



**LATE**

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

Prepared for the House Committee on Judiciary

Comments re: HB233

Tuesday, February 12, 2019, at 2:00 p.m. in Room 325

Dear Chair Lee, Vice Chair San Buenaventura, and Honorable Members,

The Hawai'i State Commission on the Status of Women supports the intent of the measure to eliminate a statute of limitations for sex trafficking and promoting prostitution. In line with national recommendations from Shared Hope International, this measure also amends H.R.S. Section 712-1200 by extending the sex trafficking law to include commercially sexually exploited children who are not under the control of a third party.

Minors involved in commercial sex acts were decriminalized in 2016. This bill goes further to ensure that no child is charged at all under the prostitution statute. The Commission supports this intent but as a member of the State's Commercial Sexual Exploitation of Children Steering Committee, a formal group comprised of heads of various federal state and local agencies affecting children, is also concerned about the absence of a services delivery system if Family Court loses jurisdiction over sex trafficked children. In addition, this measure makes numerous changes to H.R.S. Section 712-1200 that may be better addressed through separate sections, e.g., a new section that creates additional fee assessments.

Sincerely,

Khara Jabola-Carolus

**Testimony of the Office of the Public Defender,  
State of Hawaii to the House Committee on  
Judiciary**

February 11, 2019

H.B. No. 233            RELATING TO PROSTITUTION

Chair Lee and Members of the Committee:

H.B. No. 233 makes a number of changes to the sex trafficking and prostitution laws. We oppose passage of Section 1 which removes the statute of limitations for sex trafficking and promoting prostitution. Statutes of limitations have been established to allow for timely prosecution of criminal offenses. With the passage of time, a criminal charge becomes more difficult to defend against and wrongful convictions are more likely to occur. The memories of witnesses become more inaccurate, witnesses are more likely to become influenced by persons who have interests in the case, and relevant evidence is more difficult to obtain. Thus, under the law, criminal charges must be brought within certain time periods following their commission.

Sex trafficking (HRS § 712-1202) is a Class A felony for which there is currently a six year statute of limitations. Promoting Prostitution is a Class B felony for which there is currently a three year statute of limitations. These time periods are sufficient for timely and just prosecutions in these types of cases.

We also oppose the passage of subsection (a) on page 3 of the bill which would subject the customer of a prostitute upon conviction to a mandatory 30-day prison sentence. This sentence is excessive and fails to recognize that prostitution fulfills a human need for intimacy and should be classified as a vice rather than a serious criminal offense. If passed, the sentence for prostitution as a customer would exceed that of many felony offenses. Similarly, we would oppose the provision on page 4 of the bill that would mandate a 90-day prison sentence for any subsequent conviction of prostitution as a customer.

Finally, we oppose passage of section 4 of the bill on pages 7 and 8 which, under the sex trafficking law, establishes a strict liability Class A felony for someone who offers to pay a fee to a minor for sexual conduct. It would not be a defense that the minor represented himself or herself as an adult. It is not uncommon for minors, including those involved in the sex industry, to hold themselves out at an age older than they actually are. It would be draconian and unjust to punish someone with a 20-year prison term who possessed the state of mind to commit simple prostitution with someone who he/she legitimately believed to be an adult.

Thank you for the opportunity to provide testimony in this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE CHRIS LEE, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawai`i**

February 11, 2019

**RE: H.B. 233; RELATING TO PROSTITUTION.**

Chair Lee, Vice Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to H.B. 233, and particularly opposing sections 2 and 7.

First, we would like to point out some portions of the bill that we are in favor of, such as page 8, lines 3-7, clarifying that the age of a minor subjected to prostitution is a strict liability standard, under HRS 712-1202(1)(b). Also, changing the applicable state of mind for promoting prostitution (page 9, line 6), from knowing to reckless, would cast a slightly wider net for purposes of prosecution.

Our opposition to the bill is based on the following problems:

1. As written, the bill would legalize prostitution by minors. On page 2, lines 1-2, and page 10, lines 4-6, and page 10, lines 14-16, the definition of prostitution specifically exempts any minor (under age 18) who “engages in, or agrees or offers to engage in, sexual conduct with another person for a fee.” The Department is in strong opposition to legalizing prostitution for minors.
2. If prostitution is legalized for minors, then the current subsection found at page 5, lines 12-19, would be inapplicable. Technically, in the amended definition of prostitution, a minor could never violate HRS §712-1200(1)(a), because minors are expressly excluded from that offense. Moreover, if prostitution is legalized or downgraded to a “violation” for minors, this would make minors an even greater target for pimps, who could then recruit minors by emphasizing that this is “not even a crime.” Despite any good intentions to protect minors, these amendments would actually expose minors to more danger.

3. While we support the intent of the new offense created on page 4, lines 11-14, it is unclear how this would work, timing-wise, as the prostituted person would have to be (or have to have been) factually determined to be a victim of sex trafficking—ostensibly after someone else is convicted of sex trafficking that victim—before the person who solicited them could be charged with this new offense.
4. The proposal to amend habitual solicitation of prostitution to a class A felony (page 13, lines 5-7), only when the instant offense is “sex trafficking under section 712-1202(1)(c)” (fka “solicitation of a minor”) is confusing. If HRS §712-1202(1)(c) is already a class A felony in itself, (per the bill’s amendments on page 7, lines 13-16), it would make more sense just to charge and prove HRS §712-1202(1)(c), to get the class A felony conviction, rather than proving that and proving two prior convictions (of the listed offenses), just to get the same level of (class A felony) conviction. If the intent was for habitual solicitation of prostitution to be a class A felony when any of the prior offenses were sex trafficking under HRS §712-1202(1)(c) (or solicitation of a minor, as the offense existed before this amendment), that would make more sense.

Please be aware, under current laws and practice, minors are already protected by special confidentiality requirements and the sealing of their juvenile records upon reaching 18 years old. Thus, being adjudicated as a juvenile has minimal impact on a person’s future educational or occupational prospects. Also, under the current language of HRS 712-1200, minors who are involved in prostitution can be provided with treatment and counseling on a mandatory, extended, residential basis to the extent deemed necessary by Family Court. When minors are arrested for prostitution under current law, they are taken to Family Court for treatment and programs, not for punishment.

Although this bill does include some favorable provisions, inclusion of the unfavorable provisions noted above must result in our opposition to H.B. 233. Thank you for the opportunity to testify on this matter.



## HB 233, RELATING TO PROSTITUTION

FEBRUARY 11, 2019 · HOUSE JUDICIARY  
COMMITTEE · CHAIR REP. CHRIS LEE

**POSITION:** Support.

**RATIONALE:** IMUAlliance supports HB 233, relating to prostitution, which removes the criminal statute of limitations for sex trafficking and promoting prostitution; exempts minors from criminal liability for prostitution and street solicitation of prostitution; establishes minimum criminal and regulatory penalties for prostitution, sex trafficking, and promoting travel for prostitution; and repeals the offense of solicitation of a minor for prostitution.

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 efforts to increase penalties for those who perpetrate sexual slavery on our shores, especially sex buyers, whose money finances the local sex trade. This measure was drafted and sponsored by IMUAlliance and the Hawai'i Island Coalition Against Human Trafficking in response to recommendations put forward by Shared Hope International, a national leader in anti-trafficking advocacy that issues an annual "report card" evaluating gaps in state anti-trafficking policy.

This measure enhances our state's anti-trafficking protocols in a number of important ways. To begin, this proposal eliminates the statute of limitations for sex trafficking, so that investigations and prosecutions of those who force others into sexual servitude or buy sex from such victims

may be commenced at any time, which will allow highly traumatized survivors time to heal without sacrificing their ability to seek justice. Additionally, this bill immunizes minors from prostitution offenses that involve selling sex, a loophole that remains unclosed in our state’s anti-trafficking laws, even after the establishment of sex trafficking as a crime in 2016. While advancing or profiting from the prostitution of a minor is currently considered a form of sex trafficking under HRS §712-1202, **minors found to be acting as prostitutes are not automatically designated as sex trafficking victims or granted immunity from prosecution under our state’s prostitution code.** Twenty states ensure that “child prostitutes” are treated as victims, not criminals, by decriminalizing minors found to be selling sexual services. **To be clear, there is no such thing as a child prostitute. Children should not be viewed as having the ability to consent to selling themselves for sex and are almost always doing so against their will.** Trafficking advocates have long considered fully immunizing children from prosecution for prostitution to be a best practice legally and an imperative step in the creation of a coordinated continuum of care that prioritizes victims’ medical, psychological, and basic life needs.

Furthermore, this measure increases penalties for sex buyers, which, from the authors’ perspective, forms the heart and crux of the proposal. Under this measure, individuals who solicit sex would be guilty of a misdemeanor, subject to a fine of not less than \$1,000 and term of imprisonment of not less than 30 days for the first offense, with the term of imprisonment increasing to 90 days for a subsequent offense. For those who solicit sex in reckless disregard of the fact the person being solicited for sex is a sex trafficking victim—such as those who purchase sex from persons who appear to have been recently assaulted—the penalty would be increased to a class C felony. **This bill also makes soliciting a minor for prostitution a form of sex trafficking under HRS §712-1202, effectively making johns who finance the commercial sexual exploitation of children guilty of sex trafficking. This, alone, would be a tremendous step forward in our state’s anti-trafficking code,** which currently criminalizes people who buy sex from children under HRS §712-1209.1, solicitation of a minor for prostitution.

Disaggregating victims of child solicitation via HRS §712-1209.1 fails to properly identify them as victims of sex trafficking, who’ve been subjected to significant sexual trauma. It also fails to hold sex buyers fully accountable for this trauma under the harsher penalties encapsulated in our state’s sex trafficking section under HRS §712-1202. Importantly, federal law has long recognized

soliciting a child for prostitution as a form of sex trafficking under the federal 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 indicated, this measure incorporates soliciting sex from a minor into our state’s sex trafficking statute under HRS §712-1202 and repeals HRS §712-1209.1. We note, moreover, that many of the important elements of HRS §712-1209.1 would be moved 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).



# HAWAII YOUTH SERVICES NETWORK

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Rick Collins, President

Judith F. Clark, Executive Director

Bay Clinic

Big Brothers Big Sisters of Hawaii

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

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 9, 2019

Senator Chris Lee, Chair

And members of the Committee on Judiciary

## TESTIMONY IN SUPPORT OF HB 233 RELATING TO PROSTITUTION

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 233 Relating to Prostitution.

In our experience, minors engage in prostitution for two reasons:

- Because they have been enticed or coerced into performing sexual services (sex trafficking); or,
- Homeless youth engage in “survival sex” to obtain food, money, or a place to stay.

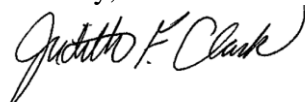
Sex trafficking is a criminal offense under Hawaii and federal law. In this case, the minor is the victim of the crime.

Homeless youth are children who have not completed their education and lack employment skills and experience. They may engage in prostitution because they have no other way to meet their basic survival and subsistence needs. More than 40% of Hawaii's homeless youth were forced to leave home by their families. Seventy-seven percent (77%) report physical, emotional or sexual abuse.

These victims need our compassion and supportive services, not prosecution.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH  
Executive Director

# TESTIMONY FOR HARM REDUCTION HAWAII

c/o 1658 Liholiho St #205

Honolulu, HI 96822

February 8, 2019

RE: HB233 to be heard, Monday, February 11, in Room 325, at 2:00 PM

## **OPPOSE**

To the members of the House Committee on Judiciary

**This bill is an expression of HATE** aimed at men who hire people for prostitution. No understanding of any of the complex issues involved with adults working in the sex trades or of minors is considered here. It simply ratchets up penalties without regard to the actual circumstances. It is completely contrary to the entire discussion being held in our state about ending mass incarceration. Under this law a person who hires a sixteen or seventeen year old for sex is guilty of a class A felony, subject to a \$50,000 fine and a twenty year prison term. This includes a sixteen year old boy hiring a sixteen year old girl.

Understand that from the standpoint of psychiatry attraction to girls of the ages noted above is considered normal. It is not a pedophilia. It is not deviance. Understand that the youth selling sexual services rely on the income from these buyers. They do not see them as their problem. They see the system which you have had a hand in creating as the problem. Instead of listening to them and developing ways to help them leave sex work you strike out violently at the very people who are their sole means of support.

Anti-prostitution advocates manipulatively talk about twelve and thirteen year old girls who are held captive by vicious traffickers and without clarification extend that picture to a whole class of young people whose basic problem is a society that has failed them, not buyers of sex. Getting people mad about the twelve year old is a tactic to make people over react in anger rather attempting to sort through and understand the real issues and potential solutions involved.

I must add the notification of this hearing being issued after 5PM on a Friday for a Monday hearing date is a problem in and of itself. Many people who might have something to say against this bill are likely to be disenfranchised as a result.

Aloha



Tracy Ryan  
For Harm Reduction Hawaii

**HB-233**

Submitted on: 2/10/2019 1:53:32 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

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

Comments:

**LATE**

**HB-233**

Submitted on: 2/11/2019 11:59:48 AM  
Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lorraine Larzabal	Accessing Freedom	Support	No

Comments:

I support this bill and pray the police catch all sex traffickers. I also suport the training of policeman to learn how to recognize prostitutes who are **victims** of sex trafficking.

**HB-233**

Submitted on: 2/8/2019 6:55:19 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nandita Sharma	Individual	Oppose	No

## Comments:

I am a professor of sociology at UH Manoa. I have conducted research and published in the area of sex and labor trafficking. I am strongly opposed to this bill. It is a major error to enact legislation on trafficking that simultaneously intensifies the prosecution of prostitution-related acts. As the reputable research, with well-respected methodologies employed, amply shows conflating traffickign with prostitution only further harms women and children.

**HB-233**

Submitted on: 2/10/2019 6:15:55 AM

Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joanne Amberg	Individual	Support	No

Comments:

Mahalo

**HB-233**

Submitted on: 2/10/2019 3:07:34 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
chelsea pang	Individual	Support	No

Comments:

**HB-233**

Submitted on: 2/10/2019 10:02:38 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melody Stone	Individual	Support	No

Comments:

I support passage of this bill which will strengthen our states position to effectively intervene in human trafficking. Please support this bill!

Mahalo! Melody Stone



**HB-233**

Submitted on: 2/10/2019 11:11:46 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lea Minton	Individual	Support	No

Comments:

I am in strong support of HB233 and ask that this committee pass this bill.

**HB-233**

Submitted on: 2/11/2019 8:02:03 AM

Testimony for JUD on 2/11/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Oppose	No

Comments:

Oppose as written. Minors are capable of committing said crimes and should be held accountable for their actions.