

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-6552

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai`i

Thursday, March 15, 2012

RE: S.B. 2576, S.D. 1; RELATING TO PROSTITUTION.

Chair Mizuno, Vice Chair Jordan, and members of the House Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony expressing strong concerns regarding S.B. 2576, S.D. 1 that authorizes a person convicted of committing the offense of prostitution to file a motion to vacate the judgment. Appealing to a higher court or Rule 40 of the Hawaii Rules of Penal Procedure currently would be the better way to achieve the policy goal of S.B. 2576, S.D. 1. Moreover, there are a number of problems in this bill, which we will point out as well.

Under Rule 40(a)(1) of the Hawaii Rules of Penal Procedure, a person may seek relief on the following grounds:

- (i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai'i;
- (ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;
- (iii) that the sentence is illegal;
- (iv) that there is newly discovered evidence; or
- (v) any ground which is a basis for collateral attack on the judgment.

The department is aware that newly discovered evidence may come up in prostitution cases, and even if it was known to the petitioner and it was not raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding, the petitioner can prove the existence of extraordinary circumstances to justify the petitioner's failure to raise the issue.

Moreover, a petitioner who was under “duress” to perform prostitution--where such duress continued throughout the court proceedings--has a strong basis for a collateral attack on the judgment. In the interest of justice, the Department of the Prosecuting Attorney of the City and County of Honolulu is open to hearing such issues in a Rule 40 hearing.

To date, our department has not heard of any situation where a victim of trafficking or other forms of forced prostitution have been precluded from using Rule 40 of the Hawaii Rules of Penal Procedure. We have made previous requests for advocates to send us case examples, but have not received any yet.

For these reasons, we recommend S.B. 2576, S.D. 1 be deferred by the committee because of the problems we mentioned in the bill, and Rule 40 of the Hawaii Rules of Penal Procedure is currently available for persons who seek relief such as discharging a case.

However, if the committee intends to pass this bill, our department would like to amend the bill with the following suggestions listed below:

First, we recommend deleting the following language in S.B. 2576, S.D.1 that is located on page 3, lines 1 to 8:

“(4) Official documentation of the defendant's status as a victim of trafficking or a victim of a severe form of trafficking from a federal, state, or local law enforcement agency shall create a presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking or a victim of a severe form of trafficking, but shall not be required for granting a petition under this subsection.”

Also, we recommend replacing the language “vacate judgment” with “discharge judgment” throughout the bill.

Finally, we recommend including language requiring the prosecuting attorney of the appropriate jurisdiction to sign and consent to the motion to discharge the conviction.

We have expressed our willingness to work with advocates on this important issue and will continue to do so. Thank you for the opportunity to testify.



The PACIFIC ALLIANCE
to STOP SLAVERY

DATE: March 12, 2012

ATTN: COMMITTEE ON HUMAN SERVICES

Rep. John M. Mizuno, Chair
Rep. Jo Jordan, Vice Chair
Rep. Della Au Belatti
Rep. Jessica Wooley
Rep. Faye P. Hanohano
Rep. Ryan I. Yamane
Rep. Chris Lee
Rep. Corinne W.L. Ching
Rep. Dee Morikawa
Rep. Kymberly Marcos Pine

DATE: Thursday, March 15, 2012

TIME: 10:30am

PLACE: Conference Room 329, State Capitol, 415 South Beretania Street

RE: TESTIMONY IN SUPPORT OF SB2576 SD1 - RELATING TO PROSTITUTION

Dear Committee on Human Services:

The Pacific Alliance to Stop Slavery (PASS) is in strong support of SD 2576 SD1. PASS serves victims of Human Trafficking for sex or labor in the state of Hawaii and has a support base of over 7000 persons.

This bill will allow survivors who have been intimidated, forced, or defrauded into prostitution to file motions to petition the court to vacate convictions of prostitution offenses suffered while in servitude under their pimp/traffickers. Passing this bill into law is simply the right thing to do.

Victims of sex-trafficking, when rehabilitated and ready to enter back into society, face serious repercussions, societal bias, shame, sexual harassment and other debilitating factors when having to divulge prostitution on their records when they were held in sexual slavery against their will. They are the victims not the criminals.

We respectfully disagree with the Prosecutor's Office that the existing Rule 40 is an effective alternative to vacating convictions. Many factors prohibit Rule 40 from allowing victims of sex-trafficking or promoting prostitution in the first degree to access the justice they deserve. One example is that convicted victims must apply with the Prosecutor's office for this ability to expunge their records and not rely on a higher judicial power. Additionally expungement of a conviction greatly differs from a vacating of conviction. Victims are not criminals whose pass



The PACIFIC ALLIANCE
to STOP SLAVERY

“crimes” must be expunged or pardoned. They are victims who often are re-victimized through our system which misidentifies them as somehow complicit with their own criminal exploitation. As such, these victims deserve vacating of any conviction as a result of this systemic misidentification.

Thank you very much for hearing this measure.

Sincerely,

Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery



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

TESTIMONY FOR SENATE BILL 2576, SD1, RELATING TO PROSTITUTION

House Committee on Human Services
Hon. John M. Mizuno, Chair
Hon. Jo Jordan, Vice Chair

Thursday, March 15, 2012, 10:30 AM
State Capitol, Conference Room 329

Honorable Chair Mizuno and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in support, with proposed amendments for SB 2576, SD1, relating to prostitution.

Last year, lawmakers passed HB 141 and HB 240, the former of which outlawed labor trafficking in the islands and the latter of which strengthened existing anti-prostitution laws by expanding witness protection for victims and targeting repeat offenders, particularly pimps and johns. Both bills were important steps in rectifying Hawaii's poor image and record with regard to anti-trafficking statutes. Importantly, these new laws focus on demand for labor and sex trafficking, signaling our state's move toward combating those most responsible for trafficking violations—pimps, johns, owners and managers of prostitution houses, and traffickers themselves—while protecting those who are most vulnerable.

The IMUAlliance lauds the State Legislature's efforts, last session. At the same time, we call upon lawmakers to continue the fight against human trafficking by hearing and advancing bills that increase services afforded to victims. To that end, the IMUAlliance strongly supports the enactment of "vacating convictions" legislation authorizing a person convicted of committing the offense of prostitution to file a motion vacating an adverse judgement. Disclosure of criminal convictions, including misdemeanor convictions, is often required for employment and housing applications. Since victims of sex trafficking and coerced prostitution are acting against their will—effectively, in a condition of slavery—they should not be held accountable for their actions in a manner that could prevent the obtainment of stable residency or entry into and matriculation through the workforce, both of which are required for successful recovery from involuntary sexual servitude.

That said, we feel that the following technical amendments would strengthen the measure. First, we encourage your committee to revise Section 2, subsection (7)(a) to read,

“promoting prostitution under 712-1202 or 712-1203.” Second, we urge you to revise Section 2, subsection (7)(b) to read, “a person who pays agrees to pay, or offers to pay a fee to another to engage in sexual conduct.”

Again, the IMUAlliance thanks you for your hard work to stem human trafficking on our shores. Room for improvement remains, however, and we feel that the measure in question, with minor amendments, will consecrate last year's momentum into a concerted movement. Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

Testimony for HUS 3/15/2012 10:30:00 AM SB2576

Conference room: 329
Testifier position: Support
Testifier will be present: Yes
Submitted by: Tana-Lee Rebhan-Kang
Organization: Individual
E-mail: tanalee08@yahoo.com
Submitted on: 3/13/2012

Comments:

Thank you for holding a hearing on this important bill.

I am in support of this bill as per the testimony presented by Kathryn Xian of Pacific Alliance to Stop Slavery (PASS) and Kris Coffield of Imua Alliance.

Aloha,

Please pass the following to help protect and support those in need.

- **SB2123 SD2** (Human Trafficking Task Force for Services)
- **SB2576 SD1** (Vacating Convictions)
- **SB2579 SD2** (Safe Harbor for Child Victims)

Mahalo,
Minda Goodman

Committee on Human Services

DATE: Thursday, March 15, 2012

TIME: 10:30 AM

PLACE: CONFERENCE RM 329

STATE CAPITOL

415 S. BERETANIA ST

MEASURE: SB2576 SD1

March 14, 2012

Dear Committee on Human Services:

My name is Veronica Garcia and I am a volunteer with the Pacific Alliance to Stop Slavery, the only active agency in Hawaii to assist victims of domestic trafficking. I strongly urge you to support SB 2576 SD1 that authorizes a person convicted of committing the offense of prostitution to file a motion to vacate the judgment under certain circumstances and establishes the procedures for the motion to vacate. This bill is explicit in who may file a motion to vacate her conviction and only allows for those to file the motion if they are a victim of promoting prostitution in the first degree or a severe form of trafficking. The bill is drafted very well and because it is specific in its language, there is almost no room for defendants who are not considered forced into sexual exploitation to file to vacate their offenses. This is also augmented by having official documentation by law enforcement, though it is not necessary.

Please consider the myriad of challenges victims of forced prostitution/trafficking face when beginning the arduous process of recovery. The majority of traffickers and recruiters responsible for the victim's exploitation are never convicted and brought to justice. This bill, if passed, could monumentally alleviate a victim's pain and suffering by having a societal stigma lifted and equal opportunity for job and housing applications. This is not a controversial bill. It is one that is necessary and overdue and one crucial step in creating justice for the victims of one of the most clandestine and destructive crimes.

Thank you for the opportunity to share my testimony with you.

Sincerely,

Veronica Garcia