

SB2576
TESTIMONY



Office of the Public Defender State of Hawaii



Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor

February 14, 2012, 9:30 a.m.

RE: S.B. 2576: Relating To Prostitution

Chair Hee and Members of the Committee:

The Office of the Public Defender supports the intent of S.B. 2576, but has some concerns about the implementation of such a law.

Many women engage in acts of prostitution due to their vulnerability as result of their youth, family situation and/or substance abuse. Those individuals who were forced into engaging in prostitution should be encouraged to leave the profession, and the ability to clear their record would help them to further their educational and employment goals, as well as wipe their record (psychologically) clean.

We have a few questions and concerns about the language in this measure. What constitutes a reasonable time period? Due to space and manpower limitations, our office keeps our files for a limited time period. We do not have the capability to keep files for an extended period of time. Who determines whether an attorney, government agency, treatment professional, or other specified individuals and/or organizations are qualified to provide documentation of a person's status as a victim of trafficking? Who files the motion on behalf of the former prostitute?

We find this measure to be procedurally vague. We also believe that this committee should all women (and men) who leave a life of prostitution who would not be able to prove that they were forced or coerced into prostitution. We suggest that this issue be referred to an inter-agency committee or task force to address the expungement of prostitution convictions for individuals who have left the profession. We thank you for the opportunity to testify on this measure

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 CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai'i**

Tuesday, February 14, 2012

RE: S.B. 2576; RELATING TO PROSTITUTION.

Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony expressing strong concerns regarding S.B. 2576 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. 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.

In particular, our Department has the following concerns with S.B. 2576: Official documentation of the person's status as a victim of trafficking can be done by an extremely broad number of persons or organizations, such as a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other health professional from whom the person has sought services; each of these sources presents considerable potential for abuse. Further, it appears that even one such document would automatically create a presumption that the person's participation in prostitution was a result of having been a victim of trafficking. We also note that the official documentation is not required for the granting of a petition under this bill. Lastly, under this bill the court may take additional action as is appropriate in the circumstances or as justice requires. This language is too broad. Rather, the court should enter an appropriate order with respect to the judgment or sentence in the former proceeding.

For these reasons, we recommend S.B. 2576 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. 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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



PETER B. CARLISLE
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE **JM-TA**

February 14, 2012

The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. 2576, Relating to Prostitution

I am John McEntire, Major of the Narcotics/Vice Division of the Honolulu Police Department.

The Honolulu Police Department opposes Senate Bill No. 2576, Relating to Prostitution, as written.

The bill allows anyone convicted of prostitution and other related offenses to file a motion to vacate the conviction based on participation which was the result of the person having been a "victim" of section 712-1202, Promoting Prostitution in the First Degree, Hawaii Revised Statutes, or section 712-1203, Promoting Prostitution in the Second Degree.

Because section 712-1203 does not include the elements of force, threat, fraud, or intimidation, the inclusion of this section would allow anyone convicted of prostitution who had a "pimp" or was otherwise assisted by someone who advances or profits from prostitution to file the motion.

We do not oppose the bill as it applies to those whose participation in the offense is the result of victimization by section 712-1202 or by any other form of force, threat, fraud, or intimidation.

The Honolulu Police Department urges you to oppose Senate Bill No. 2576, Relating to Prostitution.

The Honorable Clayton Hee, Chair
and Members
Page 2
February 14, 2012

Thank you for the opportunity to testify.

Sincerely,



JOHN McENTIRE, Major
Narcotics/Vice Division

APPROVED:

Asst Chief [Signature]

LOUIS M. KEALOHA
Chief of Police



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

TESTIMONY FOR SENATE BILL 2576, RELATING TO PROSTITUTION

Senate Committee on Judiciary and Labor

Hon. Clayton Hee, Chair

Hon. Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 14, 2012, 9:30 AM

State Capitol, Conference Room 016

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the IMU Alliance, 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, 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 IMU Alliance 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 IMU Alliance 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 amendment would improve the proposed measure.

Section 2, §712- (1)(a) of the bill, as drafted, currently applies vacation of judgement to persons convicted of a violation of prostitution in the second degree, under HRS §712-1203. In principle, this could broaden the scope of the bill to include voluntary, independent sex workers. To keep the scope of the bill narrowly focused on those forced or coerced into committing involuntary acts of prostitution, we encourage your committee to revise this section to read: “Promoting prostitution in the first degree under section 712-1202 ~~or promoting prostitution in the second degree under section 712-1203.~~”

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 a minor amendment, 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

Harm Reduction Hawaii
c/o 1658 Liholiho St #205
Honolulu, HI 96822

To the Senate Committee on Judiciary and Labor
Regarding SB 2576 relating to prostitution
To be heard Tuesday, February 14, 2012, at 9:30AM in conference room 016

Dear Committee Members:

We support the intent of this bill, but offer two different amended versions. We feel it is unfair and unreasonable to insert “victimization” language into a bill that should rightly be aimed at helping persons convicted under our prostitution statutes get on with their lives. Testimony in the House on the companion bill, HB 2235, indicated strong opposition from the AG, OPA, and others in regards to the complicated problems that would arise through the adoption of this program.

If the committee wishes to make it easier for persons to exit the sex industry and get on with their lives the simpler way to address the long term problems caused by a criminal record would be to automatically void convictions after two years. This would eliminate technical problems that have been objected to in the House version. Some in law enforcement may object, but I hope the committee will keep in mind that these statutes are petty misdemeanor offenses to begin with and no one is suggesting any great harm will be done by automatically removing them.

Proponents of this bill seem far more interested in promoting themselves and their moral agenda against prostitution than in helping working prostitutes. They actually asked the house to restrict the cohort of persons who could have their records cleared up to a smaller group than the house had suggested in its bill. They would happily leave all sex workers with a conviction out of the program unless they were willing to come up with some horror story of victimization. Their agency could then “attest” to this. They are a self serving bunch and should not be paid attention to. Their approach would leave out the transgendered community who are disproportionately involved in prostitution and at the bottom of a social ladder. True, they could make up a victim story and the proponents could then use this as “proof” that they are being controlled by “traffickers”, but I feel it is much more important for people to be encouraged to tell the truth.

I have spoken to people in the Downtown community who are concerned about prostitution and they are open to a decriminalized model using zoning. I offer a second possible amendment that would deal with both sex workers and community concerns. The legislature needs to understand that the community has issues with prostitution as well. Not one bill aimed at addressing those concerns in the last twenty years has bothered to give any rational thought to

how these concerns can actually be addressed. Instead more failed “lock ‘em up” bills keep coming along.

Sincerely:

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

Tracy Ryan
Executive Director, Harm Reduction Hawaii

(808) 534-1846

tracyar@hawaiiantel.net

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: nsharma@hawaii.edu
Subject: Testimony for SB2576 on 2/14/2012 9:30:00 AM
Date: Friday, February 10, 2012 8:55:18 AM

Testimony for JDL 2/14/2012 9:30:00 AM SB2576

Conference room: 016
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Dr. Nandita Sharma
Organization: Individual
E-mail: nsharma@hawaii.edu
Submitted on: 2/10/2012

Comments:

In regards to the content of this bill, all convictions under the petty misdemeanor sections of prostitution law should be eligible to be voided, not just those where people assert they have been victims of sex trafficking.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: nsharma@hawaii.edu
Subject: Testimony for SB2576 on 2/14/2012 9:30:00 AM
Date: Sunday, February 12, 2012 11:02:31 AM

Testimony for JDL 2/14/2012 9:30:00 AM SB2576

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Dr. Nandita Sharma
Organization: Individual
E-mail: nsharma@hawaii.edu
Submitted on: 2/12/2012

Comments:

I support this bill. However, only if there are amendments to eliminate the whole qualification procedure and simply say that all convictions under the noted statutes shall be cleared from the record within a year. Better yet, there ought to be an amendment to decriminalize prostitution.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: morganthursday@yahoo.com
Subject: Testimony for SB2576 on 2/14/2012 9:30:00 AM
Date: Sunday, February 12, 2012 5:49:40 PM

Testimony for JDL 2/14/2012 9:30:00 AM SB2576

Conference room: 016
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Morgan Evans
Organization: Individual
E-mail: morganthursday@yahoo.com
Submitted on: 2/12/2012

Comments:

Aloha, I am writing in support of SB2576 but it needs to be more inclusive. I strongly support that it be changed so that all convictions under the petty misdemeanor sections of prostitution law should be eligible to be voided, not just those where people assert they have been victims of sex trafficking. This bill in its current form does not permit those without pimps such as transgendered persons to qualify.