

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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 48 S.D. 1, RELATING TO SEX TRAFFICKING.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 23, 2021 **TIME:** 9:45 a.m.

**LOCATION:** State Capitol, Via Videoconference

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

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Chair Rhoads and Members of the Committee:

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

This bill would (1) change the definition of “minor” to under sixteen years of age, (2) move the offense of solicitation of a minor for prostitution under the offense of sex trafficking, (3) add coercion as a means of committing the offense of sex trafficking, and (4) eliminate consent as a defense for sex trafficking.

The Department is concerned about lowering the age of a “minor” from less than eighteen to less than sixteen at page 5, lines 8-9, of the bill. Federal law defines “severe forms of trafficking in persons” as “a commercial sex act . . . in which the person induced to perform such act has not attained 18 years of age,” in title 22 United States Code section 7102(11)(A). In 2017, the Hawaii Department of Human Services (DHS) adopted this definition as a form of “child abuse or neglect” in order to come into compliance with the federal Justice for Victims of Trafficking Act of 2015. The Department respectfully asks the committee to keep the definition of a “minor” as a child who is less than eighteen.

While this bill would move the offense of solicitation of a minor for prostitution (section 712-1209.1, Hawaii Revised Statutes (HRS)) under the offense of sex trafficking, it keeps the original, legally problematic wording from the solicitation offense. Currently, section 712-1209.1, HRS, has a legal loophole that allows child exploiters to

escape liability when the offer or acceptance has been made with a third party, and not a minor or an undercover officer pretending to be a minor. The problematic wording in Section 3 of the bill on page 4, lines 13 through 17, provides:

- (c) Offers or agrees to pay a fee or anything of value to a minor or to a member of a police department, a sheriff, or a law enforcement officer who represents that person's self as a minor to engage in sexual conduct.

The sex buyer often negotiates with the trafficker, pimp, or another third party, and not directly with the minor victim.

To address this concern, the Department recommends replacing the existing wording in section 3 of the bill on page 4, lines 13 through 17, with the following:

- (c) Provides a fee or anything of value to a minor or third person as compensation for having engaged in sexual conduct with a minor; agrees to provide or offers to provide a fee or anything of value to a minor or third person for the purpose of engaging in sexual conduct with a minor; or solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee or anything of value.

Additionally, the solicitation of a minor for prostitution offense under section 712-1209.1, HRS, applies a strict liability standard as to the defendant's knowledge of the victim's age. The strict liability standard is important to keep because, similar to other sex offenses involving minors (e.g., sexual assault of a minor), the crime of sex trafficking should not require knowledge of the minor victim's age. Section 9 of the bill repeals section 712-1209.1, HRS, the solicitation of a minor for prostitution statute, including subsection (5) on page 18, lines 9 through 12, which currently reads:

- (5) The state of mind requirement for this offense is not applicable to the fact that the person solicited was a minor. A person is strictly liable with respect to the attendant circumstance that the person solicited was a minor.

Instead of repealing this wording, the Department recommends moving it with the offense of solicitation of a minor for prostitution to the sex trafficking statute and

amending it to apply specifically to section 712-1202, HRS. The Department proposes the following amendment to Section 3 in the bill, page 5, line 5, adding the following new subsection (5), and making the definitions subsection (6):

(5) The state of mind requirement for the offense under subsection (1)(c) is not applicable to the fact that the victim was a minor. A person is strictly liable with respect to the attendant circumstances that the victim was a minor.

Finally, the Department recommends adding sex trafficking to offenses that can be prosecuted at any time under 701-108, HRS, which was in the original Senate Bill No. 48, in section 2 on page 2, line 17. 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. The Department, however, does not recommend including the offense of promoting prostitution to 701-108, HRS, in this bill. The title of the bill "Sex Trafficking" appears to preclude the offense of promoting prostitution from being addressed in the bill due to the single-subject rule under section 14 of article III of the Constitution of the State of Hawaii.

We appreciate this opportunity to provide comments on this bill and respectfully request the committee pass this bill with these proposed 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**

February 23, 2021

S.B. No. 48 S.D.1: RELATING TO SEX TRAFFICKING

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

The Office of the Public Defender respectfully opposes S.B. No. 48 S.D.1.

S.B. No. 48 S.D. 1 seeks to repeal HRS §712-1209.1 and inserts the prohibited conduct of 712-1209.1 into the Sex Trafficking Statute HRS §712-1202. This amendment to HRS §712-1202 presents several concerns.

S.B. No. 48 S.D. 1 purports to target the approximately “one hundred fifty establishments” that “participate in the commercial sex trade in the State.” Yet, there is very little in the proposed amendment that truly addresses “establishments.” On the contrary, HRS §712-1209.1 targets the customers, more commonly known as “johns,” who solicit a minor, or a law enforcement officer who represents himself/herself to be a minor.

Singling out prostitution “johns” for harsh treatment is misguided and should be directed at the pimps, sex traffickers, and the organizations that work on a larger scale and directly benefit from actual sex trafficking.

A conviction for the offense of solicitation of a minor currently carries a maximum penalty of five years imprisonment. The proposal in this measure to classify the offense as a Class A felony and increase the maximum penalty to twenty years of incarceration is unduly harsh. Pimps, sex traffickers, and sex trade establishments should be the primary focus of the sex trafficking laws and they deserve the harsh punishment of twenty years. Indeed, the focus should not be on cutting off the demand for prostitution but on its supply. Pimps, traffickers, and sex establishment owners who force minors into prostitution should receive harsh punishment. Their actions are heinous, and intentional. “Johns”, on the other hand, should not be subject to the same punishment as the those who groom, exploit and force minors into prostitution.

Should a young adult, an 18-year-old, who would not even think twice to distinguish someone who is 17 years old or 18 years old, be subject to a non-probationable twenty-year sentence? “Johns” who do not have an actual preference for minors may be deceived, entrapped or enticed to commit this offense.

“Johns” already face harsh penalties for soliciting a minor. Because of the aggravating circumstance of soliciting a minor to engage in sexual conduct, HRS 712-1209.1 was appropriately classified as a Class C felony. This measure will unfairly punish the individual “john” who solicits a minor for sexual conduct and does little to target the establishments that perpetuate and prey on minors that are victims to sex trafficking. Not only is the offense a Class C felony with a maximum of five years imprisonment, “johns” are not eligible to seek a deferral of their guilty or no contest pleas. And finally, the convicted customers face the shame of the offense. It makes no sense that the “johns” convicted of soliciting a minor for prostitution would be treated more harshly than the pimps, sex traffickers, and sex establishment owners.

In addition to the mandatory indeterminate term of 20 years of incarceration, living the balance of their lives as a convicted felon, and the shame and embarrassment of such a conviction, the “john” will also have a lifetime reporting requirement. Under 712-1202, the “john” faces a lifetime duty to report whereas under HRS 712-1209.1 the “john” is allowed, as a Tier 1 offender, to petition the court for termination of reporting requirements after ten years of maintaining a clean record and having substantially complied with his/her reporting requirements.

With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai‘i is to increase penalties. Increased penalties (from a maximum of five years prison to a maximum of twenty years prison) will only continue to exacerbate the Hawai‘i prison overcrowding problem. Our jails and prisons are filled above not only design capacity but also operational capacity. A significant portion of the State’s prison population are incarcerated in a contracted private, for-profit prison in Arizona; they are exiled thousands of miles away from their families, friends, and crucial support networks. According to a recent study by the Prison Policy Initiative, in 2018, Hawai‘i had an incarceration rate of 487 per 100,000 people.<sup>1</sup> Although Hawai‘i ranked 37th among the 50 states, if every state was an independent nation, Hawai‘i would have the 43rd highest incarceration rate

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<sup>1</sup> Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

in the world.<sup>2</sup> Only three foreign countries have a higher incarceration rate than Hawai‘i.<sup>3</sup> Thus, Hawai‘i locks up a higher percentage of its people than many wealthy democracies do.<sup>4</sup>

While it is logical and understandable that the State continues to have an interest in prohibiting said conduct, it is patently unfair and unjust to attach a non-probationable 20 year mandatory prison term to an offense that was previously a Class C felony where sentencing allowed for probation and fixed the maximum penalty at 5 years of incarceration. A bill that purports to target commercial sex trade establishments should do just that – and not punish the less culpable “john” with an unduly harsh and severe penalty.

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

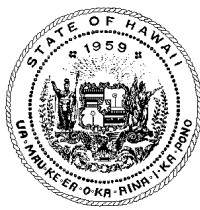
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<sup>2</sup> Prison Policy Initiative, “States of Incarceration: The Global Context.” *See* <https://www.prisonpolicy.org/global/2018.html>

<sup>3</sup> *Id.*

<sup>4</sup> Prison Policy Initiative, “Hawaii profile.” *See* <https://www.prisonpolicy.org/profiles/HI.html>

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**MAX N. OTANI**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
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**Tommy Johnson**  
Deputy Director  
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**Jordan Lowe**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 48, SENATE DRAFT 1  
RELATING TO SEX TRAFFICKING.

By  
Max N. Otani, Director

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021; 9:45 a.m.  
Via Video Conference

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

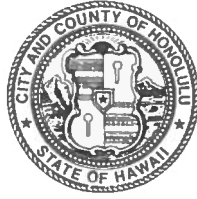
The Department of Public Safety (PSD) offers comments on Senate Bill (SB) 48, Senate Draft (SD) 1, which includes coercion as a form of sex trafficking and removes the statute of limitations for sex trafficking and promotion of prostitution offenses. The measure also designates the solicitation of a minor for sex as a form of sex trafficking and as a strict liability offense of sex trafficking.

PSD is supportive of any measure that reduces sex trafficking within the State of Hawaii. This measure will help to protect Hawaii's children from sexual predators.

Thank you for the opportunity to provide this testimony.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE PJ-GK

February 23, 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: Senate Bill No. 48, S.D. 1, Relating to Sex Trafficking**

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

The HPD supports Senate Bill No. 48, S.D. 1, Relating to Sex Trafficking.

Sex trafficking is a problem that affects individuals, families, and communities. Traffickers disproportionately target at-risk populations by any means possible, including coercion. In addition, many victims of sex trafficking are subjected to severe mental abuse. They are not aware of the extent of their victimization until years later, and only with counseling and maturity are they able to address the trauma of their abuse.

Removing the statutes of limitation for offenders of sex trafficking and promoting prostitution will increase the likelihood of holding predators of these offenses accountable for their actions. As one of our most vulnerable populations, children must be afforded the highest level of protection.

The HPD urges you to support Senate Bill No. 48, S.D. 1, Relating to Sex Trafficking.



The Honorable Karl Rhoads, Chair  
and Members  
Page 2  
February 23, 2021

Thank you for the opportunity to testify.

Sincerely,



Phillip Johnson, Major  
Narcotics/Vice Division

APPROVED:



Susan Ballard  
Chief of Police



## SB 48, SD 1, RELATING TO SEX TRAFFICKING

FEBRUARY 23, 2021 · SENATE JUDICIARY  
COMMITTEE · CHAIR SEN. KARL RHOADS

**POSITION:** Strong support with amendments.

**RATIONALE:** Imua Alliance **strongly supports and suggests amendments for SB 48, SD 1,** relating to sex trafficking, which includes coercion as a means of committing the offense of sex trafficking; removes the criminal statute of limitations for sex trafficking and promoting prostitution; designates solicitation of a minor for prostitution as a form of sex trafficking; specifies that sex trafficking of a minor is a strict liability offense; and repeals the offense of solicitation of a minor for prostitution.

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. **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.** Designating soliciting a minor for

prostitution a form of sex trafficking, as this bill does, will 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 and violence that victims have suffered.

That said, **we urge the committee to amend page 4, lines 13-17 of this bill to read: “Offers or agrees to consideration or the promise of consideration to a minor to engage in sexual conduct; third person pursuant to an understanding that such compensation is in exchange for engaging in sexual conduct with a minor; or member of a police department, a sheriff, or a law enforcement officer who represents that person's self as a minor to engage in sexual conduct.”** This change was made by the Senate Judiciary Committee to HB 2573, HD1, which was last year’s version of this measure. The prohibition on buying sex from minors currently contained in the bill may be too narrow in practice, applying only to minor victims themselves or to members of law enforcement engaging in undercover stings. **In other words, under the current language, sex buyers could only be prosecuted if they pay or agree to pay the minor or a law enforcement officer directly. Sex buyers who pay pimps, traffickers, “mamasans,” or other facilitators of sexual exploitation would *not* be prosecuted** under the proposed subsection (c), unless it is amended to apply more broadly.

Additionally, to ensure that all victims of sexual exploitation may receive justice, **we believe that the repeal of the statute of limitations on sex trafficking cases that was contained in the original draft of this bill should be reinserted.** 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.

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](mailto:kris@imuaalliance.org)**

**SB-48-SD-1**

Submitted on: 2/20/2021 11:42:53 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support SB48.

Mike Golojuch, Sr.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

**LATE**

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

February 23, 2021

**RE: S.B. 48, 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 S.B. 48, S.D. 1, **with amendments**.

The purpose of S.B. 48, S.D. 1, is to provide protection for victims of sex trafficking by strengthening and providing clarification to Hawaii’s sex trafficking laws.

**Coercion**

First, the Department strongly supports adding the term “coercion” as a means of advancing prostitution (*see* S.B. 48, S.D. 1, page 4, line 6). Under current law, Section 712-1202(a), Hawaii Revised Statutes (“HRS”), prohibits “advancing prostitution...by force, threat, fraud or intimidation,” but there have been instances when our courts indicated that a particular set of facts did not fit within these existing definitions. One such example was a victim who was told she could not eat or sleep until she finished a certain amount of work.

Adding the term “coercion” would also bring Hawaii’s sex trafficking statute in-line with federal law, which defines “severe forms of sex trafficking in persons” as:

“...sex trafficking in which a commercial sex act is induced by force, fraud, **or coercion**; or in which the person induced to perform such act has not attained 18 years of age...”

22 U.S. Code §7102(11)(a), emphasis added.

### **Anything of value**

The Department strongly supports adding the term “or anything of value,” where current law only indicates payment of a “fee” (*see* S.B. 48, S.D. 1, page 4, line 13). There are many instances when food, drugs, or other things may be given to a minor as “payment” in lieu of money. Similarly, we note this phrase should also be added to other existing statutes that involve “payment” for sexual conduct, such as Prostitution (HRS §712-1200) or Street solicitation of prostitution (HRS §712-1207).

### **Third person**

Another tragic reality that we encourage this Committee to address—possibly under the proposed new subsection (c) (*see* S.B. 48, S.D. 1, page 4, lines 13-17)—is the all-too-common situation where a third person (e.g. pimp and/or trafficker) handles all agreements and transactions on the minor’s behalf. In those situations, offenders may never offer nor pay any fee (or anything of value) directly to the minor, yet those offenders should still be held accountable for soliciting a minor for prostitution.

### **Consent**

Finally, looking to S.B. 48, S.D. 1, page 4, lines 19-20, the Department suggests removing “(3) Consent to sexual conduct shall not constitute a defense to a violation of this section,” as the statute appears to be targeting the offender’s behavior, not the minor’s. In addition, because minors are not capable of consenting to sell themselves, this subsection appears to be inconsequential to the section.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 48, S.D. 1, with amendments. Thank you for the opportunity to testify on this matter.



**LATE**



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

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

**RE:** SB 48, regarding child sex trafficking

**DATE:** February 22, 2021

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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 SB 48, 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, and Legal Director 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 SB 48.

SB 48 would include solicitation as a child sex trafficking crime, as well as clarify the definition of sex trafficking to include non-monetary compensation, remove consent as a defense to child sex trafficking, and expand the definition to include an inchoate offense. A prior version of this legislation included a necessary elimination of the statute of limitations to prosecute these crimes,



and we strongly urge you to reinstate this language. If passed, this legislation will bring Hawaii closer to being a leader in the fight to protect children's rights.

### **I. SB 48 Will Correctly Identify Children as Victims, and Accurately Capture Perpetrators**

There is a worldwide epidemic of child sex trafficking, with millions of people being trafficked for sex, 94% of which are women and girls.<sup>1</sup> In 2019, Polaris Project worked on trafficking situations involving 22,326 individual survivors in the United States through the National Trafficking Hotline.<sup>2</sup> 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.<sup>3</sup> In a recent joint study by Arizona State University and the Hawaii 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.**

According to federal law, **any child engaged in commercial sex is a victim of a severe form of sex trafficking.**<sup>4</sup> 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.

SB 48 correctly identifies children as victims, bringing attempted solicitation of a minor for prostitution into the definition of sex trafficking, and into line with the 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.

SB 48 seeks to broaden the definition of a sex trafficking, which would bring Hawaii law in line with federal law which defines sex trafficking as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”<sup>5</sup>

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<sup>1</sup> *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](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf).

<sup>2</sup> *Myths, Facts, and Statistics*, POLARIS PROJECT (last visited February 11, 2021), available at <https://polarisproject.org/myths-facts-and-statistics/>.

<sup>3</sup> 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>.

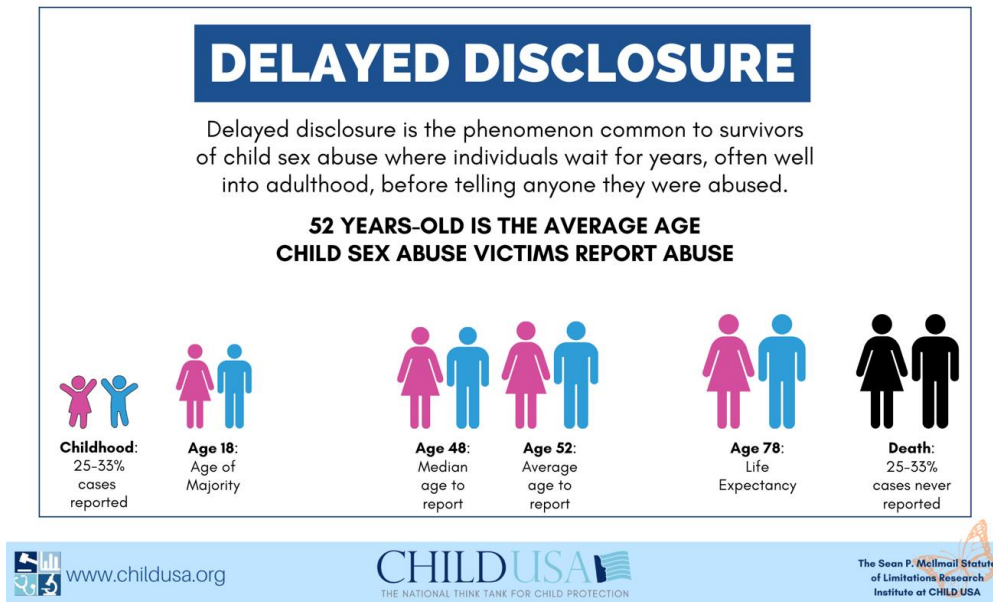
<sup>4</sup> 22 U.S.C. § 7102(11)(a).

<sup>5</sup> 22 U.S.C. § 7102(12).

## II. A prior version of SB 48 Eliminated the Statute of Limitations for Child Sex Trafficking Prosecution, and it is Important to Reinstate this Language

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 24<sup>th</sup> birthday.<sup>6</sup> A prior version of SB 48 sought to eliminate the criminal SOL, allowing more victims to come forward when they are ready, but that language has been removed from the current version. We urge you to reinstate this language, as the trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. 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 reinstating the criminal SOL elimination in SB 48 would correct the omission of child sex trafficking from that list. It would also better align 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.

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. 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.**<sup>7</sup> 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.



<sup>6</sup> HAW. REV. STAT. ANN. § 701-108.

<sup>7</sup> 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>.

### III. 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> By February of 2021, 27 states have already introduced SOL reform bills.<sup>11</sup>

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. An expanded definition of child sex trafficking, and the removal of consent as a defense to child sex trafficking, are important steps toward protecting Hawaii's children. We strongly urge you to reinstate the prior language extending the criminal SOL for child sex trafficking offenses. 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.

Sincerely,



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<sup>8</sup> 2020 SOL Report, CHILDUSA.ORG (last visited Feb. 10, 2021), available at [www.childusa.org/sol-report-2020](http://www.childusa.org/sol-report-2020).

<sup>9</sup> 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](http://www.childusa.org/2019sol).

<sup>10</sup> See *2020 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).

<sup>11</sup> See *id.*

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