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GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

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**LIVE TESTIMONY**

TESTIMONY ON SENATE 2212 SD1 HD1  
RELATING TO CRIME

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Judiciary  
Representative Tommy Waters, Chair  
Representative Blake K. Oshiro, Vice Chair

Tuesday, March 25, 2008; 4:05 PM  
State Capitol, Conference Room 325

Good afternoon Chair Waters, Vice Chair Oshiro, and Members of the House Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify before you today. The Commission supports the passage of Senate Bill 2212 SD1 HD1 with an amendment to correct the defective enactment date. This bill establishes, defines, and clarifies criminal offenses relating to human trafficking, and provides for the award of compensation for victims of human trafficking who are victims of sexual exploitation of a minor, or victims of promoting prostitution in the first degree.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay unreimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one, if compensation were not available from the Commission.

In 2006 the legislature established the Hawaii Anti-Trafficking Task Force (HATTF II) to investigate ways to combat human trafficking and to look at the social service needs of

human trafficking victims. During its review of the statutes HATTF II members determined that not all human trafficking victims are eligible to receive crime victim compensation.

The Commission is currently unable to provide compensation for crime-related expenses, including mental health counseling services, to some victims of human trafficking. Section 351-32, Hawaii Revised Statutes, provides strict limitations on the type of crimes for which the Commission may award compensation. Compensation may only be awarded to victims of the following enumerated violent crimes: Murder, Manslaughter, Negligent Homicide and Injury (First and Second Degree), Assault (First, Second and Third Degree), Kidnapping, Sexual Assault (First, Second, Third and Fourth Degree), Abuse of Family and Household Member, and International Terrorism.

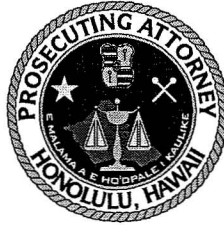
The Commission believes that victims of human trafficking victims should be eligible for compensation to cover their unreimbursed crime-related expenses. Senate Bill 2212 SD1 HD1 will help to ensure that human trafficking victims will have ready access to the medical treatment, or mental health counseling services, they need to recover.

Thank you for providing the Commission with the opportunity to testify in support of this measure with an amendment to correct the defective enactment date. The Commission urges you to support passage of this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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PROSECUTING ATTORNEY



**LATE TESTIMONY**

DOUGLAS S. CHIN  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE TOMMY WATERS, CHAIR  
THE HONORABLE BLAKE OSHIRO, VICE CHAIR  
HOUSE COMMITTEE ON JUDICIARY**

**TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION OF 2008**

**HEARING: Tuesday, March 25, 2008  
4:05 P.M., Conference Room 325**

**RE: SENATE BILL 2212, S.D 1, H.D. 1, RELATING TO CRIME**

Good afternoon, Chair Waters and members of the Judiciary Committee, the Department of Prosecuting Attorney provides the following testimony **in strong support of H.B. 2212, S.D. 1, H.D. 1, with amendments**, which proposes to enact a comprehensive series of amendments to facilitate the prosecution of offenses relating to “human trafficking” under the Hawaii Penal Code.

We greatly appreciate the efforts made to develop this bill by the Act 260 Task Force. As such, we view this bill as an important step in a positive direction. Establishment of a criminal offense for human trafficking under our existing penal code is desirable for many reasons. The most compelling is the practical reality posed by the current practices of federal investigative and prosecutorial agencies. Due to their own resource limitations, not all human trafficking cases are prosecuted under the federal criminal statutes. Typically, in cases that are limited in scope, for example involving only a single victim, or where the nature of the trafficking is not particularly egregious, they may defer prosecution. And while such cases may encompass criminal offenses under existing Hawaii statutes, the underlying offenses, as they are currently constituted, may not always reflect the full seriousness of this type of conduct, thus leaving a gap in the effectiveness of the potential criminal remedies. For this reason we favor the provisions of S.B. 2212, S.D. 1, H.D. 1, which is the product of dedicated and arduous efforts of members of the Task Force over the past two years.

At the end of the 2007 legislative session we supported a proposed Senate Draft of H.B. 1784, the basic provisions of which are reflected in the Senate Judiciary hearing (3/16/07) testimony submitted by the Department of the Attorney General as excerpted below:

*The Hawaii Anti-trafficking Task Force surveyed Hawaii's existing criminal laws to determine whether they include prohibitions on involuntary servitude, kidnapping, false imprisonment, and extortion. While Hawaii's criminal laws do contain these prohibitions, the task force determined that creating separately defined anti-trafficking criminal provisions should result in increased use of such statutes. However, unlike in other states that have passed legislation similar to the federal anti-human trafficking law, Hawaii has distinct case law that would make the establishment of separately defined anti-trafficking criminal provisions difficult.*

*Specifically, the proposed offense of Human Trafficking [in H.B. No. 1784, H.D. 2] is problematic because it attempts to create trafficking crimes that already have been established under our current penal code. Most of the new proposed crimes are the same or very similar to existing extortion, kidnapping, child abuse and promoting prostitution offenses. The significant overlap with existing offenses raises concerns that the proposed, higher grade offenses will violate the "Modica Rule." In State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977), the Hawaii Supreme Court held the following:*

*[W]here the same act committed under the same circumstances*

*is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of the defendant's rights to due process and the equal protection of the laws.*

*This rule applies not only to felony and misdemeanors, but to any crimes with differing grades of offense. In a Modica type of situation, the prosecutors would be compelled to prosecute under the lesser grade offense. Therefore, when a proposed Human Trafficking crime and an existing penal code crime would require the same elements of proof, the prosecution would be required to prosecute the lesser charge.*

*In order to ensure that trafficking crimes are properly prosecuted and not downgraded based upon the existence of an identical lesser grade offense, we recommend the attached proposed S.D. 1 that amends the existing trafficking criminal statutes, specifically the kidnapping, extortion, and promoting prostitution statutes, and creates the new offense of exploitation of minors. All of these offenses, as amended, would constitute human trafficking offenses and would enable the successful prosecution of these heinous offenses.*

At the conclusion of the 2007 legislative session the Act 260 Task Force began working toward a consensus proposal that ultimately tracked much of the outline proposed in the excerpted testimony of the Attorney General above. S.B. 2212, S.D. 1, H.D. 1 incorporates these changes to avoid the Modica issues raised last session. In order to ensure that trafficking crimes are properly prosecuted and not downgraded based upon the

existence of an identical lesser grade offense; this bill would amend the existing criminal statutes, specifically the Kidnapping, Extortion, and Promoting Prostitution statutes, that are likely to be used to prosecute human trafficking cases. In addition, the bill creates the new offense of Sexual Exploitation of a Minor. This bill requires that a perpetrator be held strictly liable with respect to the attendant circumstance of the victim's age in cases involving Sexual Exploitation of a Minor or Promoting Prostitution in the First Degree involving a minor. All of these offenses, as amended, would enable the prosecution of human trafficking offenses under Hawaii law in a manner that is roughly equivalent to prosecutions under the federal Trafficking Victims Protection Act of 2000 (Public Law 106-386) (TVPA), and would facilitate the successful prosecution of human trafficking offenses. It would also amend Hawaii Revised Statutes Section 351-32 to change the definition of "Violent crimes," to include sexual exploitation of a minor and promoting prostitution in the first degree, so that the new "human trafficking" victims would be eligible for crime victim compensation. The bill proposes to establish eligibility for crime victims' compensation for all human trafficking victims whose cases occur within the state of Hawaii. It also amends H.R.S. Section 842-1, so that the definition of "racketeering activity," includes the new offense of Sexual Exploitation of a Minor.

S.B. 2212, S.D. 1, H.D. 1 further improves the protections for minors by eliminating the distinction within the Promoting Prostitution statute between minors under sixteen and minors under eighteen, thus mirroring provisions of the TVPA. Promoting Prostitution of any minor is the equivalent of human trafficking. This elevates the penalty for Promoting Prostitution of sixteen and seventeen-year-olds to the same level that currently exists for all other minors.

As to the proposed amendments to the bill, we support revising the language proposed by the Department of the Attorney General, as incorporate in our testimony below. The first change addresses concerns raised previously by the Office of the Public Defender, Na Loio, and the Domestic Violence Action Center that the proposed language of the offense of Sexual Exploitation of a Minor inadvertently incorporated consensual sexual behavior between intimate teen partners. The problem is corrected by adopting revised definitions for "Exotic or Nude Dancer" and "Erotic or Nude Massager". These amendments will effectively narrow the scope of the offense to situations in which the minor or another person, such as an adult controlling or managing the minor, receives compensation for the services, as intended.

"Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude for which the person or another receives a fee or other compensation, and includes patrons of a business establishment or enterprise participating in a contest or receiving instruction in nude dancing.

"Erotic or nude massager" means a nude person providing massage services with or without a license for which the person or another receives a fee or other compensation.

The next amendment to the bill occurs in section 11 of the bill, concerning the offense of promoting prostitution in the second degree, which replaces "prostitutes" with "prostituted persons" on page 11, lines 2-4. The Human Services and Housing Committee, which made the amendment at our recommendation, explained, "...because trafficking victims are not deemed to be 'prostitutes' voluntarily...." We now agree with the Attorney General that this amendment could be mistakenly be interpreted to make the offense of promoting prostitution in the second degree only apply to situations involving persons who are not engaged in prostitution activity voluntarily. This was not our intent.

We therefore concur with adding a subsection (3) to section 712-1203, Hawaii Revised Statutes, that would read:

(3) As used in this section, "prostituted person" means any person who engages in, or agrees or offers to engage in, sexual conduct with another person for a fee

In summary, we **strongly support S.B. 2212, S.D 1, H.D. 1, with our proposed amendments**, and recommend your favorable consideration of this critically important legislation.

Thank you for your time and consideration.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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BOISSE P. CORREA  
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MICHAEL D. TUCKER  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

March 25, 2008

LAW TESTIMONY

The Honorable Tommy Waters, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

Subject: Senate Bill No. 2212, S.D. 1, H.D. 1, Relating to Crime

I am Richard C. Robinson, Acting Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2212, S.D. 1, H.D. 1, Relating to Crime.

Passage of this bill would provide for prosecution of human trafficking offenses under Hawaii law, similar to the Trafficking Victims Protection Act. By amending the language in the kidnapping, extortion, and promoting prostitution statutes, the creation of a separate human trafficking offense becomes unnecessary, thereby avoiding the *Modica Rule*. In addition, this act improves the protections for minors by eliminating the age distinctions of minors under the promoting prostitution statutes to include all persons less than eighteen years of age.

The creation of a new section entitled Sexual exploitation of a minor to chapter 707, Hawaii Revised Statutes, will address the recruitment and enticement of minors specifically for "knowingly or recklessly" causing, enticing, persuading, inducing, or otherwise aiding "a minor to engage in activity as an erotic or nude massager or exotic or nude dancer."

The Honorable Tommy Waters, Chair  
and Members  
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Currently, thirty-three states have passed anti-trafficking laws that criminalize the act of trafficking.

The Honolulu Police Department urges you to support Senate Bill No. 2212, S.D. 1, H.D. 1, Relating to Crime.

Thank you for the opportunity to testify.

Sincerely,

  
RICHARD C. ROBINSON, Acting Major  
Criminal Investigation Division

APPROVED:

*For*   
BOISSE P. CORREA  
Chief of Police





# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

**MY TESTIMONY**

Executive Director  
Adriana Ramelli

Advisory Board  
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Roland Lagareta  
M. Stanton Michels, M.D.  
Willow Morton  
R. Carolyn Wilcox

Date: March 25, 2008

To: The Honorable Tommy Waters, Chair  
The Honorable Blake K. Oshiro, Vice Chair  
The Committee on Judiciary

From: Adriana Ramelli, Executive Director  
Sex Abuse Treatment Center  
Kapi'olani Medical Center for Women and Children

RE: Support for SB2212 S.D.1, H.D.1  
Relating to Crime

Good afternoon Representatives Waters and Oshiro and the Committee on Judiciary. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

The SATC strongly supports the passage of SB2212 S.D.1, H.D.1 which proposes key amendments to existing criminal statutes to ensure that trafficking crimes are effectively prosecuted. SATC concurs with the rationale for these amendments and proposed revisions to the existing bill, as detailed in testimony submitted by the Department of the Prosecuting Attorney (3/25/08). Enacting these proposed amendments to Hawaii's existing penal code is a critical step in combating the tragedy of human trafficking, while also ensuring that victims of this crime are eligible for crime victim compensation.

Of key importance is the fact that this bill strengthens the protection afforded minors as it creates the new offense of sexual exploitation of a minor. Children are inherently vulnerable. SB2212 S.D.1, H.D.1 targets those who prey upon this group and seize exploitation opportunities for their own gain. This is often seen in those cases involving girls who become trapped in the commercial sex industry to meet their basic survival needs such as food, shelter and clothing. These girls are often runaways or throwaways with histories of sexual and physical abuse who are controlled and manipulated by a pimp or another person making it difficult for them to leave the situation. At SATC, we have provided services to help girls in these traumatic situations. To safeguard these girls and other minors who are exploited, our present laws need to be strengthened to effectively hold offenders accountable for the grievous harm they perpetrate on children. The passage of this bill will help ensure this.

Further, this bill offers greater protection for youth by extending the age of minors covered under the Promoting Prostitution statute to include sixteen and seventeen year olds. This critically important provision addresses the very real vulnerability of older teens to sexual victimization.

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It is also the intent of this bill to ensure victims of sexual exploitation are eligible for compensation from the Crime Victim Compensation Commission (CVCC). SATC strongly supports this action as it is imperative that victims get all the support necessary to re-build their lives. Compensation can offset the cost of counseling, medical care and other cost associated with victimization.

I strongly support bill SB2212 S.D.1, H.D.1. Thank you for the opportunity to testify.

# NĀ LOIO

## Immigrant Rights and Public Interest Legal Center

TESTIMONY IN SUPPORT OF THE INTENT  
S.B. 2212  
Committee on Human Services and Housing  
Tuesday, March 25, 2008  
4:05 p.m.

LATE TESTIMONY

To: The Honorable Tommy Waters, Chair  
Judiciary  
The Honorable Alex M. Sonson, Chair  
Labor & Public Employment

From: Patricia McManaman  
Na Loio – Immigrant Rights and Public Interest Legal Center

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Na Loio – Immigrant Rights and Public Interest Legal Center is a non-profit legal services organization committed to providing immigration legal services and advocacy in the public interest with a particular emphasis on serving poor and low-income immigrants and their families. Since the passage of the federal Trafficking Victims Protection Act in 2000, Na Loio has provided legal representation in over 40 cases involving human trafficking victims seeking certification, a trafficking or “T” visa, or adjustment of status following three years in “T” visa status. We actively screen all requests for legal services to determine if elements of trafficking are present, and we actively collaborate with local and federal law enforcement and other social service providers in cases giving rise to the prospect of human trafficking.

Human trafficking occurs in epidemic proportions across the globe, and the United Nations estimates that there are 12.3 million persons enslaved in force labor, bonded labor, forced child labor, sexual servitude, and involuntary servitude at any given point in time. Hawaii is not an exception as evidenced by *United States v. Maka*, a federal case involving Tongan males who were illegally transported to Hawaii to build lava rock walls and held in servitude. The Maka trafficking victims were compelled to live in substandard housing, subjected to routine beatings, often went without food, and received wages on an intermittent basis. In Maka and other cases, Na Loio has seen first hand the devastating consequences of human trafficking and witnessed the trauma suffered by its victims. Na Loio supports the intent of S.B 2212, but has significant concerns regarding the bill’s sweeping proposal to create a new offense entitled, “Sexual exploitation of a minor” that strays far beyond the scope of trafficking, the bill’s mischaracterization of sexually trafficked persons as “prostitutes,” and the bill’s failure to adequately address other aspects of human trafficking. Na Loio also offers other proposed amendments.

International traffickers are increasingly placing victims in strip bars and clubs rather than prostitution as demonstrated by recent federal cases involving persons held in servitude for purposes of sexually explicit performances such as “exotic dancing.”<sup>1</sup> And while this growing trend needs to be addressed, the proposed measure is overbroad and strays far beyond the bounds of trafficking by criminalizing behavior that does not involve a commercial activity. For example, the proposed legislation would criminalize

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<sup>1</sup> Model State Anti-Trafficking Criminal Statute, U.S. Department of Justice, Commentary at 9.

conduct where a partially clothed minor was persuaded by her/his partner to engage in nude dancing. This follows from the explicit language found in S.B. 2212, which criminalizes conduct where a person, “causes, entices, persuades, induces, or otherwise aids a minor to engage in activity as an...exotic or nude dancer.” Under the proposal, “exotic or nude dancer” is defined a person “performing, dancing or entertaining in the nude and includes patrons participating in a contest or receiving instruction in nude dancing.”

In lieu of the proposed statute, Na Loio suggests the adoption of the language or similar language found in the Model State Anti-Trafficking Criminal Statute which was previously provided the Committee. Additionally, Na Loio also suggests that only those who engage “knowingly” in the prohibited activity be subjected to the proposed criminal penalty. The “knowing” standard is again consistent with the Model State Anti-Trafficking Criminal Statute and Hawai’i’s pornography/promoting child abuse law, as well as Hawaii Revised Statutes §712-1202 Promoting Prostitution as it relates to a minor. Should the state wish to criminalize other instances involving the sexual exploitation of a minor, it should do so independently of a measure intended address human trafficking. Finally, Na Loio notes that this offense, like the proposed Promoting Prostitution offense involving a minor is a Class B felony. Given the breadth of the behavior prohibited by this provision and the attendant reckless standard of conduct, Na Loio believes the penalty to be unduly harsh.

Section 6 of the proposal extends Hawai’i’s extortion statutes to include offenses that involve coerced labor or services. Na Loio proposes that Section 707-764 (e) be broadened to state, “**abusing or threatening to abuse the law or the legal process.**” At present, Section 707-764 (e) is limited to accusing the victim of a penal offense or causing a penal charge to be instituted against a victim. Traffickers do not merely threaten their victims with criminal charges. They also threaten to have the victims and their family members deported, assert that their children will be removed from their custody, or that as “foreigners” they are not entitled to call the police or access the courts. Broadening the language will capture the full extent of a trafficker’s coercive tactics. In further support, Na Loio notes the Model State Anti-Trafficking Statute also employs the phrase “abusing or threatening to abuse the law or the legal process.”

Section 7 of S.B. 2212 is particularly troubling. This section proposes to address sexual servitude, but does so in the context of prostitution. Over the past several years, Na Loio has worked with multiple trafficking victims held in sexual servitude. These victims already struggle with guilt, depression, and trauma as a result of being trafficked. They believe the community looks upon them as prostitutes and not victims. If the proposed language stands, it will further traumatize victims and confirm their worst self-doubts. Na Loio also notes the commentary to Sections 712-1201 and 1204 dealing with prostitution states, “[t]hese four sections deal with the non-prostitutes who derive financial gain from the work of prostitutes.” Thus, the legislative intent confirms a trafficking victims worst self-doubts.

Na Loio suggests that the term prostitution or prostitute be replaced with “commercial sex worker,” a term that does not carry the stigma of “prostitute” or “prostitution.” Alternatively, Na Loio suggests that Hawai’i adopt the Model State Anti-Trafficking Statute in its entirety. It is noteworthy that the vast majority of states that have adopted human trafficking laws, have followed models proposed and suggested by the U.S. Department of Justice. These models create new offenses clearly and exclusively focused on human trafficking and as such do not violate the holding found in State v.

Modica, 58 Haw. 249, 567 P.2d 420 (1977). The uniform model also has the benefit of employing language familiar to federal law enforcement or government officials who are in the position to grant continued presence or certification for an immigrant victim.

Na Loio also notes that Section 10 fails to recognize that sex trafficking may also be the result of “fraud.” It is not uncommon, for example, for traffickers to entice their victims through promises of opportunity and legal employment. Once these victims arrive in the United States or at the “job site,” they are told they must work off their travel expenses, or repay loans made to the victim or family members through commercial sex. Significantly, 28 of the 36 states that have passed human trafficking laws recognize fraud as a common tactic employed by human traffickers and prohibit the same. Typically, these state statutes prohibit the proscribed conduct through the use of, “force, fraud, or coercion.” Finally, Na Loio notes that respect to Section 10, the proposed measure does not shield these victims from prosecution nor does the proposal make the trafficking of minors a more grievous offense.

Na Loio recommends that a section be added to the proposal requiring law enforcement officials to certify in writing to federal authorities that an investigation or prosecution involving human trafficking under Hawai’i laws has begun and that the individual who is a likely victim of the crime is willing to cooperate or is cooperating in the investigation. Such language might state:

Certification. The Attorney General, state or local law enforcement agencies, or other state or county agencies having criminal investigative jurisdiction in their respective areas of expertise shall forthwith certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution has begun and the individual who is a likely victim of human trafficking as described under Hawai’i law and is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims of human trafficking who are under 18 years of age. This certification shall be made available to the victim and his or her designated legal representative.

Finally, Na Loio recommends the creation of a provision which would guarantee trafficking victims' privileged communication with their case management workers, create a private cause of action for victims against their traffickers and allow for punitive damages and attorneys fees, and provide for an affirmative defense for trafficking victims psychologically coerced into committing crimes by their traffickers.

Thank you for the opportunity to testify on this important measure.