



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

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. , S.D. 1,

**BEFORE THE:**

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

**DATE:** Tuesday, March , 2008 **TIME:** 8:30 AM

**LOCATION:** State Capitol Room 329  
*Deliver to: , Room 326, copy*

**TESTIFIER(S):** ,

---

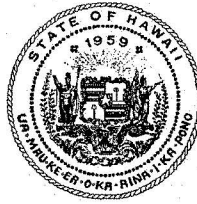
Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General supports this bill.

This 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. This bill also eliminates the distinction between minors under 18 and minors under 16 for purposes of promoting prostitution.

We respectfully urge the Committee to pass this bill.

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

1136 Union Plaza, Suite 600  
Honolulu, Hawaii 96813  
Telephone: 808 587-1143  
FAX 808 587-1146

LISA A. DUNN  
Chair

REBECCA S. WARD  
Commissioner

THOMAS WATTS  
Commissioner

PAMELA FERGUSON-BREY  
Executive Director

TESTIMONY ON SENATE BILL 2212 SD1  
RELATING TO CRIME

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Human Services and Housing  
Representative Maile S. L. Shimabukuro, Chair  
Representative Karl Rhoads, Vice Chair

Tuesday, March 11, 2008; 8:30 AM  
State Capitol, Conference Room 329

Good morning Chair Shimabukuro, Vice Chair Rhoads and Members of the House Committee on Human Services and Housing. 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. 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.

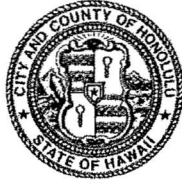
The Commission is currently unable to provide compensation for crime-related expenses, including mental health counseling services, to some victims of human trafficking. Section 351-32, Hawaii Revised Statutes, provides strict limitations on the type of crimes for which the Commission may award compensation. 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 SD1 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.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU  
801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.police.org

MUFI HANNEMANN  
MAYOR



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
MICHAEL D. TUCKER  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

March 11, 2008

The Honorable Maile S. L. Shimabukuro, Chair  
and Members  
Committee on Human Services and Housing  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Shimabukuro and Members:

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

I am Carlton S. Nishimura, 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, 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."



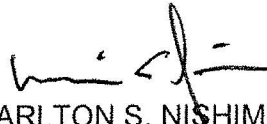
The Honorable Maile S. L. Shimabukuro, Chair  
and Members  
Page 2  
March 11, 2008

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, S.D. 1, Relating to Crime.

Thank you for the opportunity to testify.

Sincerely,



CARLTON S. NISHIMURA, Major  
Criminal Investigation Division

APPROVED:



*for* BOISSE P. CORREA  
Chief of Police

A JOINT LEGISLATIVE EFFORT

E-Mail to: [HShtestimony@Capitol.hawaii.gov](mailto:HShtestimony@Capitol.hawaii.gov)  
Regarding: House HSH hearing  
Hearing on: March 11, 2008 @ 8:30 a.m. in room 329

**HAWAII FAMILY FORUM BOARD**

Francis Oda  
President

Austin Imamura  
Vice-President

Gill Berger  
Secretary

Brogan, Mary Lou  
D'Olier, H. Mitchell  
Pace, Dr. Nancy  
Papandrew, Tom  
Paty, William  
Pflueger, Nancy  
Tsujiura, R. Brian  
Young, Sandra

**HAWAII CATHOLIC CONFERENCE BOARD**

Most Reverend Clarence Silva  
Bishop of Honolulu

Alexander, Very Rev. Marc  
Andrade, Eva  
Chung, Sr. Earnest  
Coleman, David  
Downes, Patrick  
Himenes, Dr. Carmen  
Ignacio, Carol  
Pilar, Prudencio  
Larson, Betty Lou  
Rauckhorst, Jerome  
Tong, Myron  
Yoshimitsu, Walter

**Date:** March 10, 2008

**To:** House Committee on Human Services & Housing  
The Honorable Maile Shimabukuro, Chair  
The Honorable Karl Rhoads, 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 SD 1 Relating to Crime**

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 SD 1 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.



# SOROPTIMIST

Best for Women

ATTN: COMMITTEE ON HUMAN SERVICES & HOUSING  
 Rep. Maile S. L. Shimabukuro, Chair  
 Rep. Karl Rhoads, Vice Chair  
 Rep. Karen Leinani Awana  
 Rep. Josh Green, M.D.  
 Rep. Della Au Belatti  
 Rep. John Mizuno  
 Rep. Joe Bertram, III  
 Rep. James Kunane Tokioka  
 Rep. Rida T.R. Cabanilla  
 Rep. Gene Ward, Ph.D.

HEARING DATE: Tuesday, March 9th 2008

HEARING TIME: 8:30am

PLACE: Conference Room 329

MEASURE TITLE: **SB 2212 RELATING TO CRIME**

REPORT TITLE: HUMAN TRAFFICKING

Enables prosecution of human trafficking under Hawaii law by creating new offense of sexual exploitation of a minor, amending existing kidnapping, extortion, and prostitution offenses, and including sexual exploitation of a minor in definition of racketeering. Eliminates distinction between minors under 18 and minors under 16 for purposes of promoting prostitution. Makes victims of sexual exploitation of a minor and promoting prostitution in the first degree eligible for crime victim compensation. Eff. July 1, 2010. (SD1)

**Please submit 3 copies plus 1 original to Room 326**

Dear COMMITTEE ON HUMAN SERVICES & HOUSING:

On behalf of the seven Sorooptimist International clubs in Hawaii and its 200 members, I am writing in support of SB 2212. Approximately 75 percent of all human trafficking victims are trafficked for sexual exploitation. Each year, between 800,000 and 900,000 people are trafficked across international borders – 80 percent of whom are women and children.

Girls as young as nine years old have been forced into prostitution. It is common for these women and girls to be kidnapped from their families by traffickers posing as anything from Christian missionaries to college recruiters, while others are duped into prostitution for the empty promise of a better life. Two federal indictments of sex-traffickers in the recent past, implicating Hawaii as a sex-trafficking destination, call upon us to address these crimes.

In 2005, two trafficking rings involving more than 30 women and girls, some as young as 12 years of age, was broken. If local Hawaii authorities had uncovered these child prostitution/trafficking cases they would be limited by current state law to bringing charges against the traffickers for merely promoting prostitution. HB2765 would allow the State to enforce stiffer penalties that fit the crimes that Human Traffickers commit on a daily basis and give victims of this heinous crime the services they need to heal.

The United States government has acknowledged the need to prosecute more traffickers and to rescue more victims and has called on each State to help. To date over 25 states have done so.

It is crucial to support and to ensure the existence of appropriate and severe penalties for this modern form of slavery by passing SB 2212. Under current law, traffickers may only serve a few years time for the incredible psychological, physical, and spiritual abuse they inflict on women and children caught in this illegal trade. Human Trafficking commands a much higher penalty for traffickers of women and children than the Mann Act, which has a sentence of 5 years and a \$5000 fine, or our current laws that do not define the crime yet.

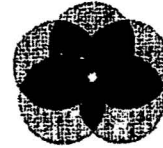
Hawaii has a proud history of upholding values such as Ohana and Aloha through trying times. Human trafficking has taken root in Hawaii, threatening values we hold dear. This modern-day slave trade requires our immediate attention to stop its proliferation. It is of the utmost importance that Hawaii addresses this burgeoning global problem pro-actively and preventatively to protect women and girls in our home State. As Soroptimists our mission is to improve the lives of women and girls. Help us fight against the rise of traffickers by passing this bill. We sincerely thank you for your time and consideration in this matter.

Mahalo nui loa,

*Judith M. Lee*

Judith M. Lee, Director  
District VI, Founder Region  
Soroptimist International of the Americas

Soroptimist clubs in Hawaii are part of Soroptimist International of the Americas. Their members join with almost 100,000 Soroptimists in about 120 countries and territories to contribute time and financial support to community-based projects benefiting women and girls. Identifying projects include Soroptimist Stop Trafficking and the Women's Opportunity Awards program - cash grants for women seeking to improve their economic situation through additional training and/or education. Soroptimists are professionals, local business owners and community leaders that work together to serve the community and make a difference for women and girls.



**VOLUNTEER STAFF**  
(Girl Fest)

Kathryn Xian  
Non-Executive Director

Jessmaya Morales  
Co-Director, Bay Area

Nikki Stevens  
Technical Director

Nohea March  
Coordinator

Katherine Shulock  
Coordinator

Jolivette Mascenas  
Film Coordinator

Christy Werner  
Education Coordinator

**BOARD OF ADVISORS**

Sonia Sanchez  
Author/Scholar

Jessica Neuwirth  
Equality Now

Derek Ellerman  
Polaris Project

Puanani Burgess  
Pu'a Foundation

Dr. Kathy Ferguson  
UHM Women's Studies

Meleanna Meyer  
Filmmaker/Artist

Dr. Susan Hippensteele  
UHM Women's Studies

**BOARD OF DIRECTORS**

Meg Filbey, Esq.  
Peace Corps

Jennifer Johns  
Musician

Harry Ramos  
Poet

Hinaleimoana Wong  
Hawaiian Instructor

Meredith Ing  
Middle School Teacher

Jaymee Carvajal  
Zang Pictures, San Diego

Weston Willard  
High School Teacher

**ATTN: COMMITTEE ON HUMAN SERVICES & HOUSING**  
Rep. Maile S. L. Shimabukuro, Chair  
Rep. Karl Rhoads, Vice Chair  
Rep. Karen Leinani Awana  
Rep. Josh Green, M.D.  
Rep. Della Au Belatti  
Rep. John Mizuno  
Rep. Joe Bertram, III  
Rep. James Kunane Tokioka  
Rep. Rida T.R. Cabanilla  
Rep. Gene Ward, Ph.D.

**HEARING DATE: Tuesday, March 11<sup>th</sup> 2008**

**HEARING TIME: 8:30am**

**PLACE: Conference Room 329**

**MEASURE TITLE: SB 2212 RELATING TO CRIME**

**REPORT TITLE: HUMAN TRAFFICKING**

Enables prosecution of human trafficking under Hawaii law by creating new offense of sexual exploitation of a minor, amending existing kidnapping, extortion, and prostitution offenses, and including sexual exploitation of a minor in definition of racketeering. Eliminates distinction between minors under 18 and minors under 16 for purposes of promoting prostitution. Makes victims of sexual exploitation of a minor and promoting prostitution in the first degree eligible for crime victim compensation. Eff. July 1, 2050. (SD1)

**Please submit 3 copies plus 1 original to Room 326 or  
Fax: (808) 586-6189**

Dear COMMITTEE MEMBERS:

On behalf of the Safe Zone Foundation and Girl Fest Hawaii, I am writing in support of SB2212. Girls as young as nine years old have been forced into prostitution. According to the Department of Justice, at the heart of "trafficking in persons" is the denial of liberty by one person or entity over another person. Business transactions/commerce and travel are secondary descriptions that may describe other characteristics included with the crime.

It is important to note that Anti-Trafficking proponents have been trying to reauthorize the federal TVPA this year because no one can use it to prosecute traffickers. It's almost impossible to prove "fraud," for instance. Also, in a cash-based illegal industry, traffickers could easily argue that the victim was doing it "for free." Local legislation must be passed to effectively address this growing problem, save victims, and bring traffickers to justice.

In Hawaii, many Asian girls and women trapped in sex-trafficking are housed in 24-hour massage parlors as "massagers." Also, a growing number of teenaged boys have

The Safe Zone Foundation 4224 Waiialae Ave. #248 Honolulu, HI 96816  
Tel & Fax 808.599.3931 Email: safezonehonolulu@cs.com URLs: general www.girlfesthawaii.org

committed crimes of pimping out their girlfriends, forcing or coercing them into prostitution.

The lack of adequate laws to bring traffickers to justice has only enabled the trend of sex-trafficking to grow. And, now it affects our island's youth culture.

In 2005, two trafficking rings involving more than 30 women and girls, some as young as 12 years of age, was broken. If local Hawaii authorities had uncovered these child prostitution/trafficking cases they would be limited by current state law to bringing charges against the traffickers for merely promoting prostitution. HB2765 would allow the State to enforce stiffer penalties that fit the crimes that Human Traffickers commit on a daily basis and give victims of this heinous crime the services they need to heal.

The United States government has acknowledged the need to prosecute more traffickers and to rescue more victims and has called on each State to help. To date over 25 states have done so.

The Safe Zone Foundation is the non-profit organization responsible for Girl Fest Hawaii, a program whose mission is to prevent violence against women and girls. We know and work with trafficking survivors and other abused and disenfranchised women caught in the modern-day slave trade called Human Trafficking. Women who survive sex-trafficking suffer extreme physical and psychological abuse at the hands of their "owners" who sell their bodies and treat them as sub-human.

It is crucial to support and to ensure the existence of appropriate and severe penalties for this modern form of slavery by passing SB2212. Under current law, traffickers may only serve a few years time for the incredible psychological, physical, and spiritual abuse they inflict on women and children caught in this illegal trade. Human Trafficking commands a much higher penalty for traffickers of women and children than the Mann Act, which has a sentence of 5 years and a \$5000 fine, or our current laws which do not define the crime yet.

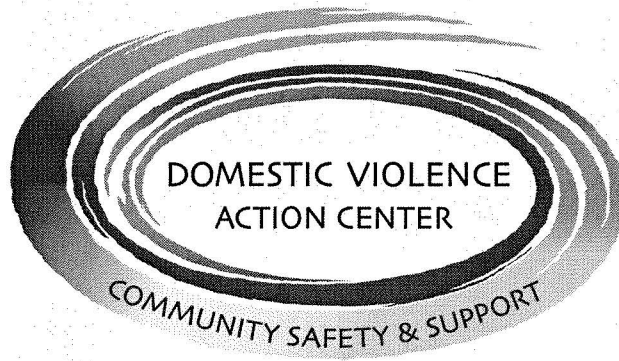
Hawaii has a proud history of upholding values such as Ohana and Aloha through trying times. Human trafficking has taken root in Hawaii, threatening values we hold dear. This modern-day slave trade requires our immediate attention to stop its proliferation. It is of the utmost importance that Hawaii addresses this burgeoning global problem pro-actively and preventatively to protect women and girls in our home State, and those of us fighting against the rise of traffickers, urge you to pass this bill. Thank you sincerely for your time and consideration in this matter.

Mahalo nui loa,



Kathryn Xian, President, The Safe Zone Foundation & Girl Fest Hawaii;  
National Education Association Ellison S. Onizuka Human & Civil Rights Award Recipient

The Safe Zone Foundation 4224 Waiatae Ave. #248 Honolulu, HI 96816  
Tel & Fax 808.599.3931 Email: safzonehonolulu@cs.com URLs: *general* www.girlfesthawaii.org



To: Chair Maile S.L. Shimabukuro  
Vice Chair Karl Rhoads  
Members of the Committee on Human Services and Housing

From: Nanci Kreidman, M.A.  
Executive Director

RE: S.B. 2212, S.D. 1

Hawaii is not exempt from the human trafficking epidemic. The intent of S.B. 2212, S.D. 1 is commendable 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. The term prostitute carries tremendous stigma in our society, and it is important that the already traumatized victim is not further victimized by that social stigma.

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 states 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, S.D 1.





THE SEX ABUSE  
TREATMENT CENTER

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

---

Executive Director  
Adriana Ramelli

Date: March 11, 2008

Advisory Board  
President  
Mimi Beams

To: The Honorable Maile S. L. Shimabukuro, Chair  
The Honorable Karl Rhoads, Vice Chair  
Committee on Human Services & Housing

Vice President  
Peter Van Zile

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

Marilyn Carlsmith

Senator  
Suzanne Chun Oakland

RE: Support for SB2212 S.D.1  
Creates New Offense of Sexual Exploitation of a Minor

Monica Cobb-Adams

Dennis Dunn

Senator  
Carol Fukunaga

Good morning Representatives Shimabukuro and Rhoads and members of the Committee on Human Services & Housing. 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.

Tina Watson

Geraldine A. Hayes

Roland Lagareta

The SATC supports the passage of SB2212 S.D.1 as it addresses criminal offenses relating to human trafficking of minors and makes victims eligible for crime victims compensation. An important first step in combating the problem of human trafficking is to promote and pass legislation to prosecute those who commit the crime.

M. Stanton Michels, M.D.

Willow Morton

R. Carolyn Wilcox

This important bill 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. SB2212 S.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 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 offenders accountable for the grievous harm they perpetrate on children. The passage of this bill will help 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 S.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 11, 2008

8:30 a.m.

To: The Honorable Maile S.L. Shimabukuro, Chair  
The Honorable Karl Rhoads, Vice Chair

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

---

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 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

---

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

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.

-----Original Message-----

From: Gina Cardazone [mailto:cardazon@hawaii.edu]  
Sent: Sunday, March 09, 2008 11:44 PM  
To: HSHtestimony  
Subject: Testimony in Support of SB2212, Relating to Crime

TESTIMONY ON SENATE BILL 2212 (SD1)  
RELATING TO CRIME

Dear Committee Members:

I am writing in support of SB2212. Human trafficking is believed to be the fastest growing criminal industry in the world, with consequences that are utterly devastating for victims and for society as a whole. The demand for cheap labor combined with the inadequacy of legislation to address trafficking, along with lenient enforcement of laws and application of penalties, creates conditions where traffickers can look forward to high profits with minimal risk.

Human trafficking is expected to continue to grow unless the risks for traffickers begin to outweigh the potential benefits. Local, national and international bodies must work on multiple levels to ensure that traffickers are caught and harshly penalized, if we wish to abolish this modern-day slavery.

The United Nations Anti-Trafficking Protocol and the U.S. Trafficking Victims Protection Act (TVPA), work on the international and national levels to address the problem of human trafficking, and many states in the U.S. have passed laws to address this issue on the local level. In passing SB2212, the state of Hawaii will join regional, federal and international efforts to protect victims of trafficking, punish traffickers, and discourage entry into the industry by potential perpetrators.

The U.S. Trafficking Victims Protection Act defines "severe forms of trafficking in persons" as

- (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person is induced to perform such an act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

SB2212 amends current Hawaii law to target these severe forms of human trafficking, including forced prostitution, sex trafficking of persons under 18, and forced labor. As you can see, the definition of trafficking is not contingent on the movement of a person across national or international bounds, and is concerned instead with trade in humans, whether it is the luring of a person from Asia to work in a sweatshop, or the selling of a young Hawaiian girl's body. These egregious violations of humanity must be met by Hawaii's legislators with laws that will punish traffickers and protect trafficking victims, and SB2212 has been designed to do this.

As Antonio Costa, the Executive Director of the UN Office of Drugs and Crime, said at a UN sponsored anti-trafficking forum last month, "It's time for the world to open its eyes to this form of modern slavery." Once our eyes are open, he implores, we must take action. "Moral outrage is not going to stop the traffickers; we need high impact law enforcement measures to make human trafficking a riskier business."

Thank you for the opportunity to voice my support of this important piece of legislation.

Gina Cardazone