February 11, 2021

S.B. No. 1041: RELATING TO CRIME

Chair San Buenaventura, Vice Chair Ihara, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 1041.

The term “anything of value” is too broad and open to wide interpretation when coupled with the term “offers to provide”. These terms do not appropriately narrow what acts would be deemed commercial sexual exploitation or mere courting or flirting and may include scenarios in modern dating that could unintentionally criminalize behaviors like buying dinner for a date with the expectation of a sexual encounter or buying a present as innocuous as flowers for a potential sexual partner that may result in sexual conduct. Offering to engage in sexual conduct after receiving a piece of jewelry or “anything of value” places ordinary citizens at risk of being in violation of the law and creates a grey area that impacts any sexual encounter between adults where gifts, favors, or anything of value including physical contact may be exchanged as part of the courting process. It would be possible under the proposed measure that “anything of value” could include the simple act of buying someone a drink at a bar or a cup of coffee at a Starbucks during discussions about whether to engage in sexual activity to be construed as an act of commercial sexual exploitation. A solution might be to add the word “explicitly” or “expressly provide”, and “for the sole purpose of” or “strictly in exchange for.” These recommendations would make it clear that this measure was intended for a purely business or transactional sexual encounter as opposed to a dating or ongoing sexual relationship between consenting adults.

We also oppose the amendments to HRS Section 712-1202(4) on page 10 which establishes strict liability as to the state of mind and attendant circumstances that the victim was a minor. The measure will eliminate the 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. Indeed, adults with no intention or desire to engage in sexual conduct with a minor will be subject to a 20-year prison term. A defendant who even requests to see identification from the minor and is provided with a false identification indicating he/she is 18-years old or older would be unjustly subjected to a class A felony.

Finally, defining “minor” as a person who is less than eighteen years of age appears inconsistent with the language found in sexual assault statutes involving minors:

HRS § 707-730(1)(b) provides, “A person commits the offense of sexual assault in the first degree if the person knowingly engages in sexual penetration with another person who is *less than fourteen years old.*” (Emphasis added).

HRS § 707-731(1)(d)(i) provides, “A person commits the offense of sexual assault in the second degree if . . . [t]he person knowingly subjects to sexual penetration a minor who is *at least sixteen years* old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that . . . [t]he person is not less than five years older than the minor.” (Emphasis added).

HRS § 707-732(1)(b) provides, “A person commits the offense of sexual assault in the third degree if . . . [t]he person knowingly subjects to sexual contact another person who is *less than fourteen years old* or causes such a person to have sexual contact with the person.” (Emphasis added).

HRS § 707-732(1)(c) provides, “A person commits the offense of sexual assault in the third degree if . . . [t]he person knowingly engages in sexual contact with a person *who is at least fourteen years old but less than sixteen years old* or causes the minor to have sexual contact with the person; provided that . . . [t]he person is not less than five years older than the minor; and [t]he person is not legally married to the minor.” (Emphasis added).

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE JOY SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Thirty-first State Legislature
Regular Session of 2021
State of Hawai`i

February 11, 2021

RE: S.B. 1041, RELATING TO SEX TRAFFICKING.

Chair San Buenaventura, Vice Chair Ihara, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in support of S.B. 1041.

The purpose of S.B. 1041 is to provide protection for victims of sex trafficking by strengthening and providing clarification to Hawaii’s sex trafficking laws. Specifically this bill:

(1) Creates the offense of “Commercial sexual exploitation” which addresses sex buyers. Currently, the crime of “prostitution” includes two distinct types of criminal conduct (section 712-1200(a), H.R.S. and §712-1200(b), Hawaii Revised Statutes (H.R.S.)). By creating a distinct and separate crime for buyers, this section places emphasis on the individuals who drive the commercial market of sexual exploitation. Having two offenses will allow us to track this arrest and conviction data.

(2) Changes “a fee” to “anything of value”. This will align our statute with the federal definition and numerous other state jurisdictions as it relates to what is exchanged during a transaction. Often, commercial sexual exploitation does not involve the exchange of money, but rather non-monetary items or amenities such as shelter, drugs or food. This amendment will ensure that our sex trafficking statutes encompass all or nearly all transactions.

(3) Removes the statute of limitations as it pertains to sex trafficking offenses. While victims of sex trafficking under the control of their trafficker, they are less likely to seek help from law enforcement or cooperate with law enforcement in a meaningful manner. This routinely leads to delays in reporting and at times expiration of the statute of limitations to prosecute as a criminal offense. By removing the statute of limitations, this bill ensures that if

and when a case is brought, we are not precluded by time. Nevertheless, the Department notes that the passage of time often weakens a criminal case.

(4) Includes “coercion” as a means of advancing prostitution. Currently, H.R.S. §712-1202(a), only states “advancing prostitution...by force, threat, fraud or intimidation,” and there have been instances when our courts indicated that a particular set of facts did not fit within these existing definitions. One example was where a victim was told she could not eat (or sleep) until she finished a certain amount of work. Adding the term “coercion” would also bring Hawaii’s sex trafficking statute in-line with the federal code.

(5) Creates strict liability as to the minor’s age. The Department recognizes that minors are a very vulnerable class and believes that the limited use of strict liability furthers the protections for minors involved in sex offenses; strict liability as to an offender’s knowledge of a minor’s age is already the applicable standard in cases involving sexual assault of a minor. The Department fully supports the concept that sex traffickers should also be strictly liable for knowledge of a victim’s age.

(6) Closes a legal loophole that allows child exploiters to escape liability. Currently, only those who offer, negotiate, or pay the child victim directly are penalized under H.R.S. §712-1209.1. A child victim is not always the one negotiating or being paid directly by the offender. The amendment properly criminalizes those who commercially sexually exploit children regardless of who they negotiate with, which is commonly the trafficker or other third party who is selling the child victim.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 1041. Thank you for the opportunity to testify on this matter.



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

February 10, 2021



TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

The Honorable Ronald D. Kouchi, District 8
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 409
Honolulu, HI 96813

RE: SENATE BILL 1041 RELATING TO CRIME

Dear Senator Kouchi:

The Maui Police Department SUPPORTS the passage of S.B. 1041

This act will increase the accountability of those involved in the crimes of sex trafficking, prostitution, and related offenses. It will increase the liability of anyone involved in sex trafficking, especially in the exploitation of minors.

The act will also close the loopholes which have allowed offenders to escape liability and increase the penalties, all of which will hopefully deter offenders from readily engaging in these crimes.

These measures will assist law enforcement to slow the spread of these illegal enterprises and protect victims while holding offenders accountable. Accordingly, the Maui Police Department requests that S.B. 1041 be passed.

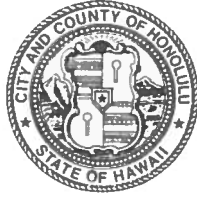
Thank you for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE PJ-GK

February 11, 2021

The Honorable Joy A. San Buenaventura, Chair
and Members
Committee on Human Services
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Dear Chair San Buenaventura and Members:

SUBJECT: Senate Bill No. 1041, Relating to Crime

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

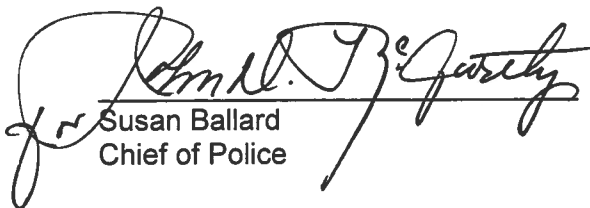
The HPD supports Senate Bill No. 1041, Relating to Crime.

This bill creates a separate offense for those who provide anything of value to engage in sexual conduct with another, removes the statute of limitation for the offense of sex trafficking, holds a person strictly liable for sex trafficking of a minor in terms of the victim's age, changes solicitation of a minor for prostitution to commercial sexual exploitation of a minor, and most importantly, closes loopholes that allow offenders to escape liability. While many bills introduced this legislative session attempt to address sexual exploitation, this bill proposes comprehensive and robust changes that will help law enforcement effectively investigate sex trafficking cases and hold offenders accountable.

The HPD urges you to support Senate Bill No. 1041, Relating to Crime, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police

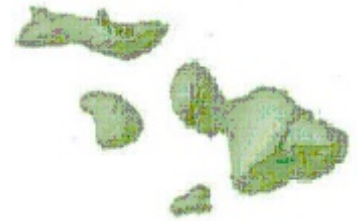

Phillip Johnson, Major
Narcotics/Vice Division

MICHAEL P. VICTORINO
M ayor

ANDREW H. MARTIN
A cting Prosecuting Attorney

MICHAEL S. KAGAMI
F irst Deputy Prosecuting Attorney

ROBERT D. RIVERA
S econd Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY
ON
S.B. 1041
RELATING TO CRIME

February 10, 2021

The Honorable Joy A. San Buenaventura
Chair
The Honorable Les Ihara, Jr.
Vice Chair
and Members of the Committee on Human Services

Chair San Buenaventura, Vice Chair Ihara, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 1041, Relating to Crime. Specifically, we would like to express our support for S.B. 1041. We believe that the laws in Hawai'i need to adapt to the ever-changing methods used by sex traffickers to avoid prosecution, and this bill represents a significant step towards that goal.

We support the strict liability provision in Section 6 of the bill, which aids in the prosecution of sex traffickers by rendering an offender who advances or profits from the prostitution of a minor strictly liable as to the age of said minor. Put differently, an offender would no longer be able to assert the defense that they were unaware of a child's age when they began profiting from that child's exploitation and victimization.

We are also particularly concerned that current law allows an offender to avoid prosecution for Advancing Prostitution by simply accepting non-monetary compensation, such as drugs or housing. This bill would close that loophole by expanding the type of compensation to include anything of value.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the passage of S.B. 1041. 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-1041

Submitted on: 2/8/2021 5:44:59 PM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	No

Comments:

Yes. offenders must NOT escape accountability through loopholes

SB-1041

Submitted on: 2/9/2021 12:50:35 PM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne Kauhi	Individual	Support	No

Comments:

I stand in Support.

SB-1041

Submitted on: 2/10/2021 10:51:42 AM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Alu Campagna	Individual	Support	No

Comments:

I stand in support of SB1041

LATE

SB-1041

Submitted on: 2/10/2021 3:41:29 PM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen M Radius	Individual	Support	No

Comments:

I am Karen Radius, a retired Family Court Judge. I testify individually as a concerned citizen.

I support SB 1041.

I am the volunteer co-Chair of the Commercial Sexual Exploitation of Children (CSEC) Steering Committee which is made up of members from child and family serving state agencies/branches on Oahu including Family Court, Department of Human Services, Department of Health, Department of Education and state and county law enforcement officials as well as federal officials. Our primary purpose is to establish an understanding of the issues facing our youth and families, assess the scope of the problem, and determine best practices to provide timely response to victims and to provide better coordination between agencies and service providers as well as better communication and effective prosecution of those who traffick Hawaii's kids.

I support the Attorney General's proposals in SB 1041 to complete a comprehensive amendment of our current state criminal laws regarding sex trafficking and commercial sexual exploitation of children. A review of the current statutes as a whole with appropriate amendments is better than a series of individual amendments done over time which could inadvertently be legally problematic and easily result in confusion or internal contradictions in various sections.

The proposed amendments in SB 1041 would bring Hawaii's statutes more in line with best practices in this field and hopefully lead to greater accountability for offenders..

It is very hard for children and their families who have been victims of commercial sexual exploitation to trust the "system" and accept assistance from those who can help provide steps toward healing and safety if those who have offended against these children are not brought to accountability.

I support the addition/revisions that add the phrase "anything of value" such as in Section 712-1209 and 712-1209.I. The child who is commercially exploited is seldom paid cash directly by the buyers and traffickers rarely provide cash payments directly to victims, Instead they provide goods, foods, a place to stay, drugs etc.

The removal of the statute of limitations for commercial sexual exploitation/sex trafficking is in keeping with other laws that have removed statutes of limitations where there has been severe trauma inflicted upon the victim. Time is often necessary for the victim to be able to confront the person(s) who reeked havoc upon the victim's' life and psyche.

Commercial exploitation of children in Hawaii is real and children on each island and in every neighborhood has been effected. We are becoming more aware of the problem that has been "hiding" in plain sight. We can no longer ignore its affects on our girls and our boys and our families.