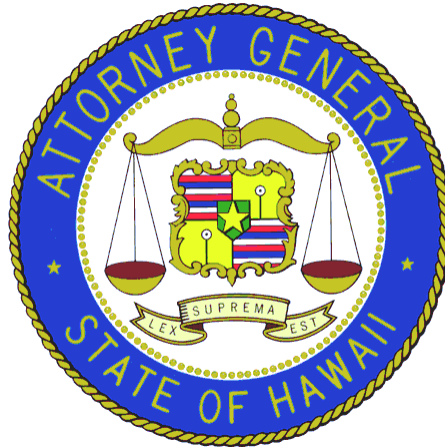


State of Hawaii

Department of the Attorney General



Report of the Hawaii Anti-Trafficking Task Force

**pursuant to Act 260, Session Laws of Hawaii 2006,
as amended by Act 176, Session Laws of Hawaii 2008**

***Submitted to
The Twenty-Fifth State Legislature
Regular Session of 2009***

I. Introduction

Act 260, Session Laws of Hawaii 2006, established the Hawaii Anti-Trafficking Task Force (“Task Force”) to carry out the following activities:

- (1) Compile and review statutes, rules, and information relating to programs adopted in other states to combat human trafficking and to provide services to its victims;
- (2) Recommend further changes to Hawaii law necessary to assist in the prevention of human trafficking and to provide support to victims;
- (3) Develop protocols and training for individuals within designated state agencies, nongovernmental organizations, and private entities regarding provision of services to trafficked persons;
- (4) Develop interagency procedures to collect and organize data, including research and resource information on domestic trafficking, and to measure the extent of the need for protection and assistance to victims of trafficking; and
- (5) Engage in consultation with governmental and nongovernmental organizations, among other entities, to advance the purposes of this Act.

Pursuant to Act 260, the Task Force had a sunset date of June 30, 2008, and comprised the following members:

- (1) The attorney general, or the attorney general's designees;
- (2) The directors of health, human services, and labor, or their designees;
- (3) The chief of police of each county or the chief's designee;
- (4) The prosecuting attorney of each county, or the prosecutor's designee;
- (5) The director of the victim and witness assistance program of the department of the prosecuting attorney, city and county of Honolulu;
- (6) The Salvation Army;
- (7) Sisters Offering Support;
- (8) The Sex Abuse Treatment Center;
- (9) GirlFest;
- (10) Na Loio Immigrant Rights and Public Interest Legal Center;
- (11) The Domestic Violence Clearinghouse and Legal Hotline; and
- (12) The Hawaii State Coalition Against Sexual Assault.

Pursuant to Act 260, the Task Force provided reports to the Legislature before the convening of the regular sessions of 2007 (“2007 Report”) and 2008 (“2008 Report”). The reports are available at http://hawaii.gov/ag/main/publications/reports/legislative_reports/.

Act 176, Session Laws of Hawaii 2008, amended Act 260 by extending the sunset date to June 30, 2010, and revising the membership as follows:

- (1) Individuals:
 - (A) The attorney general, or the attorney general's designee;
 - (B) The directors of health, human services, and labor, and industrial relations, or their designees;
 - (C) The state public defender, or the state public defender's designee;
 - (D) The chief of police of each county, or the chief's designee;
 - (E) The prosecuting attorney of each county, or the prosecutor's designee;
 - (F) The director of the victim and witness assistance program of the department of the prosecuting attorney, city and county of Honolulu;
 - (G) Hawaii contractees for services under the office of refugee resettlement of the United States Department of Health and Human Services¹; and
 - (H) Hawaii contractees for services under the United States Conference of Catholic Bishops²; and
- (2) Representatives of:
 - (A) The immigration information office of the county of Hawaii;
 - (B) The crime victim compensation commission;
 - (C) The office of the gender equity counselor of the University of Hawaii;
 - (D) The Hawaii State Coalition Against Domestic Violence;
 - (E) The Salvation Army;
 - (F) The Sex Abuse Treatment Center;
 - (G) GirlFest;
 - (H) Na Loio Immigrant Rights and Public Interest Legal Center;
 - (I) The Domestic Violence Action Center; and
 - (J) The Hawaii State Coalition Against Sexual Assault.

¹ On June 27, 2008, the Office of Refugee Resettlement informed the Department of the Attorney General that the “ORR-supported entities (contractors and grantees, and those receiving subawards from them) providing services in Hawaii that are available to victims of a severe form of trafficking in persons who are neither U.S. citizens nor Lawful Permanent Residents” are Child and Family Service, Pacific Gateway Center, and Susannah Wesley Community Center.

² On June 27, 2008, the United States Conference of Catholic Bishops informed the Department of the Attorney General that it “has a contract with the federal Department of Health and Human Services to provide case management to survivors of human trafficking across the country. We subcontract with local social service agencies, both Catholic and non-Catholic, and support them in their work with this population Our subcontractor in Hawaii is Susannah Wesley Community Center”

II. Activities of the Hawaii Anti-Trafficking Task Force

A. Compile and review statutes, rules, and information relating to programs adopted in other states to combat human trafficking and to provide services to its victims.

In its 2007 Report, the Task Force provided a compilation and review of statutes, rules, and information relating to programs adopted in other states to combat human trafficking and to provide services to its victims.

B. Recommend further changes to Hawaii law necessary to assist in the prevention of human trafficking and to provide support to victims.

In its 2007 Report, the Task Force proposed legislation that was introduced as House Bill No. 1784, Relating to Crime. The Legislature did not pass this proposed legislation. In its 2008 Report, the Task Force proposed legislation that was introduced as House Bill No. 2765 and Senate Bill No. 2212, Relating to Crime. An amended version of this proposed legislation was enacted on June 6, 2008 as Act 147, Session Laws of Hawaii 2008.

Recommendations:

- (1) A majority of the members recommend that the Legislature create the offense of Sexual Exploitation of a Minor. The majority's proposed wording is attached to this report (Attachment 1). The Department of the Attorney General noted its concern that the members did not have sufficient time to review the proposal before making their decision.
- (2) On September 3, 2008, a Special Agent of the Federal Bureau of Investigation gave a presentation to the Task Force on the Innocence Lost National Initiative as it relates to Hawaii. The Federal Bureau of Investigation website describes the initiative as follows: "In June 2003, the FBI in conjunction with the Department of Justice Child Exploitation and Obscenity Section and the National Center for Missing and Exploited Children launched the Innocence Lost National Initiative. Their combined efforts were aimed at addressing the growing problem of domestic sex trafficking of children in the United States. In the five years since its inception, the Initiative has resulted in the development of 24 dedicated task forces and working groups throughout the U.S. involving federal, state and local law enforcement agencies working in tandem with U.S. Attorney's Offices." The agent told the Task Force that many of her cases involve minors who run away from their homes on neighbor islands, fly to Honolulu without their parents' knowledge or consent, and are lured or coerced into prostitution in Honolulu. The agent told the Task Force that airlines that offer interisland flights within Hawaii have varying policies as to minimum age and identification requirements for unaccompanied minor passengers. For example, the agent noted that one airline appears to allow thirteen-year-olds to board interisland flights without identification or proof of a parent's consent. For these reasons, a majority of the Task Force members recommend that the Legislature consider encouraging airlines and other companies that provide interisland passenger transportation to consider adopting policies to help ensure that parents and guardians of unaccompanied minor passengers are aware of the minors' travel.

The Task Force continues to examine the issue of demand for prostitution in Hawaii – specifically, enhanced penalties and education requirements for patrons. The Task Force continues to examine the pros and cons of amending the offense of Promoting Prostitution in the First Degree to include the use of fraud to induce a person to engage in prostitution. The Task Force will continue to conduct research, and may propose legislation in 2010, for a new sexual assault offense regarding solicitation of sex with minors.

GirlFest proposed several additional changes to Hawaii law. Although the Task Force did not decide to recommend these changes to the Legislature in 2009, GirlFest wishes to note that it “highly urge[s] that legislative amendments . . . based on our recommendations be included in legislation for next session and not wait until 2010.” GirlFest’s recommendations are attached to this report (Attachment 2).

The Office of the Prosecuting Attorney, County of Hawaii, suggested that welfare and food stamp fraud may be used to enable human trafficking. To help prevent welfare and food stamp fraud, the member suggested that the Department of Human Services consider requiring photographs or fingerprint tracking or some form of identification other than a PIN number for Electronic Benefit Transfer cards, especially for cash withdrawals. The Department of Human Services agreed to consider this suggestion.

Pacific Gateway Center requested that Pacific Gateway Center be removed from the Task Force for the following reason: “Because of need to prioritize time and resources. Resignation should allow the Task Force to reduce its membership and change its quorum. Pacific Gateway Center is facing funding issues which are expected to become greater in 2009 and prioritizing/redirecting resources to funded programs and fundraising.” The Task Force took no position on this request.

C. Develop protocols and training for individuals within designated state agencies, nongovernmental organizations, and private entities regarding provision of services to trafficked persons.

Nearly all of the Task Force members are also members or partners of the Hawaii Coalition Against Human Trafficking (“Coalition”). The Coalition has developed protocols and training regarding provision of services to trafficked persons in the form of draft *Member Guidelines for Responding to Human Trafficking in Hawaii* and *Agency Guideline for Responding to Human Trafficking in Hawaii*. The draft guidelines were nearing completion at the time of this report.

The Coalition (formerly known as the Hawaii Anti-Trafficking Task Force or HATTF 1) was established in 2005 through the United States Department of Justice Bureau of Justice Assistance Law Enforcement and Service Provider Multidisciplinary Anti-Trafficking Task Forces program. Information regarding this program is available in the 2007 and 2008 Reports and at <http://www.ojp.usdoj.gov/BJA/grant/HumanTraffic.html>. The program requires the Coalition to carry out the following activities:

- (1) Continued enhancement of a multi-disciplinary and multi-jurisdictional victim-centered task force to identify and rescue victims of trafficking in persons and pro-actively investigate all forms of trafficking in the community to result in the successful prosecution of traffickers;
- (2) Identify and rescue victims of trafficking in persons, which entails collaboration with the [United States Department of Justice] Office for Victims of Crime (OVC)-funded victim services provider and the local Office of the [United States] Attorney to secure requests for continued presence or T-visas for foreign victims and the accurate reporting of victims who are identified and rescued by the task force . . . ;
- (3) In addition to continued reporting requirements for [the Bureau of Justice Assistance], cooperate with the [United States Department of Justice] Bureau of Justice Statistics to timely report accurate statistical information on human trafficking investigations and efforts . . . ;
- (4) In coordination with Human Trafficking Victim Service Providers and task force partners, train law enforcement line officers, and persons likely to come into contact with victims of trafficking to be able to recognize the signs of trafficking and its victims.

In Hawaii, the OVC-funded victim services provider referenced above in item 2 is The Salvation Army Hawaiian and Pacific Islands Division. Information regarding the OVC program is available at <http://www.ojp.usdoj.gov/ovc/help/traffickingmatrix.htm>. Information regarding The Salvation Army Hawaii and American Samoa Anti-Trafficking Services Project is available at www.salvationarmyhawaii.org.

D. Develop interagency procedures to collect and organize data, including research and resource information on domestic trafficking, and to measure the extent of the need for protection and assistance to victims of trafficking.

In its 2007 Report, the Task Force recommended that “a comprehensive assessment of the needs of trafficking victims and service providers in Hawaii must be done.” In response, the Legislature in 2007 passed Senate Concurrent Resolution No. 220, in which the Legislature requested that the Department of Human Services “conduct a statewide needs assessment of non-citizen victims of human trafficking”, including the following items: “(1) Collaborate with the task force that was established, to determine how Hawaii can best combat and deter human trafficking, pursuant to Act 260, Session Laws of Hawaii 2006; (2) Identify existing obstacles, in statute, rule, or policy, that limit or deny benefits to non-citizen victims of human trafficking; and (3) Identify appropriate social, financial, and other services for victims of human trafficking, in general, including gaps in the services offered by state, county, and private agencies for victims of human trafficking[.]” The Department of Human Services *Report to the Twenty-Fourth Hawaii*

State Legislature 2008 in Accordance with the Provisions of Senate Concurrent Resolution 220, Senate Draft 1 is available at <http://hawaii.gov/dhs/main/reports/LegislativeReports/2008Leg>.

Additionally, the Bureau of Justice Assistance and the Bureau of Justice Statistics have developed interagency procedures to collect and organize data regarding human trafficking investigations and efforts. The Law Enforcement and Service Provider Multidisciplinary Anti-Trafficking Task Forces program requires the Coalition to follow those procedures.

E. Engage in consultation with governmental and nongovernmental organizations, among other entities, to advance the purposes of this Act.

The Task Force engaged in consultation with governmental and nongovernmental organizations as described throughout this report.

Nearly all of the Task Force members are also members or partners of the Coalition, and there is a great amount of overlap between the work of these groups. To eliminate duplication by the Task Force of work that is being done by the Coalition, the Task Force suggested to the Coalition that the Coalition may wish to consider including all Task Force members in Coalition activities.

"§707- Sexual exploitation of a minor. (1) A person commits the offense of sexual exploitation of a minor if the person knowingly or recklessly:

- (a) Causes, entices, persuades, induces, or otherwise aids a minor to engage in activity as an erotic or nude massager or exotic or nude dancer;
or
- (b) Engages in conduct designed to institute, aid, or facilitate an act or enterprise whereby a minor engages in activity as an erotic or nude massager or exotic or nude dancer; or
- (c) Accepts or receives money or other property pursuant to an agreement or understanding whereby the person participates or is to participate in the proceeds resulting from a minor engaging in activity as an erotic or nude massager or exotic or nude dancer; or
- (d) Recruits, entices, provides, or obtains a minor knowing that the minor will engage in activity as an erotic or nude massager or exotic or nude dancer.

(2) In addition to other remedies that may be provided by law, any property used or intended to be used to facilitate the commission of the offense of sexual exploitation of a minor, proceeds derived from that offense, or property acquired or maintained, in whole or in part, with proceeds of that offense may be forfeited to the State subject to the requirements of chapter 712A.

(3) As used in this section:

"Erotic or nude massager" means a nude person providing massage services with or without a license for which the person or another receives a fee or other compensation.

"Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude for which the person or another receives a fee or other compensation, and includes patrons of a business establishment or enterprise participating in a contest or receiving instruction in nude dancing. "Minor" means any person less than eighteen years of age.

"Nude" means unclothed or in attire including, but not limited to, sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola.

(4) Sexual exploitation of a minor is a class B felony."

**VOLUNTEER
STAFF**
(Girl Fest)

Kathryn Xlan
Non-Executive Director

Nikki Stevens
Technical Director

Veronica Garcia
Education Coordinator

Erl Oura
Performance Coordinator

Valerie McDougal
Film Coordinator

Dawn Shin
Education Coordinator

Gina Cardazone
Publicity Coordinator

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Author/Scholar

Jessica Neuwirth
Equality Now

Derek Ellerman
Polaris Project

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Pu'a Foundation

Dr. Kathy Ferguson
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Meleanna Meyer
Filmmaker/Artist

Dr. Susan Hippensteele
UHM Women's Studies

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Zang Pictures, San Diego

Weston Willard
High School Teacher

October 20, 2008

(compiled by members of Girl Fest and Equality Now)
Submitted to the Hawaii Anti Trafficking Task Force II of Act 260

Suggestions for Amendments to Act 147 relating to crime

A. Trafficking Johns to Hawaii: We (Girl Fest) have reports of a pimp working out to Hawaii and Las Vegas (perhaps more cities), that flies johns in from Las Vegas. He works out of a house in a affluent community.

1. Federal Law: Mann Act may apply but the penalty is only from 3 to 5 years. Hawaii passed 2005 May Act 82 which is a Class C felony. The penalty may not fit up to the gravity of the crime from trafficking johns in to Hawaii to purchase prostitutes.

* **Attachments:** see attached language of the Mann Act and Dorchen Leidholdt's testimony before Congress last session.

B. Commerical Sexual Exploitation (CSE) of a Minor

2. PAST LEGISLATION SB 2234 CD1 (sunsetting in 2004). Passing again the sexual exploitation of a minor and accompanying forfeiture language that was sunsetted **Section 2** and **Section 5** regarding sexual exploitation of a minor (sec 2) and revising the forfeiture statute to include CSE of a minor (sec 5).

* **Attachments:** See testimony from Attorney General clarifying language regarding nude dancing (so as to not include consensual sexual acts between minors). See also NY State anti-trafficking law regarding sexual exploitation of minors.

3. We think promoting prostitution in the first degree HRS 712-1202 should include something tantamount to the act of "fraud" in (1)(a) or similar language. In New York, they used language like "making a material misrepresentation." This would probably require changing the word "compelling" to something like "inducing". It seems that compelling is redundant of force, threat or intimidation anyway. Fyi, NY State Law includes abroad definition of "coercion."

* **Attachments:** see Dorchen Leidholdt's testimony before Congress last session regarding the successful prosecution of traffickers and the obstacles surrounding the need to prove "force, fraud and coercion."

4. It would be good if trafficking could be a separate crime so it could be defined by other than the extortionate means in HRS 707-764. One example from the NY law is in Penal Law 230.34 1 which makes it a crime to advance prostitution by providing drugs to the victim.



**The 5th Annual
GiRL FeST Hawaii**
Multimedia Festival
A program of
The Safe Zone Foundation
November 7-15, 2008
Honolulu, Hawaii
www.girlfesthawaii.org

Girl Fest c/o The Safe Zone Foundation 4224 Waialae Ave. #248 Honolulu, Hawaii 96816
Tel & Fax (808) 599-3931 Email : info@girlfesthawaii.org

* we talked extensively about this at the subcommittee meeting. We feel that the use of drugs goes hand in hand with trafficking and traffickers that push drugs onto their women, as a form of control and manipulation, should be held accountable to the letter of the law.

5. Increase penalties for patronizing a prostitute.

* Dennis mentioned at the last subcommittee meeting that he was unsure if girls over the age of 15 were automatically covered as endangered minors if a John hired them for sex. We highly suggest that the task force discuss this and make a decision and recommendation to amend Act 147 to significantly raise penalties for Johns who solicit sex from minors.

6. Services for victims should be included. it really is going to be difficult to have successful prosecutions if the victims can't be made safe and healthy.

Revisiting Modica v. State of Hawaii (1977)

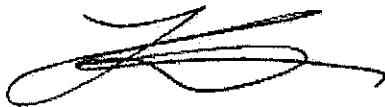
Modica plays an important part in prohibiting the successful prosecution of johns and pimps in sex-trafficking. The Task force needs to make a decision about what Modica means and what it stands for.

1. In order for Modica to come into play, we would like to see that "all" elements of proof are exactly the same in two alleged crimes, not just **some** overlapping elements. Trafficking is an evolution and conglomeration of many existing crimes wrapped into one and furthermore, aggravated.

2. It is, according to Modica v. State of Hawaii, ultimately the prosecutor's discretion what the adequate charge shall be and we would like to see this realized.

3. We need to revisit the basis for the foundation of the Modica defense v. its current usage. We feel that basis for the Modica defense is to protect a defendant against over prosecution, which is very valid. However, we argue the current usage of Modica as veering from this basis for protection of defendants from over prosecution and feel that Modica is improperly used as a technicality plea bargaining tool to release criminals from accountability at the expense of their victims in due process. Therefore, **ALL** elements of **ALL** proof must be EXACTLY the same, not just some elements of proof in overlapping crimes.

Sincerely,



Kathryn Xian

Girl Fest c/o The Safe Zone Foundation 4224 Waiālae Ave. #248 Honolulu, Hawaii 96816
Tel & Fax (808) 599-3931 Email : info@girlfsthawaii.org

18 USCS @ 2421 (1994) @ 2421.

*** THIS SECTION IS CURRENT THROUGH P.L. 103-321, APPROVED
8/26/94 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE PART I. CRIMES
CHAPTER 117. TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND
RELATED CRIMES @ 2421.

Transportation generally

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both

HISTORY; ANCILLARY LAWS AND DIRECTIVES PRIOR LAW AND REVISION:

1948 Act

This section is based on Act June 25, 1910, ch 395, @@ 1, 2, 5, 8, 36 Stat. 825--827 (former 18 U.S.C. @@ 397, 398, 401, and 404).

AMENDMENTS: 1949. Act May 24, 1949, substituted "induce" for "induct" in the second paragraph.

1986. Act Nov. 7, 1986, substituted this section for one which read: "Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or "Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States-- "Shall be fined not more than \$ 5,000 or imprisoned not more than five years, or both."

I. IN GENERAL

1. Generally

Congress had power over transportation among states; that power was complete in itself; and Congress, as incident to it, could adopt not only means necessary but convenient to its exercise, and means could have quality of public regulation such as predecessor to 18 USCS @ 2421. Hoke v United States (1913) 227 US 308, 57 L Ed 523, 33 S Ct 281.

2. Constitutionality, generally White Slave Traffic Act (18 USCS @ 2421) was valid because it was intended to prevent use of

interstate commerce to facilitate prostitution or concubinage, or other forms of immorality. *Hoke v United States* (1913) 227 US 308, 57 L Ed 513, 33 S Ct 281; *Wilson v United States* (1914) 232 US 563, 58 L Ed 728, 34 S Ct 347; 33 S Ct 281; *Wilson v United States* (1914) 232 US 563, 58 L Ed 728, 34 S Ct 347; *Caminetti v United States* (1917) 242 US 470, 61 L Ed 442, 37 S Ct 192.

3. -Equal protection 18 USCS @ 2421 could be violated by males or females, was thus sexuallyneutral and did not raise questions of illegal classification. *United States v Garrett* (1975, CA8 Mo) 521 F2d 444; *United States v Green* (1977, CA9 Wash) 554 F2d 372.

4. -Police power of states Fact that regulation of marriage was state matter did not make predecessor to 18 USCS @ 2421 unconstitutional interference by Congress with police powers of states. *Cleveland v United States* (1946) 329 US 14, 91 L Ed 12, 67 S Ct 13, reh den (1946) 329 US 830, 91 L Ed 704, 67 S Ct 361. reh den (1946) 329 US 830, 91 L Ed 704, 67 S Ct 361. Predecessor to 18 USCS @ 2421 was not unconstitutional as unwarranted attempt on part of Congress to exercise police powers. *United States v Westman* (1910, DC Or) 182 F 1017; *United States v Warner* (1911, CC NY) 188 F 682.

5. -Standing Defendant who was charged with conspiracy to knowingly transport women in interstate commerce for purposes of prostitution in violation of 18 USCS @ 2421 could not challenge constitutionality of @ 2421 on grounds that since prostitution is legal in parts of Nevada, that @ 2421, therefore, violates and derogates rights of females to seek legal employment was constrained by @ 2421, and he consequently lacked standing to attack statute on this basis. *United States v Pelton* (1978, CA8 Mo) 578 F2d 701, 4 Fed Rules Evid Serv 334, cert den (1978) 439 US 964, 58 L Ed 2d 422, 99 S Ct 451. Defendant charged with violation of Mann Act did not have standing to challenge constitutionality of 18 USCS @ 2421 on grounds that statute denied protection by protecting only female victims of prostitution, since he was not victim. *United States v Bankston* (1979, CA5 Tex) 603 F2d 528, 4 Fed Rules Evid Serv 1515.

6. Purpose In enacting predecessor to 18 USCS @ 2421, Congress was seeking to help states to stamp out degradation and debauchery of women by punishing those who engage in using them for prostitution. *Bell v United States* (1955) 349 US 81, 99 L Ed 905, 75 S Ct 620. Purpose of predecessor to 18 USCS @ 2421 is to reach and punish movement in interstate transportation of women and girls with view to accomplishment of unlawful purposes prohibited. *Hunter v United States* (1930, CA4 W Va) 45 F2d 55, 73 ALR 870. unlawful purposes prohibited. *Hunter v United States* (1930, CA4 W Va) 45 F2d 55, 73 ALR 870. Primary purpose of predecessor to 18 USCS @ 2421 was to deal with so-called commercial type of case of transportation of females for immoral purposes although statute includes within its scope so-called noncommercial cases. *United States v Jamerson* (1944, DC Iowa) 60 F Supp 281.

7. Applicability of statute, generally Predecessor to 18 USCS @ 2421 covered acts which might ultimately lead to sexual relations. *Athanasaw v United States* (1913) 227 US 326, 57 L Ed 528, 33 S Ct 285.

There is no congressional intent to limit application of 18 USCS @ 2421 to only those cases involving commercial vice.

Caminetti v United States (1917) 242 US 470, 61 L Ed 442, 37 S Ct 192; Long v United States (1947, CA10 Okla) 160 F2d 706; De Vault v United States (1964, CA10 Kan) 338 F2d 179.

While predecessor to 18 USCS @ 2421 was primarily aimed at use of interstate commerce for purposes of commercialized sex, it was not restricted to that end. Cleveland v United States (1946) 329 US 14, 91 L Ed 12, 67 S Ct 13, reh den (1946) 329 US 830, 91 L Ed 704, 67 S Ct 361.

18 USCS @ 2421's protection is not confined to unmarried women and its punishment is not intended to be limited to unmarried men. Denning v United States (1918, CA5 Tex) 247 F 463.

Predecessor to 18 USCS @ 2421 applied to voluntary prostitution. Crespo v United States (1945, CA1 Puerto Rico) 151 F2d 44, cert dismd (1946) 327 US 758, 90 L Ed 991, 66 S Ct 520. United States (1945, CA1 Puerto Rico) 151 F2d 44, cert dismd (1946) 327 US 758, 90 L Ed 991, 66 S Ct 520.

8. -Territorial applicability Predecessor to 18 USCS @ 2421 was applicable to transportation taking place wholly within District of Columbia, notwithstanding local laws for district concerning prostitution. United States v Beach (1945) 324 US 193, 89 L Ed 865, 65 S Ct 602.

Predecessor to 18 USCS @ 2421 applied to Territory of Hawaii although not specifically mentioned. Sun Chong Lee v United States (1942, CA9 Hawaii) 125 F2d 95. Predecessor to 18 USCS @ 2421 applied to transportation wholly within Puerto Rico. Crespo v United States (1945, CA1 Puerto Rico) 151 F2d 44, cert dismd (1946) 327 US 758, 90 L Ed 991, 66 S Ct 520.

9. Violations as single or separate offenses, generally Indictment charging defendant with violation of predecessor to 18 USCS @ 2422 and with violation of predecessor to 18 USCS @ 2421 charged two separate offenses because engaging in practice of debauchery and illicit sexual relations was different offense than to go for purpose of debauchery and immoral purpose since to engage in practice of debauchery and illicit sexual relations would seem to indicate continued course of illicit sexual relations, such as living with woman in state of concubinage. Gillette v United States (1916, CA8 ND) 236 F 215.

II. ELEMENTS OF CRIME A. In General

12. Generally Immoral conduct and relations of parties were not elements of offense under predecessor to 18 USCS @ 2421. Neff v United States (1939, CA8 Iowa) 105 F2d 688. By terms of 18 USCS @ 2421 two indispensable ingredients to valid conviction under statute are: (1) transportation in interstate commerce (2) transportation for prohibited purpose. Stewart v United States (1962, CA9 Wash) 311 F2d 109; United States v McConney (1964, CA2 NY) 329 F2d 467; United States v Dimsdale (1969, CA5 Fla) 410 F2d 358.

13. Pecuniary gain

There was no condition in predecessor to 18 USCS @ 2421 that furnisher of transportation was to be guiltless unless he shared in or somehow profited by hire of woman's body. Johnson v United States (1914, CA7 Ill) 215 F 679. Pecuniary gain as motive for

transportation is not essential element of offense under Mann Act (18 USCS @ 2421). Whitt v United States (1959, CA6 Ky) 261 F2d 907.

In prosecution for violation of 18 USCS @@ 2421 and 2422, merely because evidence failed to show what, if any, share of proceeds were given by defendant to other defendant would not prevent conviction. United States v Sorrentino (1948, DC Pa) 78 F Supp 425, affd (1949, CA3 Pa) 175 F2d 721, cert den (1949) 338 US 868, 94 L Ed 532, 70 S Ct 143, reh den (1949) 338 US 896, 94 L Ed 551, 70 S Ct 238.

14. Knowledge or consent of individual transported It was not necessary that woman should have known purpose held in view by accused at time of her transportation to sustain conviction under predecessor to 18 USCS @ 2421. Prdjun v United States (1916, CA6 Mich) 237 F 799; Qualls v United States (1945, CA5 Ga) 149 F2d 891. It was not necessary to prove immoral purpose on part of girl transported to find violation of predecessor to 18 USCS @ 2421. Hart v United States (1926, CA9 Or) 11 F2d 499, cert den (1926) 273 US 694, 71 L Ed 844, 47 S Ct 92. Fact that woman furnished automobile and money to make interstate transportation did not bar jury from finding that defendant transported her in violation of 18 USCS @ 2421. Brown v United States (1963, CA9 Wash) 314 F2d 293.

B. Transportation

15. Generally Offense denounced by predecessor to 18 USCS @ 2421 as procuring of interstate transportation of women or girls for purpose of prostitution, is complete when any such woman or girl shall have been transported in such commerce as result of any of criminal acts. Wilson v United States (1914) 232 US 563, 58 L Ed 728, 34 S Ct 347.

16. Procuring transportation Defendants charged with causing and procuring interstate transportation of girls for purpose of prostitution, contrary to predecessor to 18 USCS @ 2421, cannot escape conviction because they did not control or instruct in choice of means of conveyance, agent employed by them to effect transportation, and furnished by them with money to cover transportation expense. Wilson v United States (1914) 232 US 563, 58 L Ed 728, 34 S Ct 347. Procuring of interstate transportation for girl to place where she could go and await confinement was not violation of predecessor to 18 USCS @ 2421. Van Pelt v United States (1917, CA4 Va) 240 F 346. It is not offense under 18 USCS @ 2421 to counsel, command, or induce woman to transport herself and therefore, where there was no evidence that defendant in any way participated in interstate transportation of victim, conviction would be reversed despite fact that defendant participated in separate intrastate transportation of victim. Twitchell v United States (1964, CA9 Wash) 330 F2d 759, reh den (1964) 376 US 946, 11 L Ed 2d 770, 84 S Ct 799 and cert den (1964) 376 US 916, 11 L Ed 2d 612, 84 S Ct 670.

17. Providing transportation Furnishing money to accomplice with which to pay transportation of girls in interstate commerce to become inmates of house of prostitution, and with which money such transportation was furnished, was violation of predecessor to 18 USCS @ 2421; but furnishing of cab fare for such girls from railroad station in destination town to house of prostitution in such town did not constitute violation; such

transportation being intrastate. *Hietler v United States* (1917, CA7 Ill) 244 F 140.

It was sufficient in prosecution for violation of predecessor to 18 USCS @ 2421 if transportation was by automobile operated and controlled by accused. *Gowling v United States* (1920, CA9 Cal) 269 F 215.

Defendant violated predecessor to 18 USCS @ 2421 where he furnished money for ticket and expenses for himself and woman in interstate journey for purpose of having illicit relations. *Tobias v United States* (1924, CA9 Or) 2 F2d 361, cert den (1925) 267 US 593, 69 L Ed 804, 45 S Ct 229. cert den (1925) 267 US 593, 69 L Ed 804, 45 S Ct 229.

Defendant could be guilty of transportation violative of predecessor to 18 USCS @ 2421 without being personally present and accompanying female. *Gillenwaters v Biddle* (1927, CA8 Kan) 18 F2d 206.

It was not necessary that defendant actually transported woman himself or that he procured tickets, but it was sufficient if defendant caused to be transported or aided or assisted in obtaining transportation in violation of 18 USCS @ 2421. *Wagner v United States* (1948, CA5 Ala) 171 F2d 354, cert den (1949) 337 US 944, 93 L Ed 1747, 69 S Ct 1499.

Known brothel operator who gave woman, who had previously engaged in prostitution at his solicitation, money to travel from Arizona to California and arranged for her to ride in automobile driven by another prostitute in order to get to brothel in California to ply her trade, was guilty of causing woman to be transported in interstate commerce in violation of 18 USCS @ 2421. *Ege v United States* (1957, CA9 Cal) 242 F2d 879. Defendant could be found to have procured interstate transportation of woman for immoral purposes in violation of 18 USCS @ 2421 where jury could properly find that loan made by defendant to woman was connected to her presence very early next morning in another state. *Lattanzio v United States* (1957, CA9 Cal) 243 F2d 801.

18. Inducing transportation Evidence that defendant knowingly induced and procured interstate transportation of girl by definite promises and enticements, and who gave assurance of place and means to practice prostitution and did it for profit she got out of it was sufficient to sustain conviction under predecessor of 18 USCS @ 2421, although actual transportation was made by another. *Schrader v United States* (1938, CA8 Mo) 94 F2d 926.

Where woman made interstate journey to defendant's house of prostitution at her own expense because of defendant's request by telephone that she return, and there was no evidence that defendant gave any aid or assistance in obtaining transportation, defendant was not guilty of causing unlawful transportation in violation of 18 USCS @ 2421 although she might have been guilty of inducing such transportation in violation of 18 USCS @ 2422. *Le Page v United States* (1945, CA8 Minn) 146 F2d 536, 156 ALR 965.

Act of furnishing money which is used for interstate trip allegedly in violation of 18 USCS @ 2421 and in accordance with plan of one who furnishes money goes beyond mere persuading and inducing and constitutes offense within purview of statute. *Williams v United States* (1959, CA4 NC) 271 F2d 703.

Mere inducement to travel for purpose of prostitution when prostitute is likely to and does get transportation for herself does not violate 18 USCS @ 2421. *Graham v United States* (1946) 81 App DC 49, 154 F2d 325. 18 USCS @ 2421 does not extend to cases of mere inducement, since if it did so, 18 USCS @ 2422 would be redundant. *United States v Jones* (1990, App DC) 909 F2d 533.

19. Manner or means of transportation In order to constitute offense under predecessor to 18 USCS @ 2421, it was not essential that transportation was by common carrier. *Wilson v United States* (1914) 232 US 563, 58 L Ed 728, 34 S Ct 347; *Holden v United States* (1928, CA9 Ariz) 23 F2d 678...

Defendant was guilty of violating 18 USCS @ 2421 regardless of fact that he and prosecuting witness were in separate automobiles when crossing border into Alaska from United States. *Bennett v United States* (1956, CA9 Alaska) 234 F2d 675.

C. Interstate or Foreign Commerce

... Where dominant purpose of transporting girls in automobile across bridge through which state line passed was to transport girls from one state into another for immoral purposes, fact that when car approached state line girls got out and walked across line and then got back in car for rest of trip did not have effect of splitting trip into segments, so as to bar prosecution. *United States v Jamerson* (1944, DC Iowa) 60 F Supp 281.

Where attempted transportation of girl from one state into another for immoral purposes in violation of predecessor to 18 USCS @ 2421 was suppressed by girl and police officers before transportation reached state line, transportation was not interstate but was intrastate. *State v Reed* (1917) 53 Mont 292, 163 para. 477.

21. District of Columbia Transportation of woman between points within District of Columbia with intent or purpose to induce or entice her to practice prostitution violates Federal White Slave Traffic Act (predecessor to 18 USCS @ 2421). *United States v Beach* (1945) 324 US 193, 89 L Ed 865, 65 S Ct 602.

... 24. -Particular circumstances Evidence showing defendant practiced illicit sexual relations with woman with whom he traveled interstate, and who periodically entered house of prostitution to supply them with funds, was sufficient to sustain conviction under predecessor to 18 USCS @ 2421. *Hoffman v United States* (1937, CA9 Cal) 87 F2d 410. Defendant violated predecessor to 18 USCS @ 2421 when she took her niece from Texas to Arkansas, placed niece in house of prostitution run by defendant, received fixed percentage of niece's earnings and charged her with fixed room rental. *Grayson v United States* (1939, CA8 Ark) 107 F2d 367. While defendant could not be convicted upon mere ground that she operated house of prostitution to which apparently women were accustomed to come from other states, she was not entitled to acquittal of charge under predecessor to 18 USCS @ 2421 where women she urged to come from point in another state were also prostitutes subject to orders of her codefendants. *McGuire v United States* (1945, CA8 Minn) 152 F2d 577. Where there was evidence that defendant's wife was prostitute and he knew it, that she was practicing prostitution in Peoria, Illinois, before he brought her to Evansville, Indiana, for purpose of engaging in same work, which

she did within 48 hours after their arrival, it was sufficient to sustain conviction of violation of predecessor to 18 USCS @ 2421. United States v Fleenor (1947, CA7 Ind) 162 F2d 935. Evidence that witness worked as prostitute for defendant, that he beat her and she left him, that they thereafter went to Mexico for purpose of getting married and were married while there, that upon their return defendant put witness back to work for him, warranted conclusion by jury that interstate journey and marriage was nothing but device to violate 18 USCS @ 2421. Langford v United States (1949, CA9 Cal) 178 F2d 48, cert den (1950) 339 US 938, 94 L Ed 1355, 70 S Ct 669. Where defendant took two girls from Galveston, Texas, where they engaged in prostitution at defendant's house, to Louisiana to attend to some legal matters and thereafter returned to Galveston defendant was not liable under 18 USCS @ 2421 since there was no intention to engage in prostitution in Louisiana. Smart v United States (1953, CA5 Tex) 202 F2d 874.

Evidence was sufficient to support conviction under 18 USCS @ 2421 where defendant took victim into his home, admittedly had intercourse with her, and then suggested that they were going to another state to place her in house of prostitution since from these acts it is reasonable to infer that he intended to entice her to give herself up to debauchery at time of interstate transportation. United States v Marks (1959, CA7 Ind) 274 F2d

26. -Debauchery Term "debauchery" as used in predecessor to 18 USCS @ 2421 is not limited to being synonym for "seduce," but includes also exposing of woman to such influences as will naturally and inevitably so corrupt her mind and character as to lead her to act of sexual immorality, or leading of already sexually corrupt woman to engage or continue more or less habitually in sexually immoral practices. Van Pelt v United States (1917, CA4 Va) 240 F 346. "Debauchery" as used in White Slave Traffic Act (predecessor to 18 USCS @ 2421) is not limited to initial successful assault upon girl's virtue or to her more or less enjoying persistence in state of adultery or concubinage. United States v Mellor (1946, DC Neb) 71 F Supp 53, affd (1947, CA8 Neb) 160 F2d 757, cert den (1947) 331 US 848, 91 L Ed 1858, 67 S Ct 1734.

27. -Lewd dancing or other public exhibitions Predecessor to 18 USCS @ 2421 was violated by transportation of woman in interstate commerce for purpose of becoming accused's mistress, and it was not essential that there was any intention that gain was to be derived from woman's transportation. Caminetti v United States (1917) 242 US 470, 61 L Ed 442, 37 S Ct 192.

Employment of young girls in Indiana, and their transportation to Illinois, to take part in public exhibitions which defendants furnished as part of entertainment features of traveling carnival was violation of White Slave Traffic Act [predecessor to 18 USCS @ 2421 et seq.] if employment and influences with which defendants surrounded girls tended to induce them to give themselves up to condition of debauchery which eventually and naturally would lead to course of immorality sexually. United States v Lewis (1940, CA7 Ind) 110 F2d 460, cert den (1940) 310 US 634.

28. -Polygamous marriage Members of Mormon sect who

practiced polygamy and each of whom transported atleast one plural wife across state lines, either for purpose of cohabiting with her, or for purpose of aiding another member of cult in such project could be held guilty of violating predecessor to 18 USCS @ 2421. Cleveland v United States (1946) 329 US 14, 91 L Ed 12, 67 S Ct 13, reh den (1946) 329 US 830, 91 L Ed 704, 67 S Ct 361; Malaga v United States (1932, CA1 Mass) 57 F2d 822.

Enticement of girl into another state to contract bigamous marriage and after such marriage persuading her to live with defendant in immoral way was no offense under predecessor to 18 USCS @ 2421. Gerbino v United States (1923, CA3 NJ) 293 F 754.

Conviction under White Slave Traffic Act (predecessor to 18 USCS @ 2421) will be upheld where it was shown that defendant, while "married" to two other women, transported girl from District of Columbia into Virginia, where they were bigamously married, and then transported her from Virginia back to District of Columbia, where they had sexual relations. Burgess v United States (1924) 54 App DC 71, 294 F 1002.

29. -Rape Transportation by defendant of woman across state line with purpose of raping her violated 18 USCS @ 2421 since statute covers interstate transportation of woman without pecuniary motive where intent is to have illicit relations with her by force or otherwise. Poindexter v United States (1943, CA8 Ark) 139 F2d 158; Brown v United States (1956, CA8 Mo) 237 F2d 281; Wegman v United States (1959, CA8 Mo) 272 F2d 31.

Transportation of girl as secretary was not offense under predecessor to 18 USCS @ 2421 unless there was present purpose to have sexual intercourse with her. Ghadiali v United States (1927, CA9 Or) 17 F2d 236, cert den (1927) 274 US 747, 71 L Ed 1328, 47 S Ct 660. Proof that defendant took woman not his wife, in automobile to another state and lived with her in hotel, registered as husband and wife, with other evidence of intent, supported conviction under predecessor of 18 USCS @ 2421. Rockwell v United States (1940, CA9 Cal) 111 F2d 452.

Evidence was sufficient to support conviction for violation of 18 USCS @ 2421 where defendant and woman were living together in New York and went to Washington and continued to hold themselves out and act as husband and wife. United States v Pape (1944, CA2 NY) 144 F2d 778, cert den (1944) 323 US 752, 89 L Ed 602, 65 S Ct 86.

Sexual intercourse after interstate transit for purpose other than such intercourse was not offense under 18 USCS @ 2421. United States v Grace (1934, CA2 NY) 73 F2d 294. If sole purpose of trip was legitimate, purely incidental intent to have illicit relations was not federal offense under predecessor to 18 USCS @ 2421. Yoder v United States (1935, CA10 Okla) 80 F2d 665; United States v Pape (1944, CA2 NY) 144 F2d 778, cert den (1944) 323 US 752, 89 L Ed 602, 65 S Ct 86; United CA2 NY) 144 F2d 778, cert den (1944) 323 US 752, 89 L Ed 602, 65 S Ct 86; United States v Jamerson (1944, DC Iowa) 60 F Supp 281.

III. RELATIONSHIP WITH OTHER CRIMES

... 38. State criminal laws, generally Local laws of District of Columbia, which make it criminal offense for "any prostitute" to invite or persuade any person to go with her

to any building for purpose of prostitution, or for any person to entice or force any woman to go to house of assignation, or for any person to invite, induce, or procure another to engage in prostitution or to go to any place for purposes of prostitution, do not operate to except from Federal White Slave Traffic Act (predecessor to 18 USCS @@ 2421 et seq) transportation of woman for immoral purposes, wholly within District of Columbia. United States v Beach (1945) 324 US 193, 89 L Ed 865, 65 S Ct 602.

Fact that offense proved may contain elements of graver crime, cognizable by state law, does not affect prosecution under predecessor to 18 USCS @ 2421. Yeates v United States (1918, CA5 Ga) 254 F 60, cert den (1919) 248 US 583, 63 L Ed 432, 39 S Ct 136.

While states alone can penalize practice of prostitution, debauchery, or other immoral conduct within their respective borders, Congress has power under Constitution to forbid such immoral practices and conduct through channels of interstate commerce. Cleveland v United States (1945, CA10 Utah) 146 F2d 730, affd (1946) 329 US 14, 91 L Ed 12, 67 S Ct 13, reh den (1946) 329 US 830, 91 L Ed 704, 67 S Ct 361 and revd on other grounds (1946) Chatwin v United States 326 US 455, 90 L Ed 198, 66 S Ct 233.

39. -Effect of federal prosecution upon subsequent state prosecution Fact that woman was arrested and charged with violation of local ordinance regarding immorality did not preclude prosecution under 18 USCS @ 2421 on on double jeopardy ground since different evidence would be necessary to sustain two offenses. United States v Tyler (1972, CA10 Wyo) 459 F2d 647, cert den (1972) 409 US 951, 34 L Ed 2d 223, 93 S Ct 297.

40. -Conflict with federal law State statute making it unlawful to transport woman into, through, or across state, for purposes of prostitution, was proper exercise of state police power and not interference with interstate commerce. Sisemore v State (1918) 135 Ark 179, 204 SW 626.

... 87. -Wife as victim In prosecution under 18 USCS @ 2421, victim of offense may be compelled, over her objection and that of defendant, to testify on behalf of prosecution, notwithstanding fact that defendant and victim were, at time of prosecution, married, and marriage took place after commission of offense. Wyatt v United States (1960) 362 US 525, 4 L Ed 2d 931, 80 S Ct 901.

Husband's privilege as criminal defendant to prevent his wife from testifying against him is inapplicable in prosecutions for prostituting his wife, in violation of White Slave Traffic Act (18 USCS @ 2421), since such crime constituted "shameless offense against wifeness." United States v Massey (1965) 15 USMA 274, 35 CMR 246.

18 USCS @ 2422 (1994) @ 2422. Coercion and enticement

Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under the

this title or imprisoned not more than five years, or both.

18 USCS @ 2422 (1994) @ 2422. Coercion or enticement of female
"Whoever knowingly persuades, induces, entices, or coerces any
woman or girl to go from one place to another in interstate or
foreign commerce, or in the District of Columbia or in any
Territory or Possession of the United States, for the purpose of
prostitution or debauchery, or for any other immoral purpose, or
with the intent and purpose on the part of such person that such
woman or girl shall engage in the practice of prostitution or
debauchery, or any other immoral practice, whether with or
without her consent, and thereby knowingly causes such woman or
girl to go and to be carried or transported as a passenger upon
the line or route of any common carrier or carriers in interstate
or foreign commerce, or in the District of Columbia or in any
Territory or Possession of the United States, shall be fined not
more than \$ 5,000 or imprisoned not more than five years, or
both." 1988. Act Nov. 18, 1988 substituted "or foreign
commerce" for "of foreign commerce".

A Bill for an Act Relating to Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, including activities related to prostitution, pornography, sex tourism, and other commercial sexual services. Prostitution and related activities, which are inherently harmful and dehumanizing, contribute to the trafficking in persons, as does sex tourism. The low status of women in many parts of the world has led to a burgeoning of the trafficking industry. Discouraging sex tourism, which is an estimated \$1,000,000,000-per-year business worldwide, is key to reducing the demand for sex trafficking.

While prostitution is illegal in developing nations that are the primary destination of sex tourism, enforcement efforts are lax because of cultural tolerance, sex tourism is a major component of the local economy, laws target female sex workers rather than male customers, economic opportunities for females are limited, and laws are as much a leverage for extorting bribes from those involved in the sex trade as they are a deterrent to its participants. Developed nations from which the demand for sex tourism originates criminalize the practice, but laws apply only to travel for the purpose of engaging in sex with minors and do not specifically target the licenses of travel agents. Those who patronize sex tours may contract potentially fatal sexually transmitted diseases while overseas and expose their intimate partners to such diseases upon their return.

The purpose of this Act is to promote and protect the human rights of women and girls exploited by sex tourists. It is also the purpose of this Act to promote and protect the health and welfare of women and children in developing nations who may contract sexually transmitted diseases from sex tourists. In so doing, the legislature forcefully declares Hawaii's unequivocal opposition to any form of sex tourism, whether it is child sex tourism or sex tourism involving adults.

This Act is intended to equip licensing officials with the authority to strip travel agents of their registration if they promote sex tourism and to provide prosecutors with the tools necessary to punish travel agents for engaging in this activity. In addition, this Act is intended to equip prosecutors with the tools they need to punish those who promote sex tourism by making it a class C felony to do so.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Promoting travel for prostitution. (1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the state.

(2) "Travel services" has the same meaning as in section 468L-1.

(3) Promoting travel for prostitution is a class C felony."

SECTION 3. Section 468L-7.5, Hawaii Revised Statutes, is amended to read as follows:

"[§468L-7.5]] Prohibited acts. No travel agency or charter tour operator shall engage in any of the following:

- (1) Selling or advertising to sell travel or charter tour services without first registering or renewing a registration with the director under this chapter;
- (2) Conducting business as a registered travel agency or charter tour operator without establishing and maintaining a client trust account, in accordance with sections 468L-5, 468L-5.5, and 468L-24 and the rules relating to travel agencies and charter tour operators;
- (3) Failing to provide evidence of the establishment of a client trust account or to notify the department of the name of the financial institution at which the client trust account is held or of any change in the account number or location within three business days of any change, in accordance with section 468L-5 and the rules relating to travel agencies and charter tour operators;
- (4) Making any false statement, representation, or certification in any application, document, or record required to be submitted, filed, or retained under this chapter;
- (5) Misrepresenting the consumer's right to cancel and to receive an appropriate refund or reimbursement as provided under this chapter;
- (6) Failing to provide a written statement to the consumer containing specific information as required by section 468L-4;
- (7) Failing to provide or otherwise comply with the disclosure requirements of sections 468L-6 and 468L-7;
- (8) Failing to make available to the director such books and records as may be requested by the director pursuant to sections 468L-3(6), 468L-5.5, and 468L-28 and the rules relating to travel agencies and charter tour operators; [or]
- (9) Promoting travel for prostitution;
- (10) Selling, advertising, or otherwise offering to sell travel services or facilitate travel;
 - (A) For the purpose of engaging in a commercial sexual act;
 - (B) That consists of tourism packages or activities using and offering sexual acts as enticement for tourism; or
 - (C) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services;
- or
- (11) Otherwise violating any of the provisions of this chapter or its rules.

For purposes of paragraph (10):

"Commercial sexual act" means any sexual contact, as defined in section 707-700, for which anything of value is given to or received by any person;

"Sexual act" means any sexual contact as defined in section 707-700."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 19, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

“Successfully Prosecuting Sex Traffickers” - Testimony before the Committee on the Judiciary, House of Representatives, United States
Author(s): Dorchon A. Leidholdt (Nov. 2007)

Hearing before the Committee on the Judiciary
House of Representatives

One Hundred Tenth Congress

“Combating Modern Slavery:
Reauthorization of Anti-Trafficking Programs”

November 1, 2007: “Successfully Prosecuting Sex Traffickers”

Testimony of Dorchon A. Leidholdt, Esq.

Director, Sanctuary for Families’
Center for Battered Women’s Legal Services

Founding Board Member, Coalition Against Trafficking in Women (CATW)

Chairman Conyers, Members of the House Judiciary Committee, fellow anti-trafficking advocates: I am grateful for this opportunity to address the subject of how the Trafficking Victims Protection Act can become a more effective vehicle to prosecute traffickers engaging in the sexual slavery of women and girls. I speak as the Director of Sanctuary for Families’ Center for Battered Women’s Legal Services. Founded in 1988, the Center is the largest legal services program for domestic violence victims in the United States and, and since the mid 1990’s, has been providing legal services to a growing number of victims of sex trafficking. Since 2005, Sanctuary for Families has been one of the lead organizations of the New York State Anti-Trafficking Coalition, which successfully fought for the passage of a strong and comprehensive anti-trafficking law in New York State. That law goes into effect today.

I am also speaking as the Founding Board Member of the Coalition Against Trafficking in Women, a non-governmental organization working since 1988 to end all forms of trafficking in women and girls into prostitution and related forms of commercial sexual exploitation. The Coalition is made up of networks in Asia, Latin America, Africa, Europe, North America, and Australia that work to prevent the sex industry’s exploitation and abuse of women and girls, to protect its victims, and to prosecute and punish all those involved in this brutal trade.

The Coalition has conducted pioneering research into the trafficking of women, including the first comprehensive study of sex trafficking into the United States, funded by the

National Institute of Justice. The Coalition has funded and assisted trafficking prevention programs in Venezuela, the Philippines, Mexico, the Republic of Georgia and supported services for Nigerian and Albanian sex trafficking victims in Italy. The Coalition took a leadership role in drafting the Trafficking Protocol to the United Nations Convention Against Transnational Organized Crime. More recently, the Coalition, together with the European Women's Lobby has spearheaded a project to address gender inequality, the demand for trafficking, and the link between trafficking and prostitution in twelve Central and Eastern European countries contending with escalating rates of sex trafficking.

Both Sanctuary and the Coalition understand sex trafficking to be an acute form of violence against women that often overlaps with and sometimes is coextensive with other practices of gender-based violence, in particular domestic violence and sexual assault. In the cases we have handled, we have seen that sex traffickers and their agents often lure vulnerable women and girls into situations of sex slavery by establishing relationships with them, holding themselves out as boyfriends and protectors. Sometimes, as in *U.S. v. Caretto*, the successful prosecution of a family of sex traffickers from Mexico, traffickers even marry their victims. The modus operandi of domestic sex traffickers, popularly known as pimps, is to enslave vulnerable girls and women through tactics that combine seduction with brainwashing and terrorism. Rarely are these victims recognized for what they are: severely battered women.

Almost all sex trafficking victims are victims of serial sexual assault. For many, sexual assault precedes their entry into sex trafficking; the trauma they have sustained renders them vulnerable to their traffickers, facilitates their traffickers' control, and is exacerbated by the trafficking. For all sex trafficking victims, the sexual exploitation they are subjected to as an integral part of the trafficking leaves profound psychic injuries. Sex trafficking victims typically suffer from rape trauma, post traumatic stress disorder, severe depression, acute feelings of worthlessness and shame, memory loss, and/or suicidal ideations and acts. Victims of sex trafficking experience all of the trauma battered women and rape victims sustain, often at significantly higher levels.

These realities have profound implications not only for how we can best assist sex trafficking victims but also for how can we most effectively prosecute their exploiters. The TVPA defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act." To prosecute a sex trafficker using the TVPA's criminal penalties, however, the government must prove not only that sex trafficking took place but also that the trafficking was carried out through "force, fraud, or coercion." Too often these proof requirements create insurmountable obstacles to the successful prosecution of sex traffickers. In some cases, brutal and exploitive sex traffickers need not resort to force, fraud, or coercion because their victims are so vulnerable, terrified, or traumatized that such conduct isn't necessary to obtain their victims' submission.

Sanctuary represents two Korean immigrant sex trafficking victims whose traffickers are currently on trial in federal court in the Southern District of New York. These traffickers

preyed on their victims' poverty and undocumented status, made them endure 14 to 16 hour days of sexual servitude, deprived them of sleep and food, and demanded that they endure sexual intercourse with as many as ten customers a shift. The tactics these traffickers used precisely fit Amnesty International's definition of psychological torture. Although both victims are physically and psychologically devastated by their brutal exploitation, their traffickers are not being prosecuted under the TVPA. Why not? Because the U.S. attorneys prosecuting the case, hardworking and resourceful though they are, are unable to make out the TVPA's proof requirements of force, fraud, or coercion. As a result the traffickers are only facing charges of conspiring to violate the Mann Act and a sentence of a mere three to five years in prison.

In another case, Sanctuary represents a sex trafficking victim from Russia. Her trafficking scenario was classic: she answered an ad in a Moscow paper for a babysitting job in New York City, was greeted at JFK airport by traffickers who confiscated her passport and put her into debt bondage, and was then forced into prostitution, where she was passed from trafficker to trafficker. Katerina was so psychologically broken by her abuse at the hands of the first group of traffickers that its successors didn't need to resort to force, fraud, or coercion. When Immigration Customs Enforcement finally busted the brothel in which Katerina was being bought and sold, the only federal crime they could charge her traffickers with was prostitution. Although these traffickers had prostituted Katerina and many others like her, reaped huge profits from their exploitation, and left Katerina drug addicted and suicidal, their sentence was a single year in prison.

In other cases, traffickers use force, fraud, or coercion but their victims are too terrified to testify about it, often because the traffickers threatened to harm family members abroad. The need to prove force, fraud, or coercion makes it all but impossible for any sex trafficking prosecution to go forward without a victim willing and able to take the stand, to testify at length about her abuse and sexual exploitation, and to undergo brutal and humiliating cross-examination. When victims facing such an ordeal refuse to testify, as they often do, prosecutorial strategies to force them to testify often only serve to deepen their trauma and may even result in testimony that is beneficial to the traffickers.

Sex trafficking victims are often put into situations in which their very survival is contingent on their outward compliance with their traffickers' demands. Victims not infrequently have to pose smilingly for pornographic pictures, dance with customers, sign prostitution contracts, and even marry their traffickers, all of which is later used by defense counsel to prove that the victims were "willing prostitutes," not trafficking victims. If all that was required was to show proof of sex trafficking itself, not force, fraud, or coercion, such evidence would either be stricken as irrelevant or deemed probative of sex trafficking.

Requiring prosecutors to prove force, fraud or coercion wrongly puts the onus on victims, who must be proved "innocent" of willingly having engaged in prostitution, rather than on traffickers, whose criminal actions should be the focus of prosecutions. Much as prosecutors once had to prove "earnest resistance" in rape cases to show the victim was

worthy, prosecutors in sex trafficking cases have to prove force, fraud and coercion to demonstrate the bona fides of the trafficking victims.

Even worse, requiring prosecutors to prove force, fraud or coercion places victims and their families abroad in greater danger. The smartest and most ruthless traffickers realize that using violence and threats of violence brutal enough to terrorize victims into silence is a good business practice. As long as force, fraud and coercion are elements of the offense, the worse traffickers are the more unreachable they remain.

The TVPA's unnecessarily onerous proof requirements have not only hobbled trafficking prosecutions in the United States. Other countries, most recently Mexico, have adopted federal anti-trafficking laws, modeled after ours, that require proof of force, fraud, or coercion in sex trafficking cases. With some of the most ruthless and brutal trafficking rings in the world, and correspondingly some of the most terrified victims, Mexico needs a law that takes the onus off victims, not one that puts them squarely in the traffickers' crosshairs.

What is the solution? The force, fraud or coercion requirement of the TVPA is not present in other federal laws that have been used successfully to prosecute sex traffickers. The Mann Act criminalizes anyone who "knowingly persuades, induces, [or] entices . . . an individual to travel in interstate or foreign commerce . . . to engage in prostitution." Similarly, Title 8 USC Section 1328 of the Immigration Code penalizes "importing and harboring aliens for purposes of prostitution." Unfortunately the TVPA has all but effectively supplanted these older laws. And even if they were used more frequently, the criminal penalties of these earlier anti-trafficking statutes are not adequate to deter the crime of sex trafficking or give its victims the satisfaction of knowing that justice was served.

While federal prosecutors should be encouraged to dust off and begin to use older laws to prosecute sex traffickers, this country's most recent and best recognized anti-trafficking initiative—the law that has become the model for anti-trafficking legislation domestically and internationally—must be a more effective deterrent to sex traffickers. The TVPA must be amended to eliminate its unnecessary and onerous proof requirements for federal sex trafficking prosecutions, which only serve to intensify the danger and humiliation of cooperation for victims.

An important postscript: the force, fraud, or coercion requirements that have stymied sex trafficking prosecution at the federal level have also sabotaged state anti-trafficking efforts. How did this happen? A few years after the passage of the TVPA, the Department of Justice held a conference in Tampa, Florida that unveiled a model anti-trafficking law for states. That law made proof of force, fraud, or coercion a requirement for prosecuting sex traffickers. Well over half the states then passed state anti-trafficking, most borrowing heavily from the Justice Department model law. Just as the TVPA came to supplant the Mann Act, new state anti-trafficking laws began to supplant existing laws against pimping. The predictable upshot: a dearth of successful prosecutions under the new state anti-trafficking laws.

Report Title:

Sexual Exploitation; Age Verification; Dissemination Visual Depiction
of Sexual Conduct

Description:

Creates the offense of sexual exploitation of a minor; creates offense of failure to maintain age verification records of sexual performers and sexually exploited individuals; creates offense of failure to affix information disclosing location of age verification records of sexual performers; creates offense of disseminating visual depiction of sexual conduct without affixed information; includes sexual exploitation of minor as a covered offense under criminal forfeiture law. Repeals sexual exploitation provisions on July 1, 2004. (CD1)

THE SENATE

TWENTY-FIRST LEGISLATURE,
2002

STATE OF HAWAII

S.B. NO. 2234

S.D. 2

H.D. 2

C.D. 1

A BILL FOR AN ACT

RELATING TO SEXUAL EXPLOITATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that current Hawaii law does not address the exploitation of a minor whereby a minor is used in a fashion similar to a trade commodity in providing various lascivious services that are not covered by prostitution or sexual abuse laws. This exploitation is part of the overall sexual exploitation that is known as commercial sexual exploitation (CSE), and includes nude

dancing, unlicensed massage, exotic dancing, and pornographic performances.

The legislature further finds that substantiation of this growing problem is extensively documented in a recent study of CSE done by the University of Pennsylvania, School of Social Work. This report, entitled "The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico", (Richard Estes and Neil Weiner, September 10, 2001, funded in part by the National Institute of Justice of the United States Department of Justice), states that escort services, massage services, private dancing, nude dancing, lap dancing, and similar sexually provocative activities are used to organize or lure girls into prostitution and pornography.

The report's recommendations include targeting adult sexual exploiters of children for punishment and increasing the penalties associated with CSE. The report states that "[s]ome persons involved in child trafficking were quite explicit about the 'cost/benefit' ledger sheets they mentally drafted; on balance, involvement in the [CSE]...was judged to be more profitable and less risky than involvement in felony-level crimes. This imbalance is an incentive to make one's illicit money from CSE rather than drugs or other felony crimes." Notably, the report states that offenders must be given an unequivocal message that commercial sexual exploitation is impermissible, and that the victimized children must be empowered to report incidents to law enforcement and human service agencies.

Therefore, the legislature finds that the establishment and enforcement of significant criminal penalties, including securing convictions for class B felonies, are necessary to ensure that the sexual exploitation of children is severely punished and discouraged, and to assure the young victims of these deplorable acts that harsh penalties will be imposed upon those who participate or profit in their exploitation. The community and the State have a responsibility and obligation to protect minors from being mere sexual objects to be bought, sold, traded, or rented for sexual purposes and profit.

The purpose of this Act is to prohibit the commercial sexual exploitation of minors in activities consisting of exotic or nude dancing, erotic or nude massage services, and pornographic performances.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

"- Sexual exploitation of a minor. (1) A person commits the offense of sexual exploitation of a minor if that person:

(a) Intentionally, knowingly, or recklessly engages or retains the services of a minor for money or property in consideration to:

(i) Provide, to patrons or customers of a

public establishment, exotic or nude dancing or entertainment;

(ii) Provide exotic or nude dancing or entertainment in a private club or event; provided that a patron or customer of a private club or event shall be deemed to engage or retain the services of a minor for purposes of this section; or

(iii) Provide erotic or nude massage services if the person massaged or performing the massage is nude; or

(b) Entices customers through advertising that offers services of a minor in any manner prohibited under paragraph (a).

(2) As used in this section:

"Exotic dancing" or "exotic entertaining" means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in the art of nude dancing.

"Minor" means any person less than eighteen years old.

"Nude" means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola.

"Property" means personal property, real property, evidence of debt or contract, or any kind of article of value.

(3) Sexual exploitation of a minor is a class B felony.

(4) A conviction under this section shall subject the defendant to section 712A-4, if applicable."

SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

"-A Failure to maintain age verification records of sexual performers.

(1) A person commits the offense of failure to maintain age verification records of sexual performers if the person knowingly produces any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depiction's made after June 30, 2002, of sexual conduct and:

(a) Knowingly fails to create and maintain age verification records for each sexual performer;

(b) Knowingly makes or causes to be made any false entry into the age verification records of sexual performers required by this section; or

(c) Knowingly fails to produce the age verification records of sexual performers required by this section, upon request by a law enforcement officer for the purpose of verifying the age of a sexual performer.

(2) Failure to maintain age verification records of sexual performers is a class C felony.

"-B Failure to maintain age verification records of sexually exploited individuals. (1) A person commits the offense of failure to maintain age verification records of sexually exploited individuals if, with the intent to profit therefrom, the person knowingly provides sexually exploited individuals to patrons or customers of a public establishment or provides sexually exploited individuals to a private club or event, and the person:

(a) Knowingly fails to create and maintain age verification records for each sexually exploited individual;

(b) Knowingly makes or causes to be made any false entry into the age verification records of sexually exploited individuals required by this section; or

(c) Knowingly fails to produce the age verification records of sexually exploited individuals required by this section upon request by a law enforcement officer for the purpose of verifying the age of a sexually exploited individual.

(2) Failure to maintain age verification records of sexually exploited individuals is a class C felony.

-C Failure to affix information disclosing location of age verification records of sexual performers. (1) A person commits the offense of failure to affix information disclosing location of age verification records of sexual performers if the person knowingly produces any pornographic book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depiction's made after June 30, 2002, of sexual conduct and fails to affix to each copy a statement describing where any records required by section 712-A with respect to all performers depicted in that copy of the matter may be located, including the current address and telephone number of the custodian of those records.

(2) If the person to whom any record-keeping requirement of section 712-A applies is an organization, the affixed information required under subsection (1) shall include the name, title, and business address of the individual employed by the organization who is

responsible for maintaining the records required by section 712-A.

(3) Failure to affix information disclosing the location of age verification records of sexual performers is a class C felony.

-D Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers. (1) A person commits the offense of disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers if the person knowingly disseminates, sells, or otherwise transfers, or offers for sale or transfer, any book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more visual depiction's made after June 30, 2002, of sexual conduct, and that does not have affixed thereto a statement describing where the age verification records required by section 712-A may be located; provided that this section shall not be construed to impose a duty upon any persons to determine the accuracy of the contents of the affixed statement or of the records required to be kept at that location.

(2) Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers is a misdemeanor."

SECTION 4. Section 712-1210, Hawaii Revised Statutes, is amended by adding ten new definitions to be appropriately inserted and to read as follows:

"Age verification records of sexual performers" means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:

(1) Each performer's name and date of birth, as ascertained by the producer's personal examination of a performer's valid driver's license, official state identification card, or passport;

(2) A certified copy of each performer's valid driver's license, official state identification card, or passport; and

(3) Any name ever used by each performer including, but not limited to, maiden name, alias, nickname, stage name, or professional name.

"Age verification records of sexually exploited individuals" means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:

(1) Each sexually exploited individual's name and date of birth, as ascertained by an examination of

the individual's valid driver's license, official state identification card, or passport;

(2) A certified copy of each sexually exploited individual's driver's license, official state identification card, or passport; and

(3) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names.

"Erotic or nude massager" means a nude person providing massage services with or without a license.

"Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing.

"Intent to profit" means the intent to obtain monetary gain.

"Nude" means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola."

"Produces" means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.

"Sexual conduct" has the same meaning as in section 712-1200(2).

"Sexually exploited individuals" means erotic or nude massagers and exotic or nude dancers.

"Sexual performer" includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct."

SECTION 5. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

"A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

(a) All offenses which specifically authorize forfeiture;

(b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary,

money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;

(c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, sexual exploitation of a minor, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

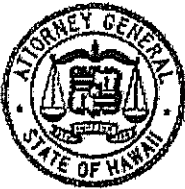
SECTION 7. If any provision of this Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act are severable.

SECTION 8. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section number for the letters used in designating the new sections in this Act.

SECTION 9. Each county prosecutor shall submit a report of the numbers of arrests, charges, convictions, and dismissals under the new offenses created pursuant to this Act to the Legislature prior to the convening of the 2004 regular session.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that sections 2 and 5 shall be repealed on July 1, 2004, and section 712A-4, Hawaii Revised Statutes, shall be reenacted as it read on the day before the effective date of this Act.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 2212, S.D. 1, H.D. 1, RELATING TO CRIME.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 25, 2008 TIME: 4:05 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Waters and Members of the Committee:

The Department of the Attorney General supports this bill, but recommends two amendments.

This bill facilitates the prosecution of human trafficking related crimes by creating a new offense of sexual exploitation of a minor, amending existing kidnapping, extortion, and prostitution laws, and adding sexual exploitation of a minor to the definition of racketeering activity. This bill also eliminates the distinction between minors under 18 and minors under 16 for purposes of promoting prostitution.

As currently written, the new offense of sexual exploitation of a minor set out in section 1 of the bill could potentially preclude private conduct between a man and his 17-year-old girlfriend. To address this concern, we propose amending the definitions of "exotic or nude dancer" and "erotic or nude massager" on page 2, lines 13-17, so that they read as follows:

"Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude for which the person or another receives a fee or other compensation, and includes patrons of a business establishment or enterprise participating in a contest or receiving instruction in nude dancing.

"Erotic or nude massager" means a nude person providing
massage services with or without a license for which the
person or another receives a fee or other compensation.

These amendments will narrow the scope of the offense to situations in which the minor or another person, such as an adult controlling or managing the minor, receives compensation for the services.

We are also concerned about the amendment to section 11 of the bill, concerning the offense of promoting prostitution in the second degree, which replaces "prostitutes" with "prostituted persons" on page 11, lines 2-4. The committee that made this amendment explained that it did so "because trafficking victims are not deemed to be 'prostitutes' voluntarily." As amended, this could be interpreted to make the offense of promoting prostitution in the second degree only apply to situations involving persons who are not engaged in prostitution activity voluntarily. To address this concern, we recommend adding a subsection (3) to section 712-1203, Hawaii Revised Statutes, that would read:

(3) As used in this section, "prostituted person" means any
person who engages in, or agrees or offers to engage in, sexual
conduct with another person for a fee.

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

A BILL FOR AN ACT

RELATING TO CRIME.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 707-700, Hawaii Revised Statutes, is
2 amended by adding two new definitions to be appropriately
3 inserted and to read as follows:

4 "Labor" means work of economic or financial value.

5 "Services" means a relationship between a person and the
6 actor in which the person performs activities under the
7 supervision of or for the benefit of the actor. Prostitution-
8 related and obscenity-related activities as set forth in chapter
9 712 are forms of "services" under this section. Nothing in this
10 chapter shall be construed to legitimize or legalize
11 prostitution."

12 SECTION 2. Section 707-720, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) A person commits the offense of kidnapping if the
15 person intentionally or knowingly restrains another person with
16 intent to:

17 (a) Hold that person for ransom or reward;

18 (b) Use that person as a shield or hostage;

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- 1 (c) Facilitate the commission of a felony or flight
2 thereafter;
- 3 (d) Inflict bodily injury upon that person or subject that
4 person to a sexual offense;
- 5 (e) Terrorize that person or a third person; [~~or~~]
- 6 (f) Interfere with the performance of any governmental or
7 political function[~~-~~]; or
- 8 (g) Unlawfully obtain the labor or services of that
9 person, regardless of whether related to the
10 collection of a debt."

11 SECTION 3. Section 707-721, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) A person commits the offense of unlawful imprisonment
14 in the first degree if the person knowingly restrains another
15 person[~~-~~

16 ~~(a) Under~~ under circumstances which expose the person to
17 the risk of serious bodily injury[~~-or~~

18 ~~(b) In a condition of involuntary servitude]."~~

19 SECTION 4. Section 707-764, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§707-764 Extortion. A person commits extortion if the
22 person does any of the following:

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1 (1) Obtains, or exerts control over, the property, labor,
2 or services of another with intent to deprive another
3 of property, labor, or services by threatening by word
4 or conduct to:

5 (a) Cause bodily injury in the future to the person
6 threatened or to any other person;

7 (b) Cause damage to property or cause damage, as
8 defined in section 708-890, to a computer,
9 computer system, or computer network;

10 (c) Subject the person threatened or any other person
11 to physical confinement or restraint;

12 (d) Commit a penal offense;

13 (e) Accuse some person of any offense or cause a
14 penal charge to be instituted against some
15 person;

16 (f) Expose a secret or publicize an asserted fact,
17 whether true or false, tending to subject some
18 person to hatred, contempt, or ridicule, or to
19 impair the threatened person's credit or business
20 reput;

21 (g) Reveal any information sought to be concealed by
22 the person threatened or any other person;

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- 1 (h) Testify or provide information or withhold
2 testimony or information with respect to
3 another's legal claim or defense;
- 4 (i) Take or withhold action as a public servant, or
5 cause a public servant to take or withhold such
6 action;
- 7 (j) Bring about or continue a strike, boycott, or
8 other similar collective action, to obtain
9 property that is not demanded or received for the
10 benefit of the group that the defendant purports
11 to represent; [ex]
- 12 (k) Destroy, conceal, remove, confiscate, or possess
13 any actual or purported passport, or any other
14 actual or purported government identification
15 document, or other immigration document, of
16 another person; or
- 17 [+k+] (l) Do any other act that would not in itself
18 substantially benefit the defendant but [which]
19 that is calculated to harm substantially some
20 person with respect to the threatened person's
21 health, safety, business, calling, career,



1 financial condition, reputation, or personal
2 relationships;

3 (2) Intentionally compels or induces another person to
4 engage in conduct from which another has a legal right
5 to abstain or to abstain from conduct in which another
6 has a legal right to engage by threatening by word or
7 conduct to do any of the actions set forth in
8 paragraph (1)(a) through ~~(4e)~~ (1); or

9 (3) Makes or finances any extortionate extension of
10 credit, or collects any extension of credit by
11 extortionate means."

12 SECTION 5. Section 707-765, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) A person commits the offense of extortion in the
15 first degree if the person commits extortion:

16 (a) Of property, labor, or services the value of which
17 exceeds \$200 in total during any twelve-month period;
18 or

19 (b) By making or financing any extortionate extension of
20 credit, or by collecting any extension of credit by
21 extortionate means."



1 SECTION 6. Section 707-766, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of extortion in the
4 second degree if the person commits extortion:

5 (a) Of property, labor, or services the value of which
6 exceeds \$50 during any twelve-month period; or

7 (b) As set forth in section 707-764(2)."

8 SECTION 7. Section 707-767, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "(1) A person commits the offense of extortion in the
11 third degree if the person commits extortion of property, labor,
12 or services."

13 SECTION 8. Section 712-1202, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§712-1202 Promoting prostitution in the first degree.**

16 (1) A person commits the offense of promoting prostitution in
17 the first degree if the person knowingly:

18 (a) Advances prostitution by compelling a person by
19 ~~[criminal coercion]~~ force, threat, or intimidation to
20 engage in prostitution, or profits from such coercive
21 conduct by another; or



(b) Advances or profits from prostitution of a person less than ~~[sixteen]~~ eighteen years old.

(2) Promoting prostitution in the first degree is a class B felony.

(3) As used in this section, "threat" means any of the actions listed in section 707-764(1)."

SECTION 9. Section 712-1203, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting prostitution in the second degree if the person knowingly[+.

~~(a)~~ ~~Advances]~~ advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more ~~[prostitutes, or~~

~~(b) Advances or profits from prostitution of a person less than eighteen years old.]~~ prostituted persons."

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.



- 1 SECTION 11. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 12. This Act shall take effect upon its approval.



S.B. NO. 2212
S.D. 1
H.D. 2
C.D. 1

Report Title:
Human Trafficking

Description:
Defines "labor" and "service" in the context of extortion promoting prostitution. Eliminates distinction between minors under 18 and minors under 16 for purposes of promoting prostitution. Effective on approval. (CD1)

2008-2472 SB2212 CD1 SMA.doc



New York Anti-Human Trafficking Law – Summary | Polaris Project

INTRODUCTION TO THE NEW YORK ANTI-HUMAN TRAFFICKING LAW

Official Title: An act to amend the penal law, the criminal procedure law, the correction law, the social services law, and the executive law, in relation to human trafficking; to repeal section 230.03 of the penal law relating to patronizing a prostitute in the fourth degree; and providing for the repeal of certain provisions upon expiration thereof.

Purpose of the Act: The New York Anti-Human Trafficking Law takes a comprehensive approach to combating human trafficking, addressing the "3 P's" of anti-trafficking policy: prosecution, protection and services, and prevention. The law strengthens penalties against traffickers and includes a broad definition of coercion, making it easier to convict traffickers. In addition, this legislation expands the existing law on sex tourism, allowing felony charges against those who run prostitution tourism businesses. The law provides remedies and services to victims of trafficking. The new legislation also creates an interagency task force to gather data and to improve the training of law enforcement and others.

Date Signed: June 6, 2007

Effective Date: November 1, 2007

OVERVIEW OF THE LAW

Prosecution and Criminal Penalties

- Creates the crimes of sex and labor trafficking and provides penalties for each.
- Adopts a broad definition of "coercion" as one of the means of committing human trafficking.
- Creates penalties for a person or business promoting sex tourism.
- Allows sex trafficking and labor trafficking to serve as the basis for enterprise corruption charges and wiretapping authorization.
- Increases the penalty for the lowest charge of patronizing a prostitute.
- Adds sex trafficking to the list of crimes for which a convicted defendant must register as a sex offender.

Protection and Services for Victims

- Provides for comprehensive social services to address the needs of trafficking victims.
- Requires law enforcement to help foreign national victims obtain visas that allow them to remain in the country and become eligible for refugee assistance.

New York Anti-Human Trafficking Law – Summary | Polaris Project

- Creates an affirmative defense for trafficked individuals who may be charged with prostitution or as an accomplice to the trafficker.

Prevention: Research and Planning

- Establishes an interagency task force to collect data on the extent of trafficking within the state, report on issues relating to implementation of this legislation, and create best practices for training law enforcement, social service providers, and others.

PROSECUTION AND CRIMINAL PENALTIES

- Sex trafficking, a Class B felony, occurs when a person intentionally advances or profits from prostitution by using any of the following five means to compel or induce a victim to engage in prostitution:
 - i. Providing the victim with certain drugs;
 - ii. Using materially false or misleading statements;
 - iii. Withholding or destroying government documents, including passports or immigration documents;
 - iv. Debt servicing; and
 - v. Force or coercive conduct, including threats of injury, property damage, unlawful imprisonment, accusations of crime or threats of deportation, exposing a secret, testifying or withholding testimony, using or abusing a public position, or other threats of harm.
- Labor trafficking, a Class D Felony, occurs when a person compels or induces another person to engage in labor, or recruits, entices, harbors, or transports such other person by means very similar to those defined in the sex trafficking statute.
- Promoting sex tourism occurs when a person or business knowingly sells travel-related services, knowing that the services include or facilitate travel for the purpose of patronizing a prostitute. This covers both domestic and international travel, regardless of the legality of prostitution in the destination. A person or business promoting sex tourism can be convicted of the Class D felony of Promoting Prostitution in the Third Degree.
- Sex trafficking and labor trafficking may serve as the basis for enterprise corruption charges, and they are offenses for which wiretapping is authorized.
- Patronizing a prostitute in the third degree is made a Class A Misdemeanor.
- In any prosecution for patronizing a prostitute in the first, second, or third degrees, where conviction depends on the age of the "prostitute," it is a defense that the defendant did not have reason to believe that the "prostitute" was younger than the specified age.
- Sex trafficking is added to the list of crimes for which a convicted defendant must register as a sex offender. However, a court may determine whether a defendant convicted of patronizing a victim under the age of seventeen should be certified as a sex offender.

PROTECTION AND SERVICES FOR VICTIMS

- Authorizes the Office of Temporary and Disability Assistance to enter into contracts with non-governmental organizations to provide a broad range of services to pre-certified trafficking victims (victims who have pending applications for federal certification as victims of severe forms of human trafficking or who reasonably appear to police or prosecutors to be trafficking victims).
- These services for pre-certified trafficking victims include case management, emergency temporary housing, medical care, mental health care, drug addiction screening and treatment, language and translation services, and job training.
- Requires law enforcement agencies and district attorney's offices to notify the Office of Temporary and Disability Assistance and the division of criminal justice services that a person may be eligible for these services as soon as practicable after a first encounter with that person.
- Requires law enforcement to help foreign national victims obtain special visas that allow them to remain in the country and become eligible for refugee status.
- Entitles victims of labor or sex trafficking to benefits from the Crime Victims Board.
- Provides an affirmative defense for trafficked individuals who may be charged with prostitution or as an accomplice to the trafficker.

PREVENTION: RESEARCH AND PLANNING

- Creates the Interagency Task Force on Human Trafficking, which is charged with the following mandates:
 - i. Coordinating the legislation's implementation;
 - ii. Studying issues that may need further reform, including ensuring that victims are properly protected and assisted;
 - iii. Collecting data on the extent of trafficking in New York;
 - iv. Recommending best practices for training and community outreach to help law enforcement, social service providers, prosecutors, defense attorneys, and the general public to recognize trafficking situations; and
 - v. Measuring and evaluating the state's progress in preventing trafficking and prosecuting traffickers.

IN SENATE

S.

Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

PENALA *Governor 27 R-3*
(Enacts provisions relating to
offenses involving human trafficking
and puts in place services for
victims of human trafficking;
repealer)

Pen L. human trafficking

AN ACT

to amend the penal law, the criminal
procedure law, the correction law,
the social services law and the
executive law, in relation to human
trafficking; to repeal section
230.03 of the penal law relating to
patronizing a prostitute in the
fourth degree; and providing for the
repeal of certain provisions upon
expiration thereof

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s22 Golden	s39 Larkin	s11 Padavan	s14 Smith
s55 Alessi	s33 Gonzalez	s01 LaVelle	s21 Parker	s58 Stachowski
s42 Bonacic	s47 Griffo	s40 Leibell	s30 Perkins	s16 Stavisky
s46 Braslin	s06 Hannon	s52 Libous	s61 Rath	s35 Stewart-
s43 Bruno	s36 Hassall-	s45 Little	s56 Robach	Cousins
s25 Connor	Thompson	s15 Maltese	s13 Sabini	s60 Thompson
s50 DeFrancisco	s10 Huntley	s05 Marcellino	s41 Saland	s03 Trunco
s32 Diaz	s07 Johnson, C.	s62 Marjatz	s19 Sampson	s49 Valesky
s17 Dilan	s04 Johnson, O.	s18 Montgomery	s23 Savino	s59 Volker
s29 Duane	s34 Klein	s38 Morahan	s31 Schneiderman	s53 Winner
s44 Farley	s26 Krueger	s54 Nozzolio	s28 Serrano	s48 Wright
s02 Flanagan	s27 Kruger	s12 Onorato	s51 Seward	s57 Young
s08 Fuschillo	s24 Lanza	s37 Oppenheimer	s09 Skelos	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a020 Conte	a139 Hawley	a112 McDonald	a056 Robinson
a001 Alessi	a032 Cook	a148 Hayes	a019 McDonough	a067 Rosenthal
a021 Alfano	a107 Crouch	a083 Neastie	a104 McNamara	a022 Saladino
a084 Arroyo	a063 Cusick	a028 Hevesi	a037 McKevitt	a113 Sayward
a118 Aubertine	a045 Cymbrowicz	a048 Hinkind	a102 Miller	a029 Scarborough
a035 Aubry	a138 DelMonte	a018 Hooper	a052 Millman	a016 Schimel
a136 Bacallies	a116 Dawhito	a144 Hoyt	a103 Molinaro	a140 Schimlinger
a099 Ball	a086 Diaz, L.	a060 Nyer-Spencer	a132 Morella	a145 Schroeder
a124 Barclay	a085 Diaz, R.	a042 Jacobs	a037 Nolan	a122 Scorzafava
a014 Barra	a081 Dinovitz	a095 Jaffee	a128 Oaks	a038 Seminario
a082 Benedetto	a114 Duprey	a057 Jeffries	a059 O'Donnell	a064 Silver
a079 Benjamin	a003 Eddington	a131 John	a137 O'Hara	a093 Spano
a073 Bing	a004 Englebright	a074 Kavanagh	a051 Ortiz	a121 Stierpe
a055 Boyland	a130 Errigo	a100 Kirwan	a150 Parmant	a011 Sweeney
a008 Boyle	a072 Espalliat	a129 Kolb	a088 Paulin	a110 Tedisco
a089 Bradley	a071 Farrell	a135 Koon	a141 Peoples	a002 Thiala
a044 Brennan	a005 Fields	a034 Lafayette	a039 Peralta	a061 Titone
a092 Brodsky	a123 Finch	a026 Lannan	a058 Perry	a031 Titus
a046 Brook-Krasny	a007 Fitzpatrick	a091 Latimer	a023 Phaffar	a062 Tobacco
a147 Buckling	a143 Gabryssek	a013 Lavine	a068 Powell	a105 Tonko
a117 Butler	a090 Galef	a050 Lentol	a087 Pretlow	a054 Towns
a101 Cahill	a133 Grant	a125 Lifton	a146 Quinn	a115 Townsend
a096 Calhoun	a036 Gianaris	a127 Lopez, P.	a097 Rabbitt	a015 Walker
a043 Camara	a149 Giglio	a053 Lopez, V.	a009 Raia	a041 Weinstein
a106 Canestrari	a066 Glick	a126 Lupardo	a006 Ramos	a020 Weisenberg
a026 Carrozza	a040 Gordon, D.	a111 Magee	a134 Reilich	a024 Weprin
a119 Christensen	a108 Gordon, T.	a120 Magnarelli	a109 Rallily	a070 Wright
a033 Clark	a075 Gottfried	a059 Maisel	a078 Rivera, J.	a022 Young
a142 Cole	a077 Graeme	a030 Markey	a080 Rivera, N.	a094 Zebrowski, K
a047 Colton	a098 Gunther	a027 Mayersohn	a076 Rivera, P.	a065

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill). Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

LBDC 05/02/07

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 230.25 of the penal law, as
2 amended by chapter 627 of the laws of 1978, is amended to read as
3 follows:

4 1. Advances or profits from prostitution by managing, supervising,
5 controlling or owning, either alone or in association with others, a
6 house of prostitution or a prostitution business or enterprise involving
7 prostitution activity by two or more prostitutes, or a business that
8 sells travel-related services knowing that such services include or are
9 intended to facilitate travel for the purpose of patronizing a prosti-
10 tute, including to a foreign jurisdiction and regardless of the legality
11 of prostitution in said foreign jurisdiction; or

12 § 2. The penal law is amended by adding two new sections 230.34 and
13 230.36 to read as follows:

14 § 230.34 Sex trafficking.

15 A person is guilty of sex trafficking if he or she intentionally
16 advances or profits from prostitution by:

17 1. unlawfully providing to a person who is patronized, with intent to
18 impair said person's judgment: (a) a narcotic drug or a narcotic prepa-
19 ration; (b) concentrated cannabis as defined in paragraph (a) of subdivi-
20 vision four of section thirty-three hundred two of the public health
21 law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepan,
22 also known as Rohypnol;

23 2. making material false statements, misstatements, or omissions to
24 induce or maintain the person being patronized to engage in or continue
25 to engage in prostitution activity;

26 3. withholding, destroying, or confiscating any actual or purported
27 passport, immigration document, or any other actual or purported govern-
28 ment identification document of another person with intent to impair

1 said person's freedom of movement; provided, however, that this subdivi-
2 sion shall not apply to an attempt to correct a social security adminis-
3 tration record or immigration agency record in accordance with any
4 local, state, or federal agency requirement, where such attempt is not
5 made for the purpose of any express or implied threat;

6 4. requiring that prostitution be performed to retire, repay, or
7 service a real or purported debt;

8 5. using force or engaging in any scheme, plan or pattern to compel or
9 induce the person being patronized to engage in or continue to engage in
10 prostitution activity by means of instilling a fear in the person being
11 patronized that, if the demand is not complied with, the actor or anothe-
12 er will do one or more of the following:

13 (a) cause physical injury, serious physical injury, or death to a
14 person; or

15 (b) cause damage to property, other than the property of the actor; or

16 (c) engage in other conduct constituting a felony or unlawful impri-
17 sonment in the second degree in violation of section 135.05 of this
18 chapter; or

19 (d) accuse some person of a crime or cause criminal charges or depor-
20 tation proceedings to be instituted against some person; provided,
21 however, that it shall be an affirmative defense to this subdivision
22 that the defendant reasonably believed the threatened charge to be true
23 and that his or her sole purpose was to compel or induce the victim to
24 take reasonable action to make good the wrong which was the subject of
25 such threatened charge; or

26 (e) expose a secret or publicize an asserted fact, whether true or
27 false, tending to subject some person to hatred, contempt or ridicule;
28 or

1 (f) testify or provide information or withhold testimony or informa-
2 tion with respect to another's legal claim or defense; or

3 (g) use or abuse his or her position as a public servant by performing
4 some act within or related to his or her official duties, or by failing
5 or refusing to perform an official duty, in such manner as to affect
6 some person adversely; or

7 (h) perform any other act which would not in itself materially benefit
8 the actor but which is calculated to harm the person who is patronized
9 materially with respect to his or her health, safety, or immigration
10 status.

11 Sex trafficking is a class B felony

12 § 230.36 Sex trafficking; accomplice.

13 In a prosecution for sex trafficking, a person from whose prostitution
14 activity another person is alleged to have advanced or attempted to
15 advance or profited or attempted to profit shall not be deemed to be an
16 accomplice.

17 § 3. The penal law is amended by adding two new sections 135.35 and
18 135.36 to read as follows:

19 § 135.35 Labor trafficking.

20 A person is guilty of labor trafficking if he or she compels or
21 induces another to engage in labor or recruits, entices, harbors, or
22 transports such other person by means of intentionally:

23 1. unlawfully providing a controlled substance to such person with
24 intent to impair said person's judgment;

25 2. requiring that the labor be performed to retire, repay, or service
26 a real or purported debt that the actor has caused by a systematic ongo-
27 ing course of conduct with intent to defraud such person;

1 3. withholding, destroying, or confiscating any actual or purported
2 passport, immigration document, or any other actual or purported govern-
3 ment identification document, of another person with intent to impair
4 said person's freedom of movement; provided, however, that this subdivi-
5 sion shall not apply to an attempt to correct a social security adminis-
6 tration record or immigration agency record in accordance with any
7 local, state, or federal agency requirement, where such attempt is not
8 made for the purpose of any express or implied threat;

9 4. using force or engaging in any scheme, plan or pattern to compel or
10 induce such person to engage in or continue to engage in labor activity
11 by means of instilling a fear in such person that, if the demand is not
12 complied with, the actor or another will do one or more of the follow-
13 ing:

14 (a) cause physical injury, serious physical injury, or death to a
15 person; or

16 (b) cause damage to property, other than the property of the actor; or

17 (c) engage in other conduct constituting a felony or unlawful impri-
18 sonment in the second degree in violation of section 135.05 of this
19 chapter; or

20 (d) accuse some person of a crime or cause criminal charges or depor-
21 tation proceedings to be instituted against such person; provided,
22 however, that it shall be an affirmative defense to this subdivision
23 that the defendant reasonably believed the threatened charge to be true
24 and that his or her sole purpose was to compel or induce the victim to
25 take reasonable action to make good the wrong which was the subject of
26 such threatened charge; or

1 (e) expose a secret or publicize an asserted fact, whether true or
2 false, tending to subject some person to hatred, contempt or ridicule;
3 or

4 (f) testify or provide information or withhold testimony or informa-
5 tion with respect to another's legal claim or defense; or

6 (g) use or abuse his or her position as a public servant by performing
7 some act within or related to his or her official duties, or by failing
8 or refusing to perform an official duty, in such manner as to affect
9 some person adversely.

10 Labor trafficking is a class D felony.

11 § 135.36 Labor trafficking; accomplice.

12 In a prosecution for labor trafficking, a person who has been
13 compelled or induced or recruited, enticed, harbored or transported to
14 engage in labor shall not be deemed to be an accomplice.

15 § 4. Section 230.03 of the penal law is REPEALED.

16 § 5. Section 230.04 of the penal law, as added by chapter 627 of the
17 laws of 1978, is amended to read as follows:

18 § 230.04 Patronizing a prostitute in the third degree.

19 A person is guilty of patronizing a prostitute in the third degree
20 when[, being over twenty-one years of age,] he or she patronizes a pros-
21 titute [and the person patronized is less than seventeen years of age].

22 Patronizing a prostitute in the third degree is a class A misdemeanor.

23 § 6. Section 230.07 of the penal law, as added by chapter 627 of the
24 laws of 1978, is amended to read as follows:

25 § 230.07 Patronizing a prostitute; defense.

26 In any prosecution for patronizing a prostitute in the first[,] or
27 second [or third] degrees, it is a defense that the defendant did not

1 have reasonable grounds to believe that the person was less than the age
2 specified.

3 § 7. Paragraph (a) of subdivision 1 of section 460.10 of the penal
4 law, as amended by chapter 442 of the laws of 2006, is amended to read
5 as follows:

6 (a) Any of the felonies set forth in this chapter: sections 120.05,
7 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
8 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
9 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
10 ing to labor trafficking; section 135.65 relating to coercion; sections
11 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10
12 and 145.12 relating to criminal mischief; article one hundred fifty
13 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
14 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
15 health care fraud; article one hundred sixty relating to robbery;
16 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
17 possession of stolen property; sections 170.10, 170.15, 170.25, 170.30,
18 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
19 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
20 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
21 and 178.25 relating to criminal diversion of prescription medications
22 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
23 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
24 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
25 190.40 and 190.42 relating to criminal usury; section 190.65 relating to
26 schemes to defraud; sections 205.60 and 205.65 relating to hindering
27 prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and
28 contempt; section 215.40 relating to tampering with physical evidence;

1 sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39,
2 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled
3 substances; sections 225.10 and 225.20 relating to gambling; sections
4 230.25, 230.30, and 230.32 relating to promoting prostitution; section
5 230.34 relating to sex trafficking; sections 235.06, 235.07 and 235.21
6 relating to obscenity; section 263.10 relating to promoting an obscene
7 sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11,
8 265.12, 265.13 and the provisions of section 265.10 which constitute a
9 felony relating to firearms and other dangerous weapons; and sections
10 265.14 and 265.16 relating to criminal sale of a firearm; and section
11 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings;
12 and sections 470.05, 470.10, 470.15 and 470.20 relating to money laun-
13 dering; or

14 § 8. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
15 procedure law, as amended by chapter 442 of the laws of 2006, is amended
16 to read as follows:

17 (b) Any of the following felonies: assault in the second degree as
18 defined in section 120.05 of the penal law, assault in the first degree
19 as defined in section 120.10 of the penal law, reckless endangerment in
20 the first degree as defined in section 120.25 of the penal law, promot-
21 ing a suicide attempt as defined in section 120.30 of the penal law,
22 criminally negligent homicide as defined in section 125.10 of the penal
23 law, manslaughter in the second degree as defined in section 125.15 of
24 the penal law, manslaughter in the first degree as defined in section
25 125.20 of the penal law, murder in the second degree as defined in
26 section 125.25 of the penal law, murder in the first degree as defined
27 in section 125.27 of the penal law, abortion in the second degree as
28 defined in section 125.40 of the penal law, abortion in the first degree

1 as defined in section 125.45 of the penal law, rape in the third degree
2 as defined in section 130.25 of the penal law, rape in the second degree
3 as defined in section 130.30 of the penal law, rape in the first degree
4 as defined in section 130.35 of the penal law, criminal sexual act in
5 the third degree as defined in section 130.40 of the penal law, criminal
6 sexual act in the second degree as defined in section 130.45 of the
7 penal law, criminal sexual act in the first degree as defined in section
8 130.50 of the penal law, sexual abuse in the first degree as defined in
9 section 130.65 of the penal law, unlawful imprisonment in the first
10 degree as defined in section 135.10 of the penal law, kidnapping in the
11 second degree as defined in section 135.20 of the penal law, kidnapping
12 in the first degree as defined in section 135.25 of the penal law, labor
13 trafficking as defined in section 135.35 of the penal law, custodial
14 interference in the first degree as defined in section 135.50 of the
15 penal law, coercion in the first degree as defined in section 135.65 of
16 the penal law, criminal trespass in the first degree as defined in
17 section 140.17 of the penal law, burglary in the third degree as defined
18 in section 140.20 of the penal law, burglary in the second degree as
19 defined in section 140.25 of the penal law, burglary in the first degree
20 as defined in section 140.30 of the penal law, criminal mischief in the
21 third degree as defined in section 145.05 of the penal law, criminal
22 mischief in the second degree as defined in section 145.10 of the penal
23 law, criminal mischief in the first degree as defined in section 145.12
24 of the penal law, criminal tampering in the first degree as defined in
25 section 145.20 of the penal law, arson in the fourth degree as defined
26 in section 150.05 of the penal law, arson in the third degree as defined
27 in section 150.10 of the penal law, arson in the second degree as
28 defined in section 150.15 of the penal law, arson in the first degree as

1 defined in section 150.20 of the penal law, grand larceny in the fourth
2 degree as defined in section 155.30 of the penal law, grand larceny in
3 the third degree as defined in section 155.35 of the penal law, grand
4 larceny in the second degree as defined in section 155.40 of the penal
5 law, grand larceny in the first degree as defined in section 155.42 of
6 the penal law, health care fraud in the fourth degree as defined in
7 section 177.10 of the penal law, health care fraud in the third degree
8 as defined in section 177.15 of the penal law, health care fraud in the
9 second degree as defined in section 177.20 of the penal law, health care
10 fraud in the first degree as defined in section 177.25 of the penal law,
11 robbery in the third degree as defined in section 160.05 of the penal
12 law, robbery in the second degree as defined in section 160.10 of the
13 penal law, robbery in the first degree as defined in section 160.15 of
14 the penal law, unlawful use of secret scientific material as defined in
15 section 165.07 of the penal law, criminal possession of stolen property
16 in the fourth degree as defined in section 165.45 of the penal law,
17 criminal possession of stolen property in the third degree as defined in
18 section 165.50 of the penal law, criminal possession of stolen property
19 in the second degree as defined by section 165.52 of the penal law,
20 criminal possession of stolen property in the first degree as defined by
21 section 165.54 of the penal law, trademark counterfeiting in the first
22 degree as defined in section 165.73 of the penal law, forgery in the
23 second degree as defined in section 170.10 of the penal law, forgery in
24 the first degree as defined in section 170.15 of the penal law, criminal
25 possession of a forged instrument in the second degree as defined in
26 section 170.25 of the penal law, criminal possession of a forged instru-
27 ment in the first degree as defined in section 170.30 of the penal law,
28 criminal possession of forgery devices as defined in section 170.40 of

1 the penal law, falsifying business records in the first degree as
2 defined in section 175.10 of the penal law, tampering with public
3 records in the first degree as defined in section 175.25 of the penal
4 law, offering a false instrument for filing in the first degree as
5 defined in section 175.35 of the penal law, issuing a false certificate
6 as defined in section 175.40 of the penal law, criminal diversion of
7 prescription medications and prescriptions in the second degree as
8 defined in section 178.20 of the penal law, criminal diversion of
9 prescription medications and prescriptions in the first degree as
10 defined in section 178.25 of the penal law, escape in the second degree
11 as defined in section 205.10 of the penal law, escape in the first
12 degree as defined in section 205.15 of the penal law, absconding from
13 temporary release in the first degree as defined in section 205.17 of
14 the penal law, promoting prison contraband in the first degree as
15 defined in section 205.25 of the penal law, hindering prosecution in the
16 second degree as defined in section 205.60 of the penal law, hindering
17 prosecution in the first degree as defined in section 205.65 of the
18 penal law, sex trafficking as defined in section 230.34 of the penal
19 law, criminal possession of a weapon in the third degree as defined in
20 subdivisions two, three, four and five of section 265.02 of the penal
21 law, criminal possession of a weapon in the second degree as defined in
22 section 265.03 of the penal law, criminal possession of a dangerous
23 weapon in the first degree as defined in section 265.04 of the penal
24 law, manufacture, transport, disposition and defacement of weapons and
25 dangerous instruments and appliances defined as felonies in subdivisions
26 one, two, and three of section 265.10 of the penal law, sections 265.11,
27 265.12 and 265.13 of the penal law, or prohibited use of weapons as

1 defined in subdivision two of section 265.35 of the penal law, relating
2 to firearms and other dangerous weapons;

3 § 9. Subparagraph (i) of paragraph (a) of subdivision 2 of section
4 168-a of the correction law, as amended by chapter 7 of the laws of
5 2007, is amended to read as follows:

6 (i) a conviction of or a conviction for an attempt to commit any of
7 the provisions of sections 130.20, 130.25, 130.30, 130.40, 130.45,
8 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred
9 sixty-three of the penal law, or section 135.05, 135.10, 135.20 or
10 135.25 of such law relating to kidnapping offenses, provided the victim
11 of such kidnapping or related offense is less than seventeen years old
12 and the offender is not the parent of the victim, or section 230.04,
13 where the person patronized is in fact less than seventeen years of age,
14 230.05 or 230.06, or subdivision two of section 230.30, or section
15 230.32 or 230.33 of the penal law, or

16 § 10. Paragraph (b) of subdivision 1 of section 168-d of the
17 correction law, as amended by chapter 11 of the laws of 2002, is amended
18 to read as follows:

19 (b) Where a defendant stands convicted of an offense defined in para-
20 graph (b) of subdivision two of section one hundred sixty-eight-a of
21 this article or where the defendant was convicted of patronizing a pros-
22 titute in the third degree under section 230.04 of the penal law and the
23 defendant controverts an allegation that the victim of such offense was
24 less than eighteen years of age or, in the case of a conviction under
25 section 230.04 of the penal law, less than seventeen years of age, the
26 court, without a jury, shall, prior to sentencing, conduct a hearing,
27 and the people may prove by clear and convincing evidence that the
28 victim was less than eighteen years of age or less than seventeen years

1 of age, as applicable, by any evidence admissible under the rules appli-
2 cable to a trial of the issue of guilt. The court in addition to such
3 admissible evidence may also consider reliable hearsay evidence submit-
4 ted by either party provided that it is relevant to the determination of
5 the age of the victim. Facts concerning the age of the victim proven at
6 trial or ascertained at the time of entry of a plea of guilty shall be
7 deemed established by clear and convincing evidence and shall not be
8 relitigated. At the conclusion of the hearing, or if the defendant does
9 not controvert an allegation that the victim of the offense was less
10 than eighteen years of age or less than seventeen years of age, as
11 applicable, the court must make a finding and enter an order setting
12 forth the age of the victim. If the court finds that the victim of such
13 offense was under eighteen years of age or under seventeen years of age,
14 as applicable, the court shall certify the defendant as a sex offender,
15 the provisions of paragraph (a) of this subdivision shall apply and the
16 defendant shall register with the division in accordance with the
17 provisions of this article.

18 § 11. The social services law is amended by adding a new article 10-D
19 to read as follows:

20 ARTICLE 10-D

21 SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

22 Section 483-aa. Definitions.

23 483-bb. Services for victims of human trafficking.

24 483-cc. Confirmation as a victim of human trafficking.

25 483-dd. Law enforcement assistance with respect to immigration.

26 483-ee. Establishment of interagency task force on human traf-
27 ficking.

1 § 483-aa. Definitions. The following definitions shall apply to this
2 article:

3 (a) "Human trafficking victim" means a person who is a victim of sex
4 trafficking as defined in section 230.34 of the penal law or a victim of
5 labor trafficking as defined in section 135.35 of the penal law.

6 (b) "Pre-certified victim of human trafficking" is a person who has a
7 pending application for federal certification as a victim of a severe
8 form of trafficking in persons as defined in section 7105 of title 22 of
9 the United States Code (Trafficking Victims Protection) but has not yet
10 obtained such certification, or a person who has reported a crime to law
11 enforcement and it reasonably appears to law enforcement that the person
12 is such a victim.

13 § 483-bb. Services for victims of human trafficking. (a) The office of
14 temporary and disability assistance may coordinate with and assist law
15 enforcement agencies and district attorney's offices to access appropri-
16 ate services for human trafficking victims.

17 (b) In providing such assistance, the office of temporary and disabil-
18 ity assistance may enter into contracts with non-government organiza-
19 tions for providing services to pre-certified victims of human traffick-
20 ing as defined in subdivision (b) of section four hundred
21 eighty-three-aa of this article, insofar as funds are available for that
22 purpose. Such services may include, but are not limited to, case manage-
23 ment, emergency temporary housing, health care, mental health coun-
24 seling, drug addiction screening and treatment, language interpretation
25 and translation services, English language instruction, job training and
26 placement assistance, post-employment services for job retention, and
27 services to assist the individual and any of his or her family members
28 to establish a permanent residence in New York state or the United

1 States. Nothing in this section shall preclude the office of temporary
2 and disability assistance, or any local social services district, from
3 providing human trafficking victims who are United States citizens or
4 human trafficking victims who meet the criteria pursuant to section one
5 hundred twenty-two of this chapter with any benefits or services for
6 which they otherwise may be eligible.

7 § 483-cc. Confirmation as a victim of human trafficking. (a) As soon
8 as practicable after a first encounter with a person who reasonably
9 appears to a law enforcement agency or a district attorney's office to
10 be a human trafficking victim, that agency or office shall notify the
11 office of temporary and disability assistance and the division of crimi-
12 nal justice services that such person may be eligible for services under
13 this article.

14 (b) Upon receipt of such a notification, the division of criminal
15 justice services, in consultation with the office of temporary and disa-
16 bility assistance and the referring agency or office, shall make a
17 preliminary assessment of whether such victim or possible victim appears
18 to meet the criteria for certification as a victim of a severe form of
19 trafficking in persons as defined in section 7105 of title 22 of the
20 United States Code (Trafficking Victims Protection) or appears to be
21 otherwise eligible for any federal, state or local benefits and
22 services. If it is determined that the victim appears to meet such
23 criteria, the office of temporary and disability assistance shall report
24 the finding to the victim, and to the referring law enforcement agency
25 or district attorney's office, and may assist that agency or office in
26 having such victim receive services from a case management provider who
27 may be under contract with the office of temporary and disability
28 assistance, or from any other available source. If the victim or possi-

1 ble victim is under the age of eighteen, the office of temporary and
2 disability assistance also shall notify the local department of social
3 services in the county where the child was found.

4 § 483-dd. Law enforcement assistance with respect to immigration. Upon
5 the request of a human trafficking victim or a representative of a human
6 trafficking victim, the state or local law enforcement agency or
7 district attorney's office shall provide the victim with the United
8 States Citizenship and Immigration Service (USCIS) Form I-914 Supplement
9 B Declaration of Law Enforcement Officer for Victim of Trafficking in
10 Persons. In order to provide persuasive evidence, the state or local law
11 enforcement agency endorsement must contain a description of the victim-
12 ization upon which the application is based, including the dates the
13 trafficking in persons occurred. The endorsement must address whether
14 the victim had been recruited, harbored, transported, provided, or
15 obtained specifically for either labor servitude or services or for the
16 purposes of a commercial sex act as defined in subdivision three of
17 section 7102 of title 22 of the United States Code.

18 § 483-ee. Establishment of interagency task force on human traffick-
19 ing. (a) There is established an interagency task force on trafficking
20 in persons, which shall consist of the following members or their desig-
21 nees: (1) the commissioner of the division of criminal justice services;
22 (2) the commissioner of the office of temporary and disability assist-
23 ance; (3) the commissioner of health; (4) the commissioner of the office
24 of mental health; (5) the commissioner of labor; (6) the commissioner of
25 the office of children and family services; (7) the commissioner of the
26 office of alcoholism and substance abuse services; (8) the chairperson
27 of the crime victims board; (9) the executive director of the office for
28 the prevention of domestic violence; and (10) the superintendent of the

1 division of state police; and others as may be necessary to carry out
2 the duties and responsibilities under this section. The task force will
3 be co-chaired by the commissioners of the division of criminal justice
4 services and the office of temporary and disability assistance, or their
5 designees. It shall meet as often as is necessary and under circum-
6 stances as are appropriate to fulfilling its duties under this section.

7 (b) The task force shall: (1) collect and organize data on the nature
8 and extent of trafficking in persons in the state; (2) identify avail-
9 able federal, state and local programs that provide services to victims
10 of trafficking, including but not limited to case management, housing,
11 health care, mental health counseling, drug addiction screening and
12 treatment, language interpretation and translation services, English
13 language instruction, job training and placement assistance, post-em-
14 ployment services for job retention, and services to assist the individ-
15 ual and any of his or her family members to establish a permanent resi-
16 dence in New York state or the United States; (3) consult with
17 governmental and non-governmental organizations in developing recommen-
18 dations to strengthen state and local efforts to prevent trafficking,
19 protect and assist victims of trafficking and prosecute traffickers; (4)
20 establish interagency protocols and collaboration between federal,
21 state, and local law enforcement, state and governmental agencies, child
22 welfare agencies, and non-governmental organizations; (5) evaluate
23 approaches to increase public awareness about trafficking and make
24 recommendations on such approaches; (6) evaluate the effectiveness of
25 training programs on human trafficking that have been designed for law
26 enforcement personnel, criminal defense attorneys, social service
27 providers and non-governmental organizations, and make recommendations
28 for improving the quality and effectiveness of such programs; and (7)

1 measure and evaluate the progress of the state in preventing traffick-
2 ing, protecting and providing assistance to victims of trafficking, and
3 prosecuting persons engaged in trafficking.

4 (c) One year from the effective date of this section, or earlier if
5 deemed appropriate, the task force shall report to the governor and the
6 legislature on these issues, and it shall thereafter issue such reports
7 and recommendations as it deems necessary to carry out its duties and
8 responsibilities.

9 § 12. Subdivision 5 of section 621 of the executive law, as amended by
10 chapter 620 of the laws of 1997, is amended to read as follows:

11 5. "Victim" shall mean (a) a person who suffers personal physical
12 injury as a direct result of a crime; (b) a person who is the victim of
13 either the crime of (1) unlawful imprisonment in the first degree as
14 defined in section 135.10 of the penal law, (2) kidnapping in the second
15 degree as defined in section 135.20 of the penal law, [or] (3) kidnap-
16 ping in the first degree as defined in section 135.25 of the penal law,
17 (4) labor trafficking as defined in section 135.35 of the penal law, or
18 (5) sex trafficking as defined in section 230.34 of the penal law; or a
19 person who has had a frivolous lawsuit filed against them.

20 § 13. Subdivision 1 of section 631 of the executive law, as amended by
21 chapter 320 of the laws of 2006, is amended to read as follows:

22 1. No award shall be made unless the board or board member, as the
23 case may be, finds that (a) a crime was committed, (b) such crime
24 directly resulted in personal physical injury to or the exacerbation of
25 a preexisting disability, or condition, or death of, the victim, and (c)
26 criminal justice agency records show that such crime was promptly
27 reported to the proper authorities; and in no case may an award be made
28 where the criminal justice agency records show that such report was made

1 more than one week after the occurrence of such crime unless the board,
2 for good cause shown, finds the delay to have been justified; provided,
3 however, in cases involving an alleged sex offense as contained in arti-
4 cle one hundred thirty of the penal law or incest as defined in section
5 255.25, 255.26 or 255.27 of the penal law or labor trafficking as
6 defined in section 135.35 of the penal law or sex trafficking as defined
7 in section 230.34 of the penal law or an offense chargeable as a family
8 offense as described in section eight hundred twelve of the family court
9 act or section 530.11 of the criminal procedure law, the criminal
10 justice agency report need only be made within a reasonable time consid-
11 ering all the circumstances, including the victim's physical, emotional
12 and mental condition and family situation. For the purposes of this
13 subdivision, "criminal justice agency" shall include, but not be limited
14 to, a police department, a district attorney's office, and any other
15 governmental agency having responsibility for the enforcement of the
16 criminal laws of the state provided, however, that in cases involving
17 such sex offense a criminal justice agency shall also mean a family
18 court, a governmental agency responsible for child and/or adult protec-
19 tive services pursuant to title six of article six of the social
20 services law and/or title one of article nine-B of the social services
21 law, and any medical facility established under the laws of the state
22 that provides a forensic physical examination for victims of rape and
23 sexual assault.

24 § 14. This act shall take effect on the first of November next
25 succeeding the date on which it shall have become a law; provided that
26 section 483-ee of the social services law as added by section eleven of
27 this act shall take effect immediately and shall remain in full force
28 and effect until September 1, 2011 when upon such date the provisions of

1 such section shall expire and be deemed repealed. Provided, effective
2 immediately, the addition, amendment and/or repeal of any rule or regu-
3 lation necessary for the timely implementation of the provisions of
4 article 10-D of the social services law, as added by section eleven of
5 this act, on its effective date are authorized to be made on or before
6 such effective date.

Kidwell, J., dissenting

drug distribution is carried on by persons who are licensed to possess and dispense the drug. So far as Appellant is concerned, the statute draws no line between a licit and an illicit distribution, if the authorization to distribute was extended to Appellant by a licensed person.

At the conclusion of this analysis, I find myself wondering whether the permissible inference, from these circumstances, that Appellant's supplier was not within one of the statutory categories was not too weak to support a conviction, regardless of what alternative inferences were also permissible. In any event, it seems clear that the circumstances permitted an inference that Appellant's supplier was a licensed person selling drugs in the more profitable illicit market. The reasonableness of this inference depends, I believe, in part on the strength of any contrary inference. Where the inference of guilt is nearly matched in weight by the inference of innocence, as it is here, I would conclude that the circumstances do not exclude a reasonable hypothesis of innocence. The motion to acquit should have been granted.

I would reverse the conviction.

Syllabus

STATE OF HAWAII, Plaintiff-Appellee v. TOMMIE
MODICA, Defendant-Appellant

NO. 5889

APPEAL FROM CIRCUIT COURT OF THE FIRST CIRCUIT
HONORABLE WALTER M. HEEN, JUDGE

AUGUST 4, 1977

RICHARDSON, C.J., KOBAYASHI, OGATA,
MENOR AND KIDWELL, JJ.

CRIMINAL LAW — constitutional law — construction and operation —
misdemeanor/felony — due process — equal protection.

Where the same act committed under the same circumstances is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of defendant's right to due process and the equal protection of the law.

SAME — statutory construction — essential element — carrying "on the person".

Where the carrying of a pistol or revolver on the person is an essential element of the conduct proscribed by the statute, the phrase "on the person" has been construed to mean physical connection with or attaching to the person.

SAME — same — indictment and information — defenses.

Statutes may on occasion overlap, depending on the facts of a particular case, but it is generally no defense to an indictment under one statute that the accused might have been charged under another.

SAME — same — same — prosecutor's discretion.

Where statutes overlap, depending on the facts of a particular case, the matter is necessarily and traditionally subject to the prosecuting attorney's discretion.

OPINION OF THE COURT BY MENOR, J.

The defendant was found guilty by a jury upon an indictment charging him with carrying a revolver without a permit or license to do so, in violation of HRS § 134-9. From the judgment and sentence of the trial court, the defendant appeals.

The operative facts are that the defendant was found with a loaded revolver, for which he had no permit, in the municipal parking lot at the corner of Smith and Pauahi Streets in the City and County of Honolulu. On the basis of these facts, he could have been charged for a misdemeanor under HRS

§ 134-6,¹ for carrying a loaded firearm on a public highway, but he was charged instead with carrying a revolver on his person in violation of HRS § 134-9.²

The defendant does not contend that the two statutes are unconstitutionally vague, but he does assert that "[i]t is the arbitrary and unbridled discretion vested in the prosecutor which allows the prosecutor to charge the same conduct either as a felony, under HRS § 134-9, or as a misdemeanor, under HRS § 134-6, which violates the [defendant's] rights to the equal protection of the laws and due process of law." He argues that inasmuch as HRS § 134-6 and HRS § 134-9 prescribe different degrees of punishment for the same conduct committed under the same circumstances by similarly situated persons, his conviction and the entry of judgment against him pursuant to the terms of HRS § 134-9 violated his rights to due process of law and the equal protection of the laws.

We find no violation of the defendant's constitutional rights. A denial of these rights would be the result, only if a violation of the misdemeanor statute (HRS § 134-6) would invariably and necessarily constitute a violation of the felony provision (HRS § 134-9). *Palmore v. United States*, 290 A.2d 573 (D.C.App. 1972); *United States v. Coppola*, 425 F.2d 660 (2d Cir. 1969); cf. *State v. Canady*, 69 Wash.2d 886, 421 P.2d 347 (1966); *State v. Reid*, 66 Wash.2d 243, 401 P.2d 988

¹ HRS § 134-6, in pertinent part provides as follows:

"It shall be unlawful for any person to have in his possession or to carry on any public highway any firearm loaded with ammunition; provided that the provisions of this paragraph shall not apply to any person who has in his possession or carries a pistol or revolver and ammunition therefor in accordance with a license or permit issued, as provided in section 134-9.

Any person who violates any provision of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

² HRS § 134-9, in pertinent part provides as follows:

"... No person shall carry concealed or unconcealed on his person a pistol or revolver without being licensed to do so under this section or in compliance with section 134-6.

Any person violating this section shall be imprisoned for a term of not less than two years nor more than five years, without probation."

(1965); *State v. Reed*, 34 N.J. 554, 170 A.2d 419 (1961). Thus, where the same act committed under the same circumstances is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of the defendant's rights to due process and the equal protection of the laws. *Olsen v. Delmore*, 48 Wash.2d 545, 295 P.2d 324 (1956); *State v. Pirkey*, 203 Or. 697, 281 P.2d 698 (1955). We do not, however, find this to be the case here.

Carrying a pistol or a revolver on the person is an essential element of the conduct proscribed by HRS § 134-9, but it is not a requirement under the provisions of HRS § 134-6.³ The phrase "on the person" in a statute has been construed to mean physical connection with or attaching to the person. *Schraeder v. State*, 28 Ohio App. 248, 162 N.E. 647 (1928); *State v. Breckenridge*, 282 S.W. 149, 219 Mo.App. 587 (1926). Black's Law Dictionary (4th ed. 1976) defines the phrase "on the person" to mean "[i]n common parlance, . . . that [the article] is either in contact with his person or is carried in his clothing." Thus, the carrying of a pistol or revolver within a vehicle, not on the person, would constitute a violation of HRS § 134-6, but it would not be an offense under HRS § 134-9. See *Hampton v. Commonwealth*, 257 Ky. 626, 78 S.W.2d 748 (1934); Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., § 5528.88.

Statutes may on occasion overlap, depending on the facts of a particular case, but it is generally no defense to an indictment under one statute that the accused might have been charged under another. *Territory v. Awana*, 28 Haw. 546 (1925); *In re Converse*, 137 U.S. 624 (1891); *State v. Swan*, 55 Wash. 97, 104 P. 145 (1909). Cf. *State v. Travis*, 45 Haw. 435, 368 P.2d 883 (1962). Under those circumstances, the matter is necessarily and traditionally subject to the prosecuting

³ HRS § 134-6 also directs itself to all types of firearms, as defined in HRS § 134-1, as well as ammunition therefor, while the weapons covered by HRS § 134-9 are strictly limited to pistols and revolvers.

attorney's discretion. *Newman v. United States*, 382 F.2d 479 (D.C.Cir. 1967); *Hutcherson v. United States*, 345 F.2d 964 (D.C.Cir. 1965), cert. denied 382 U.S. 894.

Affirmed.

Steven J. Levinson (Schutter, Levinson & O'Brien) for defendant-appellant.

Randolph Slaton, Deputy Prosecuting Attorney (Michael Gibson, Deputy Prosecuting Attorney on the brief, Maurice Sapienza, Prosecuting Attorney, of counsel) for plaintiff-appellee.

STATE OF HAWAII, Plaintiff-Appellee, v. GLENN KALANI HORN, LARRY JAMES ORTIZ, Defendant-Appellants, and DELBERT KAAHANUI WAKINEKONA, Defendant

NO. 5901

APPEAL FROM CIRCUIT COURT OF THE FIRST CIRCUIT
HONORABLE MASATO DOI, JUDGE

AUGUST 5, 1977

RICHARDSON, C.J., KOBAYASHI, OGATA,
MENOR AND KIDWELL, JJ.

CRIMINAL LAW — defense of necessity — rights of defendant.

The defense of necessity in escape situations is available to the accused when specific and articulable conditions within the prison exist which seriously expose the prisoner to severe injury.

SAME — same — sufficiency of evidence.

There must be some support in the evidence that the danger existed, that the defendant was vulnerably exposed to the danger, and that the threatened harm to him was imminent.

SAME — same — circumstantial evidence.

Whether the threat of harm was imminent, and whether the defendant was reasonable in his assessment of the situation and in acting as he did are to be determined from the facts and circumstances of the particular case.

SAME — same — constitutional right — determination by jury.

An accused is entitled to a jury determination of his guilt or innocence, and it is his constitutional right to present any and all competent matters in his defense.

SAME — right to trial by jury — due process.

A right to a trial by jury and the right to adduce evidence in his behalf are two of the fundamentals inherent in the due process guarantee of a fair trial.

SAME — rejection of evidence — reversible error.

It would be reversible error for the trial court to reject evidence which, if admitted, would present an essential factual issue for the trier of fact.

Per Curiam. The defendants, Horn and Ortiz, were indicted and convicted by a jury of the crime of escape in the second degree (HRS § 710-1021). They appeal from the judgment and sentence of the circuit court.

We are called upon to decide whether and to what extent the "choice of evils" or "necessity" defense (HRS § 703-302) is available to the accused in escape situations. We hold that the defense is available to the escapee provided certain conditions are met, and in this regard we adopt the rationale and the conditions imposed by *People v. Lovercamp*, 43 Cal.App.3d 823, 118 Cal.Rptr. 110 (1974), with one principal modification. In that case, the court held that a limited defense of necessity in escape situations is available to the accused if the following conditions exist:

(1) The prisoner is faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future;

(2) There is no time for a complaint to the authorities or there exists a history of futile complaints which make any result from such complaints illusory;

(3) There is no time or opportunity to resort to the courts;

(4) There is no evidence of force or violence used towards prison personnel or other innocent persons in the escape; and