

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

February 22, 2011

H.B. No. 242: RELATING TO PROMOTING PROSTITUTION.

Chair Keith-Agaran and Members of the Committee:

This bill proposes to create a new offense of Habitual Solicitation of Prostitution. We are not sure additional legislation like this is necessary in that it seems that enforcement of our current laws will go farther in dealing with the problem of prostitution than passing additional laws. But to the extent that this legislation is seen as needed, we believe it is too broad as currently drafted.

This legislation would make it a class "C" felony punishable by a 5 year term of incarceration or a 5 year term of probation to commit the crime of prostitution or street solicitation of prostitution if, at the time of the alleged conduct, the defendant had two prior convictions within the previous ten years. We believe that the 'two previous offenses within a ten year period' requirement is too broad.

Under current laws such as Habitual Property Crime (HRS 708-803), three previous offenses within a five year period are required. Habitually Operating a Vehicle Under the Influence of an Intoxicant requires three previous convictions within a ten year period. We would note that for the DUI offenses, there are many treatment programs available, the cost of some of which may even be covered by health plans.

Significant programs to aid prostitutes are not so available and the cost would have to be borne by the defendant unless it was a publicly supported program. As this legislature is well aware, public funding for all community based programs is currently being cut back at record rates. Yet, taking into account the harm caused or threatened and the rehabilitative assistance available or lack thereof, we would punish a prostitute more severely than a drunk driver?

We believe it would be more reasonable to base the habitual label on these crimes if the range of years was five instead of ten. We believe it would be even fairer if the requirement was for the defendant to have three previous convictions within that five year period.

For the reasons stated, we do not support this bill. Thank you for the opportunity to comment on this legislation.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai`i

February 22, 2011

RE: H.B. 242; RELATING TO PROMOTING PROSTITUTION.

Chair Keith-Agaran, Vice-Chair Rhoads and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in support of House Bill 242, which is part of the department's 2011 Legislative Package.

The purpose of House Bill 242 is to amend Act 192, Session Laws of Hawaii 2008, by increasing the offense of "habitual solicitation of prostitution" from a misdemeanor to a Class C felony. It also amends Act 95, Session Laws of Hawaii 2010, by deleting the repeal of this law that is to take place on June 30, 2012.

Basic economics tells us that there are always two sides to any commercial market: supply and demand. Thus, no matter how actively prosecutors pursue the supply-side of the prostitution "industry," it is logical to conclude that this type of activity will continue so long as-- and to the extent that-- there is a demand for such services. In order to attack the problem of prostitution and sexual human trafficking in Hawaii from both ends, we must find new ways to decrease demand on the part of patrons/customers.

Individuals who repeatedly seek out and receive prostitution services knowingly support and perpetuate the prostitution industry, ultimately strengthening incentives for people to continue rendering prostitution services, or continue profiting from, assisting, and/or compelling others to do so. The Department of the Prosecuting Attorney maintains that House Bill 242 would present a significantly stronger deterrent to those who would contemplate soliciting prostitution services, thereby decreasing the demand for such services.

For these reasons the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports this bill. Thank you for the opportunity to testify on this matter.



Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 22, 2011, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 242, Relating to Promoting Prostitution

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in **opposition** to H.B. 242.

The ACLU of Hawaii opposes state regulation and punishment of prostitution as 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 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

JUDtestimony

From: Tracy A Ryan [tracyar@hawaiiantel.net]
Sent: Friday, February 18, 2011 4:47 PM
To: JUDtestimony
Subject: testimony

TESTIMONY

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

February 18, 2011

RE: HB 242 to be heard Tuesday, February 22, 2011 at 2:00 PM in conference room 302.

To the members of the House Committee on Judiciary

We oppose passage of HB 242. Increased enforcement of prostitution laws against johns is very popular with radical feminists. It is an ugly and hateful attack against harmless people.

As a practical matter a successful campaign to deter johns will lead to a worsening not an improvement of the overall crime situation in areas such as Chinatown. Anyone who understands most women selling sex on the streets are either drug addicts, pimped, or both. Their needs to acquire funds will not disappear when prostitution related activity becomes more scarce. They will turn to other crimes such as theft and drug dealing. This is of no apparent importance to the radical feminists who promote such laws , but it is of major impact to communities. This bill is as silly and counterproductive to the problems of Chinatown as any I can imagine.

There are good professional agencies and experienced people in this community who are very familiar with the sex industry here in Hawaii. None of them seem to be consulted at any time by our legislature when considering drafting these bills. Organizations such as the Youth Outreach Project, The CHOW Project, Kulia Na Mamo, and the Life Foundation all have good people with first-hand knowledge of these issues. The Reverend Pam Vessels has known hundreds of prostitutes here. Instead of listening to us highly questionable information from an organization calling itself the Pacific Alliance to Stop Slavery is being touted and circulated.

It real problems are ever to be addressed this situation needs to change.

Sincerely:



Tracy Ryan
Oahu County Chair
The Libertarian Party of Hawaii



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: Friday, February 18, 2011

ATTN: House Committee on Judiciary

Rep. Gilbert Keith-Agaran, Chair

Rep. Karl Rhoads, Vice-Chair

Rep. Blake K. Oshiro

Rep. Tom Brower

Rep. Rida T.R. Cabanilla

Rep. Mele Carroll

Rep. Robert N. Herkes

Rep. Ken Ito

Rep. Sylvia Luke

Rep. Angus L.K. McKelvey

Rep. Hermina M. Morita

Rep. Joseph M. Souki

Rep. Clift Tsuji

Rep. George R. Fontaine

Rep. Barbara C. Marumoto

Rep. Cynthia Thielen

HEARING DATE: Tuesday, February 22, 2011

HEARING PLACE: Conference Room 302 - State Capitol –
415 South Beretania Street

TIME: 2:00pm

RE: **HB242 - RELATING TO PROMOTING PROSTITUTION –
IN SUPPORT**

Dear Committee on Judiciary:

We are in support of HB242 and applaud Prosecutor Kaneshiro's efforts to end the demand for prostitution.

However, we would just like the Committee to be aware that Street Prostitution as referenced in 712 2(b) was decided by the Appellate Court in State v. Espinoza, April 2009, that "it is only the recipient of the fee, and not the payor of the fee, who can commit this offense." (See attached).



THE PACIFIC ALLIANCE
to STOP SLAVERY

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn Xian". The signature is fluid and stylized, with a large loop at the end.

Kathryn Xian, Executive Director
Pacific Alliance to Stop Slavery

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

---o0o---

STATE OF HAWAII, Plaintiff-Appellee, v.
ROLLIE DUMASIG ESPINOSA, Defendant-Appellant

NO. 29094

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD Cr. No. 08080098)
(1P108-03090)

APRIL 30, 2009

WATANABE AND FUJISE, JJ.;
WITH RECKTENWALD, C.J., CONCURRING SEPARATELY

OPINION OF THE COURT BY WATANABE, J.

Defendant-Appellant Rollie Dumasig Espinosa (Espinosa) appeals from the judgment filed in the District Court of the First Circuit, Honolulu Division¹ (district court) on March 5, 2008, convicting him of street solicitation of prostitution in violation of Hawaii Revised Statutes (HRS) § 712-1207 (Supp. 2008) and sentencing him to serve thirty days in jail.

HRS § 712-1207 currently provides, as it did at the time Espinosa was accused of violating the statute, in relevant part, as follows:

Street solicitation of prostitution; designated areas.
(1) It shall be unlawful for any person within the boundaries of Waikiki and while on any public property, to offer or agree to engage in sexual conduct with another person in return for a fee.

¹ The Honorable Lono J. Lee presided.

CLERK OF APPELLATE COURTS
JENNIFER K. KAWAHA
STATE OF HAWAII

2009 APR 30 AM 8:11

FILED

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

(2) It shall be unlawful for any person within the boundaries of other areas in this State designated by county ordinance pursuant to subsection (3), and while on any public property, to offer or agree to engage in sexual conduct with another person in return for a fee.

(3) Upon a recommendation of the chief of police of a county, that county may enact an ordinance that:

- (a) Designates areas, each no larger than three square miles, as zones of significant prostitution-related activity that is detrimental to the health, safety, or welfare of the general public; or
- (b) Alters the boundaries of any existing area under paragraph (a); provided that not more than four areas may be designated within the State.

.
(8) For purposes of this section:

"Area" means any zone within a county that is defined with specific boundaries and designated as a zone of significant prostitution by this section or a county ordinance.

"Public property" includes any street, highway, road, sidewalk, alley, lane, bridge, parking lot, park, or other property owned or under the jurisdiction of any governmental entity or otherwise open to the public.

"Sexual conduct" has the same meaning as in section 712-1200(2).

"Waikiki" means that area of Oahu bounded by the Ala Wai canal, the ocean, and Kapahulu avenue.

(9) This section shall apply to all counties; provided that if a county enacts an ordinance to regulate street solicitation for prostitution, other than an ordinance designating an area as a zone of significant prostitution-related activity, the county ordinance shall supersede this section and no person shall be convicted under this section in that county.

(Emphasis added.)

The evidence adduced at Espinosa's bench trial showed that on or about February 29, 2008, Espinosa approached an undercover police officer who was posing as a prostitute on the corner of Kukui and 'A'ala streets in Honolulu. That corner, which is public property, is located within an area that had been designated by county ordinance pursuant to HRS § 712-1207(3) as a zone of "significant prostitution-related activity that is

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

detrimental to the health, safety, or welfare of the general public[.]" Thus, pursuant to HRS § 712-1207(2), it was unlawful "to offer or agree to engage in sexual conduct with another person in return for a fee" in that area.

The evidence further revealed that Espinosa offered to pay the undercover officer forty dollars to engage in "anything, everything[,] " which the officer testified was "street vernacular for oral sex and sexual intercourse." Based on this offer, Espinosa was arrested for and charged with street solicitation of prostitution in violation of HRS § 712-1207.

At the close of the prosecution's case, Espinosa orally moved to dismiss the charge against him on grounds that HRS § 712-1207 does not apply to patrons of prostitution. The district court denied the motion to dismiss and found Espinosa guilty as charged.

On appeal, Espinosa raises two arguments:

- (1) HRS § 712-1207 does not apply to patrons of prostitution; and
- (2) There was insufficient evidence to support his conviction.

It is unnecessary for us to address Espinosa's second argument because we agree with Espinosa that based on the clear and unambiguous language of HRS § 712-1207, the offense of street solicitation of prostitution can only be committed by a person who offers or agrees to engage in sexual conduct with another person in a prohibited area "in return for a fee." Therefore, it is only the recipient of the fee, and not the payor of the fee, who can commit the offense. In accord, State v. Wilbur, 749 P.2d 1295, 1296 (Wash. 1988).

We note parenthetically that HRS § 712-1207(2) contains language that is almost identical to HRS § 712-1200(1) (Supp. 1984), the statute which formerly defined the offense of prostitution as follows: "A person commits the offense of prostitution if the person engages in, or agrees or offers to

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

engage in, sexual conduct with another person in return for a fee." (Emphasis added.) In State v. Tookes, 67 Haw. 608, 699 P.2d 983 (1985), the Hawai'i Supreme Court held that the prohibition in HRS § 712-1200(1)² "is triggered by a sale of sexual services by a man or a woman." Id. at 614, 699 P.2d at 987. The supreme court also observed that the prohibition was gender-neutral, but even if it "were deemed to set up a gender-based classification, it would be invalid only if it did not serve important governmental objectives and was not substantially related to achieving those objectives." Id. at 614, 669 P.2d at 988. The statute did not violate the federal and state constitutional guarantees of equal protection of the laws, the supreme court concluded, because "[t]he decision to target punishment on the seller of a prohibited service, whose profit motivation could lead him or her to violate the law more frequently than potential customers," easily satisfies this standard." Id.

In 1990, the legislature amended HRS 712-1200(1) to delete the phrase "in return" that preceded the phrase "for a fee" so that subsection (1) now reads: "A person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person for a fee." 1990 Haw. Sess. Laws Act 204, § 1 at 442. In reporting on Senate Bill No. 1110, the bill that was enacted as Act 204, both the Senate and House Judiciary committees noted, in relevant part, that the purpose of the bill was to amend HRS § 712-1200 "to make it clear that the customer of a prostitute is also guilty of the offense of prostitution[.]" S. Stand. Comm. Rep.

² In Tookes, which was issued in 1985, the Hawai'i Supreme Court quoted HRS § 712-1200(1) as providing as follows: "A person commits the offense of prostitution if he engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee." (Emphasis added.) The language quoted appears to be the original version of HRS § 712-1200(1), enacted in 1972. In 1981, HRS § 712-1200(1) was amended to substitute the more gender neutral term "the person" for the word "he." The HRS 1984 supplement already contained this revision.

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

No. 325, in 1989 Senate Journal, at 946; H. Stand. Comm. Rep. No. 1205-90, in 1990 House Journal, at 1316.

HRS § 712-1207 was enacted in 1998, after the Tookes decision and Act 204's amendment to HRS § 712-1200(1). We conclude that by including the phrase "in return for a fee" in HRS § 712-1207(2), the legislature intended to exclude a patron of a prostitute, such as Espinosa, from criminal liability under that statute.

Therefore, we reverse the judgment filed in the district court on March 5, 2008.

On the briefs:

Taryn R. Tomasa,
Deputy Public Defender,
State of Hawai'i,
for Defendant-Appellant.

Corinne K. A. Watanabe

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Auna D. S. Jijine

National Association of Reformed Criminals

1765 Ala Moana Blvd. #1388

Honolulu, Hawaii, 96815

February 22, 2011

COMMITTEE ON THE JUDICIARY

Rep. Gilbert S. C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Tuesday February 22, 2011

2:00 PM

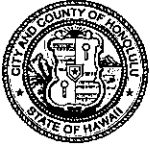
Room 325

HB 242 - RELATING TO PROMOTING PROSTITUTION

OPPOSE

This bill is unnecessary and excessive. Is there such a thing as a repeat-john offender? Has anyone ever been convicted 3 times, within 10 years, for paying for sex? If so, are any of the offenders women? I am almost 55 years old and I am still waiting for the day that a woman pays me – for anything. Additionally, to make it a class C felony, punishable by up to 5 years in prison is harsh.

For these reasons we oppose this bill.



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
House Committee on Judiciary
Tuesday, February 22, 2011, 2:00 pm Room 302
On
HB 242 Relating to Promoting Prostitution**

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The Downtown Neighborhood Board strongly supports HB 242 that increases the penalty for habitual solicitation of prostitution from a misdemeanor to a Class C felony.

Act 192 is an effective measure providing that a person convicted for the third time of soliciting prostitution within a ten-year period is considered to have committed the offense of "habitual solicitation of prostitution." The potential penalty is thus significantly stronger in deterring future offenses.

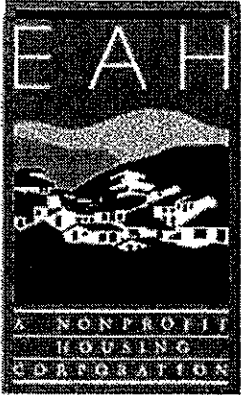
Our experience in the Downtown and China town areas is that prostitution is frequently not the "victimless crime" that some would have us believe. Prostitution is often glamorized and made to seem just the inevitable product of our sexual proclivity.

We know from direct evidence in our neighborhood that other crimes spring from the prostitution activity. These include murder, assault, robbery and violence against women. Those who control the activities of the prostitutes are often engaged in trafficking both drugs and the women they procure.

This measure would ensure that one of the most effective efforts to reduce the broad evils of prostitution would remain in place. If those who solicit prostitution are punished, as are the prostitutes themselves, we hope that these activities will diminish and we can once again move freely on the streets of our neighborhood.

Thank you for the opportunity to provide testimony.





February 22, 2011

Representative Gilbert S.C. Keith-Agaran, Chair
House Judiciary Committee
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Subject: Strong Support for HB 44, HB240, HB241, HB 242 Relating to Anti-Prostitution Measures

Dear Chair Keith-Agaran and Members of the Committee:

Thank you for this opportunity to submit testimony in strong support of HB 44, HB240, HB 241 and HB 242, all of which will help to discourage the promotion and solicitation of prostitution in our communities.

EAH Housing is a non-profit public benefit corporation that owns and manages 859 low-income rental apartments in the downtown Honolulu area. For those who live or work downtown, particularly in the Chinatown area, prostitution is not a hidden occupation. We see those who work in this "business" everyday on our street corners and in our alley ways. Our children see them when they leave for school in the mornings and when they come home in the afternoons. They see them when they go out to play every day. Take a drive along Aala Street, Kukui Street, Maunakea Street or River Street to name a few and you can spot them. It is nearly impossible to avoid them. And our children and young families are exposed to them every single day. No, they are not hidden. They are there every day and we need to do something about it.

These bills are not aimed at the prostitutes themselves but the human traffickers, pimps and johns that promote and support prostitution. EAH strongly believes that increased penalties are needed to help to curtail this very pervasive problem in our communities. We believe that reducing prostitution will also reduce crimes related to prostitution such as crimes involving drugs, assault, battery and robbery.

Please help us improve the living conditions in our neighborhoods and protect the children in our communities from exposure to this "business" by supporting these proposed bills.

Sincerely,

Kevin R. Carney, NAHP-e, (PB)
Vice President, Hawaii