

STAND. COM. REP. NO. 677

Honolulu, Hawaii

**MAR 06 2015**

RE: S.B. No. 265  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2015  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 265 entitled:

"A BILL FOR AN ACT RELATING TO SEX TRAFFICKING,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Replace "promoting prostitution" with "sex trafficking"  
by:
  - (A) Amending the offense of promoting prostitution in  
the first degree to be "sex trafficking in the  
first degree" and establishing a fine not to exceed  
\$50,000;
  - (B) Amending the offense of promoting prostitution in  
the second degree to be "sex trafficking in the  
second degree", including paying or offering to pay  
a person for sexual conduct with reckless disregard  
of the fact that the person may be a victim of sex  
trafficking in the first degree, and establishing a  
fine not to exceed \$25,000; and
  - (C) Making conforming amendments to reflect the change  
from "promoting prostitution" to "sex trafficking";
- (2) Include the offense of sex trafficking in the Department  
of the Attorney General's statewide witness program;

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- (3) Include the offenses of labor trafficking in the first and second degrees and sex trafficking in the first and second degrees in the list of violent crimes for which victims may be eligible for criminal injury compensation;
- (4) Remove the statute of limitations for the offenses of sex trafficking in the first and second degrees;
- (5) Increase the penalty for the offense of solicitation of a minor for prostitution from a class C felony to a class B felony;
- (6) Add the offenses of sex trafficking in the first and second degrees to the list of crimes for which an order to intercept wire, oral, or electronic communications is permitted; and
- (7) Include the offenses of sex trafficking in the first and second degrees to the list of offenses in which deferred acceptance of guilty plea or nolo contendere plea does not apply.

Your Committee received testimony in support of this measure from the Crime Victim Compensation Commission; Office of the Prosecuting Attorney, County of Kauai; Hawaii Catholic Conference; Hawaii Family Forum; The Pacific Alliance to Stop Slavery; Americans for Democratic Action - Hawaii; IMUAlliance; Ho'ōla Nā Pua; Family Programs Hawaii; Shared Hope International; and fifty-nine individuals. Your Committee received testimony in opposition to this measure from the Office of the Public Defender; Department of the Prosecuting Attorney, City and County of Honolulu; and Police Department, City and County of Honolulu.

Your Committee acknowledges that the existing laws relating to prostitution and promoting prostitution may not be suitable to address certain circumstances in which coercion or other inability to consent are present. In those situations, the person who engages in sexual services should not be characterized as a "prostitute", as is the case, for example, in section 712-1201, Hawaii Revised Statutes (HRS). However, your Committee recognizes that there may be situations in which a person may presumably consent to engage in sexual conduct in return for monetary consideration. To the extent that there appears to be little



social consensus at this time to repeal laws prohibiting acts of "prostitution", your Committee finds that those laws should remain largely as codified at this time.

Therefore, your Committee finds it more appropriate to create a new section in chapter 712, HRS, to address a new offense of "sex trafficking". This new section should rely on certain elements not found in part I of chapter 712, HRS, relating to prostitution. Rather, this new section should incorporate elements similar to those specified in the prohibitions on labor trafficking found in part VIII of chapter 707, HRS, and apply those elements to the context of "sexual services", which is defined by reference to various existing statutes dealing with sexual conduct with the additional context that the services be under the supervision or at the direction of the offender for the offender's benefit or that of a third person.

Because, as a matter of law, consent by a minor is not enforceable in a commercial transaction, your Committee also finds that section 712-1202(1)(b), HRS, relating to promoting prostitution in the first degree in the case of a minor, should be repealed. Your Committee believes that language substantially similar to section 712-1202(1)(b), HRS, should be inserted into the new offense of sex trafficking to serve as "per se" sex trafficking, i.e. causing a person to engage in sexual services without any additional necessary elements of coercion.

Accordingly, your Committee has amended this measure by:

- (1) Creating the new offense of sex trafficking in chapter 712, HRS, to:
  - (A) Require that the offender intentionally or knowingly procure, provide, or obtain another person for the purpose of causing the other person to engage in sexual services;
  - (B) Require no additional coercive circumstances if the person subjected to sex trafficking is less than eighteen years old;
  - (C) Enumerate coercive circumstances required to be present in the case of a person subjected to sex trafficking who is eighteen years old or older;



- (D) Define "sexual services" as "sexual conduct" by referencing existing statute with the additional requirement that the services be performed at the direction or under the supervision of the offender for the benefit of the offender or any third person; and
  - (E) Provide immunity from criminal prostitution charges and liability for a person subjected to sex trafficking;
- (2) Reinstating statutory references to "promoting prostitution," as that offense will remain, but deleting the reference to victims under the age of eighteen under the offense of promoting prostitution in the first degree;
- (3) Removing sections that:
- (A) Amend portions of certain sections, subsections, and a definition in chapter 663J, HRS, relating to civil liability in specific cases of coercion into prostitution;
  - (B) Modify the statute of limitations for the offenses of sex trafficking in the first and second degrees because the existing six-year statute of limitations for class A felonies would apply as a matter of law to the new proposed offense of sex trafficking;
  - (C) Alter the language that increases the penalty for the offense of solicitation of a minor for prostitution from a class C felony to a class B felony; and
  - (D) Delete various conforming amendments that replaces "promoting prostitution" with "sex trafficking"; and
- (4) Making various conforming amendments to reflect the changes in establishing the offense of sex trafficking instead of the offenses of sex trafficking in the first and second degrees;



- (5) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (6) 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 S.B. No. 265, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 265, 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,



GILBERT S.C. KEITH-AGARAN, Chair



