

STAND. COM. REP. NO. 3450

Honolulu, Hawaii

APR 08 2016

RE: H.B. No. 1902
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1902, H.D. 2, 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 the term "promoting prostitution in the first degree" with the term "sex trafficking", a class A felony, and establish that for a person who knowingly advances or profits from prostitution of a person less than eighteen years old, the state of mind requirement is not applicable to the fact that the person subjected to prostitution was less than eighteen years old and the person is strictly liable with respect to the attendant circumstance that the person submitted to prostitution was less than eighteen years old;
- (2) Include the offense of sex trafficking in the Department of the Attorney General's statewide witness program;
- (3) Include the offense of sex trafficking in the list of violent crimes for which victims may be eligible for criminal injury compensation;



- (4) Amend chapter 663J, Hawaii Revised Statutes (HRS), relating to civil liability in specific cases of coercion into prostitution;
- (5) Amend the offense of prostitution to:
 - (A) Clarify that a person commits the offense if the person is eighteen years of age or older and engages in or agrees to engage in sexual conduct with another person for a fee;
 - (B) Establish a class C felony if the person who paid, agreed to pay, or offered to pay a fee to engage in sexual conduct with another person did so in reckless disregard of the fact that the other person was or is a victim of sex trafficking; and
 - (C) Establish a violation for the person who is less than eighteen years of age and engages in or agrees or offers to engage in sexual conduct with another person for a fee and establish that the person will be subject to the jurisdiction of the Family Court;
- (6) Change the offense of promoting prostitution in the second degree to the offense of promoting prostitution;
- (7) Make conforming amendments to the law relating to the motion to vacate a conviction of certain prostitution offenses;
- (8) Include the offense of sex trafficking in the list of covered offenses for which property is subject to forfeiture;
- (9) Add the offense of sex trafficking to the list of crimes for which an order to intercept wire, oral, or electronic communications is permitted;
- (10) Amend the law relating to tier 1 and tier 2 offenses for the registration of sex offenders; and
- (11) Make conforming amendments to the list of offenses to which deferred acceptance of guilty plea or nolo contendere plea does not apply.



Your Committee received testimony in support of this measure from the Department of the Attorney General; Office of the Prosecuting Attorney, County of Kaua'i; IMUAlliance; The Pacific Alliance to Stop Slavery; Family Programs Hawaii; Hawaii Family Forum; American Association of University Women of Hawaii; UNITE; and six individuals. Your Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney, City and County of Honolulu; Police Department, City and County of Honolulu; LGBT Caucus of the Democratic Party of Hawai'i; The Libertarian Party of Hawaii; Shared Hope International; Amnesty International/USA; COYOTE Los Angeles; COYOTE Rhode Island; and two individuals.

Your Committee finds 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 is present. This measure allows Hawaii to join other states that have adopted comprehensive anti-sex trafficking legislation.

Your Committee has amended this measure by:

- (1) Amending and reorganizing the offense of prostitution to:
 - (A) Make the existing sentencing requirements in section 712-1200(4), HRS, apply to only prostitution as a petty misdemeanor;
 - (B) Specify that a minor who commits prostitution, either by engaging in or agreeing or offering to engage in sexual conduct for a fee or paying, agreeing to pay, or offering to pay a fee to another to engage in sexual conduct, is subject to the jurisdiction of the Family Court; and
 - (C) Add the definition of "minor";
- (2) Amending the offense of sex trafficking to:
 - (A) Establish that for a person who knowingly advances or profits from prostitution of a minor, rather than requiring strict liability of that person with respect to the victim's age of less than eighteen years, the prosecution is required to prove only



that the person committing the offense of sex trafficking acted negligently; and

- (B) Add the definition of "minor";
- (3) Amending section 712-1209.6, HRS, to delete unnecessary definitions because all of the terms are properly referenced;
- (4) Changing the effective date to July 1, 2016; and
- (5) 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. 1902, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1902, H.D. 2, 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



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB 1902 HD2	Committee Referral: JDL	Date: 3/30/16		
<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
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike	/			
KAHELE, Kaiali'i				/
KIM, Donna Mercado	/			
THIELEN, Laura H.	/			
SLOM, Sam	/			
TOTAL	6			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