

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 3036, S.D. 1, RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, March 13, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Tarnas and Members of the Committee:

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

The purpose of this bill is to clarify the offenses of sex trafficking, section 712-1202, Hawaii Revised Statutes (HRS), and promoting prostitution, section 712-1203, HRS, by: (1) clarifying the definition of "profits from prostitution", (2) inserting the definitions of "advances prostitution" and "profits from prostitution" into the statutes establishing the substantive offenses of sex trafficking and promoting prostitution; and (3) repealing section 712-1201, HRS where those definitions currently reside.

In State v. Ibarra, 153 Hawaii 50, 526 P.3d 575 (2023), the Hawaii Supreme Court held that "profits from prostitution" did not include repayment of a loan, thereby creating a safe harbor when a trafficker extends a loan or a service and categorizes proceeds received from prostituting the victims as a repayment. In fact, one of the more common recruitment methods traffickers use is to extend a loan to victims that forces them into prostitution and can never be fully repaid. In his dissent, Chief Justice Recktenwald, joined by Justice Nakayama, explains:

While the majority's interpretation of HRS § 712-1701(2) [sic] would result in Ibarra's acquittal, that approach risks making it more difficult to prosecute traffickers who coerce their victims using loans. Traffickers employ a variety of business models to keeping [sic] their victims tethered to them financially. Often, the targets of traffickers have a pressing need for money, lodging, for illicit substances, or to cross a border. The

trafficker provides funds or assistance, and the trafficked victim agrees to repay the trafficker from the proceeds of the victim's prostitution. However, the loan proves prohibitively difficult to repay, and the victim is trapped in a coercive dynamic.

Id. at 62, 526 P.3rd at 587.

This bill is necessary to close the loophole created by State v. Ibarra by making clear that "profits from prostitution" includes money, things of value, or other property received even if related to an agreement or understanding or a repayment of debt. Additionally, it will incorporate the definitions of "advances prostitution" and "profits from prostitution" into the applicable HRS sections that outline the offenses of sex trafficking and promoting prostitution and repeal section 712-1201, HRS, to further clarify the laws on sex trafficking and promoting prostitution.

The Department respectfully requests the passage of this bill.

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March 11, 2024

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**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER STATE OF HAWAI'I
TO THE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

**SB 3036, SD1: RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND
MORALS
March 13, 2024 at 2:00 p.m.**

**Chair David A. Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members**

The Office of the Public Defender (OPD) **opposes** this bill as it is contrary to the purposes of the penal statutes related to sex trafficking and promoting prostitution.

This bill seeks, in part, to amend the definition of "profits from prostitution." Currently, the definition for "profits from prostitution" reads as follows:

A person "profits from prostitution" if the person accepts or receives money, anything of value, or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity[.]

Hawai'i Revised Statutes (HRS) § 712-1201. In response to the majority holding of the Hawai'i Supreme Court in State v. Ibarra, 153 Hawai'i 50, 526 P.3d 575 (2023), this bill seeks to unnecessarily amend the definition as follows:

"Profits from prostitution" means that the person knowingly accepts or receives money, anything of value, or other property pursuant to an agreement or understanding with a third party whereby the third party participates or is to participate in the proceeds of prostitution activity, regardless of whether the money, thing of value, or other property received is in excess of expenditures related to the agreement or understanding or is for reimbursement or repayment of debt.

In Ibarra, the defendant, Paola Ibarra, was charged with sex trafficking in violation of HRS § 712-1202(1)(a)¹. Ibarra and the complainant (CW), both prostitutes, had flown from Oakland to Hawai‘i for the purpose of engaging in prostitution.² Ibarra had paid for CW’s airfare and their hotels with the understanding that CW would repay Ibarra with money CW made while in Hawai‘i. As CW termed it, she was coming to Hawai‘i for a “paycation.” When they arrived in Hawai‘i, Ibarra also paid for and posted prostitution advertisements for herself and CW. CW claimed that she gave all the money from her prostitution activities to Ibarra because it “felt right” because Ibarra had paid for CW’s airfare and hotel. Ibarra maintained that CW only paid Ibarra back for the expenses Ibarra had paid for upfront. Subsequently co-defendant Ferreira arrived and CW began to give her earnings directly to Ferreira. Ibarra was convicted of the lesser included offense of promoting prostitution in violation of HRS § 712-1203(1).³

On certiorari, the Supreme Court majority (Justices McKenna, Wilson and Eddins) held that Ibarra did not “profit” from CW’s prostitution because she was only paid back the money that she had loaned to CW for CW’s airfare and CW’s half of the hotel costs. The dissenting opinion (Justice Nakayama and Chief Justice Recktenwald) referencing the “dynamic of economic coercion” disagreed with the Majority’s interpretation based in part on the Dissent’s fear that the “majority’s interpretation unintentionally creates a safe harbor for traffickers who have extended a loan or service to their victims but have not yet ‘profited’ from the arrangement.”

This bill seeks to adopt the position of the Dissent in Ibarra based on its fear that pimps or traffickers will use the supposed loophole to create a debt or reimbursement agreement and coerce persons to engage in prostitution to pay back the debt. While there may be some isolated instances where such a coercive repayment situation could occur, Ibarra provides an actual factual situation where the purposes of the sex trafficking and prostitution statutes would not be served by the definition of “profits from prostitution” in this bill. The purpose of the trafficking and prostitution statutes was to “combat[] those who benefit most from the prostitution, the traffickers and pimps[.]”⁴ Ibarra was a fellow prostitute, neither a trafficker nor a pimp. While Ibarra was aware of where CW was earning her money, CW made an uncoerced agreement to repay Ibarra for the

¹ Under HRS § 712-1202(1)(a), “[a] person commits the offense of sex trafficking if the person knowingly ... [a]dvances 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[.]”

² CW claimed that her intention was to fly to Hawai‘i only to “strip and dance [at exotic dance clubs].”

³ Under HRS § 712-1203(1), “[a] person commits the offense of promoting prostitution if the person knowingly advances or profits from prostitution.” Both the charged offense of sex trafficking and the lesser included offense of promoting prostitution included “advances prostitution.” At the time of the case, the definition of “advances prostitution” excluded a person who was acting as a prostitute or a patron of a prostitute. As Ibarra was acting as a prostitute, it was not disputed that she could not have advanced prostitution, thus the case focused on whether she profited from prostitution.

⁴ Stand. Comm. Rep. No. 1137, in 2011 Senate Journal at 1284-85.

costs of CW's "paycation" in Hawai'i. In fact, under the expanded definition proposed by this bill, any person who agreed to accept repayment for any debt with the knowledge that the third party would repay them with proceeds gained from prostitution could be convicted of a Class A (sex trafficking) or Class B (promoting prostitution) felony. This bill's overly-expansive definition would thereby catch in its net not only the sex traffickers and pimps that are the intended targets of the penal statutes but even ordinary persons who simply accepted money as repayment of a debt from a known prostitute.⁵ The possibility that ordinary persons who are not pimps or traffickers might be convicted of a Class A or Class B felony in a misguided attempt to close a perceived loophole is too great a risk to take.⁶

The OPD opposes this bill and urges this Committee to do the same. Thank you for the opportunity to comment on SB 3036, SD1.

⁵ The Ibarra Dissent and supporters of this bill might argue that there has to be an explicit agreement that the person engage in prostitution specifically to pay back the debt, such as "I will loan you money which you will pay back with funds earned through prostitution." However, there is no assurance that the prosecution would limit itself to such instances as the proposed definition could conceivably be expanded to any person who receives payback for a debt from a known prostitute regardless of whether the person intends that the person engage in prostitution with the specific and sole purpose of paying back the debt.

⁶ As one commentator put it,

Extremely broad laws offend due process. ... With broad laws, the issue is not notice but reach. Broad statutes can be plenty clear about what they require. The problem is they sweep in too much everyday conduct, arousing worry about outsized power and arbitrary enforcement. ... Extremely broad laws, in this sense, are problematic for the same basic reason as general warrants: they afford state officials practically bondless justification to interfere with private life.

Brennan-Marquez, K., Extremely Broad Laws, Arizona Law Review (Vol. 61).

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE DAVID TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i**

March 13, 2024

RE: S.B. 3036 SD 1; RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS.

Chair Tarnas, Vice Chair Takayama, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") **strongly supports** passage of S.B. 3036 SD 1.

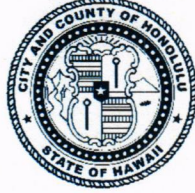
This bill repeals H.R.S. Section 712-1201, instead defining the terms "advances prostitution" and "profits from prostitution" under H.R.S. Section 712-1202 (Sex Trafficking) and H.R.S. Section 712-1203 (Promoting Prostitution). Embedding these definitions within the respective statutes clarifies and streamlines the laws prohibiting offenses by traffickers and individuals promoting prostitution.

This bill also expands the definition of "profits from prostitution" to include "reimbursement or repayment of debt." This change addresses debt bondage, a widely-employed coercive tactic used to lure and retain control over victims of trafficking. Closing the current loophole for debt bondage strengthens our ability to hold human traffickers accountable.

The Department strongly supports this bill. Thank you for the opportunity to testify.

POLICE DEPARTMENT
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DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE **ML-HR**

March 13, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
The Honorable Cedric Asuega Gates, Chair
and Members
Committee on Agriculture
and Food Systems
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chairs Tarnas and Gates and Members:

SUBJECT: Senate Bill No. 3036, S.D.1, Relating to Offenses Against Public Health and Morals

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

The HPD supports Senate Bill No. 3036, S.D.1, Relating to Offenses Against Public Health and Morals.

Sections 712-1202, Sex trafficking, and 712-1203, Promoting prostitution, Hawaii Revised Statutes, require the elements of "profits from prostitution" and "advances prostitution."

Currently, the definitions for both are not listed. Amending the above sections and adding the definitions of "advancing prostitution" and "profits from prostitution" will clarify the elements needed for sex trafficking and promoting prostitution.

This will allow law enforcement to target those who benefit the most from prostitution.

The Honorable David A. Tarnas, Chair
The Honorable Cedric Asuega Gates, Chair
and Members
March 13, 2024
Page 2


The HPD urges you to support Senate Bill No. 3036, S.D.1, Relating to Offenses Against Public Health and Morals.

Thank you for the opportunity to testify.

Sincerely,


for Mike Lambert, Major
Narcotics/Vice Division

APPROVED:

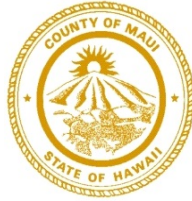


Arthur J. Logan
Chief of Police

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
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TESTIMONY ON S.B. 3036 SD1
RELATING TO OFFENSES
AGAINST PUBLIC HEALTH AND MORALS

TO: Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary and Hawaiian Affairs

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: March 12, 2024

SUBJECT: **SUPPORT OF SB 3036 SD1, OFFENSES AGAINST PUBLIC HEALTH
AND MORALS**

Thank you for the opportunity to testify in **SUPPORT** of SB 3036 SD1. This bill clarifies the definition of “profits from prostitution” and streamlines various offenses relating to sex trafficking and promoting prostitution. We support this measure because it makes clear that an offender cannot evade prostitution or sex trafficking charges by claiming profits received from prostitution or sex trafficking activities are actually just reimbursement for a pre-existing loan.

For this reason, the Department of the Prosecuting Attorney, County of Maui supports the passage of SB 3036 SD1. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.



SB 3036, SD1, RELATING TO OFFENSES AGAINST PUBLIC HEALTH AND MORALS

MARCH 13, 2024 · JHA HEARING

POSITION: Support.

RATIONALE: Imua Alliance supports SB 3036, SD1, relating to offenses against public health and morals, which clarifies the definition of "profits from prostitution" to include money or property received regardless of expenditures or if it was a reimbursement or repayment of a debt; and amends the sex trafficking and promoting prostitution criminal offense statutes by inserting relevant definitions in those statutes and repealing a statute that is no longer needed.

Imua Alliance is a victim service provider for survivors of sex trafficking. Over the past 15 years, we have provided comprehensive direct intervention (victim rescue) services to over 200 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 skyrocketed by 330 percent, driven in part by a fivefold increase in direct crisis calls.

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 fight against sexual servitude, including this bill's clarification of our state's definition of sex trafficking.** We must make sure that our state definition of sex trafficking is well-crafted and meets any potential legal challenges, including those raised in *State v. Ibarra*, 526 P.3d 575 (Haw. 2023).

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

SB-3036-SD-1

Submitted on: 3/9/2024 11:55:29 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

SB-3036-SD-1

Submitted on: 3/9/2024 12:12:39 PM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

YES to clarifying the definition of "profits from prostitution" to include money or property received regardless of expenditures or if it was a reimbursement or repayment of a debt. Amends the sex trafficking and promoting prostitution criminal offense statutes by inserting relevant definitions in those statutes and repealing a statute that is no longer needed.