



POLARIS PROJECT

FOR A WORLD WITHOUT SLAVERY

TESTIMONY IN SUPPORT OF SB 2576 PRESENTED TO THE JUDICIARY AND LABOR COMMITTEE FEBRUARY 14, 2012

Mr. Chairman and members of the Judiciary and Labor Committee:

On behalf of the more than 40,000 supporters of Polaris Project thank you for providing us with an opportunity to speak about the crime of human trafficking. My name is James Dold and I am Policy Counsel for the Polaris Project.

Polaris Project is a leading national organization dedicated to combating human trafficking within the United States by serving victims, raising public awareness, and engaging in policy advocacy at both the State and Federal level. We have been selected by the U.S. Department of Health and Human Services to be its training and technical assistance provider and have operated the National Human Trafficking Resource Center and Hotline since December 2007. During this time our human trafficking call specialists have fielded over 45,000 calls from across the nation. We have also provided victim services to more than 450 survivors of human trafficking since 2004 in our D.C. and New Jersey client service offices.

I would like to take a moment to specifically thank Senator Chun Oakland for introducing SB 2576. We greatly appreciate the Hawaii Legislature's concern for and willingness to address the crime of human trafficking, a grave violation of human rights.

Human Trafficking National and Global Perspective

Human trafficking is the modern-day slavery, and it is one of the fastest growing criminal industries in the world, consisting of the subjugation, recruitment, harboring, or transportation of people for the purpose of forced labor or services or commercial sexual exploitation. Victims of human trafficking in the United States include children and adults, as well as foreign nationals and U.S. citizens.

The United States Government estimates that between 600,000 to 800,000 people are trafficked across international borders for forced labor and sexual servitude each year, 70 percent of whom are women and over 50 percent are children. This does not include those trafficked within their own countries, which is as high as 2 to 4 million

persons. Of those trafficked across international borders, up to over 60,000 individuals at a minimum are trafficked into the United States each year. These numbers suggest that the actual figure for the scope of human trafficking is much higher. Experts also estimate that between 100,000 to 300,000 American children are at high risk of being trafficked within the United States for sexual exploitation each year. The State Department estimates that there are roughly 12.3 million slaves in the world today, more than at any other time in the history of the world. Another estimate, by renowned human trafficking expert Kevin Bales, puts the total number of people trapped in modern-day slavery at an estimated 27 million. Most victims suffer a horrific life in which they are repeatedly beaten, raped, starved, chained or locked up, and psychologically tortured. For many, the only way of leaving is by means of escape, rescue, suicide, or murder.

There have been trafficking investigations in all 50 States and incidence of trafficking have been reported in 91 U.S. cities. Human trafficking is a crime that thrives in secrecy and is fed by the insatiable greed of those who see human beings as a commodity to be profited off of. Globally, human trafficking generates over \$32 billion in annual revenue.

In the United States, the crime of human trafficking is so profitable that in recent years we have seen the emergence of organized criminal syndicates and street level gangs implicated in sex trafficking rings. I cannot impress upon members of the Human Services Committee enough, that human trafficking is alive and well in the United States and it affects every corner of our nation. It is also prevalent in Hawaii.

Human Trafficking in Hawaii

Every day we receive calls through the National Human Trafficking Resource Center referencing situations where women and young children are subjected to violence, coercion, and fraud in order for their pimps or traffickers to profit. While we do not know how many victims there are in Hawaii, we do know that the National Hotline has received calls referencing trafficking situations in cities throughout the state of Hawaii. Some of these calls were classified as tips that human trafficking was occurring in different cities, including Honolulu, Hilo, and Wakiki Beach.

Human trafficking is a scourge that preys on the most vulnerable among us and exploits those who are in need of protection. And while it may be easy at times to pretend that human trafficking is not a crime that affects every day Americans, I can tell you with absolute certainty that it does. It is a crime of absolute evil.

SB 2576 – Vacating Convictions for Sex Trafficking Victims

SB 2576 is a critical component of Hawaii enacting a comprehensive legal framework to combat human trafficking. It will allow victims of human trafficking who were forced into prostitution to file a motion to have unjust convictions for prostitution vacated from their record.

Often times, victims of sex trafficking are held in conditions of slavery for months or even years. During that time they are likely to have come into contact with law enforcement and be arrested for prostitution-related offenses. Because they are not always identifiable once picked up off the street, sometimes these victims can go through the system and be convicted or even plead guilty to having engaged in prostitution. These convictions inhibit the ability of these victims to move forward with their lives because they can no longer can apply for certain jobs, loans, or go back to school as a result of the stigma that is attached to having to report a conviction for prostitution. This bill will permit these victims to seek redress in Hawaii's courts and ultimately allow them a clean slate once they have been rescued from their trafficking situation.

Polaris Project initially began working on these Vacating Convictions bills as we came to realize that the victims of trafficking we were serving in the D.C., Virginia, and Maryland areas had difficulty seeking employment or going back to school as a direct result of these convictions. This is a new, innovative tool we have to enable victims of human trafficking to move forward with their lives once they've been rescued. New York was the first state to pass this legislation in 2010 and it received strong support by the legal community. In 2011, Polaris Project helped to successfully pass additional laws in Illinois, Maryland, and Nevada. In 2012, several states have similar bills pending.

The need for this legislation cannot be over stated as we seek to create a comprehensive, victim-centered, legal framework to combat human trafficking in the great state of Hawaii. The 2007 Trafficking In Persons Report put out by the U.S. State Department endorsed this victim-centered approach that is captured by SB 2576:

“Confirmed trafficking victims should not be punished for crimes that are a direct result of being trafficked—such as not holding proper immigration documents or violation of prostitution, labor, or begging statutes. Trafficking victims should not be detained in criminal detention facilities, except in extreme circumstances. They should be treated as victims.”

It is our hope that the House Judiciary Committee feels the same way about victims who have been forced into prostitution. That we should seek to allow those victims

redress for unjust convictions rendered against them and endeavor to ensure that their transition to living a full and healthy life is met with understanding and compassion toward the situation and horrific crimes to which they have survived.

Attorney General Concerns

Polaris Project has spoken with the Attorney General's Office and is aware of their concerns with this legislation. As a result, we have proposed several amendments that we hope will alleviate these concerns. First, we proposed amendments that would limit the applicability of this remedy to victims of promoting prostitution in the first degree and victims of sex trafficking where the elements of force, fraud, or coercion are present. Second, we proposed amendments that would limit the evidence that create a presumption that a petitioner was a victim of human trafficking to "official documentation from a federal, state, or local law enforcement agency."

We believe that our amendments adequately address many of the concerns raised by the Attorney General, as similar language has been adopted in Nevada, Illinois, and New York. Some of the language has been left intentionally broad so that judges can make the ultimate determination in granting a motion under this section. For instance, in *New York vs. G.M.*, 2011 NY Slip Op 21176 – NY, a case in which the District Attorney of Queens joined the petitioner in her motion to vacate her conviction, the petitioner had been a victim of trafficking in the late 1990's, but was unable to seek redress until this law was passed. Thus, the need to emphasize a "reasonable period of time" after the person ceases to be a victim of trafficking, taking into consideration the petitioner's safety, as well as the safety of others, is an important component of the bill especially for those persons who were victimized several years ago.

In the *G.M.* case, the petitioner had been beaten and permanently disfigured by her trafficker, raped repeatedly, and imprisoned against her will. Because her trafficker was also her husband and she was a foreign national from the Dominican Republic, she was vulnerable to becoming a sex trafficking victim and going through the criminal justice system undetected as a victim of a crime. Indeed, the factual background of her case stated:

"He exercised complete control over her, physically and psychologically, such that her every move was tracked by [DS] and she was not allowed to leave the room or apartment without him."

This type of control is typical in domestic pimp controlled sex trafficking where the pimp or trafficker controls every aspect of the victim's life, as indicated by notorious pimp Iceberg Slim:

“Fast, I got to find out the secrets of pimping. I really want to control the whole whore. I want to be the boss of her life, even her thoughts. I got to con them that Lincoln never freed the slaves.”

-Ice Berg Slim (pimp/sex trafficker)

This is the mentality of pimps/traffickers and the reality facing victims of sex trafficking. It is likely that in many instances victims of sex trafficking will go undetected by law enforcement and prosecutors because they don't self-identify as victims and identify more with their trafficker. In these instances, where victims of sex trafficking are in fact slaves as a result of violence, isolation, and psychological and emotional manipulation that their traffickers use to control them, this remedy is absolutely paramount to allowing a victim to be able to move on with their life after they have been rescued or escape.

We would also highlight the fact that if our amendments are adopted, a presumption would only be created where a law enforcement agency has provided official documentation of the victim's status as a victim of trafficking. Furthermore, the ultimate determination of whether to grant a motion would still rest with the judge and the victim-petitioner would have the burden of proof. We believe that these changes address the Attorney General's concern and that this bill is essential to victims of sex trafficking in Hawaii.

Support SB 2576

Therefore, we strongly ask you and other members of the Committee to vote favorably upon SB 2576 and bring justice to victims who have been denied it. If you should have any questions, please feel free to call me at (202) 745-1001, ext. 132. Mahalo.

-James L. Dold, J.D.
February 14, 2012

PROPOSED AMENDMENTS TO SB 2576

- (1) On page 2, line 2, strike the following after “712-1202”:

~~“or promoting prostitution in the second degree under section 712-1203”~~

- (2) On page 2, line 6, strike the following after “(c)”:

~~“A crime as set forth in title 18 United States Code section 2422, section 2423(a), or section 2425.”~~

- (3) On page 3, line 6, strike the following after “local”:

~~“government”~~

And, insert the following:

“law enforcement”

- (4) On page 3, line 6, strike the following after “agency”:

~~“or a sworn statement establishing the person’s status as a victim of trafficking or a victim of a severe form of trafficking from 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 to address the effects of having been trafficked”~~

- (5) On page 4, line 12, strike the following after “local”:

~~“government”~~

And, insert the following:

“law enforcement”

- (6) On page 4, line 12, strike the following after “agency”:

~~“, a victim services organization that has served the person as a victim of trafficking, an attorney, a member of the clergy, or a medical or health care professional”~~

SB 2576 Should Now Read:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to authorize a person convicted of committing the offense of prostitution to file a motion to vacate the judgment under certain circumstances and to establish procedures for the motion to vacate.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Prostitution; motion to vacate judgment. (1) A person convicted of committing the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206, or street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207, may file a motion to vacate the conviction if the person's participation in the offense was the result of the person having been a victim of:

(a) Promoting prostitution in the first degree under section 712-1202;

(b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102(13).

(2) A motion filed under this section shall:

(a) Be in writing;

(b) Be made within a reasonable period of time after the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the person, family members of the person, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section; and

(c) Describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this section.

(3) The court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (2); provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

(4) Official documentation of the person'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.

(5) If the court grants a motion filed under this section, the court shall vacate the conviction and dismiss the accusatory pleading, and may take additional action as is appropriate in the circumstances or as justice requires.

(6) A person making a motion to vacate pursuant to this section has the burden of proof by a preponderance of the evidence.

(7) This section shall not apply to a motion to vacate a conviction under this chapter for:

(a) Promoting prostitution; or

(b) An offense that involves offering a fee to engage in sexual conduct with another person.

(8) For the purposes of this section:

"Official documentation" includes a police report, court record, or affidavit generated from a federal, state, or local law enforcement agency.

"Victim of trafficking" and "victim of a severe form of trafficking" shall have the same meaning as in title 22 United States Code section 7102."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2050.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 2576, RELATING TO PROSTITUTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 14, 2012 **TIME:** 9:30 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") appreciates the intent of this bill in trying to protect people forced into prostitution, but must oppose it due to significant legal concerns.

The purpose of this bill is to authorize a person convicted of a prostitution-related offense to file a motion to vacate the judgment of conviction under certain circumstances. It also establishes procedures for the motion to vacate judgment.

The criminal justice system already has in place processes that allow convicted defendants to appropriately challenge judgments of conviction. A convicted defendant has a right to appeal the conviction to an appellate court and challenge the lower court proceedings. After that, a convicted defendant also has the ability to challenge a conviction in a post-conviction relief proceeding, such as the one set up by Rule 40 of the Hawaii Rules of Penal Procedure. These processes have been developed and established to ensure fairness and justice for all in the criminal justice system. The process in this bill, however, to vacate prostitution convictions, is inconsistent with our criminal justice system and invites misuse and abuse.

Although the criminal investigation, prosecution, and court proceedings may have all been conducted appropriately and in compliance with the law, and the defendant treated fairly, this bill proposes that, some time after all of that takes place, when the defendant has no basis to challenge the conviction under existing law, the defendant should still be allowed to come back to court to vacate the judgment of conviction for the petty misdemeanor prostitution offense.

This bill attempts to create a special post-conviction relief process just for a defendant convicted of a prostitution offense, to vacate the judgment of conviction when: (1) the judgment of conviction was not obtained in violation of the constitution of the United States or of the State of Hawaii; (2) there are no other legal grounds to challenge and overturn the judgment; (3) the investigation and prosecution of the crime, and the court actions and decisions all complied with the law; and (4) the defendant was treated fairly and justly throughout the criminal justice process and all of defendant's rights and privileges were protected.

The proposed justification for this special relief is that "the defendant's participation in the offense was the result of the person having been a victim" of promoting prostitution or a trafficking offense. The implication is that the defendant committed the offense under duress and, therefore, should not be held responsible for the crime.

This is a scenario that could result from this bill. A defendant is arrested for the crime of prostitution and taken into police custody. During the course of the criminal investigation, the defendant has an opportunity to tell the police investigator that the defendant was being forced to engage in prostitution by another person. If the defendant discloses this information during the investigation and the investigator is able to confirm the information, the defendant would likely be treated as a victim and witness in a case against the one promoting the prostitution activity. The defendant would not be prosecuted for prostitution. Under section 702-231, Hawaii Revised Statutes (HRS), duress is a defense to a penal charge. If the defendant does not disclose the information, then the investigator would have no reason to treat the defendant as a victim or witness, and would not be able to investigate the promoting prostitution offense. Defendant would be investigated and prosecuted for the prostitution activity, and ultimately convicted based on evidence that proves the commission of the offense beyond a reasonable doubt. Possibly a year or more later, defendant files a motion to vacate the conviction alleging that defendant participated in the prostitution conduct because defendant was forced to do so by somebody. Defendant does not even name the person involved but alleges. Defendant might also attach to the motion to vacate judgment sworn statements from a staff member of a victim services organization and defendant's own attorney, which state that defendant informed them that defendant was a victim of trafficking. The sworn statements may also include statements given to the declarants by defendant about the alleged trafficking conduct. As provided by this bill,

these sworn statements create a presumption that the defendant's participation in the prostitution offense was a result of being a victim of trafficking. The prosecutor and investigator, having had no opportunity to investigate and corroborate defendant's allegations of forced prostitution or trafficking at the time of defendant's arrest and prosecution because of defendant's failure to disclose any of these allegations at that time, have no evidence to rebut defendant's allegations or the legal presumption created by the bill. That being the case, the court must grant the motion to vacate the judgment and dismiss the matter.

The prosecution, despite following all the laws and procedure, and proving defendant's guilt beyond a reasonable doubt, is left with no ability to challenge defendant's late allegations and defend the judgment of conviction. The process is unfair, unjust, and invites misuse and abuse.

The bill provides that a defendant's judgment of conviction for a prostitution offense may be vacated if:

[T]he person's participation in the offense was the result of the person having been a victim of:

- (a) Promoting prostitution in the first degree under section 712-1202 or promoting prostitution in the second degree under section 712-1203;
- (b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102 (13); or
- (c) A crime as set forth in title 18 United States Code section 2422, section 2423(a), or section 2425.

The bill is not clear about what would be required to prove that the defendant was a victim of one of these specified crimes. It appears that the bill simply requires the defendant, a year or more after conviction, to allege that the defendant was forced to engage in prostitution by another person, an allegation that the prosecution could not contest. The bill does not appear to require much more than a statement from defendant. It does not appear to require that a prosecution of one of these specified crimes need have taken place, that someone was convicted of one of these crimes, and that the person's victimization, at the time of the conduct that resulted in the prostitution conviction, was brought out and proven in the prosecution of a specified crime. It is not even clear that the identity of the alleged perpetrator of the promoting prostitution or trafficking offense needs to be disclosed or established.

The Department also has concerns about some of the specified crimes. Promoting prostitution in the second degree, under section 712-1203, HRS, unlike promoting prostitution in the first degree, does not require any force, threat, or intimidation to compel or induce a person to engage in prostitution. It simply requires that the person knowingly advance or profit from prostitution. The offense does not establish the prostitute as a victim.

Another specified crime provision reads:

A crime as set forth in title 18 United States Code section 2422, section 2423(a), or section 2425.

Section 2422 prohibits a person from knowingly persuading, inducing, enticing, or coercing anyone to travel in interstate or foreign commerce to engage in prostitution. The acts of persuading, inducing, or enticing another to engage in certain conduct are not indicative of any coerced or forced prostitution. An offense under this section may also not have a victim.

Sections 2423(a) and section 2425 both appear to prohibit conduct involving promoting prostitution or sexual activity of a minor. Because the potential victims for these offenses appear to be minors, these offenses do not appear relevant to the provisions of this bill, because under existing law, minors in these cases are never prosecuted. Defendants convicted of prostitution offenses who are seeking to get their judgments of conviction vacated could not have been minors at the time of the commission of their offenses. If they were minors, they would have been petitioned into Family Court and would have been adjudicated as juveniles, not convicted of any crimes.

On page 2, at lines 10-17, the bill requires that the motion to vacate judgment of conviction:

Be made within a reasonable period of time after the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the person, family members of the person, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section[.] [Emphases added.]

This provision contains a significant amount of vague and ambiguous wording. A “reasonable period” subject to “reasonable concerns” or “other reasons consistent with the purpose of this section,” is unclear. A “reasonable period of time after the person ceases to be a victim” is also vague and ambiguous. It is unclear when a person ceases to be a victim of prostitution or trafficking. It is unclear, if the person leaves the alleged trafficker, but continues to engage in

prostitution on their own or while working for someone else, whether the person ceased to be a victim. It is unclear, if the person who engaged in the promoting prostitution activity stopped using any force or coercion on the person, and the person continued to engage in prostitution activity, whether the person ceased to be a victim.

On page 3, at lines 16-19, the bill provides:

If the court grants a motion filed under this section, the court shall vacate the conviction and dismiss the accusatory pleading, and may take additional action as is appropriate in the circumstances or as justice requires. [Emphases added.]

The phrase, “may take additional action as is appropriate in the circumstances or as justice requires,” is also of concern. The intended purpose of this provision is unclear. If the court has granted defendant’s motion, and vacated the conviction and dismissed the case, it is unclear what other action would be needed.

For the foregoing reasons, the Department respectfully requests that this bill be held.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: ashliana1@hotmail.com
Subject: Testimony for SB2576 on 2/14/2012 9:30:00 AM
Date: Monday, February 13, 2012 2:33:08 PM

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

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Ashliana
Organization: Individual
E-mail: ashliana1@hotmail.com
Submitted on: 2/13/2012

Comments:
Aloha Clayton Hee,

As a Native Hawaiian/Transgender Advocate for disadvantaged trans persons of Hawaii (statewide), I am writing to you in support of bill SB2576. However, I am disappointed at the fact that bill SB 2576 does not include transgenders persons whatsoever. And therefore would like to see it amended to allow all sexworkers including transgenders recieve the same equal rights as to those individuals who are victimized through trafficking. Mahalo for your time.

Ashliana Hawelu



DATE: February 13, 2012

ATTN: SENATE COMMITTEE ON JUDICIARY AND LABOR

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

DATE: Tuesday, February 14, 2012

TIME: 9:30 A.M.

PLACE: Conference Room 016, State Capitol, 415 South Beretania Street

RE: TESTIMONY IN SUPPORT OF SB2576 WITH AMENDMENTS - RELATING TO
PROSTITUTION

Dear Committee on Judiciary and Labor:

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

PASS is in strong support of SB2576, which 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 urge you to support this much needed legislation and recommend the following amendment on page 2, 712-__, (1)(a) to read as follows:

“Promoting prostitution in the first degree under section 712-1202 ~~or promoting prostitution in the second degree under section 712-1203.~~”



The PACIFIC ALLIANCE
to STOP SLAVERY

Thank you very much for hearing this measure.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kathryn Xian', written in a cursive style.

Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery