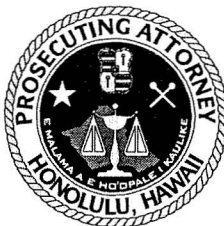


DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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LATE TESTIMONY

PETER B. CARLISLE
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**THE HONORABLE MAILE SHIMABUKURO, CHAIR
THE HONORABLE KARL RHOADS, VICE CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING**

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

**HEARING: Tuesday, March 11, 2008
8:30 A.M., Conference Room 016**

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

Good morning Chair Shimabukuro and members of the Human Services and Housing Committee, the Department of Prosecuting Attorney provides the following testimony **in strong support of H.B. 2212, S.D. 1, with an amendment**, 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, 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 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 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 amendment to the bill, we support revising 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.

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

Thank you for your time and consideration.

LATE TESTIMONY

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

From: Dara Carlin, M.A. [mailto:breaking-the-silence@hotmail.com]
Sent: Tuesday, March 11, 2008 12:04 AM
To: HSHtestimony
Subject: SB2212 SD1 to be heard Tuesday, 03/11/08 at 8:30am by the HSH
Committee
Importance: High

> TO: Representative Maile Shimabukuro, Chair
> Representative Karl Rhoads, Vice Chair
> Health & Human Services Committee Members
>

> FROM: Dara Carlin, M.A.
> Oahu VOICES
> 716 Umi Street, Suite 210
> Honolulu, HI 96819
>

> DATE: March 11, 2008
>

> RE: Support for SB2212 SD1, Relating To Crime
>
>
>

The Formerly Battered Womens Caucus, VOICES, stands in support of SB2212 SD1 as it pertains to Human Trafficking, the modern day term for slavery. It's sad to think that a new offense has to be created for the sexual exploitation of a minor (since it should already be listed as a crime) but if doing so will bring justice or help bring an end to this atrocity, then please pass this measure with your full support. Childhood is a mere 18 years and in today's society, parents have to actively fight for their children's childhood if that's what they want to see for them. Sexual exploitation robs and rips childhood away from a child forever - those who would do such a heinous thing should be punished to the fullest extent possible - and while it can't undo the crime, it does send a healing message to the child that what was done to them was wrong.

>
> Thank you for your time and consideration.
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>

> Respectfully,

>
> Dara Carlin, M.A.
> Oahu VOICES Representative
>

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