

Honolulu, Hawaii

APR 08 2011

RE: H.B. No. 141
H.D. 1
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred H.B. No. 141, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII PENAL CODE,"

begs leave to report as follows:

The purpose and intent of this measure is to authorize retroactive application of the requirement that multiple terms of imprisonment run concurrently unless directed to run consecutively by law or court order.

Prior to the hearing, your Committee circulated a proposed S.D. 1 of this measure that replaced the contents of this measure with provisions that establish class A and B felonies for labor trafficking offenses, a nonpayment of wages offense, an unlawful conduct with respect to documents offense, and related provisions relating to these new offenses. Your Committee notes that the contents of the proposed S.D. 1 were originally included in H.B. No. 1003, H.D. 2, S.D. 1 (2011), an effective date of July 1, 2011, was also inserted.

Your Committee received testimony in support of the proposed S.D. 1 from IMUAlliance and one individual.

Your Committee finds that currently, Hawaii is one of only five states without an anti-trafficking statute or adequate legal protection for victims of sex and labor trafficking. This does not mean that trafficking is not a problem in Hawaii. For



example, in one of the largest labor trafficking cases in United States history, Global Horizons Manpower, Inc., a Los Angeles-based employment contractor is alleged to have coerced into agricultural work over four hundred Thai nationals, including forty-four farmers who paid recruiters \$20,000 each for the chance to work at a local farm. Trafficked workers who were victims of this company were chronically underpaid, forced to live in modified storage containers, and threatened with deportation and other forms of economic damage, after having their passports take by the local farm owners.

Your Committee notes that federal law also covers labor trafficking, and the prosecution of the traffickers described above is being conducted pursuant to federal law. However, as explained in testimony submitted during the hearing on H.B. No. 1003, H.D. 2, S.D. 1, while these types of offenses are covered by federal law, federal law enforcement officers generally will only proceed against traffickers with many victims, and not traffickers with one or two victims. Thus, state laws on this subject will complement the federal laws.

Your Committee has amended this measure by adopting the proposed S.D. 1 and further amending the measure by:

- (1) Specifically excluding prostitution-related and obscenity-related activities as set forth in chapter 712, Hawaii Revised Statutes, from the definitions of "labor" and "services";
- (2) Clarifying the intent for the labor trafficking in the first degree offense;
- (3) Revising the language describing the means or methods used by a person committing the offense of labor trafficking in the first degree, as recommended by the Department of the Attorney General, by requiring that the means be committed against the trafficked person and by specifying that, where the means referenced another crime, the means referred to the acts constituting the crime, rather than the underlying crime itself, which may have included a different state of mind than specified in the labor trafficking offense;
- (4) Replacing "aggravated sexual assault" from the sentencing provisions related to labor trafficking in

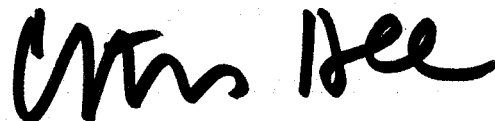


the second degree with "sexual assault in the first, second, or third degree", for consistency with existing law and adding sexual assault as one of the means used by a person committing the offense of labor trafficking in the first degree, as recommended by IMUAlliance;

- (5) Substituting the means of "force, threat, or intimidation" with "force, deadly force, or unlawful force" for consistency with existing law, as recommended by IMUAlliance, and adding definitions for those terms;
- (6) Revising the categories or types of injuries sustained by a victim for purposes of determining extended terms of imprisonment to conform to existing law, as recommended by IMUAlliance;
- (7) Clarifying that an employer who withholds wages for lawful reasons does not violate the nonpayment of wages offense, as recommended by the Department of the Attorney General and IMUAlliance; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 141, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 141, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




CLAYTON HEE, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB141, HD1	Committee Referral: JDL	Date: 4-7-11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
TOTAL	4	—	1	—
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes