



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

H.B. NO. 1003, H.D. 2, S.D. 1, RELATING TO THE PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, March 31, 2011 TIME: 9:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Hee and Members of the Committee:

The House Draft No. 2, upon crossover, only contained part I of this bill. After crossover, part II was added in the current Senate Draft No. 1.

The Department of the Attorney General (The "Department") strongly supports part I of this bill (intended to provide greater protection to victims of domestic violence), with one minor amendment. While the Department strongly supports the goals of preventing human trafficking and bringing its perpetrators to justice, the Department opposes part II of this bill (the labor trafficking provisions), because it seeks to prohibit conduct that is already prohibited under Hawaii law, and it contains numerous other legal problems.

PART I: DOMESTIC VIOLENCE

Family is the bedrock of our community, but it is also where some of the worst violence is occurring. The purpose of part I of this bill is to provide greater protection to victims of domestic violence whom the courts and police are attempting to keep safe through family court domestic abuse protective orders, and through

police orders requiring family or household members to leave premises.

Part I of this bill is part of the two-bill 2011 legislative package of the Hawaii Law Enforcement Coalition. The Coalition is composed of the Chiefs of Police of all four counties, the Prosecuting Attorneys of all four counties, the Attorney General, and the United States Attorney for the District of Hawaii. Every bill in the Coalition's legislative package has the unanimous support of every Coalition member.

Part I will help deter violence against a particularly vulnerable class of victims in high risk situations. Victims of domestic violence often endure extended periods of physical violence, mental abuse, intimidation, harassment, and terrorization before they reach out for help. It requires a great amount of courage for victims to seek the assistance of police, the court system, and others. But often, the abuse and violence continue even after the police or courts have intervened and issued protective orders.

Current laws do not provide adequate deterrence. The prospect of only a misdemeanor charge for criminal contempt, assault, or terroristic threatening is not enough to discourage many perpetrators of abuse from continuing to harm their victims. Upgrading certain criminal offenses, as provided in part I of this bill, provides a meaningful deterrent that can help free victims from the cycle of violence. The potential for increased sentences can also allow the courts to impose appropriate punishments and provide for the safety and security of victims and others in the community when offenders are undeterred and continue with their violent course of conduct.

Part I amends section 707-701.5, Hawaii Revised Statutes, to upgrade manslaughter to murder in the second degree, if it is

committed against a protected victim. It amends section 707-701, Hawaii Revised Statutes, to upgrade murder in the second degree to murder in the first degree, if it is committed against a protected victim. And it amends sections 707-711 and 707-716, Hawaii Revised Statutes, to upgrade the misdemeanor offenses of terroristic threatening in the second degree and assault in the third degree to the class C felony offenses of terroristic threatening in the first degree and assault in the second degree, if the offenses are committed against victims covered by protective orders.

We respectfully request that one amendment be made to section 707-701.5(1) in section 3 of part I of this bill. On page 2, lines 14-17, the bill reads:

- (1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if [the]:
- (a) The person intentionally or knowingly causes the death of another person[-]; or

We recommend that these lines be amended to read as they did in the House Draft No. 2 of this bill, on page 2, lines 14-19:

(1) A person commits the offense of murder in the second degree if:

- (a) Except as provided in section 707-701, [a person commits the offense of murder in the second degree if] the person intentionally or knowingly causes the death of another person[-]; or

The exception to section 707-701 should only apply to section 707-701.5(1)(a), which prohibits intentionally or knowingly causing the death of another person, as does section 707-701. Section 707-701.5(1)(b) should not be part of the exception.

PART II: LABOR TRAFFICKING

Part II of this bill proposes to add to chapter 707 of the

Hawaii Revised Statutes, a new part entitled "Labor Trafficking," which includes the two new offenses of labor trafficking in the first degree and labor trafficking in the second degree.

Much of the conduct that part II seeks to prohibit is already prohibited by existing laws, especially as a result of Act 147, Session Laws of Hawaii (SLH) 2008, which was proposed by the Hawaii Anti-Trafficking Task Force after two years of analysis and discussion. The Task Force was established by the Legislature through Act 260, SLH 2006, as amended by Act 176, SLH 2008, and comprised of 27 law enforcement agencies, service providers, and other state agencies and community groups. Act 147 made amendments to existing criminal offenses, like kidnapping, extortion, and promoting prostitution, to make them stronger tools against human trafficking. Although Hawaii does not have a criminal offense called "human trafficking" or "labor trafficking," it does have existing laws, such as extortion, kidnapping, unlawful imprisonment, assault, terroristic threatening, sexual assault, and promoting prostitution, to combat human trafficking.

Furthermore, the two new labor trafficking offenses do not fit within the existing legislative scheme and are so confusing that it would be more difficult to obtain convictions under these new offenses than under current laws that prohibit the same conduct.

If there is concern that the current penalties under existing laws are insufficient, then the penalty provisions should be amended, but part II does not do that.

Proposed Section 707-A Definitions

Part II of the bill defines "labor" and "services" for the new labor trafficking provisions by basically adopting the existing definitions of these terms under section 707-700, Hawaii Revised Statutes. This is a clear indication of the overlap and redundancy of the new labor trafficking provisions with existing

law. The definition of "labor" is exactly the same in the proposed provision as it is in the existing law, and therefore redundant. The definition of "services," however, is slightly different. This will likely create confusion. This is because the new labor trafficking offenses may use the new definition of "services." Certain existing offenses, however, are incorporated within the labor trafficking offenses, such as extortion and kidnapping. When the existing offenses use the general definition of "services," as set out in section 707-700, Hawaii Revised Statutes, the result will be inconsistencies and confusion.

**Proposed Section 707-B
Labor Trafficking in the First Degree**

Proposed section 707-B(1) prohibits a person from knowingly providing or obtaining or attempting to provide or obtain another person for labor or services, by any of the following means:

- (1) Committing the offenses of extortion, kidnapping, unlawful imprisonment, or assault;
- (2) Using force, threat, or intimidation;
- (3) Using deception or false statements to induce or maintain the person to engage in the labor or services;
- (4) Requiring that the labor be performed to pay a debt;
- (5) Withholding government issued identification documents With intent to impede the movement of the person;
- (6) Causing the person to believe that if the person did not perform the labor or services, that the person or a friend or family member would suffer serious harm, financial loss, or physical restraint; or
- (7) Using or threatening to use domination, restraint, or control.

This section has many legal issues, is confusing, and will be difficult to enforce and prosecute.

For a conviction for labor trafficking in the first degree, proposed section 707-B(1) requires the commission of specified offenses such as extortion, kidnapping, unlawful imprisonment, or assault. It would be much easier to simply enforce these existing offenses.

The following are just some of the main concerns with proposed section 707-B(1):

- (1) The offense is based on the key phrase, "by any of the following means," but that phrase is vague and ambiguous. It is not clear that any of the specified "means" have to be committed against the person who is being provided or obtained for labor or services. As drafted, the offense could be based on the "means" being committed against someone else.
- (2) The offense of labor trafficking is very similar to extortion, as defined in section 707-764, Hawaii Revised Statutes. One of the specified "means" of committing labor trafficking is the offense of extortion (prohibits obtaining labor or services of another by certain threatening conduct). Extortion, however, uses different terms to describe the prohibited conduct, as well as a different state of mind, from labor trafficking.
- (3) The offense of labor trafficking is very similar to kidnapping, as defined in section 707-720(1)(g), Hawaii Revised Statutes. One of the specified "means" of committing labor trafficking is the offense of kidnapping (prohibits a person from intentionally or knowingly restraining another with intent to unlawfully obtain the

labor or services of that person). Kidnapping, however, uses different terms to describe the prohibited conduct, as well as a different state of mind, from labor trafficking.

- (4) The "means" of unlawful imprisonment is confusing, and appears unnecessary, as the prohibited acts of restraint are already covered by the offense of kidnapping.
- (5) The "means" of "force, threat, or intimidation" involves vague and undefined terms that are confusing and possibly redundant, as "force" may be covered by kidnapping or assaultive conduct, and "threat" or "intimidation" may be covered by extortion.
- (6) The "means" involving "deception," "fraud," and "false statements" to induce or "maintain" a person to engage in labor or services is overly broad, vague, and ambiguous, and should not, by themselves, be the basis for the offense. Theft of services or obtaining services through deception, is already prohibited by section 708-830(4), Hawaii Revised Statutes.
- (7) The "means" requiring that labor be performed to repay a debt is flawed, as the term "requiring" is vague, and there probably needs to be a threat associated with the act of "requiring" the repayment through labor. If there were such a threat, then there probably would be a violation of the existing extortion law.
- (8) The "means" of withholding a person's government-issued identification documents is already prohibited under the offense of unauthorized possession of confidential personal information, section 708-839.55, Hawaii Revised Statutes. If the offender merely threatens to withhold the identification documents to secure the other person's

labor or services, then the offender would likely violate the existing extortion law.

- (9) The "means" of obtaining labor of services from a person by threatening to cause harm, financial loss, or physical restraint to the person's family or friends is already prohibited by the existing extortion law.
- (10) The "means" of "using or threatening to use any form of domination, restraint, or control" is vague and ambiguous, and likely redundant with the prohibitions under existing extortion, kidnapping, and assault offenses.

**Proposed Section 707-C
Labor Trafficking in the Second Degree**

This section also contains confusing provisions with a number of legal problems.

Section 707-C(1)(a) prohibits a person from aiding another in a venture, knowing that the other person in the venture is committing the offense of labor trafficking in the first degree. Therefore, all of the issues we raised regarding the proposed first degree labor trafficking offense apply to this subsection as well. The term "aid another" is vague and undefined. Furthermore, the offense does not require any nexus or connection between the venture and the labor trafficking offense. Although the person, while aiding another in the venture in some way, may not have anything to do with the offense of labor trafficking, that person will still be held liable for it if the person knows that the offense is being committed. It will probably be difficult, if not impossible, for the prosecution to prove that the person knew all of the elements of the offense of labor trafficking in the first degree were being committed by the other person.

Section 707-C(1)(b) prohibits a person from benefitting, "financially or by receiving something of value," from participation

in a venture knowing or in reckless disregard of the fact that another person has engaged in any act in violation of subsection (a) in the course of that venture. This subsection raises the same concerns we addressed regarding subsection (a) and the offense of labor trafficking in the first degree. It is also confusing. The following is an attempt to describe its application:

Person A would commit the offense if A benefits from participation in a venture, knowing that person B has aided person C in the venture, with B knowing that C has committed labor trafficking in the first degree.

Clearly, applying this law to gain a conviction will be difficult to impossible.

Section 707-C(2) makes labor trafficking in the second degree a class B felony offense, provided that:

[I]f a violation of subsection (1) involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

It should be noted that there is no offense of "aggravated sexual abuse" under Hawaii law. Furthermore, if the offense involves causing or attempting to cause a person's death, then the offense of murder or manslaughter would be the more appropriate offense.

The Department reserves comment on the other proposed labor trafficking sections in part II of this bill.

CONCLUSION

The Department strongly supports part I of this bill (intended to provide greater protection to victims of domestic violence), with one minor amendment, as described on page 3, above. While the Department strongly supports the goals of preventing human

trafficking and bringing its perpetrators to justice, the Department opposes part II of this bill (the labor trafficking provisions), and based on the legal issues discussed above, respectfully requests that part II be deleted from this measure.



LATE TESTIMONY

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
OFFICE OF COMMUNITY SERVICES
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March 31, 2011

To: The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

Date: Thursday, March 31
Time: 9:45 a.m.
Place: Conference Room 016, State Capitol

From: **Mila Kahaanui**, Executive Director
Office of Community Services
Department of Labor and Industrial Relations

TESTIMONY IN SUPPORT

Re: H.B. 1003 Relating to the Penal Code

Good Morning Chair Hee, Vice-Chair Shimabukuro, and committee members. My name is Mila Kaahanui, Executive Director of the Office of Community Services (OCS), an agency administratively attached to the Department of Labor and Industrial Relations (DLIR). We appreciate this opportunity to testify in support of these measures.

The Office of Community Services is charged, in part under HRS 371-K-1, to "improve the delivery of services to disadvantaged persons, refugees, and immigrants." Additionally, under HRS 371-K-3, OCS is charged to "Assess the policies and practices of public and private agencies impaction on the disadvantaged and conduct advocacy efforts on behalf of the disadvantaged, refugees, and immigrants."

As stated in previous testimonies, OCS supports any effort to create statute that will act as leverage for our enforcement and prosecuting agencies to punish these crimes. To reiterate, a primary concern given the lack of enforcement infrastructure is Hawaii is located in the middle of the Pacific and acts as a hub for shipping traffic around the Pacific Rim. Not creating such enforcement infrastructure could incentivize this activity's occurrence.

That being said, we will confine our testimony to the portion of the bill dealing specifically with Labor Trafficking. We understand it is the Legislature's prerogative to establish such infrastructure, and respectfully submit the following for consideration.

Four issues were brought up in written testimony to the House Labor Committee under HB577 in our capacity as a division attached to DLIR, namely Restitution to victims, Non-Payment of Wages, Minimum Wages, and Documentation. These issues will most likely be resolved in the implementation phase, however we submit them again for this committee.

In addition to those previous comments, another issue has arisen in a number of conversations about the issue of trafficking in general. There exists a current false dichotomy between the two choices of "All prostitutes are victims," and "All prostitutes are perpetrators." The truth is most likely that it is a combination of both types of persons, and there is no data to say which way this may be skewed. However, from a philosophical standpoint of an agency providing human services, we would ideally like to see a process that errors on the side that the prostituted persons are victims and will respect their rights.

Again, OCS is not an enforcement or regulatory agency. We will defer to the Attorney General's office and the respective County enforcement agencies to comment on the ramifications of implementing, enforcing, and adjudicating any program.

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

March 31, 2011

RE: H.B. No. 1003 HD2 SD1: Relating to the Penal Code

Chair Hee and Members of the Committee:

We respectfully oppose passage of H.B. No. 1003 HD2 SD1

Part I of H.B. No. 1003 HD2 SD1 (pp. 1-7)

Part I of H.B. No. 1003 HD2 SD1 seeks to amend various provisions in Chapter 707 of the penal code with the stated purpose of providing harsher penalties for offenses against persons who are subjects of a restraining or protective order. We believe that, not only would these proposed amendments have no deterrent effect, but they conflict with current provisions in the Penal Code.

In Section 2, the bill seeks to amend Murder 1° to include the situation where a person is killed by a defendant against whom the decedent had a restraining order or who had been ordered to leave for a “cooling off” period under the Household Abuse law (§709-906). In Section 3, the bill seeks to lower the state of mind for Murder 2° to “recklessly causing the death” of a person who is protected by a restraining order. In both of these cases, the bill seeks to create a “special class” of victim, those who are killed by a defendant against whom a restraining order has been brought or a defendant who has violated a “cooling off” period.

First of all, these changes will have no deterrent effect against those who are determined to kill an intimate partner. There is no evidence that increasing the penalty for murder from life in prison with the possibility of parole to life in prison without the possibility of parole will prevent the murder of a person who possesses a restraining order or who is being protected by a “cooling off period” from taking place. There is much evidence that persons who kill in a domestic situation do not stop to consider the possible legal penalty for the crime. Rather, these are the crimes that are most often committed in the heat of anger, where there is certainly no rational thought given over to consequences.

Second, placing the aforementioned victim in a “special class” devalues the lives of victims who have not obtained restraining orders or sought police intervention. Is the life of a woman who is killed by her partner and who chose not to obtain a restraining order less important than the life of a woman who got the order? What about a victim who is killed at random in a home invasion robbery? This is the fundamental problem that the bill presents.

Third, the creation of a reckless form of Murder 2° contradicts our current manslaughter statute and, in Section 4, the creation of a reckless form of Assault 2° contradicts our Assault 3° statute. Likewise, the creation of an additional form of Terroristic Threatening 1° which occurs in violation of a restraining order or cooling off period contradicts our current Terroristic Threatening statute. Current penalties for these offenses are sufficient. As mentioned

previously, it is always problematic to single out specific categories of victims for special treatment because other categories of victims who see themselves as equally deserving of special treatment immediately call for the same laws.

Part II of H.B. No. 1003 HD2 SD1 (pp. 7-20)

Part II of this bill seeks to create the new offenses of Labor Trafficking in the First and Second Degrees. The proposed First Degree offense would prohibit knowingly providing or obtaining or attempting to provide or obtain a person for labor or services by committing a list of crimes which include extortion, kidnapping, and assault, or by engaging in specified conduct such as force, threat, intimidation, using labor to repay a debt, withholding government documents with the intent to impede movement, threatening family members, etc.

First, the terms “force”, “threat” and “intimidation” are vague and undefined. These terms could be interpreted against an employer to mean the threat of discharge from employment or perceived intimidation by a demanding supervisor over a subordinate employee. The vagueness of these terms could result in a vindictive employee making a labor trafficking complaint against a legitimate employer. Second, the term domination in subsection (j) is equally vague and presents the same problem previously stated.

The proposed Second Degree offense would create a class “B” felony if someone benefited financially or received something of value from participating in a business relationship involving economic activity “in reckless disregard of the fact” that another person engaged in any activity that aided another person in the venture, knowing that the other person was committing the offense of First Degree Labor Trafficking.

This provision could have a chilling effect on legitimate business transactions in the state. An example would be that a certain farm supplies numerous businesses in town with produce and these businesses hear rumors about improper labor practices. The reckless standard in the Second Degree offense would arguably create an obligation on the part of the businesses to investigate the farm or the businesses could be found guilty of labor trafficking.

The proposed section 707-D is unnecessary as our current H.R.S. § 706-606 already mandates that the court consider “the nature and circumstances of the offense” which would include the “time” of the offense, i.e., length of duration, and the number of victims.

We also note that the proposed section 707-E which allows for an extended term of imprisonment duplicates the current extended term statute. This section also includes the term “permanent or life-threatening bodily injury” which is not contained in the penal code and is likely to create much confusion in its application.

Proposed section 707-F which requires restitution to the victim when not requested by the victim is very confusing; particularly the provision which provides for restitution after the victim leaves the country. What is the responsibility of the court at that point? Is the court responsible for locating the victim in another country so that the restitution can be paid to them? Is the court responsible for making sure the payment is in a form that can be transacted in the home country? Who will pay the costs of arranging for payment in that form?

Finally, the proposed crime of nonpayment of wages in proposed section 707-G would make a potential felon out of every employer who withholds payment of wages from an employee. The offense does not appear to distinguish between the withholding of wages for nefarious reasons from the situation where there is a legitimate dispute between employer and employee or even when a business may be on the brink of closing and does not have sufficient money on the books to pay what is owed to an employee.

Thank you for the opportunity to comment on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 30, 2011 5:01 PM
To: JDLTestimony
Cc: thirr33@gmail.com
Subject: Testimony for HB1003 on 3/31/2011 9:45:00 AM

Testimony for JDL 3/31/2011 9:45:00 AM HB1003

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Arvid Tadao Youngquist
Organization: Sky Ohana
Address:
Phone:
E-mail: thirr33@gmail.com
Submitted on: 3/30/2011

Comments:
Chair, Senate JDL Committee
Honorable Members of the Hawaii Senate
JDL Committee

We support HB 1003 HD2 SD1 Relating to Penal Code.

We are in particular support for definition of victims of domestic violence, human trafficking, and what constitutes a victim in cases of prostitution/white slavery/witness protection.

Please report this measure out for a full debate on the Hawaii Senate Floor.

Mahalo for this opportunity to submit written testimony in support of HB 1q003 HD2 SD1 Relating to Penal Code.

Sincerely,

Arvid Tadao Youngquist
Founder/Editor
Sky Ohana
Kalihi Valley Resident

Christopher D. Yanuaria

1800 East-West Road

Honolulu, HI 96822

Rep. Clayton Hee, Chair

Rep. Maile Shimabukuro, Vice Chair

SENATE JUDICIARY COMMITTEE

Thursday, March 31, 2011 9:45AM

State Capitol, Conference Room 016, 415 South Beretania Street

RE: HB1003 SD1 RELATING TO THE PENAL CODE.

Amends certain criminal offenses to include conduct committed against domestic violence victims covered by protective orders or restraining orders. Establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. Establishes provisions related to prosecution of the offenses. (SD1)

Aloha Chairman Hee, Vice Chair Shimabukuro and Members of the Committee,

My name is Christopher Yanuaria, a graduate student at Myron B. Thompson School of Social Work and a resident of Maui County. I am testifying in **strong support of HB1003.**

Included among the five remaining states in the nation with no local Human Trafficking law, and with recent uncovering of labor trafficking charges including involvement in the largest labor-trafficking case in U.S. history (Global Horizons¹), it is clear that Hawai'i has fallen short to prevent labor trafficking while wrongfully criminalizing victims of these violations go unchallenged.

Human Trafficking continues to thrive because traffickers are able to operate in areas lacking sufficient laws to prosecute perpetrators and ensure the protection of those most vulnerable in society. Awareness of these offenses demands the responsibility of both state and federal legislation to take action. The passing of HB1003 will be a step forward to deter labor-trafficking occurring in Hawai'i for these reasons:

¹Global Horizon's Case

<http://www.civilbeat.com/articles/2010/09/02/4084-largest-human-trafficking-case-in-us-history-filed-in-honolulu/>

- HB1003 recognizes Human Trafficking as a serious violation of human rights worthy of strict consequences if convicted.
- HB1003 creates a working legal definition of identifying perpetrators, therefore making it easier to prosecute traffickers with sentences commensurable to their crime.
- HB1003 identifies and protects victims of Human Trafficking rather than treating them as a criminal.

Last year as an intern at the Polaris Project in Washington, D.C. I spent about seven months working directly with victims of both labor and sex trafficking. I have seen and heard stories of unspeakable atrocities. I have witnessed the difficulties these women had to face in their ever day lives. I was able to put a face to the issue. Apart from their struggles it was the strength they demonstrated every day that inspired me to dedicate my work towards helping victims who has suffered from this horrific crime both here at home and abroad.

I urge you to please pass HB1003. Mahalo.

Sincerely,

«GreetingLine»

LATE TESTIMONY

Date: 3/30/2011

Attn: Sen. Clayton Hee, Chair
Sen. Maile Shimabukuro, Vice-Chair
Sen. Mike Gabbard
Sen. Les Ihara, Jr.
Sen. Sam Slom

Hearing Date: Thursday, March 31st 2011

Hearing Place: Conference Room 016 - State Capitol - 415 South Beretania Street

Time: 9:45am

RE: HB1003 SD1

Dear House Committee on House Judiciary:

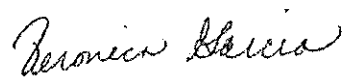
My name is **Veronica Garcia** and I strongly **support** HB1003 SD1. I am a former employee of the Department of the Attorney General, the chief law enforcement officer of the state. I have been able to discuss the human trafficking issue regarding labor and sex trafficking with attorneys within the Department who agree the state would benefit from such a law. Why the Attorney General himself opposes such measures makes me question his motives, priorities, and his knowledge on such a pressing issue.

You may already know that Hawaii has been implicated in a federal investigation of the **largest** human trafficking case in U.S. history (Global Horizons). This is such a major injustice to happen in the Aloha State and makes clear that there are some major flaws and limitations in our current statutes that reflect a lack of response in our law enforcement agencies and other first responders who need to be trained to recognize signs of human trafficking. This case clearly demonstrates there are not enough penalties to deter traffickers and there are not enough resources for victims who may be exploited for labor. This is especially crucial for international victims who do not understand the primary language and state laws, making it more important to train our law enforcement and social services to learn how to identify human trafficking and to learn which industries are most likely to exploit their workers and to keep such businesses accountable.

I urge you to support HB1003 SD1 to define labor trafficking and include fitting penalties for traffickers. Support our prosecutors by passing such a measure to allow them to indict these criminal activities and most importantly, to protect victims of this inherently violent crime. There are stories from victims we will never hear because of the choices of farm owners to wholly deny or assist in denying basic rights

and liberties to their employees. With your help, we can make a commitment to prevent such exploitation.

Thank you,

A handwritten signature in cursive script that reads "Veronica Garcia".

Veronica Garcia

LATE TESTIMONY

DATE: Tuesday, March 31, 2011

ATTN: SENATE JUDICIARY COMMITTEE!

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice -Chair

Sen. Mike Gabbard

Sen. Les Ihara, Jr.

Sen. Sam Slom

HEARING DATE: Thursday, March 31st 2011

HEARING PLACE: Conference Room 016 State Capitol 415 South Beretania Street

TIME: 9:45am

RE: HB1003 SD1 RELATING TO THE PENAL CODE.

Amends certain criminal offenses to include conduct committed against domestic violence victims covered by protective orders or restraining orders. E establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. Establishes provisions related to prosecution of the offenses. (SD1)

EMAIL: LABTestimony@Capitol.hawaii.gov

Dear Committee on Labor & Public Employment:

Aloha! My name is Saho Uemura, Master of Social Work candidate in University of Hawaii at Manoa.

I am in strong support of SB1003 SD1.

In order to describe appropriate punishment for offenders, and to protect victims, Hawaii needs an effective state statute that focuses on criminalizing perpetrators.

Although human trafficking occurs both internationally and domestically, victims who are trafficked across the nation are extremely vulnerable.

They may be isolated from society because of limited language skill or knowledge in the US.

According to TIP report 2010, 12.3million adults and children are in forced labor, bonded labor, and forced prostitution around the world. AND 56 % of the victims are women and girls.

Victims of labor trafficking are often in debt bondage, and/or often have their document of identification confiscated by the traffickers.

Trafficking victims have various needs in health care, housing, education, medical services, and legal assistance In which if seen as criminals these services will be deprived from them and they may be deported.

They are not "illegal immigrants", but "victims of modern-day slavery."

I am originally from Japan, which is one of major destination countries for human trafficking. I have seen that many from another country forced to work

The more I got to know about human trafficking, the more I became overwhelmed at this complex and deep-rooted issue.

But I will devote myself to establish social justice in Hawaii, which is my second home.

I believe the best thing I can do now is speak in support of this bill. Please pass this important bill. I thank you and your committee for the opportunity to testify.

Sincerely,

Saho Uemura

Master of Social Work candidate
University of Hawaii Manoa



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY ON HOUSE BILL 1003, HOUSE DRAFT 2, SENATE DRAFT 1, RELATING TO THE PENAL CODE

Senate Committee on Judiciary and Labor
Hon. Clayton Hee, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair

Thursday, March 31, 2011, 9:45 AM
State Capitol, Conference Room 016

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 60 local members. On behalf of our members, we offer this testimony in strong support of HB 1003, HD2, SD1, relating to the penal code, with suggestions for amendments.

Currently, Hawaii is one of only five states without an anti-trafficking statute or adequate legal protection for victims of sex and labor trafficking. Part two of HB 1003, HB2, SD1 seeks to remedy that problem, however, by establishing class A and B felony offenses for the perpetrators of labor trafficking, while creating the subsidiary crimes of nonpayment of wages and unlawful conduct with respect to documents. Such measures are urgently needed at a time when Hawaii is embroiled in the largest labor trafficking case in United States history, in which Global Horizons Manpower, Inc., a Los Angeles based employment contractor riddled with litigation, is alleged to have coerced over 400 Thai nationals into agricultural work, including 44 farmers who paid recruiters \$20,000 each for the chance to work at Oahu's Aloun Farms. According to FBI reports, workers were chronically underpaid, forced to live in modified storage containers, and threatened with deportation and other forms of economic damage, after having their passports taken by the farm's owners, Alec Souphone Sou and Mike Mankone Sou. Had a statute been in place several years ago, the state could have taken action against the alleged traffickers. Unfortunately, the lack of a comprehensive law forced the state to wait until federal law enforcement officials performed their own investigation before taking action.

Nonetheless, the IMU Alliance believes that part two of the measure can be strengthened prior to final passage through the adoption of several amendments. First, the draft provision of §707-B(1)(d) proscribes provision of labor through "force, threat, or intimidation," but does not define these terms or cite other definitions within the Hawaii Revised Statutes. Accordingly, we encourage the committee to amend this subsection to prohibit the obtainment of labor by "deadly force or unlawful force," while also revising the list of definitions contained in §707-A by adding the following: "'Force'" means any bodily impact, restraint, or confinement, or the threat thereof," "'Deadly force'" means force which the

actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm, excluding a threat to cause death or serious bodily injury by the production of a weapon or otherwise,” and “Unlawful force” means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use force.” Additionally, we understand that similar concerns have been raised about the lack of definition in §707-E, specifically regarding the term “permanent or life-threatening bodily injury.” To rectify this problem, we suggest substituting the term “substantial bodily injury,” as defined in §707-700, for the offense affiliated with an additional five years of imprisonment, while replacing the term “permanent or life-threatening bodily injury” with the term “serious bodily injury” for the offense associated with an additional fifteen years of imprisonment. Finally, the proposed language of §707-G, relating to the nonpayment of wages, could, as the Office of the Public Defender has expressed, criminalize the withholding of wages for legitimate, legal reasons, per authorization under §388-6. Thus, we encourage the committee to amend §707-G(1), lines 17-20, to state: “A person commits the offense of nonpayment of wages if the person, willfully knowingly or with intent to defraud fails or refuses to pay wages to the employee, except where required by federal or state statute or by court process.” Implementing this change brings the bill’s language into comportment with current regulations regarding the withholding of wages, thereby resolving the problem.

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance



POLARIS PROJECT
FOR A WORLD WITHOUT SLAVERY

**TESTIMONY IN SUPPORT OF HB1003 PRESENTED TO THE SENATE
JUDICIARY AND LABOR COMMITTEE
MARCH 31, 2011**

Mr. Chairman, members of the Judiciary and Labor Committee, on behalf of the more than 15,000 supporters of Polaris Project, thank you for providing us with an opportunity to speak about the crime of human trafficking. My name is James Dold and I am Policy Counsel for the Polaris Project.

Polaris Project is a leading national organization dedicated to combating human trafficking within the United States by serving victims, raising public awareness, and engaging in policy advocacy at both the State and Federal level. We have been selected by the U.S. Department of Health and Human Services to be its training and technical assistance provider and have operated the National Human Trafficking Resource Center and Hotline since December 2007. During this time our human trafficking call specialists have fielded over 25,000 calls from across the nation. We have also provided victim services to more than 300 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices.

We greatly appreciate the Hawaii Legislature's concern for and willingness to address the crime of human trafficking, a grave violation of human rights. Human trafficking is a monstrous crime, shrouded in secrecy, often unknown except to those who remain bound by invisible chains. It is one of the great injustices of our lifetime and will continue to threaten the freedom of our children, our neighbors, and our fellow brothers and sisters until it is eradicated completely.

Human Trafficking National and Global Perspective

Human trafficking is the modern-day slavery, and it is one of the fastest growing criminal industries in the world, consisting of the subjugation, recruitment, harboring, or transportation of people for the purpose of forced labor or services or commercial sexual exploitation. Victims of human trafficking in the United States include children and adults, as well as foreign nationals and U.S. citizens.

The United States Government estimates that between 600,000 to 800,000 people are trafficked across international borders for forced labor and sexual servitude each year, 70 percent of whom are women and over 50 percent are children. This does not

include those trafficked within their own countries, which is as high as 2 to 4 million persons. Of those trafficked across international borders, up to over 60,000 individuals at a minimum are trafficked into the United States each year. These numbers suggest that the actual figure for the scope of human trafficking is much higher. The State Department estimates that there are roughly 12.3 million slaves in the world today, more than at any other time in the history of the world. Another estimate, by renowned human trafficking expert Kevin Bales, puts the total number of people trapped in modern-day slavery at an estimated 27 million. Of that astounding number, Dr. Bales estimates that 15 to 20 million are victims of labor trafficking.

Most victims suffer a horrific life in which they are repeatedly beaten, raped, starved, chained or locked up, and psychologically tortured. For many, the only way of leaving is by means of escape, rescue, suicide, or murder.

There have been trafficking investigations in all 50 States and incidence of trafficking have been reported in 91 U.S. cities. Human trafficking is a crime that thrives in secrecy and is feed by the insatiable greed of those who see human beings as a commodity to be profited off of. Globally, human trafficking generates over \$32 billion in annual revenue.

Recently, Polaris Project served a labor trafficking victim, “Sabine,” who was brought over from Rwanda by a wealthy family in the United States. Sabine was the only survivor from her family of the genocide in Rwanda, so when a wealthy family offered her a chance to move to America with them she agreed. Upon arrival, however, she quickly learned that she had been taken advantage of. She was imprisoned in the home; unable to leave, she was made to work around the clock. Anytime she had to sleep she was made to sleep on the kitchen floor. After six months of servitude she was allowed to go to church for an hour each Sunday. On one of her visits she was approached by a kindly Rwandan man. He asked if she was ok and after learning about her situation, he helped her escape. He took Sabine to one of our partner agencies and once they learned her story they immediately referred her to Polaris Project.

Unfortunately, Sabine’s story is far too common in the United States. I cannot impress upon members of the Human Services Committee enough, that labor trafficking is alive and well in the United States and it affects every corner of our nation. It is also prevalent in Hawaii.

Human Trafficking in Hawaii

Every day we receive calls through the National Human Trafficking Resource Center referencing situations where men, women, and young children are subjected to

violence, coercion, and fraud in order for their traffickers to profit. While we do not know how many victims there are in Hawaii, we do know that the National Hotline has received calls referencing trafficking situations in cities throughout the state of Hawaii. Some of these calls were classified as tips that human trafficking was occurring in different cities, including Honolulu, Hilo, and Wakiki Beach.

Most recently, Hawaii was home to the largest labor trafficking case in the history of the United States. On September 1, 2010, the U.S. Department of Justice brought formal charges against the President and Chief Operating Officer of Global Horizons for “engaging in a conspiracy to commit forced labor and document servitude.” The case involved 400 Thai workers who were lured with false promises of high-paying farm jobs but were exploited and forced into labor, often with little or no pay. The victims were sent to 13 states including Washington, California, Florida, Colorado, Hawaii, Utah, the Carolinas, the Dakotas, Kentucky, New York, and Virginia. One of the most publicized cases came from victims who worked at 13 to 14 farms on Oahu, Kauai, Maui and the Big Island, tending to coffee, fruits and vegetables for Aloun Farms and Maui Pineapple Farm.

Human trafficking is a scourge that preys on the most vulnerable among us and exploits those who are in need of protection. And while it may be easy at times to pretend that human trafficking is not a crime that affects every day Americans, I can tell you with absolute certainty that it does. It is a crime of absolute evil, but by criminalizing labor trafficking you will provide law enforcement and prosecutors in Hawaii with the tools that are needed to combat it.

In addition to giving law enforcement and prosecutors the tools they need, Hawaii will send a clear message to traffickers and to the public that human trafficking is a serious issue and will not be tolerated. Current law in Hawaii does not adequately address all of the circumstances in which a person may be subject to labor trafficking. Often times the use of threats or coercion (both economic and otherwise) are used to compel someone to perform labor or services. Additionally, those activities that are traditionally associated with trafficking are not covered by existing law, such as when a trafficker: “recruits, solicits, entices, provides, or obtains a person knowing that the person will be subjected to forced labor or services through the use of force, fraud, or coercion.” Human trafficking is the modern-day slavery and if the fight against this scourge is to be won it is paramount that the legal framework that is needed to combat it be in place in states across the nation.

We would encourage the Judiciary and Labor Committee to support the amended version of HB1003 and enable Hawaii to bring its laws in line with the other 46 states that have enacted some form of anti-human trafficking law.

Support HB1003

Therefore, we ask that the honorable members of the Judiciary and Labor Committee act with what Dr. Martin Luther King, Jr. referred to as “the fierce urgency of now,” by voting favorably upon HB1003. If you should have any questions, please feel free to call me at (202) 745-1001, ext. 132. Mahalo.



POLARIS PROJECT
FOR A WORLD WITHOUT SLAVERY

Amendment to HB1003

Our **amendments** appear in all caps and are underlined. The following Amendment is proposed to be added to HB1003:

Labor Trafficking

§707-C Labor trafficking in the second degree. (1) a person commits the offense of labor trafficking in the second degree if the person knowingly:

- (a) RECRUITS, ENTICES, SOLICITS, ISOLATES, HARBORS, TRANSPORTS OR MAINTAINS, OR SO ATTEMPTS, ANOTHER PERSON KNOWING THAT THE PERSON WILL BE SUBJECTED TO FORCED LABOR OR SERVICES UNDER §707-B; or
- (b) Either acting as an individual or using a licensed business enterprise, aids another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or
- (c) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act in violation of subsection (a) or (b) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.

(2) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (1) involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

(3) Upon conviction of a defendant under subsection (1), the court shall also order that any and all business licenses issued by the State be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate the business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section.

From: Ann Freed [annfreed@hotmail.com]
Sent: Wednesday, March 30, 2011 2:55 PM
To: JDLEvidence
Subject: Fwd: HB 1003 SUPPORT
Attachments: labor trafficking 1003; ATT00001..htm

LATE TESTIMONY

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, March 31, 2011, 9:45 a.m., Room 016

Aloha Chair Hee, Vice Chair Shimabukuro and Committee Members,

Strong Support for HB1003 SD1 (labor-trafficking)

As a life-long advocate for women I am appalled that so little is being done to protect women from labor and sex trafficking. Women are often victims of both crimes, being forced into the sex trade and back-and-forth to the labor trade as this worldwide slave market continues to thrive. This bill is a beginning only. Much more needs to be done in the area of services to women victims that help them get out and stay out.

Currently, we are now one of four states in the nation with no local law whatsoever yet Hawai'i has been implicated in the largest labor trafficking investigation in U.S. History (Global Horizons) which includes over 400 victims. Then there is the infamous Aloun Farm case going to trial this July involving more than 44 victims of forced/slave labor.

Please pass this bill and next year address services for these victims.

Mahalo nui for allowing me to testify,

Ann S. Freed
Mililani, Hawai'i
808-623-5676

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 30, 2011 3:24 PM
To: JDLEstimony
Cc: richard.minatoya@mauicounty.gov
Subject: Testimony for HB1003 on 3/31/2011 9:45:00 AM
Attachments: HD 1003 HD2 SD 1.pdf

LATE TESTIMONY

Testimony for JDL 3/31/2011 9:45:00 AM HB1003

Conference room: 016

Testifier position: support

Testifier will be present: No

Submitted by: Richard K.Minatoya

Organization: Department of the Prosecuting Attorney, County of Maui

Address:

Phone:

E-mail: richard.minatoya@mauicounty.gov

Submitted on: 3/30/2011

Comments:

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 30, 2011 11:05 AM
To: JDCTestimony
Cc: ChoonJamesHawaii@gmail.com
Subject: Testimony for **HB1003** on 3/31/2011 9:45:00 AM

Testimony for JDL 3/31/2011 9:45:00 AM HB1003

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Ms. Choon James
Organization: Individual
Address:
Phone:
E-mail: ChoonJamesHawaii@gmail.com
Submitted on: 3/30/2011

Comments:

Every human being deserves basic decency and just treatment. Human Rights must apply to all.

The character of a humane society is how it treats its poor and down-trodden and the helpless. Please be a positive advocate for those who cannot have a voice.

Mahalo,

Choon James
56-1081 Kam Hwy
Kahuku, Hawaii 96731

LATE TESTIMONY

From: Mila.S.Kaahanui@hawaii.gov
Sent: Wednesday, March 30, 2011 3:29 PM
To: En.H.Young@hawaii.gov
Cc: JDLEstimony; Michael.Ng@hawaii.gov; William.G.Kunstman@hawaii.gov
Subject: re: OCS Testimony for **HB1003**, 9:45 am, rm016

En, great job!

From: En H Young/DLIR/StateHiUS
To: JDLEstimony@Capitol.hawaii.gov
Cc: Mila S Kaahanui/DLIR/StateHiUS@StateHiUS, William G Kunstman/DLIR/StateHiUS@StateHiUS, Michael Ng/Gov/StateHiUS@StateHiUS
Date: 03/30/2011 02:32 PM
Subject: re: OCS Testimony for HB1003, 9:45 am, rm016

Good Afternoon,

Please find attached OCS' testimony for HB1003, being heard in Rm. 016 at 9:45 am.

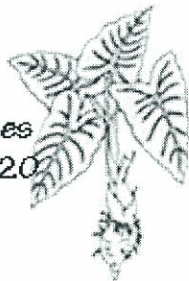
We apologize for the tardiness of this testimony.

[attachment "OCS Testimony HB1003 3-31-11.docx" deleted by Mila S Kaahanui/DLIR/StateHiUS]



En Young

Office of Community Services
830 Punchbowl St., Rm. 420
Honolulu, HI 96813
Ph: (808) 586-8675
Fax: (808) 586-8685



LATE TESTIMONY

THE SENATE
TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

COMMITTEE ON JUDICIARY & LABOR

Sen. Clayton Hee, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair

Hearing: Tuesday, March 31, 2011
Time: 9:45 a.m.
Place: Conference Room 016

TESTIMONY OF LOWELL CHUN-HOON FOR
PACIFIC SURVIVOR CENTER
RE: HB 1003, HD 2, SD 1, RELATING TO THE PENAL CODE

Chair Hee, Vice Chair Shimabukuro, and Members of the Committees on Judiciary and Labor:

Thank you for the opportunity to testify regarding H.B. 1003, HD 2, SD 1. We vigorously support this bill but also wish to propose substantive amendments to enhance it.

The Pacific Survivor Center is a non-profit organization committed to the treatment and rehabilitation of victims of human trafficking, torture, and other human rights abuses. We are actively engaged in coordinating medical and social services to sex trafficking victims, approximately 20 of the Aloun Farms labor trafficking victims, and torture victims. Through our own Thai-speaking case worker we render social services, transportation, and English language assistance to the Aloun Farms labor trafficking victims.

We support the concept of criminalizing labor trafficking as a Class A and B Felony, although we recognize some in law enforcement have raised the question of whether such offenses are redundant and unnecessary. Quite apart from whether or not existing criminal statutes are sufficient to prosecute sex and labor traffickers, codifying a criminal offense of labor trafficking is independently important as a vital educational tool for law enforcement and the general public.

The success of a criminal statute should not narrowly be measured by successful prosecutions alone, but in the statute's broader effect on deterring and preventing the criminal conduct addressed. Adopting a separate labor trafficking statute will encourage law enforcement to conduct training in this area and focus attention upon an area that has until recently been neglected. As a result, officers will be armed with the necessary awareness to recognize and intervene in potential and actual situations involving labor trafficking, and decrease the incidence of this exploitation.

While the Aloun Farms and Global Horizons prosecutions brought by the federal government are extremely significant steps in combating human trafficking locally, the federal government cannot possibly prosecute all instances of labor trafficking within our jurisdiction, and criminal sanctions are necessary to deter this illegal activity. Hawaii as a state should shoulder its own responsibility with other states and other nation states to address this reprehensible global problem.

Finally, we suggest more attention should be directed in HB 1003, HD 2, SD 1 toward the safety and well-being of the labor trafficking victims themselves. It is important to fashion the current legislation with an eye toward its impact on current victims who remain in indentured servitude and who are presently experiencing coercion and live in fear of reprisal by their employers. Some of the suggestions would enhance the safety and welfare of labor trafficking victims and would create more incentive for them to seek escape from their traffickers, even though they are not customarily provisions that would be found in criminal statutes.

Consistent with this broad victim-centered approach, we suggest:

- 1. The bill clearly specify that labor trafficking victims are eligible for participation in witness protection programs. Current provisions in the existing bill already may give trafficking victims access to witness protection where conspiracy charges are included but a more definite statement that all labor trafficking victims were given this benefit would be helpful.**
- 2. That a “hot line” be created so that victims can anonymously report situations of labor trafficking with minimal risk of detection by their captors or fear that they would have to implicate other undocumented workers who fear deportation.**
- 3. That labor trafficking victims be given access to private immigration attorneys, perhaps as part of the witness protection program. Since many victims will either be undocumented or have been denied access to their legal documents, and thus fear deportation. Private counsel can advise them on lawful avenues to obtain continued presence in Hawaii. In some instances, access to such legal advice may be the critical difference between a willingness to report or not report the labor trafficking offense in question.**
- 4. That the “additional sentencing considerations” outlined in Section 707-D utilized in sentencing defendants also include: “(c) the actual wages, hours and terms and conditions of employment afforded victims in comparison to the wages, hours, and terms and conditions of comparable employment.”**
- 5. Section 707-G(5) on Non-Payment of Wages wisely permits the employee to bring a civil action to recover all wages, but it should also include a provision for assessing attorneys’ fees and costs to the victim if she/he prevails. Without such a provision, private attorneys may be unlikely to expend their time on assisting**

victims with restitution, especially where the population of labor trafficking victims lacks the economic resources to retain attorneys.

In brief, we support the present version of HB 1003, HD 2, SD 1 but urge that serious consideration be given to adopting the additional suggestions we have proposed, which would enhance its effectiveness in practical application.