



Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Ke Kōmike Ho'okolokolo

In Support of SB1039 "SURVIVORS NOT CRIMINALS"

Thursday, February 14, 2019, at 9:30 a.m. in Room 016
Pō'ahā, Peleluali 14, 2019, Lumi 'Aha Kūkā 016

Aloha e Luna Ho'omalū/Chair Rhoads a Hope Luna Ho'omalū/Vice Chair Wakai,

The Hawai'i State Commission on the Status of Women **supports** SB1039 and offers friendly amendments. While prostitution may be a free choice and empowering experience for some, it is also a marketplace defined by deep structural inequalities. Vulnerabilities such as poverty, lack of housing, drug dependency, domestic violence, discrimination and trauma from sexual violence often pressure women, youth, and gender minorities into prostitution, whether trafficked or untrafficked. Against this backdrop, sex-buying behavior may be viewed as an abuse of power.¹

The power differential inherent in prostitution is supported by the most comprehensive study of sex buyers undertaken in the United States to date, which found that the majority of sex buyers are middle and upper middle-class men while the majority of "providers" and/or victims are nubile women and girls of color living in poverty.² Buyer demand is the root cause of the system of prostitution but law enforcement efforts in Hawai'i are currently geared toward targeting the vulnerable—arresting twice as many prostituting people, rather than the men purchasing them for sexual access:

HPD Arrests – Prostitution

January - December 2017: 72 prostituting persons; 36 buyers

January - June 2018: 37 prostituting persons; 14 buyers

While the arrest data is not disaggregated for sex or gender, the marketplace for commercial sex generally speaking is heteronormative, with cisgender male sex buyers and women provider/victims. From a gender justice and human rights perspective, this data should be genuinely troubling.

¹ Martin, L., *Mapping Demand*, University of Minnesota, Jul. 2017.

² *Id.*

This measure would also greatly assist sex trafficking victims in Hawai‘i who can be and are misidentified and criminalized by law enforcement. The current statute allows for sex trafficking to vacate these convictions with proven victimization at any time within six years, but this expectation is unrealistic. Sex trafficking victims face significant barriers to disclosing their victimization to legal authorities and in seeking support. Most trafficking victims are unable to disclose or prove there are trafficking victims due to fear of retaliation from a trafficker or buyer, physical harm inflicted by the trafficker, economic dependency upon the trafficker, family connections with their trafficker (children, parents), emotional manipulation, trafficker-controlled finances or legal documents, language barriers, fear of police, unawareness of their legal status as a “victim,” and stigma.

Recent Hawai‘i-specific data supports the contention that in the real world marketplace for sex, categories such as victim and “deviant/criminal” blur. Our 2019 report *Sex Trafficking in Hawai‘i Part II: The Stories of Survivors* was recently recognized by Dr. Jane Chung-Do, Chair of Social & Behavioral Health Sciences at the University of Hawai‘i as well as Governor David Ige in a formal proclamation ceremony on January 25, 2019.

- 80% of those initiated into the sex trade by a trafficker prostituted without a trafficker, i.e., engaged in “prostitution” at later points, sometimes for decades;
- The average amount of time in the sex trade in Hawai‘i for those first initiated by a trafficker was 13 years;
- The average number of attempts to successfully exit either sex trafficking or prostitution circumstances in Hawai‘i was 5.8 times;
- At least 1 of 15 sex trafficking survivors interviewed were arrested for prostitution;
- Survivors reported that a criminal record posed an additional barrier to successful exit;

Finally, the 2019 Trafficking Victims Protection Reauthorization Act encourages law enforcement to reverse the trend of criminalizing sex trafficking survivors. The Department of Justice must restore funding to help survivors vacate criminal records that remain. The state should make a similar effort, driven by data that makes clear sex trafficking survivors often do not have the ability to prove victimization.

Accordingly, the Commission asks that the Committee pass SB1039 with the following friendly amendments to ensure that we preserve the ability for sex trafficking victims to motion to vacate their conviction at any time, that we remove a time-limit to doing so, and shorten the 3-year precondition:

SECTION 1. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) A person convicted of committing the offense of prostitution as a petty misdemeanor shall be sentenced as follows:

- (a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a fine of not less than \$500 but not more than \$1,000 and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).
- (b) For any subsequent offense, a fine of not less than \$500 but not more than \$1,000 and a term of imprisonment of

thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.

- (c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until **[four] one year[s]** following discharge **for persons charged under subsection (1) (a) of this section, or four years following discharge for persons charged under subsection (1) (b) of this section**. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense. When the court has ordered a sentence of probation, the court may impose as a condition of probation that the defendant complete a course of prostitution intervention classes; provided that the court may only impose the condition for one term of probation."

SECTION 2. Section 712-1209.6, Hawaii Revised Statutes, is amended to read as follows:

"§712-1209.6 Prostitution; motion to vacate conviction based on trafficking victimization. (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, 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 **at any time** if the defendant's participation in the offense was the result of the person having been a victim of:

- (a) Sex trafficking under section 712-1202 or promoting prostitution under section 712-1203; or
 - (b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102(9)(A).
- (2) A motion filed under this section shall:
- (a) Be in writing;
 - (b) Be signed and sworn to by the petitioner;

~~[(c) Be made within six years after the date that the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, 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;]~~

~~[(d)]~~ (c) Describe all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge, and provide copies of any official documents showing that the defendant is entitled to relief under this section; and

~~(e)~~ (d) Be subject to the review and written approval of the state agency or county prosecutor responsible for prosecuting the offense that is the subject of the motion to vacate conviction.

(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) If the court grants a motion filed under this section, the court shall vacate the conviction.

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

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

- (a) Sex trafficking under section 712-1202;
- (b) Promoting prostitution under section 712-1203; or
- (c) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct."

SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712-1209.6 Prostitution; motion to vacate conviction. (1) A person convicted of committing the offense of prostitution under section 712-1200(1)(a), loitering for the purpose of engaging in or advancing prostitution under section 712-1206(2), street solicitation of prostitution in designated areas under section 712-1207(1)(a) or 712-1207(2)(a), or convicted of a lesser offense when originally charged with a violation of section 712-1200(1)(a), 712-1206(2), 712-1207(1)(a), or 712-1207(2)(a), may file a motion to vacate the conviction if the defendant is not subsequently convicted of any offense under section 712-1200(1)(a), 712-1206(2), 712-1207(1)(a), or 712-1207(2)(a), or convicted of a lesser offense when originally charged with a violation of section 712-1200(1)(a), 712-1206(2), 712-1207(1)(a), or 712-1207(2)(a) within the one year prior to the motion to vacate.

(2) The court shall hold a hearing on a motion filed under this section to review the defendant's record over the one year prior to the motion to vacate, and if the court finds that the defendant has not been convicted of any offense under section 712-1200(1)(a), 712-1206(2), 712-1207(1)(a), or 712-1207(2)(a), or convicted of a lesser offense when originally charged with a violation of section 712-1200(1)(a), 712-1206(2), 712-1207(1)(a), or 712-1207(2)(a) within the one year prior to the motion to vacate, the court shall vacate the conviction."

Mahalo nui,

Khara Jabola-Carolus

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

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**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
The Thirtieth Legislature
Regular Session of 2019
State of Hawai'i**

February 11, 2019

RE: S.B. 1039: RELATING TO PROSTITUTION.

Chair Rhoads, Vice-Chair Wakai, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i is in strong support of S.B. 1039 – Relating to Prostitution. The purpose of this Bill is to permit persons convicted of certain prostitution offenses to file a motion to vacate the conviction if the defendant is not convicted of another offense under the penal code within three years of the prostitution offense.

In support of this Bill we note the following:

- Sex trafficking victims can be and are misidentified by law enforcement;
- Trafficking victims face significant barriers to disclosing their victimization to legal authorities and in seeking support;
- Most trafficking victims are unable to disclose or prove there are trafficking victims due to fear of retaliation from a trafficker or buyer, physical harm inflicted by the trafficker, economic dependency upon the trafficker, family connections with their trafficker (children, parents), emotional manipulation, trafficker-controlled finances or legal documents, language barriers, fear of police, unawareness of their legal status as a “victim,” and stigma;
- Arrest and law enforcement is currently the state’s dominant point of contact with sex trafficking victims;
- According to HSCSW’s recent report:
 - 50% of Hawaii sex trafficking survivors were diagnosed with PTSD
 - 80% of those initiated into the sex trade by a trafficker prostituted without a trafficker, i.e., engaged in “prostitution.” at later points

- The average number of attempts to successfully exit the sex trade was 5.8
- At least 1 of 15 sex trafficking victims interviewed in *The Stories of Survivors* was arrested for prostitution;
- A criminal record poses an additional barrier to successful exit and transition into above-ground employment, and a life free of stigma;
- This measure would also help to bring about substantial cultural reform, as it would send a strong message that a person's participation in prostitution is often complex and should not bar access to resources, safety and compassion.

In conclusion, we respectfully ask that your Committee PASS this Bill.

Thank you for this opportunity to testify on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DWIGHT K. NADAMOTO
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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i

February 14, 2019

RE: S.B. 1039; RELATING TO PROSTITUTION.

Chair Rhoads, Vice Chair Wakai, members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 1039.

The purpose of this bill is to allow anyone with a prior conviction for prostitution to have that conviction “vacated,” regardless of whether that person was a victim of sex trafficking or not, if he or she remains conviction-free for three years. It would also shorten the waiting period before a person would be eligible for expunging deferred pleas to prostitution charges, from 4 years to 3 years; the Department takes no position on that amendment.

It is the Department’s understanding that HRS §712-1209.6 was enacted to provide victims of sex trafficking an alternative means of having any prior prostitution convictions (judgments) vacated. While the Department would prefer that different mechanisms be used, we do agree with the ultimate goal, and hope victims use this mechanism to further their recovery and rehabilitation.

Nevertheless, the Department cannot support a proposal to remove the requirement that such person be a victim of sex trafficking; the amendments proposed in Section 2 of this bill would essentially allow anyone with a prior conviction for prostitution, to have their judgment vacated after remaining conviction-free for 3 years. Not only would this be unfair to countless other types of convicted offenders, who go three years or even longer without any further convictions on their record, but it would also discount the distinction between victims of sex trafficking and “actual” prostitution offenders. We believe the current requirements are appropriate, and respectfully ask the Committee to defer this measure.

For all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, opposes the passage of S.B. 1039. Thank you for this opportunity to testify.

SB-1039

Submitted on: 2/11/2019 10:06:47 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of SB 1039.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

SB-1039

Submitted on: 2/11/2019 10:59:11 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Testifying for AAUW of Hawaii	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Wakai, and members of Committee on Judiciary,

Thank you for this opportunity to submit a testimony in support of SB1039, which would permit persons convicted of certain prostitution offenses to file a motion to vacate the conviction if the defendant is not convicted of another offense.

Sex trafficking victims are often misidentified by law enforcement. According to a [recent report](#) by Hawaii State Commission on Status of Women, 80% of those initiated into sex trade by a trafficker continue to prostitute without a trafficker although the average number of attempts to successfully exit the sex trade was 5.8. A criminal record poses an additional barrier to successful exit and transition into above-ground employment, and a life free of stigma.

Please pass this bill to support those who want to exit sex trade to do so.

SB-1039

Submitted on: 2/11/2019 6:16:46 PM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tracy Ryan	Testifying for Harm Reduction Hawaii	Support	No

Comments:

One of the few useful ideas on prostitution likely to pass this year. Let's get it done

Executive Director
Adriana Ramelli

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Date: February 14, 2019

To: The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai, Vice Chair
Senate Committee on Judiciary

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony Supporting the Intent of S.B. 1039 with Comments
Relating to Prostitution

Good morning Chair Rhoads, Vice Chair Wakai, and members of the Senate Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) supports the intent of S.B. 1039, and respectfully submits additional comments for the Committee's consideration.

Sex Trafficking—the commercial sexual exploitation of a minor or the coercive commercial sexual exploitation of any person—is a form of modern-day slavery, with significant and often lifelong medical, psychological, and social consequences for victims.

Breaking away from being trafficked can be complicated by a host of issues. A trafficking victim may fear retaliation from their trafficker if they attempt to leave, be subjected to legal, financial, emotional, or physical coercion and manipulation by their trafficker, distrust police and other authorities, face language barriers, or feel unable to cope with the stigma that society still unfairly attaches to trafficking victims.

A criminal arrest or conviction record for prostitution can pose an additional and sometimes insurmountable barrier to a victim's successful exit and transition out of commercial sexual exploitation, as it can make it very difficult for a victim to find and keep other employment and otherwise re-integrate into society.

Hawaii's current rules concerning the expungement of arrest records for prostitution, and for vacating prostitution convictions, are not consistent with these realities of trying to end the cycle of coercive commercial sexual exploitation. Therefore, we support the intent of S.B. 1039, to make it easier for victims to expunge their arrest records and vacate convictions for prostitution.

However, we are concerned about unintended consequences that the current language of S.B. 1039 may have, and respectfully offer the following comments for the Committee's consideration:

- With regard to Section 1 of S.B. 1039, the change to H.R.S. Section 712-1200(4) would grant an accelerated time frame for expungement in cases of deferred acceptance of guilt or nolo contendere plea to buyers (also referred to colloquially as "Johns"), not just the potential sex trafficking victims the bill seeks to help.

If the goal of S.B. 1039 is to provide assistance to those wishing to exit commercial sexual exploitation by allowing them to timely expunge their arrest records for prostitution, the bill should be amended to reduce the timeframe for expungement with respect such persons to the default of one year provided in H.R.S. Section 831-3.2(a)(5) for most crimes, while retaining a longer timeframe for expungement with respect to buyers ("Johns") who make up the demand side of sex trafficking.

- Under the current statute allowing victims of sex trafficking to motion for a vacation of their past convictions for prostitution, H.R.S. Section 712-1209.6, a motion to vacate can be made at any time within 6 years of the victim no longer being trafficked, or more depending on specific circumstances like the victim being unable to move for vacation of the conviction earlier for safety reasons. Vacation of a prostitution conviction under the current statute is also not premised on a victim having a clean conviction record for all crimes subsequent to the conviction for prostitution.

The revision in Section 2 of S.B. 1039 only allows a victim to move for vacation of their prostitution conviction 3 years or later after the conviction, by requiring as a pre-condition that no conviction for any offense under the penal code occurred within the 3 years following the prostitution conviction. This would seem to significantly delay the earliest date on which a victim of sex trafficking could motion for vacation of their prostitution conviction.

Additionally, although the current language of Section 2 of S.B. 1039 removes the burden to demonstrate that the victim was sex trafficked to be eligible for vacation of their prostitution conviction, adding the requirement that they not receive *any* criminal conviction in the subsequent 3 years is a significant barrier to many trafficked persons being able to vacate their prostitution conviction.

Our understanding is that trafficked people often commit other crimes while being subjected to commercial sexual exploitation, while trying to exit such exploitation, and in the aftermath of being trafficked. It is very common to have victims of trafficking with non-prostitution criminal convictions on their record in the 3 years after a prostitution conviction, in which case they would not be able to vacate the prostitution conviction at all based on the current language of Section 2 of S.B. 1039, regardless of their previously having received the prostitution conviction as a result of being sex trafficked.

Hawaii needs a way for victims of sex trafficking to motion for the vacation of their prostitution convictions, both in cases where the victim may be able to prove their sex trafficked status, as well as in cases where the victim is unable to make such a showing, as when they are too afraid to testify against their traffickers to prove their

victim status, but can demonstrate through their lack of convictions for prostitution over time that they have exited commercial sexual exploitation.

As such S.B. 1039 should be amended to keep in place the current process for victims to motion to vacate a prostitution conviction based on their being sex trafficked, while eliminating the 6 year default deadline for making such a motion.

S.B. 1039 should be further amended to create a new H.R.S. section to allow for victims who may not be able to demonstrate that they were sex trafficked under the standards established in the existing H.R.S. Section 712-1209.6 to motion to vacate their prostitution convictions in cases where no additional prostitution convictions have occurred in the 3 years preceding the motion to vacate.

The amendments suggested above are included in the enclosed draft language (Exhibit A).

Thank you for this opportunity to testify, supporting the intent of this important measure with additional comments.

Exhibit A
Suggested Amendments

SECTION 1. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) A person convicted of committing the offense of prostitution as a petty misdemeanor shall be sentenced as follows:

(a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a fine of not less than \$500 but not more than \$1,000 and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).

(b) For any subsequent offense, a fine of not less than \$500 but not more than \$1,000 and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.

(c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement

pursuant to section 831-3.2 until ~~four~~ one year[s] following discharge for persons charged under subsection (1) (a) of this section, or four years following discharge for persons charged under subsection (1) (b) of this section. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense. When the court has ordered a sentence of probation, the court may impose as a condition of probation that the defendant complete a course of prostitution intervention classes; provided that the court may only impose the condition for one term of probation."

SECTION 2. Section 712-1209.6, Hawaii Revised Statutes, is amended to read as follows:

"§712-1209.6 Prostitution; motion to vacate conviction based on trafficking victimization. (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, 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 at any time if the defendant's participation in the offense was the result of the person having been a victim of:

(a) Sex trafficking under section 712-1202 or promoting prostitution under section 712-1203; or

(b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102(9)(A).

(2) A motion filed under this section shall:

(a) Be in writing;

(b) Be signed and sworn to by the petitioner;

~~[(c) Be made within six years after the date that the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, 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;]~~

~~[(d)]~~ (c) Describe all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge, and provide copies of any official documents showing that the defendant is entitled to relief under this section; and

~~[(e)]~~ (d) Be subject to the review and written approval of the state agency or county prosecutor responsible for prosecuting the offense that is the subject of the motion to vacate conviction.

(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) If the court grants a motion filed under this section, the court shall vacate the conviction.

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

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

- (a) Sex trafficking under section 712-1202;
- (b) Promoting prostitution under section 712-1203; or
- (c) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct."

SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712-1209.6 Prostitution; motion to vacate conviction; no additional convictions. (1) A person convicted of committing the offense of prostitution under section 712-1200(1)(a),

loitering for the purpose of engaging in or advancing prostitution under section 712-1206(2), street solicitation of prostitution in designated areas under section 712-1207(1) (a) or 712-1207(2) (a), or convicted of a lesser offense when originally charged with a violation of section 712-1200(1) (a), 712-1206(2), 712-1207(1) (a), or 712-1207(2) (a), may file a motion to vacate the conviction if the defendant is not subsequently convicted of any offense under section 712-1200(1) (a), 712-1206(2), 712-1207(1) (a), or 712-1207(2) (a), or convicted of a lesser offense when originally charged with a violation of section 712-1200(1) (a), 712-1206(2), 712-1207(1) (a), or 712-1207(2) (a) within the three years prior to the motion to vacate.

(2) The court shall hold a hearing on a motion filed under this section to review the defendant's record over the three years prior to the motion to vacate, and if the court finds that the defendant has not been convicted of any offense under section 712-1200(1) (a), 712-1206(2), 712-1207(1) (a), or 712-1207(2) (a), or convicted of a lesser offense when originally charged with a violation of section 712-1200(1) (a), 712-1206(2), 712-1207(1) (a), or 712-1207(2) (a) within the three years prior to the motion to vacate, the court shall vacate the conviction."

SB-1039

Submitted on: 2/13/2019 8:46:12 AM

Testimony for JDC on 2/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



SB 1039, RELATING TO PROSTITUTION

FEBRUARY 14, 2019 · SENATE JUDICIARY
COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: IMUAlliance supports SB 1039, relating to prostitution, which permits persons convicted of certain prostitution offenses to file a motion to vacate the conviction if the defendant is not convicted of another offense under the penal code within three years of the prostitution offense.

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 135 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. Yet, sadly, many of the victims with whom we work are misidentified as so-called "voluntary prostitutes" and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.

Sex trafficking is a profoundly violent crime. The average age of entry into commercial sexual exploitation in Hawai'i may be as low as 14-years-old, with 60 percent of trafficked children being

under the age of 16. Based on regular outreach and monitoring, we estimate that approximately 150 high-risk sex trafficking establishments operate in Hawai'i. In a recent report conducted by the State Commission on the Status of Women, researchers from Arizona State University found that 1 in every 11 adult males living in our state buys sex online. When visitors are also counted, that number worsens to 1 in every 7 men walking the streets of our island home and a daily online sex buyer market of 18,614 for O'ahu and a total sex buyer population for the island of 74,362, including both tourists and residents.

ASU's findings are grim, but not surprising to local organizations that provide services to survivors of sex trafficking. IMUAlliance, for example, has trained volunteers to perform outreach to victims in high-risk locations, like strip clubs, massage parlors, and hostess bars. 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."

Accordingly, we support measures to advance our state's ability to crack down on sexual slavery, including by allowing likely victims of sex trafficking to vacate their convictions. At issue in this measure is who constitutes a "victim" of exploitation. When HRS §712-1209.6 was enacted in 2012, the legislature found that this statute would assist in combating human trafficking by permitting trafficking victims who were forced into prostitution to file a motion to have their prostitution convictions vacated from their records, given that criminal records are an impediment to the successful obtainment of non-exploitative employment, housing, educational scholarships, and more. IMUAlliance has always argued, though, that prostitution is inherently exploitative. While the complex psychological effects of trafficking, like trauma bonding, often prevent victims from recognizing the abuse they suffer, when given appropriate care, each of the hundreds of victims with whom we have worked has attested to enduring repeated physical and sexual assault during their time in the commercial sex trade.

Voluntary prostitutes, while real, are, in our experience, extremely rare in the commercial sex trade. The threat of arrest, detainment, and conviction remains a barrier to the successful completion of sex trafficking cases, since victims are often told by their pimps that police will arrest them, rather than help them find a better life. Because victims are, as stated previously, often trauma bonded to pimps and traffickers, they are frequently unable to articulate to first responders that they are in need of assistance (in effect, they come to see being exploited as a normal way of life and, in many cases, a form of love). Because of this inability to communicate the trauma to which they are exposed, trafficking victims are often misidentified as voluntary prostitutes and arrested, despite being blameless in their own suffering. Passing this measure would be a step toward ensuring that such victims are viewed as survivors, not criminals, and given justice, not jail cells. In the future, we urge you to explore decriminalizing the act of selling one's body for sexual purposes and concurrently increasing penalties for sex buyers, thereby completely protecting victims of sexual slavery from being held responsible for the violence done to them.

LATE

[SB1039](#) - "Survivors Not Criminals" (vacate conviction) bill. Lead: HSCSW

I, Tamara Bitanga, am in support of SB1039 because: Sex trafficking victims can be and are misidentified by law enforcement. Often trafficking victims face significant barriers to disclosing their victimization to legal authorities and in seeking support. Many victims are not willing or able to disclose or prove they are trafficked due to fear of retaliation, language barriers, fear of law enforcement, emotional manipulation, no access to their legal documents and family connections with their trafficker. A criminal record poses an additional barrier to successful exit and transition into above-ground employment, and a life free of stigma. This measure would also help to bring about substantial cultural reform, as it would send a strong message that a person's participation in prostitution is often complex and should not bar access to resources, safety and compassion.

According to Hawaii State Commission on the Status of Women's Recent Report:

- 50% of Hawaii sex trafficking survivors were diagnosed with PTSD
- 80% of those initiated into the sex trade by a trafficker prostituted without a trafficker, i.e., engaged in "prostitution." at later points
- The average number of attempts to successfully exit the sex trade was 5.8
- At least 1 of 15 sex trafficking victims interviewed in *The Stories of Survivors* was arrested for prostitution;