



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 887, H.D. 1, S.D. 1, RELATING TO CRIME.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 30, 2021 **TIME:** 9:50 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Farshad M. Talebi, Deputy Attorney General

Chair Rhoads and Members of the Committee:

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

The purpose of this bill is to amend Hawaii's sex trafficking laws to: (1) create a separate offense for sex buyers; (2) eliminate the statute of limitations for the crime of sex trafficking so the offenses can be prosecuted at any time; (3) create strict liability as to the knowledge of the victim's age for the crime of sex trafficking of a minor; (4) change the name of the crime of "solicitation of a minor for prostitution" to "commercial sexual exploitation of a minor," (5) close a legal loophole that allows child exploiters to escape criminal liability when the offer or acceptance is with a third party; (6) change the grade of offense for commercial sexual exploitation of a minor from a Class C to a Class B felony; and (7) add "anything of value" in addition to a "fee" as a type of compensation for crimes involving prostitution, commercial sexual exploitation, and sex trafficking.

Section 2 of the bill, at page 3, line 19 through page 7, line 8, adds a new section to chapter 712, Hawaii Revised Statutes (HRS) that creates a separate crime for sex buyers. Currently, the crime of "prostitution" includes both the criminal conduct of those engaged in prostitution and those buying sex. A separate crime for buyers will shift the primary focus from prostituted people to those who victimize them by creating a commercial market of sexual exploitation. Having two separate offenses will allow the

State to track arrest and conviction data for sex buyers and use that data to determine whether law enforcement efforts are effectively combating and reducing sexual exploitation.

Section 3 of the bill, at page 7, lines 9 to 17, amends section 701-108, HRS, to add sex trafficking to offenses that can be prosecuted at any time. This section eliminates the statute of limitations for sex trafficking so that delays by victims in reporting the offenses will not preclude the prosecution of the offenses. Data shows that victims and survivors of sex trafficking are less likely to seek help from law enforcement while they are under the control of their trafficker and may only be able to report the offenses after they have escaped to a safe and stable situation.

Section 6 of the bill, at page 12, line 4, through page 13, line 8 amends section 712-1202, HRS, by adding subsection (4), that eliminates the state of mind requirement for an offender if the victim was a minor, creating strict liability for the crime of sex trafficking where the victim is a minor.

Section 9 of the bill, at page 15, line 14, through page 17, line 15, amends section 712-1209.1, HRS, by changing the name of the crime of “solicitation of a minor for prostitution” to “commercial sexual exploitation of a minor.” It is not a crime for a minor to engage in prostitution because by definition a minor is a victim. Therefore, the name of the offense should be consistent with the criminal act by the offender, which is commercially sexually exploiting a minor. Amendments to section 712-1209.1(1) close a legal loophole that allows child exploiters to escape liability when the offer or acceptance of a sex act has been made by a third party. A trafficker, pimp, or another third party is often the one selling a child victim to the sex buyers. Currently, section 712-1209.1, HRS, does not penalize a child sex buyer if the transaction for sex with a minor is made by a third party. Under the current law, the offer or agreement must be made directly to the child victim or a member of law enforcement posing as a minor. The amendments to section 712-1209.1, HRS, correct this omission and criminalize offenders who offer or agree to pay to have sex with children even if the transaction is made with a third party.

An additional amendment to section 712-1209.1, HRS, at page 16, lines 12 to 13, changes the classification of “commercial sexual exploitation of a minor” from a class C to a class B felony offense to appropriately reflect the seriousness of the crime, which in other jurisdictions, and in federal law, is included in the crime of sex trafficking as a more serious offense.

Throughout the affected statutes, the bill adds the wording “anything of value” to the fee required for a transaction for commercial sexual conduct. Currently, our sex trafficking statutes only criminalize a transaction for “a fee,” which does not encompass many commercial sexual exploitation scenarios in which other things of value are provided, including drugs, goods, food, and housing. “Anything of value” is used in the federal definition and most state jurisdictions.

The Department respectfully asks the committee to consider the following amendments to House Bill No. 887, H.D. 1, S.D. 1.

In section 2 of the bill, at page 4, line 13, the wording “otherwise it is a class B felony” should be removed from this section. The new crime of “commercial sexual exploitation” is a petty misdemeanor and the Department believes an increase to a class C felony if the person exploited is a victim of sex trafficking is sufficient. Additionally, as written, it is not clear what would cause the crime to be a class B felony. Removing the phrase “otherwise it is a class B felony” would resolve this issue.

In section 2 of the bill, the new commercial sexual exploitation section, subsection (7), at page 5, line 20, through page 7, line 8, offers certain protections from prosecution for prostitution crimes for a person who in good faith seeks law enforcement assistance or medical assistance. This new subsection is legally problematic and presumably, would apply the protection to those engaged in prostitution as well as sex buyers. While the Department appreciates the intent to encourage victims of crime or those in need of medical assistance to reach out for help, this provision has several legal issues. First, “good faith” is not defined and is ambiguous. Second, the protection is focused on how the evidence is obtained, not on the conduct or mental state of the person seeking assistance. It is not clear how a defendant would prove the affirmative defense. Finally, the provision is written in parts as an immunity, but the last sentence

states that this protection would be an affirmative defense. Therefore, the Department recommends removing subsection (7) as currently written.

Finally, the Department recommends that the proposed amendment to 712-1202(1)(a), HRS, in section 6 of the bill, at page 12, lines 8 through 12, be limited to the addition of the word “coercion” as follows:

- (a) Advances prostitution by compelling or inducing a person by force, threat, fraud, coercion, or intimidation to engage in prostitution, or profits from such conduct by another; or

The Department has made the fight against human trafficking a priority, including by appointing a State Human Trafficking Coordinator and investing resources to improve the statewide response. This bill will enhance the State's ability to combat sex trafficking and commercial sexual exploitation.

We respectfully ask this Committee to pass this bill with the recommended amendments.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

March 30, 2021

H.B. No. 887, HD1, SD1: RELATING TO CRIME

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. No. 887, HD1, SD1.

The term “anything of value” is too broad and open to wide interpretation when coupled with the term “offers to provide.” These terms do not appropriately narrow what acts would be deemed commercial sexual exploitation (engaging in prostitution) or mere courting or flirting. These terms may include scenarios in modern dating that could unintentionally criminalize behaviors like buying dinner for another person on a date with the expectation of a sexual encounter or buying a present as innocuous as flowers for a potential sexual partner that may result in sexual conduct. Offering to engage in sexual conduct after receiving a piece of jewelry or “anything of value” places ordinary citizens at risk of being in violation of the law and creates a grey area that impacts any sexual encounter between adults where little gifts, favors, or “anything of value,” including physical contact, may be exchanged as part of the courting process. It would be possible under the proposed measure that “anything of value” could include the simple act of buying someone a drink at a bar prior to an agreement to engage in a sexual encounter or a cup of coffee at a Starbucks during discussions about whether to engage in sexual activity in another location to be construed as an act of commercial sexual exploitation under this broad definition.

A solution to narrow the statute is to add the following words/phrases: “explicitly” or “expressly provide,” and “for the sole purpose of” or “strictly in exchange for.” These recommendations would make it clear that this measure was intended for a purely business or transactional sexual encounter as opposed to a dating or ongoing sexual relationship between consenting adults where items of value may be exchanged.

We also oppose the amendments to HRS § 712-1202(4) on page 10 of the measure which establishes strict liability as to the state of mind with respect to the attendant

circumstances that the victim was a minor. The measure will eliminate the 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 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. Indeed, adults with no intention or desire to engage in sexual conduct with a minor will be subject to a 20-year prison term. Even a defendant who requests to see identification from the minor and is provided with false identification indicating he/she is 18 years old or older would be unjustly subjected to a class A felony. An adult who meets a willing partner in an adults only bar or night club may be subject to a class A felony where the minor not only produced a false identification but was also able to enter an adult only establishment to give every impression of being an adult. Elevating a petty misdemeanor offense in these circumstances to a class A felony is excessive.

H.B. No. 887, HD1 removes the statute of limitations for sex trafficking. 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. This time period is sufficient for timely and just prosecutions in these types of cases.

If the committee is inclined to extend the statute of limitations, this extension should not be applied retroactively to cases in which the applicable statute of limitations has already expired. Put another way, a statute of limitations that has already expired cannot be revived. In fact, the federal courts have prohibited such *ex post facto* applications, holding in *Stogner v. California*, 539 U.S. 607, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003) that “a law enacted after expiration of a previously applicable time limitations period violates the *Ex Post Facto* Clause when it is applied to revive a previously time-barred prosecution.”

In addition, defining “minor” as a person who is less than eighteen years of age appears inconsistent with the language found in sexual assault statutes involving minors:

HRS § 707-730(1)(b) provides, “A person commits the offense of sexual assault in the first degree if the person knowingly engages in sexual penetration with another person who is *less than fourteen years old.*” (Emphasis added).

HRS § 707-731(1)(d)(i) provides, “A person commits the offense of sexual assault in the second degree if . . . [t]he person knowingly subjects to sexual penetration a minor who is *at least sixteen years* old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that . . . [t]he person is not less than five years older than the minor.” (Emphasis added).

HRS § 707-732(1)(b) provides, “ A person commits the offense of sexual assault in the third degree if . . . [t]he person knowingly subjects to sexual contact another person who is *less than fourteen years old* or causes such a person to have sexual contact with the person.” (Emphasis added).

HRS § 707-732(1)(c) provides, “A person commits the offense of sexual assault in the third degree if . . . [t]he person knowingly engages in sexual contact with a person *who is at least fourteen years old but less than sixteen years old* or causes the minor to have sexual contact with the person; provided that . . . [t]he person is not less than five years older than the minor; and [t]he person is not legally married to the minor.” (Emphasis added).

H.B. No. 887, HD1, SD1 also seeks to prohibit defendants originally charged with the offenses of Commercial Sexual Exploitation and Commercial Sexual Exploitation of a Minor from qualifying for a deferred acceptance of guilty or nolo contendere plea.

The courts should be allowed to maintain their discretion on a case-by-case basis to grant deferrals in these types of cases. Courts cannot exercise this discretion without meeting the requirements of H.R.S. § 853-1, which provides, in pertinent part:

(1) When a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor; (2) It appears to the Court that the defendant is not likely to engage in a criminal course of conduct; and

* * * *

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, without accepting the plea of nolo contendere or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceedings.

If this measure passes, defendants originally charged with these offenses under §712- , 712-1207 (2)(b), 712-1209, 712-1209.1, and 712-1209.5 would be prohibited from requesting a deferral of their charges. As stated in HRS Chapter 853, the trial court, after considering the merits of the case, and hearing from the prosecutor, may or may not grant a defendant's motion to defer the proceedings. In order for the trial court to defer the proceedings, ***it must find that the defendant is not likely to re-offend or engage in a (further) course of criminal conduct, and that the ends of justice and welfare of society do not require the defendant receive a criminal conviction.***

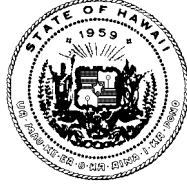
Statutory eligibility does not guarantee a deferral – in fact, because of this unusually high standard for granting a deferral, many requests by defendants to defer their criminal pleas are denied by the trial courts. Defendants must still be deemed worthy of a deferral. Criminal history, seriousness of the offense, history of substance abuse, lack of employment, and previous criminal behavior (even if uncharged) are common reasons argued by prosecutors and cited by judges for a denial of a defendant's motion to defer the acceptance of his or her guilty or no contest plea.

Why is it important that some defendants receive deferrals of their criminal proceedings? A criminal conviction follows an individual for the rest of his/her life. It will impact his/her ability to seek and maintain employment and to receive government benefits. A defendant who is youthful, immature, remorseful and is not likely to re-offend should be allowed, in limited circumstances, to be given the opportunity for a second chance -- a chance to avoid a criminal conviction. Police officers, soldiers, government and private sector employees may lose their jobs if they receive a criminal conviction.

Moreover, the possibility of requesting a deferral -- a chance to avoid a criminal conviction -- is a particularly enticing reason for a defendant to waive his right to a trial and enter a plea. Without the possibility of a deferral, a defendant is more likely to elect a trial. Defense attorneys weigh the strength of their case versus the strength of the State's case in determining whether or not to recommend trial. The likelihood of obtaining an acquittal, favorable verdict, or an improved position for sentencing are factors that defense attorneys consider in deciding to recommend a trial or plea.

Without a deferral, defendants will often take their chances at trial. And even when a deferral is granted, a defendant must still comply with conditions in order to earn the possibility of expunging their record.

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



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
**Hawai‘i State Commission on the Status of
Women**

HB887 HD1 SD1 Comments
March 29, 2021
Senate Judiciary

Aloha Chair Rhoads, Vice Chair Keohokalole, and Honorable Members,

The Hawai‘i State Commission on the Status of Women provides the following comments for HB887 HD1 SD1. This measure represents an important opportunity to improve the safety of women and gender diverse people who are in the commercial sex industry by force or by discrimination. Accordingly, the Commission asks that the Committee protect inclusion of the language that would allow a person in the sex trade seeking law enforcement or medical assistance to be immune from being charged or prosecuted for prostitution.

Thank you for this opportunity to testify.

Sincerely,

Khara Jabola-Carolus



HB 887, HD 1, SD 1, RELATING TO CRIME

MARCH 30, 2021 · SENATE JUDICIARY COMMITTEE
· CHAIR SEN. KARL RHOADS

POSITION: Support with amendments.

RATIONALE: Imua Alliance **supports and suggests an amendment for HB 887, HD 1, SD 1,** relating to crime, which creates a separate offense for those who provide anything of value to engage in sexual conduct with another; adds sex trafficking to offenses that can be prosecuted at any time; makes a person strictly liable for sex trafficking of a minor in terms of the victim's age; changes the name of the crime of solicitation of a minor for prostitution to commercial sexual exploitation of a minor; increases the grade of the offense of commercial sexual exploitation of a minor to a class B felony; adds "anything of value" as a type of compensation for purposes of engaging in commercial sexual exploitation; establishes a good faith exemption to the crime of commercial sexual exploitation for individuals who seek law enforcement or medical assistance for themselves and others.

Imua Alliance 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. **During the pandemic, demand for victim services to our organization has skyrocketed by 330 percent, driven in part by a fivefold increase in direct crisis calls from potential trafficking victims.**

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. Imua Alliance, 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 Imua Alliance 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 stop sexual slavery, including this measure's effort to increase sanctions for sex buyers who prey upon our keiki. That said, **we**

urge your committee to amend this measure by repealing Hawai'i's prohibition of solicitation of a minor for prostitution under HRS §712-1209.1, which does not align with 22 U.S. Code Chapter 78, the Trafficking Victims Protection Act, and instead designate soliciting a minor for prostitution as a form of sex trafficking under HRS §712-1202 using language from the original draft of HB 568/SB 831 (or HB 2573, HD 1, SD1 from 2020).

Designating soliciting a minor for prostitution a form of sex trafficking would ensure that 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, 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 stricter 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 victim 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. **There is no such thing as a child prostitute. Instead, children found in the commercial sex trade should be automatically designated as sex trafficking victims.**

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, 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 sadly see used with increasing frequency throughout the United States).

Finally, we fully support adding coercion as a means of committing the offense of sex trafficking and authorizing a prosecution for sex trafficking to be commenced at any time. As indicated above, sex trafficking victims are typically trauma bonded to their abusers. **Trauma-attached coercion is like Stockholm Syndrome, involving a powerful emotional dependency on the abusers and a shift in world- and self-view that results in feelings of gratitude and loyalty toward the abusers and a denial, dismissal, or minimization of the coercion, violence, and exploitation that victims have suffered.** Trauma-attached victims require placement in a coordinated continuum of care to “break” their trauma bonds, receive rehabilitative services, and reintegrate into society in a healthy manner. It is common for victims to need long-term care before recognizing the extent of the trauma they’ve suffered, much less feel emotionally and physically secure enough to participate in criminal investigations. Moreover, sex trafficking often involves elements of nonphysical intimidation, such as social manipulation, ridicule, sexual humiliation, emotional and financial injury, and the establishment of a continuous climate of fear. Thus, to fully respect the needs of survivors and ensure that all victims of sexual exploitation may receive justice, we believe that the statute of limitations on sex trafficking cases should be eliminated.

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

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org



TO: The Honorable Karl Rhoads, Chair, The Honorable Jarrett Keohokalole, Vice Chair, and Honorable Members of the Senate Committee on Judiciary

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Robert A. Fox Professor of Practice, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USA Advocacy

RE: HB 887, elimination of criminal SOL for child sex trafficking

DATE: March 30, 2021

Dear Chairman, Vice Chairman, and Members of the Senate Committee on Judiciary,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USA Advocacy, to submit testimony regarding HB 887, which will increase access to justice for victims of childhood sex trafficking and enhance protection for children in Hawaii. If passed, this legislation will make Hawaii a leader in the fight to protect children's rights.

By way of introduction, Marci Hamilton is the Founder & CEO of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor in the Fels Institute of Government. She authored *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and is the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations, or "SOL" reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

Kathryn Robb is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up HB 887.

HB 887 would eliminate the criminal SOL for child sex trafficking crimes, as well as clarify the definition of sex trafficking to include non-monetary compensation. HB 887 would remove references to childhood "prostitution" and use more correct language like "commercial sexual exploitation." If passed, this legislation will bring Hawaii closer to being a leader in the fight to protect children's rights.



I. HB 887 Will Correctly Identify Children as Victims

According to federal law, **any child engaged in commercial sex is a victim of a severe form of sex trafficking.**¹ The federal law correctly acknowledges that children are incapable of consenting to sex. Moreover, anyone over the age of 18 engaged in commercial sex who has experienced any form of physical or sexual force, coercive grooming, financial coercion, or manipulative fraud at any time is also considered a victim.

HB 887 removes the language of “prostitution” from its laws, and correctly identifies children as victims, bringing its interpretation into line with federal law. It also underscores this change by removing Consent as a possible defense for child sex trafficking. These changes encourage an attitude shift in victims, law enforcement, members of the judiciary, and the public to recognize victims as victims, and to remove misplaced stigma that may keep victims from coming forward.

II. The Science of Delayed Disclosure Supports SOL Reform for Child Sex Trafficking

There is a worldwide epidemic of child sex trafficking, with millions of people being trafficked for sex, 94% of which are women and girls.² In 2019, Polaris Project worked on trafficking situations involving 22,326 individual survivors in the United States through the National Trafficking Hotline.³ According to the National Center for Missing and Exploited Children, **1 out of 6 children reported missing is “likely [a victim] of child sex trafficking”** based on case information.⁴ In a recent joint study by Arizona State University and the Hawai’i State Commission on the Status of Women conducted from April-June 2019, **1 out of 5 victims of sex trafficking in Hawaii were trafficked as children.**⁵

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.⁶ It is now settled that PTSD, memory deficits, and complete

¹ 22 U.S.C. § 7102(11)(a).

² *Global Report on Trafficking in Persons*, UNODC, 33 (2018), available at https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf.

³ *Myths, Facts, and Statistics*, POLARIS PROJECT (last visited February 11, 2021), available at <https://polarisproject.org/myths-facts-and-statistics/>.

⁴ K. Tate Chambers, Ed., *Human Trafficking*, 65 U.S. ATTORNEY’S BULLETIN, 33 (Nov. 2017), available at <https://www.justice.gov/usao/page/file/1008856/download>.

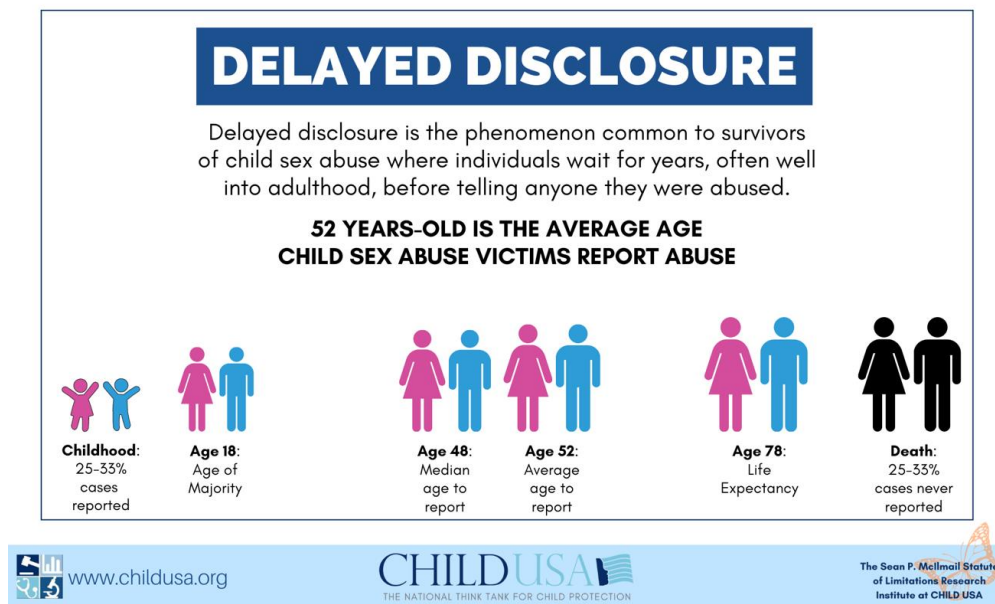
⁵ D. Roe-Sepowitz & K. Jabola-Carolus, *Sex Trafficking in Hawai’i: Part III*, ASU SCH. OF SOC. WORK OFFICE OF SEX TRAFFICKING INTERVENTION RES. 6 (Jan. 2020), available at https://www.dropbox.com/s/e9muqfigatvfdp1/2020_SexTraffickingHawaii_FINAL.pdf?dl=0.

⁶ VAN DER KOLK, B. THE BODY KEEPS THE SCORE: MEMORY & THE EVOLVING PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS, *HARVARD REV. OF PSYCHIATRY* (1994) 1(5), 253-65; Jim Hopper, *Why Can’t Christine Blasey Ford Remember How She Got Home?*, *SCIENTIFIC AMER.* (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, *JUSTICE CANADA* 30 (2019), available at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter “Hoskell”).

disassociation are common coping mechanisms for child victims.⁷ As a result, it can take years for a victim to acknowledge their abuse.

Trauma is only one of the barriers preventing children from disclosing abuse. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don’t have an adult they can disclose their abuse to, don’t have opportunities to disclose abuse, and aren’t believed when they try to disclose.”⁸ Studies suggest that many victims, as much as 33%, never disclose their abuse.⁹ The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their memory.¹⁰

In fact, the **average age of disclosure of child sexual abuse, including child sex trafficking, in a study of 1,000 victims was 52 years-old.**¹¹ Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked, shutting victims out of justice.



⁷ Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, FRONTIERS IN PSYCHOL. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

⁸ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

⁹ *Id.*

¹⁰ Hoskell, at 24.

¹¹ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

It is a medical fact that victims of child sex trafficking often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse. Short SOLs for child sex trafficking play into the hands of the perpetrators and the institutions enable them; they disable victims' voices and empowerment. Because of its lifelong effect on health and well-being that can erect high barriers to disclosure and the fact that many perpetrators pursue and assault children even in their elder years, childhood sexual abuse needs to be added to the list of laws that should not be subject to an SOL, like kidnapping, fraud and embezzlement, war crimes, treason, and murder in the United States. HB 887 seeks to do just that.

III. **HB 887 Will Serve the Public Good by Increasing Victims' Access to Justice and Preventing Future Abuse**

Statutes of limitations or SOLs are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that has prevented victims from naming their perpetrators publicly for fear of retaliation and from obtaining justice.

Current Hawaii law provides that a prosecution for child sex trafficking must be commenced within 6 years of the abuse, or by a victim's 24th birthday.¹² HB 887 would eliminate the criminal SOL, allowing more victims to come forward when they are ready.

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE



Identifies previously unknown predators and institutions responsible

to the public, shielding other children from future abuse.



Shifts the cost of abuse

from the victims and society to the perpetrators and the institutions that enabled them.



Educates the public

about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.


www.childusa.org

CHILDUSA

THE NATIONAL THINK TANK FOR CHILD PROTECTION

The Sean P. McInnis Statute
of Limitations Research
Institute at CHILD USA

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states have shut down most

¹² HAW. REV. STAT. ANN. § 701-108.

cases. That is a major reason we knew so little about the epidemic of child sex abuse and child sex trafficking. Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.

As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. By allowing prosecutors and victims all the time they need to prosecute a child sex trafficking case, hidden predators are brought into the light and are prevented from further abusing more children. Preventing further abuse only serves to help –society—by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children to grow into healthy adults. SOL reform also educates the public about the danger of child sexual abuse.

IV. Hawaii Should Join the National Trend Toward Meaningful SOL Reform for Child Sex Abuse by Eliminating its Criminal SOL for Child Sex Trafficking

There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement from 2002 through 2020, see CHILD USA's 2020 SOL Report.¹³ 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with 23 states and Washington D.C changing their SOLs for the better in 2019.¹⁴ The powerful SOL reform wave rode its way into 2020, with 30 states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.¹⁵ By March of 2021, 30 states have already introduced SOL reform bills.¹⁶

This proposed elimination of the criminal SOL among the other changes suggested in HB 887 is in line with the recent trend to eliminate the criminal SOL and to give victims into their 50's time to come forward in accordance with the delayed disclosure of abuse science. Hawaii has already eliminated the criminal SOL for first and second-degree sexual assault and continuous sexual assault of a minor under age 14, so HB 887 corrects the omission of child sex trafficking from that list. It also better aligns Hawaii's definitions of child sex trafficking to those of the federal government, to highlight the reality that children involved in sex trafficking are victims.

Once again, we commend you for supporting this legislation, which is desperately needed to help survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. Hawaii's children deserve SOL reform to protect them today and into the future. Extending the time for survivors to file suit and opening a window for expired claims is a positive step for Hawaii's children and families. Please do not hesitate to contact us if you have questions regarding SOL reform or if we can be of assistance in any way on other child protection issues.

¹³ 2020 SOL Report, CHILDUSA.ORG (last visited Feb. 10, 2021), available at www.childusa.org/sol-report-2020.

¹⁴ For more information on SOL reform in 2019, visit *2019 Summary of Child Sexual Abuse Statutes of Limitations (SOLs): Introduced, Signed into Law and State Laws by Category*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at www.childusa.org/2019sol.

¹⁵ See *2020 SOL Summary*, CHILDUSA.ORG (last visited Mar. 29, 2021), available at www.childusa.org/2020sol.

¹⁶ See *id.*

Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal line extending to the right.

Marci A. Hamilton, Esq.
Founder & CEO
CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
(215) 539-1906

A handwritten signature in black ink that reads "Kathryn Robb". The signature is cursive and somewhat stylized.

Kathryn Robb, Esq.
Executive Director
CHILD USA Advocacy
3508 Market St., Suite 201
Philadelphia, PA 19104

HB-887-SD-1

Submitted on: 3/26/2021 4:57:59 PM

Testimony for JDC on 3/30/2021 9:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

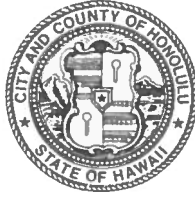
Stand in support

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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

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MAYOR



SUSAN BALLARD
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JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
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OUR REFERENCE PJ-GK

March 30, 2021

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 887, H.D. 1, S.D. 1, Relating to Crime


I am 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. 887, H.D. 1, S.D. 1, Relating to Crime.

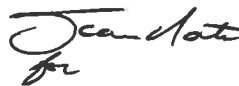
This bill creates a separate offense for those who provide anything of value to engage in sexual conduct with another, removes the statute of limitation from the offense of sex trafficking, holds a person strictly liable for sex trafficking of a minor in terms of the victim's age, changes the name of the crime of solicitation of a minor for prostitution to commercial sexual exploitation of a minor, and most importantly, closes loopholes that allow offenders to escape liability. While many bills introduced for this legislative session attempt to address sexual exploitation, this bill proposes comprehensive and robust changes that will help law enforcement effectively investigate sex trafficking cases and hold offenders accountable for their actions.

The HPD urges you to support House Bill No. 887, H.D. 1, S.D. 1, Relating to Crime, and thanks you for the opportunity to testify.

APPROVED:

for

Susan Ballard
Chief of Police

Sincerely,



Phillip Johnson, Major
Narcotics/Vice Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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LATE

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-first State Legislature
Regular Session of 2021
State of Hawai`i

March 30, 2021

RE: H.B. 887, H.D. 1, S.D. 1, RELATING TO SEX TRAFFICKING.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in support of H.B. 887, H.D. 1, S.D. 1, with suggested amendments.

The purpose of H.B. 887, H.D. 1, S.D. 1, is to provide protection for victims of sex trafficking by strengthening and providing clarification to Hawaii’s sex trafficking laws. Specifically, this bill:

Section 2: Creates the offense of “Commercial sexual exploitation”

Currently, the offense of “Prostitution,” Section 712-1200, Hawaii Revised Statutes (“HRS”) includes two distinct types of criminal conduct: HRS §712-1200(a), which applies to prostituted persons; and HRS §712-1200(b), which applies to the sex buyers. By creating a distinct and separate crime for buyers, this offense would be more aptly labeled, and place more emphasis on the individuals who drive the commercial market for sexual exploitation. Having two separate offenses will also better facilitate data collection and tracking.

We do note that the addition of the words, “otherwise it is a class B felony,” on page 4, line 13, seems to be misplaced, where the increase to a class C felony (see page 4, line 10)—if the prostituted person is a victim of sex trafficking—is an appropriate step-up from the usual petty misdemeanor charge (see page 4, line 9). Thus, **we ask that the words “otherwise it is a class B felony” be deleted.**

Also, while we support the intent of the newly proposed subsection (7)—at page 5, line 20, through page 7, line 8—that subsection is extremely long and worded in such a way that it is very

confusing as to how it would be applied. We also note that the protection from prosecution under this subsection may have been intended as an addition to the remaining “prostitution” statute, HRS §712-1200 (starting at page 7, line 18), as a way to assist those who suffer from being prostituted, rather than its current place under “commercial sexual exploitation,” which applies to sex buyers. **To ensure that the intent of this subsection can be fully realized, we respectfully ask that the Committee remove it**, for the time being, and allow stakeholders to discuss its potential revision for next session.

Section 3: Removes the statute of limitations as it pertains to sex trafficking offenses

While victims of sex trafficking are under the control of their trafficker, they are less likely to seek help from law enforcement or cooperate with law enforcement in a meaningful manner. This routinely leads to delays in reporting, and potentially expiration of the statute of limitations for criminal prosecution. By removing the statute of limitations, this bill ensures that if and when a case is brought, we are not precluded by time. That said, the Department notes that the passage of time often weakens a criminal case.

Sections 4, 7, 8, 9, 10: Changes “a fee” to “anything of value”

Often, commercial sexual exploitation does not involve the exchange of money, but rather non-monetary items or amenities such as shelter, drugs or food. This amendment would ensure our sex trafficking statutes encompass all or nearly all transactions, and align our statute with the federal definition, in terms of what is exchanged during a transaction.

Section 6: Includes “coercion” as a means of advancing prostitution

Adding the term “coercion” would bring Hawaii’s sex trafficking statute in-line with the federal code, and fill a possible gap in our current statutes. Indeed, there have been instances when our courts indicated that a particular set of facts did not fit within the current sex trafficking statute, such as a victim who was told she could not eat (or sleep) until she finished a certain amount of work. Currently, HRS §712-1202(a) only defines “advancing prostitution” in terms of “force, threat, fraud or intimidation.”

Respectfully, **we ask that the proposed amendments on page 12, lines 8 and 11-12, be deleted**, as those changes would not assist in prosecution of these offenses, and in fact could potentially complicate matters.

Section 6: Creates strict liability as to the minor’s age, for sex trafficking

The Department supports the proposed amendments on page 12, lines 14-16, and page 13, lines 5-8—holding sex trafficker’s strictly liability for their knowledge of a minor’s age—as that would be consistent with the well-established strict liability standard that already applies when minors are victims of rape. The Department believes that minors are a particularly vulnerable class, and the limited use of strict liability in sex offenses furthers their protection.

Section 9: Closes a legal loophole that allows child exploiters to escape liability

Currently, only sex buyers who offer, negotiate, or pay a child victim directly are chargeable under HRS §712-1209.1. However, a child victim is often not the one negotiating with or being

paid directly by the offender; it is often a trafficker or other third party who is selling the child victim. The proposed amendments on page 16, lines 3-11, would properly criminalize those who commercially sexually exploit children, regardless of whom the sex buyer negotiates with.

We do note, however, that the proposed amendments delete existing language that explicitly holds offenders accountable even when the “minor” is an undercover law enforcement officer representing themselves to be a minor (e.g. via online advertisements or messaging) (see page 16, lines 1-2). If the Committee elects to delete that language, **we respectfully ask that the Committee include an explanation in its committee report, expressing its intent that offenders would still be held accountable under HRS §712-1209.1, where the purported “minor” is in fact a law enforcement officer representing that person’s self as a minor, at least for purposes of HRS §712-1209.1(b) and (c).**

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 887, H.D. 1, S.D. 1, with amendments. Thank you for the opportunity to testify on this matter.

LATE

HB-887-SD-1

Submitted on: 3/30/2021 1:02:06 PM

Testimony for JDC on 3/30/2021 9:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support this bill to be passed through legislature.

LATE

HB-887-SD-1

Submitted on: 3/30/2021 1:13:47 PM

Testimony for JDC on 3/30/2021 9:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tim Hitchens	Individual	Support	No

Comments:

I support HB887 because it amends the law to be more trauma-informed, survivor-focused, and reality-based.

Sex Trafficking is a very real problem in Hawaii, and some of the most problematic elements of current state law are corrected by this bill.

Vulnerable, high risk, and exploited people must be supported and protected. Perpetrators must be arrested, charged, and convicted. Law enforcement, Child Welfare Services, and prosecutors must be provided with necessary tools to do their jobs. Data must be collected cleanly and consistently. The public must be educated. The state must have a statewide approach to addressing sex trafficking that aligns with and connects with federal efforts and resources.

Extensive research recognizes that trauma impacts the recollection of events. Asking survivors to overcome fear, shame, and the brain's natural survival instincts - which can include repressing or dissociating from details of a traumatic event - in a specified timeframe is unrealistic. Thus, the statute of limitations should be eliminated.

Shifting terminology from "prostitute" to "exploited person" recognizes the status and reality of survivors of trafficking and removes stigma and blame.

Changing the language from "fee" to "anything of value" recognizes the reality that exploitation is not limited to the exchange, offer, or promise of money; and it brings Hawaii into alignment with the federal definition of sex trafficking.

Adding "coercion" to the definition of sex trafficking extends the definition to cover a range of methods not included in force, threat, fraud, or intimidation; and again, it brings Hawaii into alignment with the federal definition of sex trafficking.

Aligning the state and federal definition of sex trafficking is important for consistency, particularly in instances when Child Welfare Services and local Police Departments work on a case together. By federal mandate (The Justice for Victims of Trafficking Act of 2015), Hawaii's state child abuse definition (HRS350) includes the federal definition of sex trafficking. Thus, while CWS is bound by the federal definition, local law enforcement is bound by the state definition.

Thank you for your consideration,

Tim Hitchens, MSW



3/31/2021

Testimony in Support of: HB887 HD1 SD1

Chair Rhoades, Vice Chair Keohokalole, and Honorable Members,

Ho'ola Nā Pua is in support of HB 887 to create separate offenses for those who provide anything of value to engage in sexual conduct with another; add sex trafficking to offenses that can be prosecuted; making a person strictly liable for sex trafficking of a minor in terms of the victim's age; changing the name of the crime of "solicitation of a minor for prostitution" to "commercial sexual exploitation of a minor" while closing loopholes in the law that allow offenders to escape liability, and increasing the grade of offense to a class B felony; add "anything of value" to reflect the reality of non-monetary compensation used in commercial sexual exploitation.

In the state of Hawaii, perpetrators have been able to escape criminal culpability by exploiting gaps in our current laws. Updating the terminology in our laws to include "anything of value" as a means of compensation will help further protect victims being exchanged for other non-monetary forms of payment. Amending the law is necessary to hold those who distribute, profit, or buy sexually exploited minors accountable.

It is also imperative, given the severity of the crime, to increase the level of the offense for perpetrators who purchase children for sex to a class B felony. Due to the psychological abuse and manipulative tactics utilized by traffickers, those exploited are often very reluctant to come forward and seek justice until they feel safe from their exploiters. That is why Ho'ola Nā Pua is also in support of eliminating the statute of limitation for sex trafficking.

It is clear through high profile (such as the Larry Nassar and Jeffrey Epstein trials), and all too common cases that youth who have been abused may take a significant amount of time before they are able or ready to come forward and discuss their trauma.

Victims may withhold their experiences from family, friends, and even themselves until much later in life. There is a need to give survivors more time to process and heal, for a multitude of reasons, including their own safety and mental health. Many perpetrators imprint a sense of shame, guilt, or fear onto youth that keeps them from speaking out at the time abuse

We are committed to the prevention of sex trafficking and providing care for children who have been exploited.

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Martha Smith

Michelle Stoffe

Susan Utsugi

Ho'ola Nā Pua
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occurs. Hopefully, with more education and awareness surrounding crimes of sexual abuse, the shame and stigma surrounding youth can be obliterated.

Many states have already extended the statute of limitations, and some have eliminated it altogether. We hope the state of Hawaii considers this measure and adopts the extension provided in this bill.

Amending terminology in Hawai'i's current laws is also vital. Ho'ōla Nā Pua is in full support of changing the name of the crime from "solicitation of a minor for prostitution" to "commercial sexual exploitation of a minor" and eliminating the pronoun "prostitute." As we advance, this will help Hawai'i properly define and identify those who are sexually exploited as victims and survivors.

Ho'ōla Nā Pua implores that Hawaii state legislators support HB 877 to properly hold traffickers and exploiters accountable for their actions while making our law consistent with the federal human trafficking definitions and laws.

Respectfully,
Ho'ōla Nā Pua



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LATE

HB-887-SD-1

Submitted on: 3/30/2021 9:25:35 PM

Testimony for JDC on 3/30/2021 9:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victoria Anderson	Individual	Support	No

Comments:

Please pass this bill.