

HB241,HD1

Testimony



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

ON THE FOLLOWING MEASURE:

H.B. NO. 241, H.D. 1, RELATING TO PROMOTING PROSTITUTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, April 4, 2011 **TIME:** 9:00 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 Department of the Attorney General ("the Department") supports this bill.

The purpose of this bill is to combat prostitution and its accompanying criminal activity by increasing the grade of the offenses of promoting prostitution in the first and second degrees to a class A and class B felony, respectively.

Section 712-1202, Hawaii Revised Statutes, provides that a person commits the offense of promoting prostitution in the first degree if the person knowingly: (1) advances prostitution by compelling a person by force, threat, or intimidation to engage in prostitution, or profits from such coercive conduct by another; or (2) advances or profits from prostitution of a person less than eighteen years old. This bill will increase the grade of this offense from a class B felony to a class A felony.

Section 712-1203, Hawaii Revised Statutes, provides that a person commits the offense of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving

prostitution activity by two or more prostituted persons. This bill will increase the grade of this offense from a class C felony to a class B felony.

The Department respectfully requests the passage of this measure.



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Monday, April 4, 2011, 9:00 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 241, HD1,
Relating to Promoting Prostitution

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 241, HD1.

The ACLU of Hawaii believes that prostitution should be decriminalized, and while that is not the issue being debated today, we certainly oppose any effort to increasing the criminal penalties associated with private sexual behavior between consenting adults.

Criminal sanctions against prostitution have traditionally represented one of the most direct forms of discrimination against women. Further, prostitution laws are a violation of the right of individual privacy because they impose penal sanctions for the private sexual conduct of consenting adults. Whether an adult chooses to engage in sexual activity for purposes of recreation, or in exchange for something of value, is a matter of individual choice, not for governmental interference.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org



DOWNTOWN NEIGHBORHOOD BOARD NO. 13

c/o NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET ROOM 400 • HONOLULU, HAWAII, 96813
PHONE (808) 527-5749 • FAX (808) 527-5760 • INTERNET: <http://www.honolulu.gov>

**Testimony of
Thomas Smyth, Vice Chair**

**Before the
Senate Committee On Judiciary And Labor
Monday, April 4, 2011, 9:00 am Room 016
On
HB 241 HD 1 Relating to Promoting Prostitution**

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The Downtown Neighborhood Board strongly supports HB 241 HD 1, as amended, that increases penalties for promoting prostitution by raising the penalty for first and second degree of promotion of prostitution by one level of felony.

The current felony level for each degree of offense has not been as successful in curbing this continual crime, as we had hoped, so an increase is well warranted.

We witness prostitution in the Downtown and China town areas on a daily basis even though the Honolulu Police Department does an excellent job in trying to reduce this criminality and its victims. We know that many, other than the prostitutes themselves, are affected by this activity. Our neighbors are often fearful that they could become involved in the criminal acts that accompany prostitution.

Our children may witness assaults or pick up drug paraphernalia in the areas frequented by prostitutes. Our senior citizens who often need to visit stores in those areas are certainly not immune from the side effects of this activity and have become fearful of venturing out during the hours when this activity is most likely to occur, even if they need to obtain necessary medication or food.

This measure would ensure that one of the most effective efforts to reduce the broad evils of prostitution would become even more likely to reduce this crime. If those who promote prostitution are punished sufficiently, we hope that these activities will diminish and we can once again feel safe in our own neighborhood.

Thank you for the opportunity to testify.



From: [Tracy A Ryan](#)
To: [JDLTestimony](#)
Subject: Testimony for Monday
Date: Friday, April 01, 2011 9:58:50 AM

TESTIMONY

The Libertarian Party of Hawaii
c/o 1658 Liholiho St #205
Honolulu, HI 96822

March 31, 2011

RE: HB 241 to be heard Monday, March 4, 2011 at 9:00 AM in conference room 016.

To the members of the House Committee on Judiciary and Labor

We continue to oppose passage of HB 241. Although this bill was improved in the House by eliminating the increased penalties for promoting prostitution in the third degree, there is still no rational basis provided in the language of the bill or any testimony for increasing the penalties for promoting prostitution the second degree. All of the rationales deal with harm done to prostitutes who are underage or coerced. These two areas are elements of the crime of promoting prostitution in the first degree, but not in the second degree. For the actions of the legislature to make sense this bill would have to be changed to include a revised definition of promoting in the second degree to include some elements of coercion or abuse of minors.

As written the bill can lead to situations where persons selling sex may be in greater rather than lesser danger since non coercive employers such as madams who provide some degree of security, are now to be more heavily sanctioned because of the actions of third parties (pimps and traffickers) who have nothing to do with their activities. I

A further issue is cost. If we are to increase prison terms for certain crimes what offsetting reduction in other crimes does the committee suggest. Incarceration is expensive and prison space is scarce. Who should we let out to make room for these longer sentenced people?

This bill is a revenge based act in response to a few over the top scare stories. It takes little notice of the overall situation of the sex industry in Hawaii and has been prepared without input from people familiar with that industry.

Sincerely:

A handwritten signature in black ink, appearing to read 'Tracy Ryan', with a long horizontal flourish extending to the right.

Tracy Ryan
Oahu County Chair
The Libertarian Party of Hawaii



The PACIFIC ALLIANCE
to STOP SLAVERY

Supporters

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)

DATE: Saturday, April 2, 2011

ATTN: Senate Committee on Judiciary

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senator Les Ihara, Jr.
Senator Mike Gabbard
Sendator Sam Slom

HEARING DATE: Monday, April 4, 2011

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

TIME: 9:00am

RE: **HB241 HD1- RELATING TO PROMOTING
PROSTITUTION – IN SUPPORT WITH AMENDMENTS**

Dear Committee on Judiciary:

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

Sincerely,

Kathryn Xian, Executive Director
Pacific Alliance to Stop Slavery

**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Judiciary and Labor**

February 22, 2011

H.B. No. 241 HD1: RELATING TO PROMOTING PROSTITUTION.

Chair Hee and Members of the Committee:

This bill proposes to increase the class of offense for the crimes of Promoting Prostitution in the First and Second Degrees. Currently, the First and Second Degree offenses are class "B" and "C" felony offenses, punishable by 10 years and 5 years in prison, respectively, and are probationable.

The Office of the Public Defender has no objection to the increase in classification for the First and Second Degree offenses from their current status as class "B" and "C" offenses to class "A" and "B" offenses if this change is part of a concerted effort to address the problem of human sexual trafficking and if this measure, along with H.B. No. 240, is being advanced in lieu of the establishment of a separate human trafficking statute.

If the proposed change is addition to the possible passage of human trafficking legislation, we would oppose H.B. No. 241 HD1 as an unnecessary and arbitrary increase in penalties.

Thank you for the opportunity to comment on this legislation.