

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2045

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2045, entitled "A Bill for an Act Relating to Crime."

The purposes of this bill are to create two new criminal offenses of Sexual Human Trafficking in the First Degree and Sexual Human Trafficking in the Second Degree, and to add Sexual Human Trafficking to the list of offenses covered under the government witness protection program.

This bill is objectionable because the proposed new offenses seek to prohibit conduct that is already prohibited under Hawaii law, and because the proposed new offenses do not clearly define prohibited conduct in such a way that they can be enforced and prosecuted in court.

The language in this measure is poorly drafted, overly broad, redundant, and inaccurate so as to make it virtually impossible to bring to trial and convict those who engage in human trafficking. The bill also fails to establish clear standards for a person knowingly or intentionally engaging in this behavior, thus jeopardizing the case that a prosecutor would have to present in a court of law.

In addition to the inadequately defined terms, the proposed offenses of sexual human trafficking do not clearly establish prohibited conduct that can be reasonably understood.

This bill is also objectionable because most of the conduct that the proposed offenses attempt to prohibit is already

covered by existing statutes.

Advancing or profiting from the prostitution of a minor is prohibited by section 712-1202, Hawaii Revised Statutes, Promoting Prostitution in the First Degree. Under section 712-1202, the State need only prove that: (1) the actor knowingly advances or profits from prostitution, and (2) the prostituted person is less than eighteen years old. In contrast, proposed section 707-B of this bill would impose additional elements (enticement, fraud, or coercion; maintenance, management, supervision, or control; and transportation) that the State must prove. The additional elements would make it more difficult to obtain convictions in cases involving prostitution of minors. There is no logical reason to add them.

The proposed offenses refer to prostitution or sexually-explicit activity obtained or maintained through coercion. The use of coercion is prohibited by existing statutes. Section 712-1202, Promoting Prostitution in the First Degree, prohibits knowingly "[a]dvanc[ing] prostitution by compelling a person by force, threat, or intimidation to engage in prostitution, or profit[ing] from such coercive conduct by another." Section 707-764, Hawaii Revised Statutes, Extortion, prohibits obtaining, or exerting control over, the property, labor, or services of another with intent to deprive another of property, labor, or services by threats of word or conduct; and prohibits intentionally compelling or inducing another person to engage in conduct from which another has a legal right to abstain, or to abstain from conduct in which another has a legal right to engage, by threats of word or conduct.

I support the goals of preventing human trafficking and bringing its perpetrators to justice. Unfortunately, those goals

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will not be achieved by the enactment of this bill and this bill will make it more difficult to achieve the objectives of penalizing those who engage in sexual human trafficking.

For the foregoing reasons, I am returning Senate Bill No. 2045 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii