

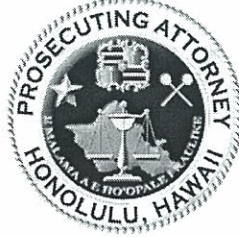
DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

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**THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai`i**

April 4, 2011

RE: H.B. 241, H.D. 1; RELATING TO PROMOTING PROSTITUTION

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony in support of House Bill 241, H.D. 1, with a request for amendments.

The purpose of House Bill 241, H.D. 1 is to amend Hawaii Revised Statutes section 712-1202 and 712-1203, to increase penalties for promoting prostitution in the first and second degrees. With these amendments:

- Second degree promoting prostitution--cases that involve an enterprise with two or more prostitutes--would be moved from a Class C felony to a Class B felony, with a prison sentence of up to ten (10) years.
- First degree promoting prostitution--cases that involve the use of force, threat or intimidation--would be moved from a Class B felony to a Class A felony, with a prison sentence of twenty (20) years.

The current language of H.B. 241, H.D. 1 would keep third degree promoting prostitution as a misdemeanor, thereby creating a "gap" in categorization, such that first, second, and third degree promoting prostitution would be Class A felony, Class B felony, and misdemeanor, respectively. In order to strengthen Hawaii's ongoing fight against prostitution, and to maintain continuity in the way these crimes are charged and penalized, the Department respectfully requests that promoting prostitution in the third degree be changed to a Class C felony.

While traditional efforts to eliminate prostitution in Hawaii focused on punishing prostitutes directly, it has become increasingly apparent that many prostituted persons are actually victims of exploitation, who concede to performing this criminal activity for the benefit and profit of others. Today, there is a growing realization that the 'supply chain' for this industry often involves numerous links and/or contributors, all of whom profit from and/or advance the prostitution of their victim(s). Even where there is insufficient evidence to prove "force, threat or intimidation," or an "enterprise involving...two or more prostitutes" (emphasis added), the Department believes that promoting the prostitution of even one individual should call for serious consequences, and further believes that every single link in the supply chain must be addressed, to truly address the overall problem.

By definition, "promoting prostitution" encompasses--among other things--knowingly causing or aiding a person to engage in prostitution, permitting a premises to be regularly used for prostitution purposes, procuring persons for prostitution purposes, or assisting in the operation of a house of prostitution or other prostitution enterprise (emphasis added). Although our Department has successfully prosecuted many prostitution profiteers, we do not believe that the current penalties for Promoting Prostitution in the First, Second, and Third Degree adequately reflect the seriousness of the acts that constitute these crimes. The elements of a first degree offense (non-consensual sexual conduct or sexual conduct with a minor) are comparable to the type of conduct proscribed by Sexual Assault in the First Degree, which is currently a Class A felony. For a second degree offense, those who knowingly advance or profit from a prostitution enterprise involving two or more prostituted persons deserve the full force of the law to provide both adequate punishment and deterrence for such an orchestrated crime. Finally, elevating Promoting Prostitution in the Third Degree to a class C felony would properly address the broad social impact of those individuals who actively and knowingly advance or profit from the prostitution/misery of others.

Building a more effective response to prostitution in Hawaii includes adopting legislative measures that are commensurate with the gravity of the offense, and sending a strong message to those who would contemplate being involved in such activities. For this reason and all of the reasons discussed above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 241, H.D. 1, and asks that the Committee make further amendments to increase Promoting Prostitution in the Third Degree to a Class C felony. Thank you for your time and consideration.

LATE TESTIMONY**COMMITTEE ON JUDICIARY AND LABOR**

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Monday, April 4, 2011, 9:00 a.m., Room 016

HB241 HD1- RELATING TO PROMOTING PROSTITUTION Comments

HB240 - Amends HRS section 28-101, to give the "greatest priority" to cases involving promoting prostitution, when the attorney general is determining whether to fund or provide for witness security and protection. Support

Aloha Chair Hee and Committee Members,

For several years now various groups have tried to address the problem of sex trafficking in a comprehensive way. This bill with the HD1 amendments leaves the victims of trafficking in the de facto status of "prostitutes" rather than victims.

Further by keeping the promoter or pimp at the lowest level of penalty, there is no incentive for the trafficker "promoter" to cease. The misdemeanor will just be treated by the pimp as a cost of doing business.

The framing of current law – that calls women (and girls) "prostitutes" rather than victims -is similar to the way in which rape victims were treated 20 or 30 years ago. The assumption concerning rape victims used to be that "they asked for it." The assumption under current statute is that the women in the sex trade are there voluntarily.

We do need a comprehensive sex and labor trafficking statute. HB241 HD1 is not it and misses the mark in my opinion.

HB240 that would protect witness against intimidation by traffickers or "pimps" is moving in the right direction – services for victims.

Ann S. Freed

Mililani, HI 96789

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LATE TESTIMONY

Christopher D. Yanuaria
1800 East West Road
Honolulu, HI 96822

Rep. Clayton Hee, Chair

Rep. Shimabukuro, Vice Chair

COMMITTEE ON JUDICIARY

Monday, April 4, 2011 9:00am – 11:00am

State Capitol, Conference Room 016

RE: HB241 HD1 - RELATING TO PROMOTING PROSTITUTION

Increases the grade of offense for promoting prostitution in the first and second degree to a class A and B felony, respectively. Effective January 7, 2019. (HB241 HD1)

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 **support of HB241 with amendments.**

We strongly support the intent of this bill however we feel that the Promoting Prostitution statutes are not adequate in addressing sex-trafficking, which is the incentive for this bill.

According to the Hawaii State Judiciary's Statistical Report for 2009-10, less than a handful of felony prostitution charges (Promoting Prostitution in the first and second degree) were tried. This does not reflect the actual rate of crimes that happen statewide on a daily basis. *For the report visit:

http://www.courts.state.hi.us/docs/news_and_reports_docs/annual_reports/Jud_Statistical_Sup_2010.pdf

Raising the Promoting Prostitution penalties will not make proving the offense any easier. This is due to the way the laws are written. For example, Promoting Prostitution in the first degree does not include fraud, which is the most common method traffickers use to lure or trick women and girls into prostitution. All traffickers train and force their girls to say what they want them to say when interrogated or questioned by police. This makes proving "force" or "threat" incredibly difficult. Furthermore, law enforcement will almost never get collaboration from a sex-trafficking victim if they are criminalized as "prostitutes" and even face court for prostitution offenses while their

traffickers are free. This is a “sign” to the victims that the justice system cannot protect them.

Equally problematic is Promoting Prostitution in the second degree, which requires having at least two victims. Law enforcement themselves know how hard it is to maintain just one victim throughout trial, let alone two.

Promoting Prostitution in the third degree is easiest to prove of the three offenses but is only currently a misdemeanor. This statute is what law enforcement is relegated to using for traffickers if they cannot prove, “force, threat, or intimidation.” Should HB241 pass with the problematic current language of the first and second degree offenses still in place, we fear this will result in the overall application of these laws to primarily relegate law enforcement to only be able to use the third degree Promoting Prostitution offense, which would make these related offenses punishable as misdemeanors. (HRS §712-1204)

If you must revise the Promoting Prostitution statutes in an effort to address sex-trafficking, at the very minimum, please include fraud in the definition of Promoting Prostitution in the first degree (a class A felony), and remove Promoting Prostitution in the second degree and replace with the language of promoting prostitution in the third degree, which would then become a class B felony.

See Proposed language below:

1. Include in Promoting Prostitution in the First Degree: “Fraud” described as “making material false statements, misstatements, or omissions to induce or maintain the person being prostituted to engage in or continue to engage in prostitution.”

2. Amend Promoting Prostitution in the Second Degree as follows:

§712-1203 Promoting prostitution in the second degree. (1) A person commits the offense of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution.

(2) Promoting prostitution in the third degree is a Class B Felony.

[L 1972, c 9, pt of §1; gen ch 1993]

3. Repeal Promoting Prostitution in the Third Degree

Mahalo,

Christopher D. Yanuaria

Amendments concerning HB241:

1. Include in Promoting Prostitution in the First Degree: “Fraud” described as “making material false statements, misstatements, or omissions to induce or maintain the person being prostituted to engage in or continue to engage in prostitution.”

2. Amend Promoting Prostitution in the Second Degree as follows:

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[L 1972, c 9, pt of §1; gen ch 1993]

3. Repeal Promoting Prostitution in the Third Degree