



Urban Justice Center

123 William Street, 16th floor, New York, NY 10038
Tel: (646) 602-5600 • Fax: (212) 533-4598
www.urbanjustice.org

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Memorandum in Opposition -----

H.B 5044, sponsored by Rep. Giannini

An Act Relating to Criminal Offenses – Prostitution and Lewdness.

A Statement in Opposition:

Formed in December 2001, shortly after the passage of the federal Trafficking Victims Protection Act of 2000, the Sex Workers Project at the Urban Justice Center (SWP) provides essential legal and social services to victims of trafficking into prostitution. Our agency was among the first to provide legal services to people who work in the sex industries regardless of whether they do so by choice, circumstance, or coercion. We also work closely with the Center for Court Innovation's Midtown Community Court in the identification of victims of trafficking among individuals arrested on prostitution-related offenses, as well as the provision of services through diversion programs.

SWP's anti-trafficking program is highly respected, not only in New York City, one of the nation's biggest trafficking hubs, but across the country. We are frequently called upon to share the expertise we have developed based on the experiences of our clients with local, state and federal legislators. As part of a broad coalition of feminists, service providers working closely with trafficked persons, and anti-trafficking advocates, SWP played a critical role in policy advocacy with respect to the 2003, 2005, and 2008 reauthorizations of the federal anti-trafficking law, as well as in the drafting and passage of New York State's anti-trafficking legislation. In addition to our experience working with hundreds of trafficking clients over the past seven years, we draw on the results of three comprehensive human rights documentation projects conducted by SWP in conjunction with respected scholars in the field to provide unique and critical information and practical recommendations for addressing issues relating to trafficking and sex work at the local, state, federal and international levels.

We strongly urge Rhode Island legislators to oppose H.B. 5044 and any other state bill that similarly seeks to criminalize all forms of prostitution. The existence of human trafficking in indoor sex work venues has been offered as a justification for passage of legislation criminalizing all commercial sexual exchanges in Rhode Island. The reality is that such a measure is likely to cause severe harm to victims of human trafficking by subjecting them to repeated arrest, incarceration, and retraumatization, without increasing the likelihood of locating, identifying, or assisting trafficking victims.

Our recently released research report, *Kicking Down the Door: The Use of Raids to Fight Trafficking in Persons* (available at <http://www.urbanjustice.org/ujc/publications/sex.html>) summarizes findings from interviews with 46 people with experience of law enforcement actions against indoor sex venues, including service providers who have worked with hundreds of trafficking victims, law enforcement personnel, and 15 immigrant women who have been trafficked. Trafficked women reported that they were repeatedly arrested, in some cases up to ten times, in police raids on brothels and other sex work venues, convicted of prostitution, and even sentenced to jail without ever being identified as trafficked. Additionally, some raids were accompanied by serious violations of the rights of the very people the raids were intended to protect. The experiences of the trafficking victims we spoke with were corroborated by interviews with service providers who had worked with hundreds of trafficking victims over the years. Service providers reported that law enforcement actions aimed at enforcing anti-prostitution laws rarely resulted in the location or identification of people who have been trafficked. Instead, more often than not, they resulted in the arrest, detention, and deportation of trafficking victims.

The affirmative defense against prostitution charges created by House Bill 5044 will not eliminate these deleterious effects of the proposed legislation on trafficking victims. As an initial matter, the definition of “trafficking” a victim must meet in order to avail herself of the defense under HB 5044 is narrower than the definition set forth in the TVPA, making the defense available to fewer women than would be protected by federal law. Moreover, as world renowned anti-trafficking expert Ann Jordan, Esq. insightfully points out in her submission to the Rhode Island Senate Judiciary Committee, highly traumatized trafficking victims should not carry the burden of proving themselves to be victims immediately following an arrest, particularly given the very real potential threats to their families and loved ones by traffickers and their associates still at large, as well as the minimal resources available for indigent defense and limited time available to do so.

It has also been suggested that, in the absence of a state law criminalizing indoor prostitution in Rhode Island, federal agents are unable to enforce federal anti-trafficking laws or protect minors in prostitution. See L. Arditi, *R.I. in the ‘Eye of the Storm’ in Sex Trafficking*, Providence Journal, April 19, 2009. **This is quite simply factually and legally incorrect.** The federal law clearly defines trafficking to include any circumstance in which force, fraud, or coercion is used to induce any person into any kind of labor or commercial activity, including prostitution, regardless of whether the underlying activity itself is criminalized. Indeed, labor trafficking can be and is prosecuted without there being a need to criminalize domestic work, agricultural work, or service jobs, which are just a few of the sectors in which trafficking is prevalent. Federal anti-trafficking law also prohibits and severely punishes inducing a minor into prostitution, even where no force, fraud or coercion is used, regardless of the status of state laws.

While it may be true that the federal law has not been effectively used in Rhode Island, the solution to this problem is more effective and vigorous enforcement of federal anti-trafficking legislation and passage of strengthened state anti-trafficking legislation, not the wholesale criminalization of the very persons you seek to help. Trafficked persons are very unlikely to go to the police when they are afraid of arrest and prosecution. Indeed, traffickers use the fact that prostitution is a crime to further isolate their victims. Further criminalization only gives traffickers additional ammunition to tell their victims that the police will never help them because they are considered criminals. Confirming these messages will simply make trafficking victims *less likely* instead of more likely to seek help from law enforcement.

Advocates of the proposed legislation suggest that a law criminalizing prostitution in indoor venues is necessary in order for the police to be able to remove trafficking victims from the control of their traffickers and enable them to come forward as victims of trafficking. Such an approach runs directly contrary to existing evidence regarding best practices for identification of trafficking victims. It also directly contradicts the advice of federal law enforcement agents such as U.S. Department of Justice trafficking prosecutor Robert Moosy, whose recent article *Sex Trafficking: Identifying Cases and Victims*, published by the National Institutes of Justice Journal and based on his presentation at the U.S. DOJ's Fourth National Human Trafficking Conference, advocates focused, in-depth investigations of suspected trafficking operations, not indiscriminate arrests of potential victims.

Our research indicates that raids of indoor sex work venues conducted to enforce anti-prostitution laws are extremely traumatic to victims of trafficking, and counterproductive to building the kind of relationships required for a victim to come forward and identify herself as trafficked into prostitution. Our experience, and that of other service providers, is that trafficking victims are identified after months of building trust in the offices of social service agencies providing supportive counseling, not immediately following arrest in a police station under interrogation and the threat of criminal charges, deportation, or both. Moreover, to the extent that there is a need to remove a person from any situation based on a belief that they are in immediate danger, law enforcement already possesses the power to do so under existing laws against assault, rape, coercion, kidnapping, statutory rape, among numerous other criminal provisions.

Advocates in support of the bill state that the goal is to end trafficking, but the real focus of the bill is clearly on prostitution. If the goal of this bill is to end prostitution itself, we would caution Rhode Island legislators to consider whether this goal will actually be met. Criminalization of prostitution decreases choices available to people engaged in sex work rather than increasing their options to leave the industry or a trafficking situation. Our experience and research indicates that the vast majority of individuals engaged in prostitution do so for survival or to meet economic needs. Fines and asset forfeitures only further entrap women in the very dire economic straits that so often motivate them to voluntarily engage in prostitution or which render them vulnerable to trafficking in the first place. Additionally, once saddled with a criminal record, sex workers have fewer options for legal employment, and can be shut out of public housing, evicted from private housing, lose custody of their children or be denied immigration status, further increasing their vulnerability to abuse and trafficking. In short, being arrested for prostitution increases the likelihood that people will be forced by circumstance or coerced into continuing to engage in prostitution as their only option for survival.

Moreover, proposed legislation would impose liability on property owners who believe that their premises are being used for prostitution and do not take action to stop it. This provision will increase the likelihood that people who are engaged in prostitution – *or who are merely profiled as engaging in prostitution, as is the case for many Asian and Latina women* – will be denied access to or evicted from private housing, thereby increasing their vulnerability to violence and coercion at the hands of family members, partners, and traffickers.

By recriminalizing indoor sex work in Rhode Island, legislators would simply be pushing people who are engaged in prostitution into more dangerous circumstances and further from help. According to our two widely cited research studies of the sex industry in New York City, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, available at:

<http://www.urbanjustice.org/pdf/publications/RevolvingDoor.pdf>, and *Behind Closed Doors: An Analysis of Indoor Sex Work in New York City*, available at <http://www.urbanjustice.org/pdf/publications/BehindDoorsFullRpt.pdf>, sex workers who work privately indoors are at much lower risk for violence than those who work on the street. Internet services and newspapers are a common way for independent sex workers to earn an income without relying on potential traffickers or criminal networks. As a result, this law would ultimately increase, not decrease, sex workers' vulnerability to violence by reducing their ability to stay independent of abusive traffickers, and screen out potentially abusive clients.

We applaud the Rhode Island Legislature's concern for victims of trafficking and encourage the Rhode Island Senate to examine successful approaches to human trafficking rather than repeat the mistakes of the past by penalizing its victims. Examples of effective responses to human trafficking include community education campaigns and forging partnerships with communities most affected, including immigrant communities and sex workers themselves. Improving access to employment, housing, legal services, and other essential services, helping undocumented persons obtain immigration status so they can work legally, and eliminating the barriers for transitioning out of sex work and into living wage forms of work are all initiatives that get at the root causes of trafficking in persons without penalizing its victims.

We therefore strongly urge you to not enact a law that will have severe unintended negative consequences for the very people it is intended to protect, and to instead consider measures that will improve people's lives.

Please do not hesitate to contact us should you wish to discuss this proposed legislation further or obtain more information about SWP and its work.

Respectfully submitted,

Andrea Ritchie
Director,
Sex Workers Project at the Urban Justice Center
aritchie@urbanjustice.org 646.602.5690

Sienna Baskin
Equal Justice Works Fellow
Sex Workers Project at the Urban Justice Center
sbaskin@urbanjustice.org/646.602.5695