



AMERICAN UNIVERSITY
WASHINGTON, DC

CENTER FOR HUMAN RIGHTS AND HUMANITARIAN LAW

June 5, 2009

Senator Levesque
Vice Chair, Senate Judiciary Committee
Rhode Island Senate

Dear Vice Chair Levesque and Members of the Committee:

In response to your request for technical assistance to the Senate Judiciary Committee regarding proposed Rhode Island legislation on prostitution and its relationship to human trafficking, I write to offer my expertise in this subject area. As an experienced legal scholar and advocate against human trafficking of long standing¹, I am quite concerned about the impact that bill 09-S-596, "An Act Relating to Criminal Offences- Prostitution and Lewdness," will have on trafficking victims and women in prostitution in general. This bill will lead to the arrest of victims of human trafficking but will do little to protect them or encourage them to cooperate with law enforcement. Rather, it will increase their fear of law enforcement and discourage them from coming forward to identify their traffickers and abusers. In addition, a criminal record will make it more difficult for people who are trafficking victims and people who engage in prostitution free of coercion to find alternative employment and will push the industry underground.

The bill erroneously assumes that arresting women who sell sex will somehow lead to more prosecutions for human trafficking. This is not an effective strategy for identifying victims or encouraging their cooperation with law enforcement. Rather, law enforcement should follow the expert advice given by the Director of the Department of Justice's Human Trafficking Prosecution Section of the Civil Rights Division, Robert Moosy in his article "Sex Trafficking: Identifying Cases and Victims."² Through extensive experience with trafficking cases, Moosy has learned that women who are trafficked into prostitution are typically afraid of law enforcement because they fear being prosecuted for prostitution and deported, and because they often are highly traumatized. Thus, mass arrests of women for prostitution are extremely unlikely to lead to the identification of trafficked women.

Instead, Moosy advises patience, intensive and extensive covert investigations and working with non-governmental organizations that are likely to come across trafficking victims. Law enforcement must assure these organizations that they are only

¹ Please see attached bio.

² Moosy, Robert, "Sex Trafficking: Identifying Cases and Victims" *National Institute of Justice Journal*, Issue 262 (2009), <http://www.ncjrs.gov/pdffiles1/nij/225759.pdf>

PROGRAM ON HUMAN TRAFFICKING AND FORCED LABOR

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interested in going after traffickers, not their victims, in order ultimately to have the successful prosecution of traffickers.

The bill clearly attempts to use threat of prosecution for prostitution as a blunt instrument to convince women to testify against traffickers. It is extremely disturbing to learn that there is some support for the proposed law because it would allow the police to detain women (apparently for the own 'good') so that they can be interviewed as possible trafficking victims. Moosy advises a completely different approach, one that seeks to support victims while building a strong case for the prosecution of traffickers. He states it is necessary to "use covert methods and exhaust them before conducting a raid or arresting the sex trafficker." Raiding, arresting and then using coercive tactics to force a potential trafficking victim to testify runs counter to all of Moosy's advice. In addition, such coercive tactics might expose the women or their families to violence from the traffickers who remain at large. In any event, the purpose of criminal law is to prosecute criminals, not to scare victims through indiscriminate mass arrests.

In addition, mass arrest of women for prostitution will certainly lead to the imprisonment of many, if not the majority, of victims of trafficking. S-596 would transfer the responsibility for proving the existence of trafficking or another crime to trafficking victims themselves. Investigating and proving the crime of human trafficking are the responsibilities of law enforcement, not the victim. S-596 actually undermines enforcement of Rhode Island's current trafficking law (§11-67-1), because it relieves law enforcement of any obligation to determine whether a woman charged with prostitution is a victim or not. Proving trafficking or another crime would become the woman's responsibility, which she would have to assume *right after* she is arrested, at the time Moosy states she is most likely to be afraid, unsure and unable to speak clearly and honestly. Who would help these women collect this evidence? The vast majority of the women will be represented by public defenders who have very limited capacity and time and little funding to mount a lengthy and complicated defense based on trafficking. Most prostitution cases are moved quickly through the system and most public defenders spend very little time with their clients and build the kind of trust required for a victim of trafficking to disclose her situation. Thus, it is highly probable that the overwhelming majority of victims of trafficking would be arrested and prosecuted multiple times for prostitution under the proposed bill without ever being recognized as victims.

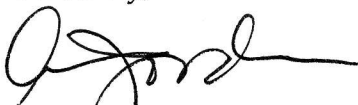
Lastly, this bill will only exacerbate the obstacles that non-trafficked women in prostitution face in leaving sex work. Many women who engage in prostitution do so for reasons of economic insecurity or substance abuse. They would not legally qualify as trafficking victims but may qualify as victims of any number of other crimes. The bill would saddle these women with a criminal record, cause them to forfeit their limited assets, and go into debt to the state, all of which would have the effect of making it even *more difficult* for them to leave prostitution and find alternate employment. Women in prostitution need nonjudgmental support and assistance, not arrest, detention and prosecution. According to the Department of Corrections' 2008 Population Report, women incarcerated for prostitution constitute 25% of the female population at the

ACI.³ Rhode Island currently spends approximately \$440,000 each year on incarceration of women for prostitution.⁴ If these funds were redirected to drug cessation programs, education and training and counseling, and job creation, for example, with the goal of supporting women's transition to other forms of income generation, the state would be transforming women's lives (and the lives of their children) in a positive manner, and would also be able to focus limited resources on the types of human trafficking investigations recommended by Moosy.

It is evident that the Rhode Island legislature is serious about combating human trafficking more effectively. A more cost-effective, targeted approach to the issue would be to ensure that state law includes (1) trafficking into forced labor, slavery, servitude and debt bondage in order to ensure that people trafficked into farms, factories, homes, streets, brothels and other sites are protected, (2) state-funded services for victims so that NGOs can provide the type of support discussed by Moosy for safe and healthy survivors, and (3) ample funding and training for law enforcement to be able to carry out the type of investigations recommended by Moosy. Members of the Freedom Network (USA), a national network of anti-trafficking service providers and advocates, have produced the attached State Model Law for the Protection of Victims of Human Trafficking, which you will find useful in considering ways to improve the state's anti-trafficking law.

I would be happy to work with the Committee to identify some of the gaps in the Rhode Island's human trafficking legislation. There are many ways in which these laws could be strengthened to improve the ability of law enforcement to identify and rescue trafficking victims, and prosecute their traffickers. Unfortunately, arresting and prosecuting women in prostitution *will not* achieve these goals—it will only further victimize victims.

Sincerely,



Ann Jordan

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³ Rhode Island Department of Corrections. *Population Report FY08*. 2008

http://www.doc.ri.gov/administration/planning/statistics_reports.php

⁴ Rhode Island Family Life Center. *Policy Brief: Prostitution and Incarceration in Rhode Island*. April 2007.

<http://www.riflc.org/index.php?name=reports>

Ann Jordan

Bio

Ann Jordan is Director of the Program on Forced Labor and Trafficking in the Center on Human Rights and Humanitarian Law at American University's Washington College of Law. She is an international human rights attorney who specializes in issues of human trafficking, forced labor and women's rights. She was the Director for ten years of the Initiative against Trafficking in Persons at Global Rights and spent eight years in Hong Kong and China teaching women's rights, human rights, criminal law and torts and advocating for and writing about women's rights in China and Hong Kong.

She actively participated with an international coalition of NGOs in the development of the UN Trafficking Protocol and with a U.S. NGO coalition in the development of the U.S. Victims of Trafficking and Violence Protection Act. She was a member of the Women's Caucus for Gender Justice in the International Criminal Court, which successfully advocated during the negotiation process for the inclusion of women and women's issues at all levels of the Court. She works with a broad international coalition of advocacy and grassroots organizations on building local capacity to develop and advocate for human rights-based programs on human trafficking and forced labor and to carry out evidence-based research and programming that addresses and supports the needs and rights of the affected persons. She has worked in or on projects in China, Hong Kong, Cambodia, Bosnia, Guatemala, Honduras, Mexico, and Ukraine. The Program supports the creation of networks, promotes conceptual clarity and trains on rights-based laws and policies.

Currently, the Program focuses on transparency and accountability in U.S. anti-trafficking policies and grant making and on developing materials to promote a greater understanding of the complexity of human trafficking and its intersection with labor migration policies, sexual rights, health rights and women's rights. Ms. Jordan was intimately involved in developing the Freedom Network (USA) to Empower Trafficked and Enslaved Persons, premier U.S. NGO anti-trafficking network of service providers and advocates. In addition, she is on the board of advisors of the Open Society Institute Sexual Health and Rights Program and also the central and eastern European anti-trafficking network, La Strada. She earned her law and undergraduate degrees at Columbia University and serves as an advisor to several NGOs and networks.