



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2352, RELATING TO PROTECTION OF CHILDREN.

**BEFORE THE:**

SENATE COMMITTEES ON HUMAN SERVICES AND ON JUDICIARY

**DATE:** Wednesday, February 7, 2018 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 16

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Michelle M.L. Puu, Deputy Attorney General

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Chairs Green and Taniguchi and Members of the Committees:

The Department of the Attorney General supports the spirit of this bill while noting the following legal concerns.

Page 7, line 7, should include "(H)" to include the new proposed subparagraph on page 6, lines 15 to 20.

This bill proposes "strict liability" as to the minor's age (page 15, lines 13 to 15; page 15 to 16, lines 18 to 2; and page 16, lines 4-9). Such wording would be more appropriately placed in the Penal Liability portion of the Penal Code. [See section 702-207 or 702-12, Hawaii Revised Statutes (HRS)]. There are several areas of the Penal Code, Sexual Assault of a Minor for example [sections 707-730(b) & (c); 707-731(d), 707-732(b) & (c), 707-733(d), HRS] where the strict liability analysis applies. [See also: Continuous Sex Assault of a Minor, section 707-733.6, HRS; Promoting Child Abuse in the First Degree, section 707-750, HRS; Promoting Child Abuse in the Second Degree, section 707-751, HRS; Promoting Child Abuse in the Third Degree, section 707-752, HRS; Electronic Enticement of a Child in the First Degree, section 707-756, HRS; Electronic Enticement of a Child in the Second Degree, section 707-757, HRS; Indecent Electronic Display to a Child, section 707-759, HRS]. Inclusion of this wording in only the sex trafficking statutes may afford accused offenders the opportunity to contest whether strict liability applies to other offenses against minors. This strict liability

standard comes from caselaw. See State v. Buch, 83 Hawai'i 308 (1996). The Hawaii Supreme Court's analysis in Buch reviewed the legislative history on Sexual Offenses. Any subsequent statutory change on this issue could negate that reasoning.



## Office of the Public Defender State of Hawaii



### Testimony of the Office of the Public Defender, State of Hawaii to the Senate Committees on Human Services and Judiciary

February 7, 2018, 2:45 p.m.

S.B. No. 2352: RELATING TO THE HAWAII PENAL CODE

Chairs Green, Taniguchi and Members of the Committees:

While we understand the importance of protecting our children from sexual abuse, we believe the sanctions proposed in this measure are overly harsh. We believe that effective use of the laws we currently have in the books are adequate to address the concerns raised in this bill. Therefore, the Office of the Public Defender strongly opposes S.B. 2352.

This measure would permit the termination of parental rights for any parent of a child if that parent is convicted of sex crimes ranging from sex trafficking to the petty misdemeanor offense of prostitution. We do not believe mothers who engage in prostitution should have their parental rights terminated. Advocates for sex trafficking victims believe that most women who engage in prostitution were at some point trafficked, and force into the sex trade against their will. There are some advocates who believe that all women who engage in prostitution were trafficked. Many of these women have prostitution convictions, and some of them have children. We believe the termination of parental rights to be one of the harshest penalties and will affect mothers as well as fathers. It may also cause irreparable harm to the children who are removed from their parents.

Section 5 of this measure proposes to include the offenses of sex trafficking and solicitation of a minor for prostitution with offenses for which there is no statute of limitations. We do not agree with this proposal and would argue that there is no justification for its inclusion with offenses that have no statute of limitations. Currently under §701-108(6)(a), H.R.S. the statute of limitations does not begin to run until the minor turns eighteen. At that point, the prosecution would have six, five and three years to commence prosecution for class A, B and C felonies respectively. We believe the

tolling of the statute of limitations for minors is sufficient to balance the rights of victims with the rights of accused. While there are some who believe that an accused should not have any rights, provisions in the Hawaii and United States Constitution say otherwise.

Section 7 of this measure would elevate the penalty for promoting child abuse in the first degree from a class A felony to life imprisonment with the possibility for parole. We strongly disagree with this proposal. Promoting child abuse in the first degree is already a class A felony. A person convicted of this offense is not eligible for probation and must be sentenced to twenty years imprisonment. A life term should be reserved for the most heinous of all crimes. If the child abuser is being sentenced to multiple offenses, the court has the discretion to sentence him or her to serve the terms consecutively. Dr. Nassar, the former U.S. Olympics doctor was sentenced to consecutive prison terms, which due to its length, turned into a life term without possibility of parole.

We have serious problems with sections 10 & 11 of this measure. This measure would impose strict liability on a “John” who engages in prostitution with a minor and increase the penalty from a class C felony to a class A felony where the minor is under fourteen and a class B felony where the minor is under eighteen years of age.

We strongly oppose section 13 of this bill. As is apparent in the language on page 18 of this measure, the prosecution for solicitation of a minor borders on entrapment. A police officer, pretending to be a young girl, communicates with the suspect. Eventually, the parties agree to meet, and the suspect is arrested and charged. This offense is already a class B felony and is non-probational. We believe this penalty to be sufficient.

We strongly oppose S.B. 2352. Thank you for the opportunity to be heard on this matter.

**SB-2352**

Submitted on: 2/2/2018 3:13:34 PM

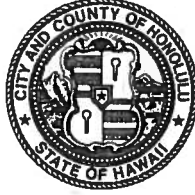
Testimony for HMS on 2/7/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Maui Police Department	Support	No

Comments:

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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SUSAN BALLARD  
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JOHN D. MCCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

OUR REFERENCE CT-TA

February 7, 2018

The Honorable Josh Green, Chair  
and Members  
Committee on Human Services  
The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chairs Green and Taniguchi and Members:

SUBJECT: Senate Bill No. 2352, Relating to Protection of Children

I am Major Calvin Tong of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2352, Relating to Protection of Children, as this bill is consistent with the HPD's mission and goals.

As some of the most vulnerable people in our society, children victims of sexual exploitation and trafficking should be afforded the most protection under the law. This bill would increase penalties for the offense of promoting travel for prostitution and related prostitution or child abuse type offenses, as well as the application of enhanced sentencing for related offenses. In addition, it seeks to remove the period of limitations for reporting such offenses as many do not do so until a much later age.

In keeping with our conviction of sustaining and enriching communities, the HPD urges you to support House Bill No. 2352, Relating to Protection of Children.

The Honorable Josh Green, Chair  
and Members  
The Honorable Brian T. Taniguchi, Chair  
and Members  
Page 2  
February 7, 2018

The HPD urges you to support Senate Bill No. 2352, Relating to Protection of Children.

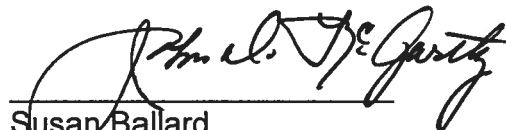
Thank you for the opportunity to testify.

Sincerely,



Calvin Tong, Major  
Narcotics/Vice Division

APPROVED:



Susan Ballard  
Chief of Police

**SB-2352**

Submitted on: 2/5/2018 9:23:07 AM

Testimony for HMS on 2/7/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Councilmember Yuki Lei Sugimura	Maui County Council	Support	No

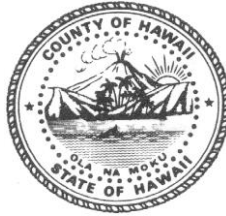
Comments:

This act amends various provisions of the HRS to increase protections for child victims of sex trafficking, prostitution, and commercial exploitation by increasing penalties for offenders and habitual offenders. Among other things, amends the offense of sex trafficking to impose criminal liability on a person who solicits a minor for prostitution and by imposing strict liability with respect to the age of the minor.



**MITCHELL D. ROTH**  
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## **OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF SENATE BILL 2352

A BILL FOR AN ACT RELATING TO RELATING TO  
PROTECTION OF CHILDREN

COMMITTEE ON HUMAN SERVICES

Senator Josh Green, Chair  
Senator Stanley Chang, Vice Chair

COMMITTEE ON JUDICIARY

Senator Brian T. Taniguchi, Chair  
Senator Karl Rhoads, Vice Chair

Wednesday, February 7, 2018, 2:45 P.M.  
State Capitol, Conference Room 16

Honorable Chair Nishimoto, Vice-Chair San Buenaventura and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 2138.

This measure amends various provisions of the HRS to increase protections for child victims of sex trafficking, prostitution, and commercial exploitation by increasing penalties for offenders and habitual offenders.

Since the introduction of this bill, we have been consulting with numerous parties. Based on those discussions and our review of the law, we suggest the following amendments for consideration to correct potential unintended consequences.

1. Section (6) on page 10 be modified to read:

Who has been convicted of sex trafficking under section 712-1202 or an equivalent offense under the laws of another state, territory, possession or Native American tribe where the offense occurred.

Under the current draft, a person who has been a victim of sex trafficking could have her child removed and parental rights terminated. This is contrary to victim centered approach. The intent is to allow the family court to remove children from parents who are convicted of sex trafficking and using their children for commercial sexual exploitation.

2. Section 12 on pages 17 and 18, be modified to read:

(1) A person eighteen years of age or older commits the offense of solicitation of a minor for prostitution if the person intentionally, knowingly, or recklessly offers or agree to pay a fee to any person or a law enforcement officer who represents that person's self as a minor to engage in sexual conduct.

This modification would not create a loophole for offenders who pay someone other than the law enforcement officer to engage in sexual conduct with a minor.

3. We concur with the suggestions for modification proposed by the Attorney General's office in their testimony in support of H.B. 2138 dated February 1, 2018 suggesting that the "strict liability" as to minor's age (page 15, lines 13 to 15; page 15 to 16, lines 18-2; and page 16, lines 4-9 of H.B. 2138) be placed in the Penal Liability portion of the Penal Code (Section 702-207 or 702-12, HRS). This would make clear the intent that strict liability analysis apply to several areas of the Penal Code involving the sexual abuse of children, to include Sexual Assault (of a minor) Sections 707-730(b) & (c); 707-731(d), 707-732(b) & (c), 707-733(d), Continuous Sex Assault of a Minor, Section 707-733.6, Promoting Child Abuse in the First Degree, Section 707-750, Promoting Child Abuse in the Second Degree, section 707-751, Promoting Child Abuse in the Third Degree, section 707-752, Electronic Enticement of a Child in the First Degree, Section 707-756, Electronic Enticement of a Child in the Second Degree, Section 707-757, Indecent Electronic Display to a Child, section 707-759. We agree that inclusion of this working in only the sex trafficking statutes may afford accused offenders the opportunity to contest whether strict liability applies to other offenses against minors. The strict liability standard comes from caselaw, State v. Buch, 83 Hawaii 308 (1996) based upon a review of legislative history, and not from statutory language, a subsequent statutory change on this issue could negate that reasoning.

4. We recommend that Section 712-1200(1) be added to the definition of "Sex offender" for the purposes of Sex Offender Registration, where the offender has solicited a minor for sexual conduct.

5. In Section 11, on pages 15 and 16 we recommend that the language be amended to read:

(c) Solicits a minor under fourteen years of age by offering or agreeing to pay a fee to the minor or another person, to engage in sexual conduct with the minor; or  
(d) Solicits a minor between fourteen but less than eighteen years of age by offering or agreeing to pay a fee to the minor or another person, to engage in sexual conduct with the minor.

This amendment would clarify the definition of "solicits" which does not appear in the chapter, and is consistent with the language from Section 712-1209.1.

Currently, solicitation of a minor for commercial sexual exploitation is a Class C felony. This bill includes solicitation of minors in the sex trafficking statute and increases the penalties to those who buy or attempt to buy children for sexual exploitation to Class A and B felonies. We wish to move forward with our protection of children by recognizing them as victims rather than criminals and holding buyers of child commercial sexual exploitation accountable for creating the demand. This bill imposes strict liability on persons responsible for commercial sexual exploitation of children with respect to the age of the minor and prohibits the defense that the minor victim willingly engaged in or appeared to have engaged in commercial sexual exploitation.

The bill clarifies the law pertaining to the crime victims compensation commission when considering the behavior of the crime victim to recognize the dynamics of child sexual exploitation; increases the penalties for promoting travel for prostitution and related offenses; includes convictions for sex trafficking or prostitution as grounds for terminating parental rights; increases the statute of limitations for child sexual exploitation crimes, promoting child abuse; includes in the term “victim of sex trafficking” all commercially sexually exploited persons, regardless of whether the trafficker is a readily identifiable person or being prosecuted separately; and authorizes the use of wiretapping for the crime of solicitation of a minor for prostitution.

The Office of the Prosecuting Attorney, County of Hawai‘i supports the passage of Senate Bill 2352. Thank you for the opportunity to testify on this matter.

FOR HARM REDUCTION HAWAII  
TESTIMONY

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

February 2, 2018

RE: SB 2352 to be heard Wednesday February 7, in Room 16, at 2:45 PM  
To the members of the Senate Committee on Judiciary and on Human Services  
**Strong Opposition**

Dear Senators

This is an ill-considered bill. These issues should first have been discussed or vetted with the professional agencies who work within our harm reduction coalition. We should not be learning about them days before a hearing. Last month a major conference was held on sex work and sex trafficking. No one from the legislature attended. Discussions on issues related to minors and what best to do about them is ongoing. The people involved in these efforts should be part of the planning process when such legislation is considered.

This bill specifically aims to increase all sorts of sentencing for people who we are angry about. No rational basis as to how this will effect solving problems related to minors in the sex industry are apparent. It is simply an exercise in anger that will continue the process of overcrowding our prisons. We need dispassionate, rational, evidentiary, and solution based approaches, not simply bills that show how mad we are. You appointed through HCR 85; a task force to look into areas of prison reform. Have any of the members of that task force been made aware of the proposals in this bill?

Very problematic to this bill is the attempt to strip sex workers of their parental rights. If the legislature is so convinced that people selling sex are victims why add all offenses under section 712 to that of sex trafficking; as is done in two places in this bill. Can't the Family Court be left to make its own decisions based on the information they have about specific individuals? Why get involved in this at all?

I will leave you with a single question. **Are you interested in learning enough about these problems to attempt a solution or are you simply going to push forward bad bills like SB 2352?**

Aloha



Tracy Ryan  
For Harm Reduction Hawaii

**SB-2352**

Submitted on: 2/2/2018 4:52:08 PM

Testimony for HMS on 2/7/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joy Marshall		Support	No

Comments:



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

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**TESTIMONY FOR SENATE BILL 2352, RELATING TO PROTECTION OF  
CHILDREN**

**Senate Committee on Human Services**

**Hon. Josh Green, Chair**

**Hon. Stanley Chang, Vice Chair**

**Senate Committee on Judiciary**

**Hon. Brian T. Taniguchi, Chair**

**Hon. Karl Rhoads, Vice Chair**

**Wednesday, February 7, 2018, 2:45 PM**

**State Capitol, Conference Room 016**

Honorable Chair Green, Chair Taniguchi, and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in strong opposition to Senate Bill 2352, relating to protection of children.

IMUAlliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention services to 130 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims in total. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name.

Sex trafficking is a profoundly violent crime. The average age of entry into commercial sexual exploitation is 13-years-old, with 60 percent of trafficked children being under the age of 16. Approximately 150 high-risk sex trafficking establishments operate in Hawai'i. An estimated 1,500-2,500 women and children are victimized by sex traffickers in our state annually. Over 120,000 advertisements for Hawai'i-based prostitution are posted online each year, a number that

is rapidly increasing as technology continues to outpace the law. More than 80 percent of runaway youth report being approached for sexual exploitation while on the run, over 30 percent of whom are targeted within the first 48 hours of leaving home. With regard to mental health, sex trafficking victims are twice as likely to suffer from PTSD as a soldier in a war zone. Greater than 80 percent of victims report being repeatedly raped and 95 percent report being physically assaulted, numbers that are underreported, according to the United States Department of State and numerous trauma specialists, because of the inability of many victims to recognize sexual violence. As one underage survivor told IMUAlliance prior to being rescued, “I can’t be raped. Only good girls can be raped. I’m a bad girl. If I *want* to be raped, I have to *earn* it.”

Unfortunately, this bill does not protect victims of sexual slavery. Instead, it may be catastrophic to Hawai’i’s efforts to end sexual slavery. Our primary concerns with this bill are as follows: primary concerns with HICAHT’s measure are as follows:

1. On p.4, lines 9-12, the phrase "perceived acquiescence to being trafficked" is confusing and unnecessary. Sex trafficking is crime defined under section HRS §712-1202, for which crime victim compensation already applies. This phrase seems to suggest that there are trafficking-related reasons *other* than "perceived acquiescence" for which the Crime Victim Compensation Commission *may* justifiably deny compensation. Moreover, trafficking is, by definition, not a crime of "acquiescence"—for adults, it involves force, fraud, or coercion; for minors, consent to prostitutive activity is immaterial in determining whether or not a child has been trafficked (only the fact that the child is under the age of eighteen needs to be established for trafficking to be legally prosecuted). The phrase "perceived acquiescence" seems to suggest that acquiescence can or should be given legal consideration in trafficking cases and delivery of victim services. We should, instead, simply state that crime victim compensation shall not be denied or reduced for victims of sex trafficking pursuant to HRS §712-1202, full stop.
2. On p. 6, this bill would require the “involuntary termination” of the parental rights of anyone convicted of “any prostitution offense under chapter 712” pursuant to HRS §571-61. Victims of sex trafficking, both past and present, have regularly been convicted of prostitution and misidentified as voluntary prostitutes, rather than sex trafficking victims. Thus, this provision would have the abhorrent consequence of stripping sex trafficking survivors’ parental rights to care for their children, many of whom were born while the survivor was being sold for sexual services and used as leverage to keep the victim from escaping sexual exploitation.
3. On p. 13, lines 8-12, we are concerned about promoting child abuse in the first degree—the production of child pornography—(pursuant to section HRS §707-750), being given a mandatory sentence of life imprisonment without the possibility of parole, when such mandatory sentences aren't also included for sex trafficking in the bill—for *literal* sexual slavery of a child? This is not consonant with federal law. Are the bill’s authors

claiming that producing child pornography is a greater offense than trafficking a child as a sex slave? We must be tough on child pornography, for sure, but debates across the country about the statutory equivalency of child pornography charges versus charges for sex trafficking—and other high-grade offenses, like murder—are complex and worthy of greater consideration than this bill allows, with many states refusing to make such legal leaps. If we're going to increase penalties, we should be smart about it. A similar concern applies to sections 8 and 9 of this bill, which amend Hawai'i's promoting child abuse in the second and third degrees to class A and B felonies, respectively.

4. In general, we agree with escalating penalties for individuals who solicit minors for prostitution, but we are deeply uncomfortable with the creation of legal distinctions between minors below the age of 14 and those between the ages of 14-17, especially given that the age of entrance in commercial sexual exploitation for most child victims is approximately 14-years-old and the median age of child victims is 15-years-old, according to the Department of Justice. This bill appears to be mistakenly interpret provisions of 18 U.S.C § 1591 that clarify mandatory minimums for minors trafficked by force, fraud, or coercion above and below the age of 14, but do not apply this distinction more broadly or in the manner proposed by this measure. Furthermore, state law does not need to mirror federal law in this area. IMUAlliance regularly conducts direct intervention outreach in the locations at which victims are being trafficked. We see and have worked with lots of children, some as young as 11-years-old. Children who've been trafficked during their teenage years, however, make up the vast majority of the minors with whom we've worked, many of whom have been recruited on or near their high school campuses. We're in favor of increasing solicitation penalties across the board for those who solicit such victims, but believe we should do so by increasing the penalty for solicitation overall to a misdemeanor or class C felony under HRS §712-1200, adding solicitation of a minor to our state's definition of sex trafficking statute in §712-1202, and repealing 712-1209.1 outright to ensure that all solicitation of minors, including law enforcement posing as minors, is criminalized as sex trafficking under HRS §712-1202. Additionally, by the term "commercially exploited persons" (used in Section 10's definition of "victim of sex trafficking"), we assume the bill's authors mean the same thing as "sexually exploited individuals" pursuant to HRS §712-1210. If so, that would need to be cross-referenced and include all "erotic or nude massagers and exotic or nude dancers." If this is not intended as the definition, then Section 10's definition of "victim of sex trafficking" is confusing at best, given the prior and similar definition in HRS §712-1210. If the bill does employ the same meaning of "sexually exploited individuals" as in HRS §712-1210, it inadvertently omits persons who are exploited outside of massage parlors or strip clubs—in hostess bars, on the streets, or through backpage, for example. Why would we want to omit these individuals? If the bill's authors are trying to cover the entire universe of commercially sexually exploited persons, then, again, the definition of "victim of sex trafficking" should be clarified. That said, there are appropriate questions to ask about whether or not every



stripper at Rock-Za should be viewed as a trafficking victim, which this bill seems to do, since the definition of "victim of sex trafficking" used in this section, when applied to adults, does not include any element of force, fraud, or coercion. We are also concerned that defining the term "victim of sex trafficking" as broadly as this measure does may cause confusion when it comes to delivering services for individuals who are victims of the actual crime of sex trafficking under HRS §712-1202 or 22 U.S. Code §7102. A 21-year-old stripper at Rock-Za who is solicited for a lap dance may not a victim of the crime of sex trafficking under either state or federal law and would not be eligible for services made available to such victims. Yet, Section 10 would legally define the stripper as a "victim of sex trafficking" under that very term, even if she is not legally established as a victim of the actual crime of sex trafficking under HRS §712-1202 or federal law.

5. Portions of Section 11, which begins on p. 15 and runs through p. 17, lines 1-6, are concerning for reasons similar to those listed above regarding the creation of unnecessary age distinctions in state law. Currently, sex trafficking is a class A felony, full stop, including the trafficking of any person under the age of 18. **Thus, we should make solicitation of all minors a class A felony, regardless of the age of the minor, rather than institute an arbitrary distinction between soliciting a minor under the age of 14 for sexual services and a minor between the ages of 14-17, with the latter graded as a lesser crime.** We're additionally concerned about setting a precedent in the state's sex trafficking ban that could be used to argue for a further distinction for individuals who sell children for sexual servitude, including pimps, since both offenses would be covered in the same statute. Our suggestion above, coupled with the repeal of 712-1209.1, is both cleaner legally (it doesn't require differing grades of offense based on the minor's age) and a stronger criminal stance on predators who solicit children (since all minors would be treated the same). On a personal note, a couple of years ago, we worked with a 16-year-old victim who, when we met her, couldn't remember her own name. She was regularly beaten, kept on a leash, and fed dog food. We've met and worked with literally hundreds of child and can assure the committee that the trauma endured by a 16-year-old is just as severe and profound as that suffered by a 13-year-old. This week, we are working with another 16-year-old, who was once beaten by john who brought in his daughter's clothes for her to wear while they had sex. Surely, delivering justice to these young women, too, demands the toughest possible sentence, despite the fact that they're in their mid-teens.
6. Section 13, which begins on p. 17, line 14, and runs through the end of p. 18, could be more clearly written by, again, simply adding "or a law enforcement officer who represents that person's self as a minor" to the solicitation provisions of HRS §712-1202. In IMUAlliance's proposal based on Shared Hope's recommendations—which has been introduced as Senate Bill 2538. While the penalties established in HB 2138 between these two sections are (mostly) commensurate (there are no mandatory fines in HRS §712-1202 because class A felonies may carry their own associated fines), we would much rather have law enforcement be able to represent themselves as minors, arrest a person for soliciting

an officer representing herself or himself as a minor, and have the perpetrator charged with sex trafficking, than have the person charged with the non-trafficking offense of "solicitation of a minor for prostitution." Also, the mandatory fines established in this section are well below the potential fines currently associated with class A and class B felonies pursuant to HRS §706-640.

7. Finally, this bill fails to address certain critical items in advancing a victim-centered approach to ending sex trafficking. **First and most importantly, this bill does not immunize minors from being charged with a violation for prostitution and, thus, from being charged with a violation for their own exploitation.** Currently, under HRS §712-1200, minors found to be engaging in prostitution can be charged with a violation, thus preventing them from being properly and immediately identified as victims of sex trafficking. Immunizing minors from being in any way penalized for their own exploitation is a central component of any victim-centered approach to sex trafficking. Second, the definition of "advancing prostitution" pursuant to HRS §712-1201 currently includes persons who "permit premises to be regularly used for prostitution," which provides a barrier to the prosecution of traffickers who own and operate local brothels. IMUAlliance estimates that over 150 high-risk sex trafficking establishments are located on Hawai'i's shores, which are places where we have documented at least two incidents of prostitution activity within a single month, through police records or our direct intervention and outreach efforts. Eliminating the word "regular" from this definition would allow law enforcement to investigate and prosecute persons who operate brothels—massage parlors used as fronts for trafficking, for example—upon a single incident of prostitutive activity. Third, this measure does not alter HRS §712-1203, Hawai'i's promoting prostitution law, which is often used as a lesser offense for sex trafficking. We would like to see the state of mind for this offense downgraded to "recklessly" to incentivize additional prosecutions, particularly of the brothel operators we mentioned above. Fourth, this bill does not address HRS §712-1206 or HRS §712-1207, loitering for the purpose of engaging in or advancing prostitution and street solicitation of prostitution; designated zones, by, again, immunizing minors from being penalized for their own exploitation, instead leaving them subject to being charged for these crimes.

Slavery has no place in paradise. We **urge you to defer this measure and, instead, hear Senate Bill 2538, which provides a victim-centered approach to strengthening our efforts to end sex trafficking in the islands.** Mahalo for the opportunity to testify in opposition to this bill.

Sincerely,  
Kris Coffield  
*Executive Director*  
IMUAlliance



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**SENATE COMMITTEES ON HUMAN SERVICES and JUDICIARY**

**TESTIMONY—SB 2352, Relating to Protection of Children**

**WEDNESDAY, FEBRUARY 7, 2018**

**Jeanné Kapela, UNITE Hawaii Executive Director**

**POSITION: STRONG OPPOSITION**

Chair Green, Chair Taniguchi, and committee members,

Hawai'i is home to over 150 high-risk sex trafficking establishments, with the average age a victim is first exploited being only 13-years-old. We are also a target for "cybertrafficking," with over 110,000 ads for local prostitution posted online each year. Yet, the numbers fail to fully capture the human toll of the commercial sex trade, a tragedy we witness each day in the eyes of the survivors we serve.

UNITE is an educational nonprofit devoted to ending sex trafficking in Hawai'i. Through outreach and awareness in local schools, we provide students with the skills necessary to prevent exploitation by building healthy relationships and learning communities. Our program, "It Ends With Us," explains how trafficking works in the 21st Century, preparing students to recognize threatening situations and respond to potential abuse. To date, we have provided anti-trafficking education to thousands of keiki in our state's public school system. Working with UNITE's strategic partner, IMUAlliance, we have also helped to emancipate sex trafficking victims from local brothels in the Ala Moana area. For both victims who self-identify at the schools we visit and those for whom we've provided direct intervention services, a lack of information about how to get help is a common concern.

We oppose this measure for two primary reasons: 1) it fails to fully immunize trafficked children from being charged with a violation of the law for their own exploitation,

for which they are *clearly* not responsible; and 2) it makes an absolutely astonishing legal distinction between children who are above the age of 14 and between the ages of 14-17, effectively making buying a high school teenager for sex a lesser offense, rather than simply imposing the harshest penalties possible on *all* predators who abuse children (the median age of child trafficking victims is 15-years-old, according to the Department of Justice). It's also worth noting that Hawai'i Coalition Against Human Trafficking—which sponsored this measure—did not consult with Honolulu advocates when crafting their proposal. Even Shared Hope International, upon whose recommendations this bill is supposedly based, has expressed to us deep concerns about the bill and the extent to which it does not reflect their position on what constitutes effectively anti-trafficking policy.

Thank you for the opportunity to testify **in opposition** to this bill.

To: The Honorable Brian T. Tanaguchi, Chair  
The Honorable Karl Rhoads, Vice-Chair  
Members of the Senate Committee on Human Services

Date: February 6, 2018

**Testimony in Strong Support of SB2352: “Relating to Protection of Children”**

Dear Chair Tanaguchi, Vice-Chair Rhoads, and Members of the Senate Committee on Judiciary,

My name is Colleen Barba and I am an MSW student at the Myron B. Thompson School of Social Work at UH Mānoa. Currently, I am a practicum student at the Queen’s Medical Center Youth Psychiatric Outpatient Programs. As an MSW Intern, I have observed the detrimental effects of sexual abuse and sex trafficking in my work with clients. Such experiences impact various facets of their lives, as well as, the lives of those around them. For some, there is not justice as they are forced to live with the resulting destruction.

SB2352 calls for amendments to HRS to increase protections for child victims of sex trafficking, prostitution, and commercial exploitation by increasing penalties for offenders and habitual offenders while amending the offense of sex trafficking as well. I am in support of this bill as further penalizing offenders of this crime and improving prosecution of offenders while decreasing victim liability is one step towards dismantling this destructive industry. Children, in their limited decision-making capacity and vulnerable developmental state, cannot be held culpable for this crime. The solicitors of child victims should be penalized for seeking sex services from this vulnerable population who lack the proper insight, resources, protections, and power to protect themselves from those who prey on them. Children, an easily impressionable age group, can be coerced, manipulated, forced, threatened, and deceived into becoming involved in this industry. It is of vital importance that we hold these criminals accountable for their destruction of young lives and the lasting trauma that their decisions create.

Child sex trafficking is a profitable business that has existed since the 1800s in Hawaii. According to the founder of The Pacific Alliance to Stop Slavery (PASS), Hawaii is a prime location for sex trafficking and ideal physical location for transportation of victims. Increasing criminal liability and monetary fines for the solicitation of child sex victims is only one step forward. It is my firm belief that more must be done to protect children from sex trafficking. Task forces specifically assembled to target traffickers and solicitors of child sex victims should be established in Hawaii as it is a rampant crime that requires more resources specifically utilized to address this issue. Educating the public about signs of child sex trafficking, how to discern traffickers of child sex victims, increasing awareness about harms of child sex trafficking, and who to contact is also important to increase protection of children. Further, providing housing and services for child sex victims is also important to protect child sex victims as some may be less apt to reveal they are victims if they do not have a stable home or family and may be their reasons for involvement in the industry.

Thank you for the opportunity to testify on SB2352.

Sincerely,  
Colleen Barba

**SB-2352**

Submitted on: 2/6/2018 2:43:37 PM

Testimony for HMS on 2/7/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments: