

Honolulu, Hawaii

APR 03 2014

RE: H.B. No. 1926
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1926, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CRIME,"

begs leave to report as follows:

The purpose and intent of this measure is to strengthen laws
relating to prostitution. Specifically, this measure:

- (1) Deletes the conviction of promoting prostitution in the second degree from the class C felony offenses enumerated under the law relating to the sentencing of repeat offenders;
- (2) Adds the offenses of promoting prostitution in the first degree, promoting prostitution in the second degree, and solicitation of a minor for prostitution to the law relating to enhanced sentencing for repeat violent and sexual offenders;
- (3) Amends the definition of "sexual conduct" to include sadomasochistic abuse under the offense of prostitution;
- (4) Amends section 712-1209.1, Hawaii Revised Statutes, relating to the offense of solicitation of a minor for prostitution, to:



- (A) Clarify that a person eighteen years of age or older commits the offense if the person offers or agrees to pay a fee to a minor or to another person who represents that person's self as a minor to engage in sexual conduct;
 - (B) Increase the minimum fine imposed on a person convicted of the offense from \$2,000 to \$5,000;
 - (C) Add that the offense of solicitation of a minor for prostitution does not apply to a law enforcement officer acting in the course and scope of duties; and
 - (D) Establish that a defendant not knowing that the minor was under the age of eighteen is not a defense;
- (5) Amends the definition of "sexual offense" in section 846E-1, Hawaii Revised Statutes, to exempt a person convicted of the offense of solicitation of a minor for prostitution from registering as a sex offender if the perpetrator was not more than two years older than the minor at the time of the offense; and
- (6) Amends section 853-4(a), Hawaii Revised Statutes, which enumerates the offenses that are ineligible for deferred acceptance of guilty pleas and nolo contendere pleas to:
- (A) Repeal the offense of promoting prostitution in the first degree; and
 - (B) Add the offense of solicitation of a minor for prostitution.

Your Committee received testimony in support of this measure from the Hawaii State Commission on the Status of Women; Office of the Prosecuting Attorney, County of Hawaii; The Pacific Alliance to Stop Slavery; IMUAlliance; Rainbow Family 808; and fourteen individuals. Your Committee received testimony in opposition to this measure from the Office of the Public Defender and four individuals. Your Committee received comments on this measure from the Department of the Attorney General and two individuals.



Your Committee finds that in recent years, the Legislature has passed several laws combatting human trafficking in Hawaii, including enacting labor trafficking laws and increasing the penalties for the promotion and solicitation of prostitution. According to an ongoing study conducted by The Pacific Alliance to Stop Slavery and IMUAlliance, there are approximately one hundred twenty-five high risk sex trafficking establishments in Hawaii, which are predominately located on Oahu. This measure further strengthens the State's efforts in combatting sex trafficking.

Your Committee notes the concerns raised in the testimony submitted by the Office of the Public Defender regarding making the offense of solicitation of a minor for prostitution ineligible for a deferred acceptance of guilty plea and nolo contendere plea. The Office testified that if a person is required to register as a sex offender for committing the offense of solicitation of a minor for prostitution, that person should be eligible for deferred acceptance of guilty plea and nolo contendere plea because the sex offender registry laws affect the covered offender's private and professional life. While your Committee recognizes the potential ramifications of being a registered sex offender, your Committee disagrees that making a person convicted of solicitation of a minor for prostitution ineligible for deferred acceptance of guilty plea and nolo contendere plea in addition to requiring the person to register as a sex offender is overly burdensome in light of the convicted offense.

Your Committee further notes the concerns raised by The Pacific Alliance to Stop Slavery and IMUAlliance regarding the exemption provided to law enforcement officers from the offense of prostitution under section 712-1200, Hawaii Revised Statutes, if the law enforcement officers act in the course and scope of their duties. Your Committee recognizes that this exemption allows law enforcement officers to conduct undercover investigations. However, the IMUAlliance testified to incidents where law enforcement officers have abused their powers by engaging in sexual penetration in the course and scope of their duties. Your Committee also notes that this exemption has garnered extensive statewide and national media coverage. Your Committee believes that it is unnecessary for a law enforcement officer to engage in sexual intercourse in order to make an arrest for prostitution because it is the financial transaction that makes the act illegal under the offense of prostitution.

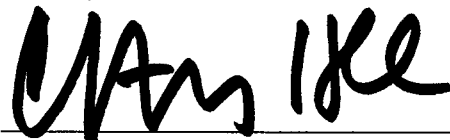
Your Committee has amended this measure by:



- (1) Amending section 712-1200, Hawaii Revised Statutes, relating to the offense of prostitution, to:
 - (A) Delete "sodomasochistic abuse" from the definition of "sexual conduct";
 - (B) Amend the exemption for law enforcement officers to clarify that law enforcement officers are not exempt if they engage in sexual penetration while acting in the course and scope of their duties; and
 - (C) Create a safe harbor provision for minors by establishing that minors will not be prosecuted for any prostitution and promoting prostitution offenses if the minor was less than eighteen years of age at the time of the offense and the prostitution offense is the minor's first and only prostitution offense;
- (2) Deleting the sex offender registration exemption for a person convicted of the offense of solicitation of a minor for prostitution if the perpetrator was not more than two years older than the minor at the time of the offense; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1926, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1926, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1926 HD1	JDL	3/28/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les				✓
SOLOMON, Malama				✓
SLOM, Sam				✓
TOTAL	4			3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes