

## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2212, RELATING TO CRIME.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Tuesday, February 12, 2008 **TIME:** 9:00 AM

**LOCATION:** State Capitol Room 016  
*Deliver to: Committee Clerk, Room 219, 1 copy*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Lance M. Goto, Deputy Attorney General

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Chair Taniguchi and Members of the Committee:

The Department of the Attorney General appreciates the intent of this measure to address the problem of human trafficking but recommends that amendments be made to the bill.

The bill facilitates the prosecution of human trafficking related crimes by creating a new offense of sexual exploitation of a minor, amending existing kidnapping, extortion, and prostitution laws, and adding sexual exploitation of a minor to the definition of racketeering activity. The bill also eliminates the distinction between minors under 18 and minors under 16 for purposes of promoting prostitution.

We recommend the following amendments. On page 11 of the bill, the term "labor" is being added to the definition of extortion in section 707-764, Hawaii Revised Statutes (HRS). Accordingly, the term should also be added to the substantive extortion offenses in sections 707-765(1)(a), 707-766(1)(a), and 707-767, HRS.

On pages 10 and 14 of the bill, the definitions of "labor" and "services" are being defined only for purposes of section 707-720, regarding kidnapping, and section 707-764, regarding the general definition of extortion. The definitions, although needed, are not applicable to the substantive extortion offenses. As such, the definitions of "labor" and "services" should be moved to section

707-700, HRS, "Definitions of terms in this chapter." With that move, the last sentence in the proposed definition of "services" should be amended to read, "Nothing in this chapter shall be construed to legitimize or legalize prostitution."

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

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Chair

REBECCA S. WARD  
Commissioner

THOMAS WATTS  
Commissioner

PAMELA FERGUSON-BREY  
Executive Director

TESTIMONY ON SENATE BILL 2212  
RELATING TO CRIME

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

Committee on Judiciary and Labor  
Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair

Tuesday, February 12, 2008; 9:00 AM  
State Capitol, Conference Room 016

Good morning Chair Taniguchi, Vice Chair Hee and Members of the Senate Committee on Judiciary and Labor. 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. 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 or a minor and 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 human trafficking victims should be eligible for compensation to cover their unreimbursed crime related expenses. Senate Bill 2212 will help to ensure that human trafficking victims will have access to the medical 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.

Testimony on behalf of the  
Office of the Public Defender, State of Hawai`i  
to the Senate Committee on Judiciary and Labor

February 11, 2008

RE: S.B. 2212: Relating To Crime.

Senator Taniguchi and Members of the Committee:

S.B. 2212 seeks to create a new offense of "human trafficking". We are unclear what specific conduct in our community this legislation is designed to address that is not already covered by offenses in the Hawaii Penal Code.

As drafted, this legislation appears to address conduct already covered by current statutes. We do not see the need to dismantle the structure of the Hawaii Penal Code in order to draft statutes to mirror federal counterparts.

Also, it seeks to add this newly created offense of "sexual exploitation of a minor" to the list of "violent offenses" under section 351-32. While taking no issue with the seriousness of the conduct sought to be addressed in this bill, the offense created is not a "violent" offense, under the standard definition of violence. We open a Pandora's box when we start adding offenses that are not violent, per se, to such a list.

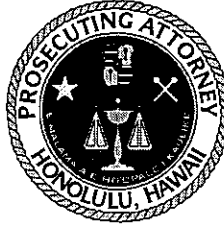
For these reasons, we cannot support this legislation in its current form.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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FIRST DEPUTY  
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**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR**

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

**HEARING: Tuesday, February 12, 2008  
9:00 A.M., Conference Room 016**

**RE: SENATE BILL 2212, RELATING TO CRIME**

Good morning Chair Taniguchi and members of the Judiciary and Labor Committee, the Department of Prosecuting Attorney provides the following testimony **in strong support of H.B. 2212, 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, 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 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 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. It also changes the term "prostitutes" in *HRS Section 712-1203(a)*, "Promoting Prostitution in the Second Degree," to "prostituted persons" reflecting the premise that trafficking victims are, by definition, not deemed to be "prostitutes" voluntarily.

As to the proposed amendments to the bill, we support the following revisions that we believe will be proposed by the Department of the Attorney General in their testimony: (1) The definition of "labor and services" as defined in *H.R.S. Section 707-720* should be included under definitions in *H.R.S. Section 707-700*, since it would also apply to Extortion under *H.R.S. Section 707-764*. (2) *H.R.S. Sections 707-765, 707-766* and *707-767* would also be amended to include labor, and (3) Under Sexual Exploitation of a Minor, the last part of the definition of "nude" should be "...or any clothing that exposes the areola or through which the areola can be viewed".

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

Thank you for your time and consideration.



**JAY T. KIMURA**  
PROSECUTING ATTORNEY

**CHARLENE Y. IBOSHI**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



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**Testimony In Support of SB 2212**  
**Relating to Crime, Human Trafficking**

Hearing before the Senate Committees on Judiciary and Labor  
Tuesday, February 12, 2008, 9:00 a.m.

Submitted by Charlene Y. Iboshi, First Deputy Prosecuting Attorney for  
Jay T. Kimura, Prosecuting Attorney

TO: Chair Taniguchi and Members of the Committees:

We support the Senate Bill 2212, with the recommended changes, to enhance our ability to prosecute Human Trafficking cases.

Our Office is a member of the Hawaii Human Anti-Trafficking Task Forces. We fully agree with the purpose and explanation of Senate Bill 2212. The proposed changes will enhance the prosecution of Human Trafficking cases by increasing the penalty for "involuntary servitude" as Kidnapping; by amending the extortion law to provide another means to "extort" services by concealing identification papers or passports; by creating a new offense of sexual exploitation of a minor (nude dancing) and equally protecting all minors who are prostituted, even if they are older than sixteen.

Additionally, the bill provides for compensation for the victims of Human Trafficking, and takes away the profit from "organized" criminal activity enterprises through changes in the "racketeering" law.

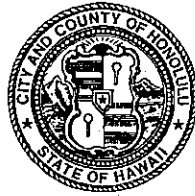
We have reviewed the Testimony of the Attorney General and agree with their minor changes for clarity of the law. We also recommend that the definitions of "labor" and "services", along with the explanation that the definition "services" does not legalize prostitution, be included in the General Provisions relating to the Offenses against Property Rights under Section 708-800, H.R.S. This insures consistent definitions when dealing with Theft of Services and the Crimes against Persons under Section 707-700, which cover extortion and kidnapping offenses.

Thank you for considering our testimony.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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MUFU HANNEMANN  
MAYOR



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
MICHAEL D. TUCKER  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 12, 2008

The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: Senate Bill No. 2212, Relating to Crime

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

The Honolulu Police Department supports Senate Bill No. 2212, 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 Brian T. Taniguchi, Chair  
and Members

Page 2

February 12, 2008

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, Relating to Crime.

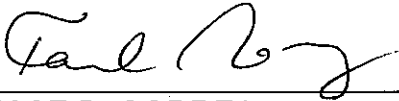
Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Captain  
Criminal Investigation Division

APPROVED:



*for* BOISSE P. CORREA  
Chief of Police

# Domestic Violence Action Center

P.O. Box 3198 • Honolulu • Hawaii • 96801-3198

To: Chair Brian Taniguchi  
Vice Chair Clayton Hee  
Members of the Committee on Judiciary and Labor

From: Nanci Kreidman, M.A.  
Executive Director

RE: S.B. 2212

Hawaii is not exempt from the human trafficking epidemic. The intent of S.B. 2212 is good but there are concerns regarding the bill's proposal to create a new offense, "Sexual exploitation of a minor." This attempts to stretch beyond the scope of trafficking.

Another concern is the characterization of sexually trafficked persons as "prostitutes" which is inaccurate. Victims are not only forced into prostitution but have also been placed in strip bars and clubs which are part of the sex industry.

In the attempt to protect trafficking victims and ensure that those who commit trafficking crimes are appropriately prosecuted some parts of this bill steps beyond the bounds of trafficking. A majority of state that have adopted human trafficking laws have followed models from the U.S. Department of Justice which focuses exclusively on human trafficking.

Thank you for inviting input about this issue through the hearing of S.B. 2212.

A JOINT LEGISLATIVE EFFORT

E-Mail to: [testimony@Capitol.hawaii.gov](mailto:testimony@Capitol.hawaii.gov)

Regarding: Senate JDL hearing

Hearing on: February 12, 2008 @ 9:00 a.m. in room 016

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**Date:** February 8, 2008

**To:** Senate Committee on Judiciary & Labor  
The Honorable Brian Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair

**From:** Kelly M. Rosati, JD  
Executive Director, Hawaii Family Forum  
Lobbyist, Roman Catholic Church in the State of Hawaii

**Re: Support for SB 2212 Relating to Crime**

Honorable Chair and members of the Senate Committee on Judiciary & Labor, I am Kelly Rosati, representing both the Hawaii Family Forum and the Roman Catholic Church in the State of Hawaii. Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in Hawaii, which under the leadership of Bishop Larry Silva, represents over 210,000 Catholics in Hawaii.

We strongly support efforts to stop the abomination of human trafficking. Hawaii Family Forum was involved years ago in the successful efforts at the city and state levels to better protect victims of commercial sexual exploitation, which has a particularly adverse impact upon young women and girls. This type of exploitation is often associated with human trafficking as girls are literally bought, sold and transported against their will for the purpose of commercial sexually exploitation.

We defer to the appropriate legal authorities on the details of SB 2212 as it involves complicated criminal law provisions. We hope consensus can be developed to support efforts to strengthen laws against human trafficking.

Mahalo for the opportunity to testify.

# HAWAII YOUTH SERVICES NETWORK

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Web site: <http://www.hysn.org> E-mail: [info@hysn.org](mailto:info@hysn.org)

Joseph Fichter, President

Judith F. Clark, Executive Director

Adolescent Services Program, Kaiser  
Permanente Medical Care System

Aloha Pride Center

American Civil Liberties Union of Hawaii

Assistive Technology Resource Ctrs. of HI

Bay Clinic, Inc.

Big Brothers Big Sisters of Honolulu

Big Island Substance Abuse Council

Blueprint for Change

Bobby Benson Center

Catholic Charities Hawaii

Central Oahu Youth Services Assn.

Child and Family Service

Coalition for a Drug Free Hawaii

Community Assistance Center

Domestic Violence Action Center

EPIC, Inc.

Family Support Services of West Hawaii

Foster Family Programs of Hawaii

Friends of the Missing Child Center of HI

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Behavioral Health

Hawaii Foster Parent Association

Hawaii Student Television

Healthy Mothers Healthy Babies Coalition

Hina Mauka Teen Care

Kahi Mohala Behavioral Health

Kama'aina Kids, Inc.

KEY (Kualoa-Heeia Ecumenical Youth)

Project

Kids Behavioral Health

Kids Hurt Too

Life Foundation

Marimed Foundation

The Maui Farm, Inc.

Maui Youth and Family Services

Palama Settlement

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

Planned Parenthood of Hawaii

Salvation Army Family Intervention Svcs.

Salvation Army Family Treatment Svcs.

Sex Abuse Treatment Center

Susannah Wesley Community Center

Turning Point for Families

Waikiki Health Center

Women Helping Women

World Healing Institute

YWCA of Kauai

February 11, 2008

To: Senator Brian T. Taniguchi, Chair  
And members of the Committee on Judiciary and Labor

## Testimony in Support of SB 2212 Relating to Crime

Hawaii Youth Services Network (HYSN), a statewide coalition of more than fifty youth-serving organizations, supports SB 2212 Relating to Crime.

In surveys of more than 10,000 Hawaii intermediate and high school students that participated in sexual exploitation prevention education sessions between 2002 and 2006, one in ten stated that someone had tried to recruit them into commercial sex work such as prostitution, pornography, and exotic dancing. Young people have reported recruitment efforts on school campuses and in shopping malls.

Youth who engage in any form of commercial sexual exploitation are at high risk of sexually transmitted infections, unplanned pregnancy, rape, and assault. Often they are trafficked from their state or country of origin by their abusers to ensure that they have no family or friends to go to for help and no knowledge of community resources. Children as young as nine have engaged in prostitution in Honolulu and the average age at recruitment is thirteen or fourteen.

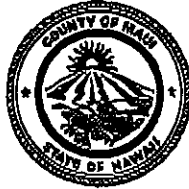
This bill will strengthen penalties for those who sexually exploit children. Making victims of commercial sexual exploitation eligible for crime victim compensation will strengthen access to medical and psychological services for these victims of sexual abuse.

Thank you for this opportunity to testify.

Sincerely,

Judith F. Clark, MPH  
Executive Director

CHARMAINE TAVARES  
Mayor



BENJAMIN M. ACOB  
Prosecuting Attorney

PETER A. HANANO  
First Deputy Prosecuting Attorney

**LATE**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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PHONE (808) 270-7777 • FAX (808) 270-7625

February 11, 2008

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR  
THE HONORABLE CLAYTON HEE, VICE-CHAIR  
COMMITTEE ON JUDICIARY AND LABOR

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,  
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,  
IN SUPPORT OF SENATE BILL NO. 2212  
RELATING TO CRIME

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports S.B. 2212 Relating to Crime.

We cannot think of any other act that is more inhumane than human trafficking. Human trafficking is not only an offense against an individual or a limited number of individuals but also a crime against humanity. In the world of human trafficking, men, women, and children are bought, sold, and held against their will in slave-like conditions. People are trafficked and forced to work in the commercial sex trade, sweatshops, agricultural settings, domestic service, and other types of servitude, for basically the most basic needs of food and shelter. In addition, these individuals are treated with psychological torture and torment.

Furthermore, to control their victims, human traffickers beat, burn, rape, and threaten the victim's families. If the victims are brought in from another country, the traffickers hold their documents, hold them to debt bondage, and threaten them with deportation. Victims are held captive 24 hours a day to prevent any opportunity to report or seek help.

This Bill seeks to combat this unimaginable crime by strengthening Hawaii's existing penal code as it pertains to human trafficking and creates a new offense of sexual exploitation of a minor. Moreover, this Bill adequately addresses the concerns regarding the "Modica Rule".

In conclusion, our Department strongly supports S.B. 2212. With these proposed amendments to the law, State law enforcement officers will now possess the much needed tools in the fight against this horrific crime of modern day slavery. Thank you for the opportunity to testify.

(S.B. 2212, Relating to Crime.)



**LATE**

# NĀ LOIO

## Immigrant Rights and Public Interest Legal Center

TESTIMONY IN SUPPORT OF THE INTENT

S.B. 2212

Committee on Judiciary and Labor

Thursday, February 12, 2008

9:00 a.m.

To: The Honorable Brian Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair

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 and the bill’s mischaracterization of sexually trafficked persons as “prostitutes.” 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 strays far beyond the bounds of trafficking by criminalizing behavior that does not involve a commercial activity. For example, the proposed legislation would criminalize 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 is attached. 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. A “knowing” state of mind also reaffirms that traffickers are fully aware and involved participants in the commercial exploitation of minors. 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.

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 (k) include the phrase “or **other immigration document.**” In addition to passports and government issued identification documents, other documents traffickers withhold may include written decisions by an immigration court or documents issued by the United States Citizenship and Immigrant Services authorizing legal status in the United States or extending the period of lawful admission. Additionally, Na Loio also suggests 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

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

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.

Finally, Na Loio recommends that a final 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.

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



THE SEX ABUSE  
TREATMENT CENTER

LATE

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

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Date: February 12, 2008

Executive Director  
Adriana Ramelli

Advisory Board

President  
Mimi Beams

Vice President  
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To: The Honorable Brian T. Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

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

RE: Support for SB2212  
Human Trafficking

Good morning Senators Taniguchi and Hee and members of the Committee on Judiciary and Labor. 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.

Human trafficking is an egregious abuse of human rights. It has been the focus of world wide attention with nearly every country attempting to tackle the problem and put an end to this horrendous tragedy. Impoverished, isolated and vulnerable women and children are at greatest risk of suffering the injustices of human trafficking. They are held against their will in slave-like conditions and are often subjected to rape, physical and psychological abuse and torture. The emotional and physical toll on human life is substantial and long lasting.

Organizations throughout the country are working on enacting laws and developing programs to prevent trafficking, prosecute traffickers and to assist those who are exploited by traffickers. In Hawaii, professionals from various organizations have been partnering to address this problem and to identify strategies to resolve human trafficking.

An important first step in combating the problem of human trafficking is to promote and pass legislation to prosecute those who commit the crime. The Hawaii Anti-Trafficking Task Force has been diligently working on legislation to ensure that trafficking crimes will be properly prosecuted. SB2212 is an act that will facilitate the prosecution of this offense. While there may be some legal "technical" aspects of the bill that need to be addressed (defer to recommendations from the Department of the Attorney General), this bill sets forth the required public policy to protect the rights of trafficked persons.

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This bill also strengthens the protection afforded minors as it creates the new offense of sexual exploitation of a minor. Children are inherently vulnerable. For a myriad of reasons some are more easily exploited than others. Traffickers 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 that 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 traffickers accountable for the grievous harm they perpetrate on children. The passage of SB2212 will ensure this.

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. Thank you for the opportunity to testify.

TESTIMONY IN SUPPORT OF THE INTENT  
S.B. 2212  
Tuesday, February 12, 2008

To: The Honorable Brian Taniguchi, Chair  
The Honorable Clayton Hee, Vice-Chair

From: Robin Wurtzel  
Attorney at Law

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I am an attorney in private practice. Until recently I was a staff attorney at Na Loio – Immigrant Rights and Public Interest Legal Center. In that position I represented victims of trafficking, preparing T visa applications and adjustment of status applications. I believe that I have more experience in this area than any other attorney in the state of Hawai'i, and was the only attorney representing trafficking victims until 2007.

I have also given workshops and presentations in this area of law.

Labor trafficking is a major issue worldwide. Within Hawai'i we have had two major cases, including the more recent one against Lueleni Maka. The victims, who were forced to live like animals, eaten, deprived of food and medical care, would not be covered under this bill. The Daewoosa case originated in Samoa but was tried in Hawai'i, as well as another case involving sexual servitude. There have been other instances of trafficking in Hawaii that were not prosecuted by the U.S. Attorney. A state statute could be used to punish the

I fully support the intent of S.B. 2212 and think it wise to have an anti-trafficking state statute. I support the amendments listed in testimony presented by Patricia McManaman, CEO of Na Loio. In particular, I reiterate her amendments to Sections 6,7 and the addition of a final section requiring written certification. This would ensure that immigrant victims can have access to federal remedies and benefits.

I fully support the intent of the bill, to criminalize trafficking, both labor trafficking and sex trafficking. I applaud the effort to make victims eligible for compensation from the crime victim compensation commission. However, there is a model statute, which addresses trafficking in a more specific and cohesive manner, and will not be affected by *Modica*. Many states have adopted statutes, and accommodations can be found in those for the case law that is of concern here. In general, Hawaii adopts model codes, and this situation should not be any different.

Section 2 of the proposed bill is overly broad. It criminalizes conduct inducing a minor to engage in nude dancing. This is very broad and inclusive, and could include a high school couple where one of the pair dances nude for the other.

Also, the intent required in the different sections differs. Sexual exploitation of a minor is triggered by knowing or reckless actions. However, Section 4 is triggered by

intentional or knowing conduct. The inconsistency is troublesome. I support amending the language in all sections to be the same, and require knowing action.

Section 7 of the proposed bill is shocking in that trafficked persons are labeled as "prostitutes." If a young woman is promised a job in the United States as a nanny, or housekeeper, and is then forced into sexual servitude, she regards herself as a victim. She is sexually assaulted daily. She may be held captive, and told that if she escapes her parents or siblings will be harmed. Her acts are not prostitution, and labeling her as a criminal creates more psychological damage. Having personally worked with trafficking victims who were held in sexual servitude, I found my clients to be fragile, and traumatized. Just the characterization will create harm, as well as be misleading to police and prosecutors. The introduction to the bill states that victims are "prostituted persons," as trafficking victims are not "prostitutes" voluntarily." In my opinion, better language would be "commercial sex worker." This eliminates all references to "prostitutes," and relieves some of the stigma.

I support the suggestions made by Na Loio, and hope that Hawai'i will pass a bill that is amended. There are model statutes available, as well as those adopted in other states. I particularly support a mechanism requiring law enforcement officials to submit written certification regarding an investigation, since this meshes with the federal requirements regarding trafficking victims.

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