

STATE OF HAWAII  
TWENTY-SIXTH LEGISLATIVE SESSION  
REGULAR SESSION OF 2011

**COMMITTEE ON LABOR**

Rep. Karl Rhoads, Chair  
Rep. Kyle Yamashita, Vice Chair  
Hearing: Tuesday, February 15, 2011  
Time: 10:00 a.m.  
Place: Conference Room 309

**TESTIMONY OF PACIFIC SURVIVOR CENTER**  
**RE: HB 946, HD 1, RELATING TO HUMAN TRAFFICKING**

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to present testimony regarding HB 946, HD 1, Relating to Human Trafficking. We support this bill.

My name is Lowell Chun-Hoon, and I am the Secretary of the Board of Directors of the Pacific Survivor Center ("PSC"), a non-profit organization that assists survivors of human trafficking, torture, and other human rights abuses. PSC is currently engaged in interviewing and assisting approximately twenty plus of the Aloun Farms labor trafficking victims in obtaining basic social services through a Thai-speaking case worker to identify their basic needs. We also have a grant from the Atherton Foundation through which we are providing training to hospitals, clinics, and other medical organizations about the identification and referral of human trafficking victims to appropriate medical and social services. We are engaged in regular, ongoing collaboration with public interest attorneys, such as those at the Hawaii Immigrant Justice Center at Legal Aid Society of Hawaii, to provide holistic, victim-centered services in all relevant professional disciplines where they require help.

A. Sex Trafficking and Labor Trafficking

We are not criminal law specialists, so our comments regarding the criminal offenses for sex trafficking and labor trafficking are generally limited to stating that Pacific Survivor Center supports the concept of a separate criminal offense for each of these activities. PSC believes that Hawaii should join the overwhelming number of jurisdictions in the nation that have enacted criminal statutes of this nature. However, we are sensitive to the fact that issues exist about the best fashion in which to accomplish this task, given the varying opinions among prosecutors, the Attorney General's office, law enforcement and human trafficking advocates.

We endorse HB 942, HD 1 for seeking to enhance witness protection programs for victims, but believe it is highly unlikely that such witness protection programs can provide the kind of in-depth social services victims require in basic monetary support, medical care, transportation, vocational rehabilitation services, and language training that could truly rehabilitate victims and integrate them into society. The witness protection program should also include *all victims of human trafficking*, not just sex trafficking victims as the current bill stipulates. Victims of labor trafficking, as well as victims of sex trafficking, have encountered physical beatings and extreme coercion and are in need of safety, security, and protection as much as sex trafficking victims.

Limited confidentiality and assurance of police protection against retaliatory conduct from traffickers is necessary in crafting any effective human trafficking statute. This is especially true of immigrant trafficking victims, who because of their sometimes ambiguous legal status are especially vulnerable to manipulation or coercion through tactics as withholding their passports or immigration documents. Moreover, because the trafficked persons may not speak English, they are singularly vulnerable to those who trafficked them, be they pimps, legitimate employers, or others. Pacific Survivor Center has proposed its own bill HB 1452 to address these needs, but due to our late start in introducing the legislation, it has not been heard. However, we urge the committee to examine the California human trafficking statute, which we will forward under separate cover as an attachment to our testimony.

#### B. Social services and civil remedies for victims

The California law provides a means for an attorney or social worker to certify a human trafficking victim and then permits the victim to receive basic social services. Even if a labor trafficking victim is not "pre-certified" under federal anti-trafficking laws, she may still receive basic social services from the State of California. This additional factor must be weighed and fully addressed if legislative action is to meet the serious and pervasive needs of human trafficking victims as opposed to punishing perpetrators of these crimes. As vital as punishment and deterrence is, it is first imperative that we care for those whose lives have been disrupted and often destroyed by this heinous exploitation. In Hawaii, because the number of labor and sex trafficking victims is finite, it should not unduly strain existing resources to include labor and sex trafficking victims under the basic Hawaii social service net of welfare and medical assistance.

HB 946, HD 1 also laudably creates civil remedies for trafficking survivors and it is sensitive to the linguistic isolation of this population and their need for longer than normal statutes of limitations. While there will undoubtedly be unique difficulties enforcing any judgments obtained through civil law suits against traffickers, civil actions are an appropriate weapon to add to the arsenal of resources available to combat human trafficking.

### C. Specific drafting concerns

Finally, we have technical concerns with the drafting of HB 946, HD 1 that also affect substantive areas of concern. More specifically:

1. The definition of “forced labor or services” in Section 1 refers to “labor or services that are. . . obtained or maintained through fraud or any of the means listed in subdivision 10 below.” Unfortunately, the bill as circulated has no subdivision 10.
2. The definition of “fraud” in Section 1 applies to sex trafficking but not to labor trafficking.
3. The definition of “commercial sex acts” also does not include or cover sex abuse that occurs in non-commercial sex employment settings where trafficking victims are employed such as domestic servants, construction workers, and agricultural workers. These persons are all vulnerable to beatings, starvation, or other forms of physical mistreatment and these things have happened during the course of trafficking cases in our own jurisdiction so the bill should be alerted to insure that such abuses occurring outside of commercial sex employment settings are also addressed.

We deeply appreciate the opportunity to be heard on HB 946, HD 1 and urges its adoption with the incorporation of the additional suggestions we have made in our testimony.

CALIFORNIA CODES  
WELFARE AND INSTITUTIONS CODE  
SECTION 18945

18945. (a) Noncitizen victims of trafficking, domestic violence, and other serious crimes, as defined in subdivision (b), shall be eligible for public social services under this division, and health care services under Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, to the same extent as individuals who are admitted to the United States as refugees under Section 1157 of Title 8 of the United States Code. These services shall discontinue if there is a final administrative denial of a visa application under Section 1101 (a)(15)(T)(i) or (ii), or Section 1101 (a)(15)(U)(i) or (ii), of Title 8 of the United States Code. For trafficking victims on behalf of whom law enforcement officials have not yet filed for continued presence or who have not yet filed an application for a visa, benefits issued pursuant to this subdivision shall be available for up to one year, and shall continue after that date only if an application for continued presence, or an application for a visa, is filed within the one-year period. Benefits and services under this subdivision shall be paid from state funds to the extent federal funding is unavailable.

(b) For purposes of this section, victims of trafficking, domestic violence, and other serious crimes shall be defined to include both of the following:

(1) Noncitizen victims of a severe form of trafficking in persons, who have been subjected to an act or practice described in Section 7102 (8) or (9) of Title 22 of the United States Code or Section 236.1 of the Penal Code, and who have filed an I-914 application for T Nonimmigrant status with the appropriate federal agency, are preparing to file an application for status under Section 1101 (a)(15)(T)(i) or (ii) of Title 8 of the United States Code, or otherwise are taking steps to meet the conditions for federal benefits eligibility under Section 7105 of Title 22 of the United States Code.

(2) Individuals who have filed a formal application with the appropriate federal agency for status under Section 1101 (a)(15)(U)(i) or (ii) of Title 8 of the United States Code.

(c) After one year from the date of application for public social services, noncitizen victims of a severe form of trafficking, as defined in paragraph (1) of subdivision (b), shall be ineligible for state-funded services if a visa application has not been filed until under Section 1101 (a)(15)(T)(i) or (ii) of Title 8 of the United States Code.

(d) A noncitizen victim of a severe form of trafficking, as defined in paragraph (1) of subdivision (b), who is issued a visa shall be removed from the state-funded program and provided federally funded public social services benefits under the provisions of Section 1522 of Title 8 of the United States Code, or another federal program for which the noncitizen victim may be eligible.

(e) For purposes of this section, Section 13283 and Section 14005.2:

(1) In determining whether an applicant for public social services has been a victim of a severe form of human trafficking, as defined in Section 7102 (8) or (9) of Title 22 of the United States Code, or

Section 236.1 of the Penal Code, the state or local agency shall consider all relevant and credible evidence. A sworn statement by a victim, or a representative if the victim is not able to competently swear, shall be sufficient if at least one item of additional evidence is also provided, including, but not limited to, any of the following:

(A) Police, government agency, or court records or files.

(B) News articles.

(C) Documentation from a social services, trafficking, or domestic violence program, or a legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with the crime.

(D) A statement from any other individual with knowledge of the circumstances that provided the basis for the claim.

(E) Physical evidence.

(F) A copy of a completed visa application.

(G) Written notice from the federal agency of receipt of the visa application.

(2) If the victim cannot provide additional evidence, then the sworn statement shall be sufficient if the county or state agency makes a determination documented in the case file that the applicant is credible.

STATE OF HAWAII  
TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION 2011

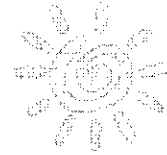
**COMMITTEE ON LABOR**

Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair  
Hearing: Tuesday, February 15, 2011  
Time: 10:00 a.m.  
Place: Conference Room 309

**RE: Testimony of ILWU Local 142 Re: HB 946, HD 1,  
Relating to Human Trafficking**

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to testify about H.B. 946, HD 1. We support this bill but suggest that it could be amended to provide more direct services to those who have actually been victimized and exploited by human trafficking



# LIFE OF THE LAND

76 North King Street, Suite 203

Honolulu, Hawai'i 96817

Phone: 533-3454; [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)

## COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

DATE: Tuesday, February 15, 2011

TIME: 10:00am

PLACE: Conference Room 309

re: HB 946 Human Trafficking **STRONG SUPPORT**

Aloha Chair Rhoads, Vice Chair Yamashita and Members of the Committee

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

**Hawai'i has the distinction of having horrible examples of trafficking slave labor for agricultural activities and for sexual exploitation.**

**Yet we lack adequate laws to go after those who exploit people.**

**Please pass this bill**

Mahalo,

Henry Curtis



**HAWAII CATHOLIC CONFERENCE**  
6301 Pali Highway  
Kaneohe, HI 96744-5224

Email to: [LABtestimony@Capitol.hawaii.gov](mailto:LABtestimony@Capitol.hawaii.gov)  
Hearing on: February 15, 2011 @ 10:00 a.m.  
Conference Room # 309

**DATE:** February 14, 2011

**TO:** House Committee on Labor & Public Employment  
Representative Karl Rhoads, Chair  
Representative Kyle Yamashita, Vice Chair

**FROM:** Walter Yoshimitsu, Executive Director

**RE:** Strong Support for HB 946 HD1 Relating to Human Trafficking

I am Walter Yoshimitsu, representing the Hawaii Catholic Conference. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, under the leadership of Bishop Larry Silva. We strongly support this bill that would strengthen the laws in Hawaii regarding human trafficking.

The Catholic Church has placed the elimination of trafficking as an important priority in the areas of public advocacy, public education, and services to trafficking victims. We have begun working to raise awareness within the Catholic community about the problem, including education to help people in the community identify and understand the problem of human trafficking.

Trafficking victims also need, first and foremost, safety and security. According to recent news stories, many are terrified of the traffickers who brought them to Hawaii. Providing them with a secure, safe, and nurturing environment is crucial to ensuring their return to society as contributing members. The Church and its service organizations, particularly Catholic Charities, does all that it can to provide support services to both adult and child victims of trafficking, including health and mental health services, employment assistance, English-language training, counseling, housing and other material assistance needs.

The themes of Catholic social teaching—the protection of human dignity and human rights; the option for the poor; the call to family and community; the rights of workers; solidarity and care for creation—all address evils inherent in human trafficking. These principles of justice are not unique to Catholicism but are manifest in most religions. Commitment to these principles gives the issue of human trafficking a sense of urgency to many faiths and religious communities. For this reason we strongly support passage of this measure.

Please support HB 946 HD 1. Mahalo for the opportunity to testify.



# hawaii family forum

Email to: LABtestimony@Capitol.hawaii.gov  
Hearing on: February 15, 2011 @ 10:00 a.m.  
Conference Room # 309

**DATE:** February 14, 2011

**TO:** House Committee Labor & Public Employment  
Representative Karl Rhoads, Chair  
Representative Kyle Yamashita, Vice Chair

**FROM:** Allen Cardines, Jr., Executive Director

**RE:** Strong Support for HB 946 HD1 Relating to Human Trafficking

Mahalo for affording me the opportunity to testify on this measure. I am Allen Cardines, **representing the Hawaii Family Forum**. Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii, representing a network of various Christian Churches and denominations. We strongly support passage of HB 946 HD1.

It is estimated by the U.S. State Department that as many as 17,500 human beings each year are trafficked into the United States to work in the sex trade or as slave labor. Women and children have been forced to work in prostitution and child pornography rings, while men, women, and children have been forced into different types of manual labor, without pay or protection. As an organization that cares about the ohana, we find this both apprehensible and unacceptable.

Victims of human trafficking are commonly linked by poverty and lack of opportunity. Often they seek to escape their impoverished life with the hope of finding opportunity and a brighter future in Hawaii. It is in these types of environments that human traffickers flourish, promising unsuspecting victims an opportunity to travel, at no immediate expense, for employment and housing. When they reach Hawaii, they find coercion, abuse, entrapment, and exploitation in a brothel, a massage parlor, or an agricultural outpost. By the time they are rescued, if ever, they are shattered by physical, mental, and psychological abuse. Many become ill and some have even lost their lives.

Hawaii Family Forum has placed the elimination of trafficking as an important priority in the areas of public advocacy and education both to the wider community and to trafficking victims. Let me add that faith-based organizations are uniquely positioned to identify and provide assistance to victims of human trafficking.

First, faith-based organizations act from a theological and philosophical perspective. Commitment to these principles gives the issue of human trafficking a sense of urgency to many faiths and religious communities.

Second, most faith-based organizations have networks that enhance their capacity to give voice and volume to the cry for justice. They have access to a cross-section of agencies which offer an expertise that expands the possibilities for outreach and service, an asset not to be underestimated.

Finally, faith-based organizations have resources which can assist in the fight against human trafficking. Organizations like Catholic Charities Hawaii, Pacific Alliance to Stop Slavery and others. While we see the effort as a partnership with the government and the faith-based community, please know that those of us in the faith-based community will be performing this work regardless, particularly because of the moral gravity of the issue and the ongoing suffering of its victims.

Please pass this measure. Mahalo!



**Supporters**

February 13<sup>th</sup> 2011

American Association of  
University Women

Bluewater Mission

Catholic Diocese  
of Honolulu

Equality Now

Hawaii State Commission  
on the Status of Women

Imago Dei  
Christian Community

International Justice Mission

Kumulani Chapel  
(Lahaina, Maui)

Not For Sale

Pacific Survivor Center

Soroptimists International  
of Waikiki Foundation

Women Helping Women  
(Wailuku, Maui)

To: The Honorable Karl Rhoads, Chair  
House Committee on Labor and Public Employment

Date: Tuesday, February 15

Time: 10:00 a.m.

Place: Conference Room 309, State Capitol

From: Kathryn Xian

**TESTIMONY IN OPPOSITION**

**Re: H.B. 946 HD1-Relating to Crime**

WEB: <http://www.capitol.hawaii.gov/emailtestimony>

Note to clerk: (Please print 24 copies including original)

---

Dear Committee on Labor & Public Employment:

I represent the Pacific Alliance to Stop Slavery. Though we support the intent of HB946 HD1, we testify in opposition of this measure for the following reasons:

1. This measure would add extra unnecessary elements to prove human-trafficking for both labor and sex.
2. This measure would also require the proof of additional unnecessary elements (e.g. "force") to bring child-traffickers to justice. This is not consistent with federal or existing promoting prostitution laws, and;
3. This measure recognizes labor-trafficking of adults as only a Class B offense. It should be recognized as a Class A felony.

Sincerely,

Kathryn Xian, Executive Director  
Pacific Alliance to Stop Slavery



# EQUALITY NOW

New York: 250 West 57 Street, #1527, New York, NY 10107, USA • Tel: +1 212-586-0906 • Fax: +1 212-586-1611 • Email: [info@equalitynow.org](mailto:info@equalitynow.org)

London: 6 Buckingham Street, London WC2N 6BU, UK • Tel: +44 (0) 20-7839-5456 • Fax: +44 (0) 20-7839-4012 • Email: [ukinfo@equalitynow.org](mailto:ukinfo@equalitynow.org)

Nairobi: PO Box 2018 - 00202, Nairobi, Kenya • Tel: +254 20-2719-832 • Fax: +254 20-2719-868 • Email: [equalitynownairobi@equalitynow.org](mailto:equalitynownairobi@equalitynow.org)

To: The Honorable Karl Rhoads, Chair  
House Committee on Labor and Public Employment

Hearing Date: February 15, 2011

Hearing Time: 10:00 a.m.

Place: Conference Room 309, State Capitol

Fax: (808) 586-6331

(Please submit 24 copies including original)

Re: Human Trafficking Bills

## TESTIMONY IN OPPOSITION TO H.B. 946; AND IN SUPPORT OF H.B. 577

---

Dear Committee on Labor & Public Employment:

I am writing on behalf of Equality Now to oppose H.B. 946 HD-1 Relating to Human Trafficking, and to support H.B. 577 – Relating to Crime. Equality Now is an international human rights organization working for the protection and promotion of the rights of women and girls worldwide. Issues of concern to Equality Now include trafficking in women and girls, discrimination in law, sexual violence, female genital mutilation and all other forms of violence and discrimination against women and girls. Through our work to end the trafficking of women and girls, Equality Now closely followed the Hawaii state law making promotion of sex tourism a crime. We have also been involved with the passage of anti-trafficking legislation at the federal and state levels.

While we support the passage of a comprehensive anti-trafficking bill in Hawaii and we acknowledge a number of important elements contained in the bill, including the addition of sex trafficking victims to the state witness program and the establishment of a civil remedy for trafficking victims, we oppose H.B. 946 on a number of grounds. First, H.B. 946 requires proof of unnecessary and unclear elements (i.e. “deprives or violates the personal liberty” of a person) for the crimes of “human trafficking” and “sexual human trafficking.” Second, contrary to the federal trafficking law and existing state laws on promoting prostitution, this bill requires the same elements of proof for trafficking of minors as it does for trafficking of adults. And third, this bill classifies the trafficking of adults for labor exploitation as a Class B felony (rather than a Class A felony) which is not commensurate with the gravity of this crime.

Equality Now urges the rejection of H.B. 946, and urges the Committee to support H.B. 577 instead. H.B. 577 focuses specifically on trafficking for labor exploitation (trafficking for sexual exploitation is dealt with in a separate bill), and does not present such an overwhelming burden to prosecution of labor trafficking offenses. H.B. 577 recognizes the seriousness of this crime by classifying Labor Trafficking in the first degree as a Class A felony, and is supported by the Office of Community Services, an agency administratively attached to the Department of Labor and Industrial Relations.

Sincerely,

A handwritten signature in black ink that reads "Taina Bien-Aimé". The signature is written in a cursive style with a horizontal line underlining the first name.

Taina Bien-Aimé  
Executive Director

**TESTIMONY ON HOUSE BILL 946, HOUSE DRAFT 1 RELATING TO HUMAN TRAFFICKING**

House Committee on Labor and Public Employment

Hon. Karl Rhoads, Chair

Hon. Kyle T. Yamashita, Vice Chair

Tuesday, February 15, 2011, 10:00 AM

State Capitol, Conference Room 309

Honorable Chair Rhoads and committee members:

I am Kris Coffield, editorial director of Fracturedpolitics, an emergent political action network born out of internet activism. Currently, the network boasts over 50 local members, though I offer this testimony only on behalf of myself, in support of HB 946, HD 1.

As you are undoubtedly aware, Hawaii is suffering from a human trafficking epidemic. Last September, a federal indictment charged Global Horizons Manpower, Inc. with trafficking 400 workers from Thailand to work on farms in Hawaii for little or no pay. Labor trafficking is not the only form of slavery plaguing our state's shores, however, as women and girls—some of whom have yet to reach puberty—have been brought to our island home and forced to work as prostitutes under literally torturous conditions, according to the Pacific Alliance to Stop Slavery (P.A.S.S.), Hawaii's leading anti-trafficking nonprofit organization. In just the past eight months, P.A.S.S. has helped nearly two dozen prostitutes cope with the trauma they've endured and find freedom, said the group's co-founder recently, some of whom were severely beaten, starved, raped, threatened with physical injury and/or death, and, in some cases, all of the above.

In the past, opponents of human trafficking legislation have argued that such bills conflict with the Hawaii Supreme Court's decision in *State v. Modica*, 567 P.2d 420 (Haw. 1977), which affirmed that two differentially-related crimes cannot require duplicated elements of proof. While HB 946, HD 1 does delineate a statutory scheme in which lesser-grade offenses could overlap with greater-grade offenses, the measure's "transportation and recruitment" provision relating to first-degree human trafficking offenses (class B felonies, except in the case of minors), first-degree sexual human trafficking offenses (class A felonies), and second-degree sexual human trafficking offenses (class B felonies) clearly distinguishes the bill from Hawaii's enacted promoting prostitution, sexual assault, and extortion regulations, as enumerated in §702-1202, §707-730, and §707-764, respectively. Moreover, to cite a memorandum prepared by Davis Polk & Wardwell, LLC during last year's debate on the codification of a human trafficking statute, the "Modica rule" endorses prosecutorial discretion with regard to charging individuals under overlapping statutes, and the Hawaii judiciary has continually confirmed the legality of this principle, in, for example, *State v. Lagat*, 40 P.3d, 894, 901 (Haw. 2002), *State v. Rabago*, 686 P.2d

824, 826 (Haw. 1984), and *State v. Kuuku*, 595 P.2d 291, 294 (Haw. 1979). It should be clear, at this point, that any critique of HB 946, HD 1 based upon *Modica*, should it arise, is misguided and readily dismissed.

One concern I have about HB 946, HD 1, as currently drafted, is its failure to enumerate sex trafficking into §803-44, as an offense subject to applications for court orders to intercept wire, oral, or electronic communications. Similarly, the profitability of sex trafficking (estimated in excess of \$30 billion globally) has made it a boon for organized crime rings operating locally, domestically, and transnationally. Thus, I urge the committee to amend this bill by adding language to §842-1 incorporating sex trafficking into definitions of “organized crime” and “racketeering activity.” Addressing these concerns can be easily accomplished by incorporating Section 10 (relating to court order applications) and Section 11 (relating to organized crime) of HB 576 into HB 946, HD 1, thereby amplifying the aforementioned statutes. Any further discrepancies can be worked out in conference committee by continuing the defective date of July 1, 2050 attached to this bill by the House Committee on Human Services at a prior hearing.

In summation, a blow against human trafficking is a vote for human rights. If Hawaii is to continue to strive toward economic and social justice, it must protect itself against the perpetrators of sexual terror. Mahalo for the opportunity to testify in support of this bill.

Sincerely,  
Kris Coffield  
*Editorial Director*  
Fracturedpolitics