



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2272, H.D. 1, RELATING TO SEXUAL OFFENSES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 26, 2020 **TIME:** 12:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General (the Department) supports this bill with amendments.

Section 2 of this bill seeks to do two things: (1) make it a crime for an adult who is a parent, guardian, or a person who has custody or control of a minor to offer or agree to provide the minor to another, for any consideration, for the purpose of sexual conduct and (2) make it a crime for a person to seek to solicit sex from a minor through another.

To address the situation where *a person offers the minor* for prostitution (i.e. sex for a fee), this bill creates the new crime of promoting the prostitution of a minor, by making it illegal for an adult who is a parent, guardian, or has custody of a minor to offer or agree to provide the minor to another, for any consideration, for the purpose of sexual conduct. This new crime would be a class B felony.

Our current sex trafficking statute, section 712-1202(1)(b), Hawaii Revised Statutes (HRS), would cover this conduct as it prohibits *anyone* from advancing or profiting from the prostitution of a minor and is a class A felony offense. Section 712-1201, HRS, defines "advances prostitution" in relevant part as "causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, [and] provides persons for prostitution purposes[.]" The bill seeks to address conduct that would fall within the existing sex trafficking statute. While section 712-1202(1)(b) covers

more conduct than the proposed law, it is limited to prostitution, which is defined as sexual conduct for a fee. The new law would penalize offering a minor “for consideration, or the promise of consideration.” The Department supports this change but believe it should be implemented in the context of section 712-1202(1)(b), HRS.

To criminalize the conduct of a parent, guardian, or *anyone* who promotes the prostitution of a minor, the Department proposes using the current sex trafficking law under section 712-1202(1)(b), HRS, and to amend the definition of prostitution in section 712-1200(1), HRS, to broaden its impact as follows:

§712-1200. Prostitution. (1) A person commits the offense of prostitution if the person:

- (a) Engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee, or anything else of value; or
- (b) Pays, agrees to pay, or provide, or offers to pay or provide a fee, or anything else of value, to another to engage in sexual conduct.

The intent of the new proposed law would be accomplished through changing the definition of prostitution and applying it to the existing sex trafficking law under section 712-1202(1)(b), HRS.

While the bill uses the term “consideration” for what the person would agree to provide in exchange for sex with the minor, the Department believes that “a fee, or anything else of value” is more comprehensive and easier to understand than the proposed definition of consideration.

Solicitation of a minor for prostitution (section 712-1209.1, HRS) and electronic enticement of a child in the first and second degrees (sections 707-756 and 707-757, HRS) both currently only prohibit soliciting **the minor directly** or communicating with **the minor directly**.

To address *those who are soliciting a minor* for sexual conduct through a third party *whether or not a fee, or anything else of value is discussed*, the bill, in sections 4 and 5, seeks to amend the electronic enticement of a child in the first and second

degree statutes (sections 707-756 and 707-757, HRS) to allow for the prosecution of a person who communicates electronically with another person who represents that the person has control or custody of a minor, and who agrees to meet that other person with the intent to commit a felony, and travels to the agreed upon meeting place at the agreed upon meeting time. The Department of the Attorney General supports sections 4 and 5 of the bill.

To address the situation where an adult is *seeking to solicit another for the prostitution of a minor*, the Department supports the second portion of section 2 of the bill, under section 712-B, “Solicitation of another for the prostitution of a minor,” with the suggestion that on page 5, line 6 and 7, to replace “agrees for consideration or the promise of consideration for sexual conduct with a minor” with “offers or agrees to pay a fee, or provide anything else of value for sexual conduct with a minor.”

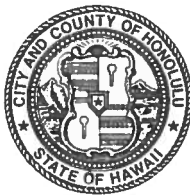
On page 6, line 19, of the bill, the Department proposes that rather than replacing “pay a fee” with “provide any type of consideration,” the bill should add “or provide anything else of value” after “pay a fee,” as explained above.

The Department also supports the bill’s amendment to subsection (4) of section 712-1209.1, HRS, on page 7, line 12, of the bill, but would again propose to include the wording of “pay a fee, or provide anything else of value” in place of “provide any type of consideration.”

For the foregoing reasons, the Department of the Attorney General supports this bill with amendments.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE PJ-LS

February 26, 2020

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

SUBJECT: House Bill No. 2272, H.D. 1, Relating to Sexual Offenses

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

The HPD supports House Bill No. 2272, H.D. 1, Relating to Sexual Offenses.

Passage of this bill will assist law enforcement in stopping child predators and individuals who offer minors for sex. This bill also seeks to hold parents or guardians accountable if they offer their minor children for sex by imposing a class B felony for these offenses. Any measure that protects minor children from sex offenses should be considered and implemented.

The HPD urges you to support House Bill No. 2272, H.D. 1, Relating to Sexual Offenses, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Susan Ballard in black ink.

Susan Ballard
Chief of Police

Handwritten signature of Phillip Johnson in black ink.

Phillip Johnson, Acting Major
Narcotics/Vice Division

HAWAII YOUTH SERVICES NETWORK

677 Ala Moana Boulevard, Suite 904 Honolulu, Hawaii 96813

Phone: (808) 489-9549

Web site: <http://www.hysn.org> E-mail: info@hysn.org

Rick Collins, President

Judith F. Clark, Executive Director

Bay Clinic

Big Brothers Big Sisters of Hawaii

Big Island Substance Abuse Council

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action Network

Hawaii Health & Harm

Reduction Center

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Kokua Ohana Aloha (KOA)

Maui Youth and Family Services

Na Pu'uwai Molokai Native

Hawaiian Health Care Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the Great Northwest and

Hawaiian Islands

Residential Youth Services & Empowerment (RYSE)

Salvation Army Family Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community Center

The Catalyst Group

February 24, 2020

To: Representative Sylvia Luke, Chair
And members of the Committee on Finance

Testimony in Support of HB 2272 HD 1 Relating to Sexual Offenses

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 2272 HD 1 Relating to Sexual Offenses.

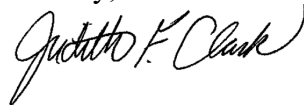
Runaway and homeless youth who are living on their own on the streets without support or guidance from their families are the most vulnerable segment of our homeless population. They are children who have not completed their education and lack employment experience.

While on the streets they have few options for meeting their basic survival needs. Homeless youth often trade sex for food, money or a place to sleep. In a recent study on sex trafficking in Hawaii, a quarter (24.7%) of the victims stated that they exchanged sex for a place to sleep (Sex Trafficking in Hawaii; Arizona State University and Hawaii Commission on the Status of Women; 2020).

Soliciting sexual acts in exchange for basic survival needs is abuse and exploitation of these vulnerable minor and should be addressed in the same way as exchanging sexual favors for money.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



TO: Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance

FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)

DATE/LOCATION: February 26, 2020; 12:00 p.m., Conference Room 308

RE: TESTIMONY IN SUPPORT OF HB 2272 HD 1– RELATING TO SEXUAL OFFENSES

We support HB 2062 HD 1 which would protect minors who are victims of survival sex and make it easier for law enforcement to stop child sex predators. These and other measures are critical to advancing our state’s effort to crack down on sexual exploitation and trafficking crimes and KEEP OUR KEIKI SAFE.

The crimes of sex trafficking and commercial exploitation of children have been increasing over the past decade. In a recent study on sex trafficking in Hawaii conducted by Arizona State University and The Hawaii State Commission on The Status of Women, the most common reason identified by the sex trafficking victims for their being forced or coerced to exchanging sex was for drugs (26.8%), followed by money (24.7%), and a place to stay (24.7%). From our work in the field we also know that, when sex crimes are committed against children, they are often forced into survival sex where basic necessities (food, shelter, clothing, etc.) are offered in exchange for sex. This data confirms that it is not just money that is exchanged for sex and that amending the law to include “offering or agreeing to any type of consideration... constitutes solicitation of a minor” would better protect our keiki.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii’s not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 15,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 18 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, childhood sexual abuse supportive group services, child and adolescent behavioral health programs, sex trafficking intervention, poverty prevention and community building programs.

Thank you for the opportunity to testify in **support of HB 2272 HD 1**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.



HB 2272, HD1, RELATING TO SEXUAL OFFENSES

FEBRUARY 26, 2020 · HOUSE FINANCE
COMMITTEE · CHAIR REP. SYLVIA LUKE

POSITION: Comments.

RATIONALE: IMUAlliance provides the following comments on HB 2272, HD1, relating to sexual offenses, which amends the offense of solicitation of a minor for prostitution by specifying that the act of offering or agreeing to any type of consideration, rather than payment of a fee, constitutes solicitation of a minor; makes solicitation of a minor a class B felony; clarifies that the offender's state of mind is not required when the person solicited is a law enforcement officer who holds themselves out as a minor; omposes a criminal penalty on any parent, guardian, or person having custody or control of a minor that offers or agrees for consideration for the purpose of another person engaging in sexual conduct with the minor. Imposes a criminal penalty on any person that entices a parent, guardian, or person having custody or control of a minor by electronic means for the purposes of engaging in sexual conduct with the minor; and imposes a criminal penalty on any person that solicits another for prostitution of a minor.

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 (victim rescue) services to 150 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims and individuals at risk of sexual exploitation. 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. At least 23 percent of trafficking victims in Hawai'i report being first exploited before turning 18, according to a recent report, with the average age of trafficked keiki's initial exposure to exploitation being 11. 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 this measure's intent to elevate criminal penalties for sex buyers who prey upon our keiki. That said, we note that **Hawai'i's prohibition of solicitation of a minor for prostitution**

under HRS §712-1209.1 does not align with 22 U.S. Code Chapter 78, the Trafficking Victims Protection Act, which makes soliciting a minor for prostitution a form of sex trafficking. Accordingly, we urge you to **amend this measure by repealing HRS §712-1209.1 and, instead, incorporating solicitation of sexual conduct from children as a form of sex trafficking under HRS §712-1202** using the language included in SB 2643. Moreover, **all of the new offenses created by this statute—including promoting the prostitution of a minor and solicitation of another for prostitution of a minor—are already covered by our state’s sex trafficking statute under HRS §712-1202 and promoting prostitution under HRS §712-1203.** Enacting the new offenses imagined by this proposal would impugn our state’s effort to prosecute cases of sexual exploitation by overcomplicating the statutory scheme under which such offenses are charged, carving out exceptions from our sex trafficking statute for different categories of sexual exploitation offenses involving children (rather than categorizing all such offenses as forms of sex trafficking), and creating unnecessary distinctions between different classes of minor victims. All minor victims of “promoting prostitution” or who are bought or sold for sexual services are victims of sex trafficking. **As advocates constantly contend, there is no such thing as a child prostitute. All “child prostitutes” are victims of sex trafficking and should be treated as such under state law.**

Amending this measure to make soliciting a minor for prostitution a form of sex trafficking would ensure that the sex buyers who finance the commercial sexual exploitation of children are held fully accountable for the trauma they cause. This, alone, would be a tremendous step forward in our state’s anti-trafficking code. Currently, HRS §712-1209.1 fails to properly identify child victims of sexual exploitation as victims of sex trafficking, preventing them from being properly identified as trafficking victims and impairing their ability to receive trauma-informed services that are reserved for survivors of sex trafficking. It also fails to hold sex buyers fully responsible for this trauma under the harsher penalties encapsulated in our state’s sex trafficking section under HRS §712-1202, which makes sex trafficking a class A felony. Furthermore, **the crime of “solicitation of a minor for prostitution” legally attaches the term “prostitute” to child victims of HRS §712-1209.1, which contradicts the modern legal and services perspective of eliminating statutory references that directly or inadvertently label children as prostitutes, a designation that can produce a long-lasting social stigma that impedes a victim’s ability to**

receive housing, education, scholarships, employment, and other services necessary to successfully recover from the prolonged trauma of sexual exploitation.

Federal law has long recognized soliciting a child for prostitution as a form of sex trafficking under the Trafficking Victims Protection Act, which defines child sex trafficking as the “recruitment, harboring, transportation, provision, obtaining, patronizing, **or soliciting** of a minor for the purpose of a commercial sex act.” Thus, as previously stated, we strenuously encourage the committee to move the important elements of HRS §712-1209.1 into HRS §712-1202, including language allowing law enforcement to perform undercover sting operations, ensuring that the state of mind requirement for trafficking a minor does not apply to the minor’s age (making sex trafficking of minors a strict liability offense), and eliminating consent to sexual conduct as a defense to sex trafficking (a defense we are sadly seeing used with increasing frequency throughout the United States).

Slavery has no place in paradise. Together, we can end exploitation on our shores.