

END HUMAN TRAFFICKING.
PROMOTE HEALTH & SAFETY.

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February 25, 2024

RE: Support for H5348 / H5357 / H5358

To the House Judiciary Committee,

I am writing on behalf of my organization to express our strong support of H5348, H5357, and H5358, three bills that make amendments to Rhode Island's Commercial Sexual Activity statutes in order to protect the health, safety, and wellbeing of sex workers and survivors of human trafficking. All three of these bills ensure that people in the sex trade (whether by choice, circumstance, or force, fraud, or coercion) are able to access critical services without being further marginalized and burdened by unnecessary criminalization.

Decriminalize Sex Work (DSW) is a national organization dedicated to advancing legislation that protects the rights, health, and safety of consensual adult sex workers and survivors of human trafficking in the United States. Our organization is composed of experts and activists with decades of combined experience in policy, direct services, lived experience, and community engagement.

H5348 - "An Act Relating to Health and Safety - Prevention and Suppression of Contagious Diseases - HIV/AIDS"

H5348 makes a critical update to existing laws by ensuring that individuals convicted of commercial sexual activity are offered HIV testing and access to services without being subjected to mandatory, non-consensual testing.

Under current law, R.I.G.L. § 23-6.3-4, "Exceptions to Consent Requirements" allows healthcare providers to test individuals convicted under commercial sexual activity statutes for HIV without their consent. Additionally, R.I.G.L. § 11-34.1-12, "Human Immunodeficiency Virus (HIV)" requires mandatory HIV testing for all individuals convicted under that chapter. H5348 removes these provisions, replacing mandated testing with an opt-in model that allows individuals to access testing and services voluntarily.

This change aligns Rhode Island's policy with recommendations from public health experts. Both the Centers for Disease Control and Prevention (CDC)¹ and the World Health Organization (WHO)² advise that HIV testing should never be mandatory, even for vulnerable populations. Rhode Island's own Special Legislative Study Commission on Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized

¹ "The following recommendations apply to testing for HIV...HIV screening should be voluntary and free from coercion." U.S. Department of Health and Human Services Centers for Disease Control and Prevention, *Sexually Transmitted Infections Treatment Guidelines*, MMWR Recomm Rep 2021; Vol. 70, No. 4, p. 24. <https://www.cdc.gov/std/treatment-guidelines/STI-Guidelines-2021.pdf>

² "HIV testing for diagnosis must always be voluntary and consent for testing must be informed by pre-test information. Coerced or mandatory testing is never appropriate," Geneva: World Health Organization, *Consolidated guidelines on HIV testing services*, 2019, p. 12. <https://www.who.int/publications/i/item/978-92-4-155058-1>

Individuals³ recommended eliminating mandatory testing in its 2023 report.⁴ Research consistently shows that informed consent leads to better healthcare outcomes by encouraging individuals to seek care without fear of coercion or stigma.

Beyond improving health outcomes, eliminating mandatory testing also prevents unnecessary financial burdens on the state. According to the CDC, 87% of individuals living with HIV already know their status.⁵ Current law requires testing for individuals even in cases where no sexual contact occurred,⁶ further underscoring the need for reform. By adopting an opt-in model, Rhode Island can ensure that resources are directed toward those who need them while upholding principles of bodily autonomy and informed consent.

Rhode Island would not be alone in taking this step. Colorado and Nevada repealed their mandatory HIV testing laws entirely in 2016 and 2021, respectively.⁷ Nevada's repeal followed a legislative task force recommendation similar to Rhode Island's 2023 Commission findings.⁸ Virginia also updated its law in 2021, replacing mandatory testing with an opt-in approach like the one proposed in H5348.⁹

By passing H5348, Rhode Island can modernize its HIV testing laws to reflect best practices in public health while maintaining access to critical services for at-risk individuals. We urge you to support this bill to ensure that healthcare policies prioritize consent, privacy, and effective resource allocation.

H5357 "An Act Relating to State Affairs and Government - Corrections Department"

We ask you to promptly pass this bill to ensure Rhode Island does not continue imposing needless and punitive financial burdens on your most marginalized constituents. The 2023 Special Legislative Study Commission Report recommended the repeal of extra court costs for prostitution convictions¹⁰. H5357 takes an important step toward implementing the recommendations of the commission by repealing specific provisions that unfairly impose financial penalties on those convicted of commercial sexual activity.

H5357 repeals subsection (e) "Costs" from R.I.G.L. § 42-56-20.3, "Community correctional program for women offenders." Subsection (e) subjects only people charged with commercial sexual activity crimes to additional fines beyond those already required by law for criminal convictions. These extra fees range from \$350 to \$500 or more, on top of existing fines ranging from \$250 to \$1,000¹¹.

An arrest already creates numerous financial hardships—not just from court fines, but also from the associated costs of a criminal case, such as transportation, childcare, missed work, and even lost employment. For individuals who are often already experiencing financial instability, these additional fines can be devastating. The law provides no justification for these extra costs, and its legislative intent is unclear. Per § 42-56-20.3(e)(3), these fines are deposited as "general revenue," meaning they do nothing to support people involved in the sex trade; instead, they simply send money to the state for any purpose. Not only is

³ The twelve-member Commission was established through the passage of House Resolution 5280 in 2021 and met eight times between November 2021 – August 2023 before issuing its final report.

⁴ "Based on the testimony and information presented to the Commission, and given the varied nature of the Commission's findings, the Commission proposes the following recommendations... 4. Recommend the General Assembly repeal R.I.G.L. §23-6.3-4(a)(7), which requires any individual convicted of prostitution to have an HIV test performed on them." *Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals Final Report*, Recommendations 4, p. 7.

⁵ CDC. *Estimated HIV incidence and prevalence in the United States 2017–2021*. HIV Surveillance Supplemental Report 2023;28(3). <https://www.cdc.gov/hiv/library/reports/hiv-surveillance/vol-28-no-3/index.html>

⁶ See, for example, R.I. Gen. Laws § 11-34.1-4 "Loitering for prostitution" and § 11-34.1-6 "Soliciting from motor vehicles for indecent purposes" which do not involve sexual contact; see also § 11-34.1-7. "Pandering or permitting prostitution", which applies only to third parties to commercial sexual activity.

⁷ SB 16-146, 70th Gen. Assemb., 2nd Reg. Sess. (Colo. 2016) <https://leg.colorado.gov/bills/sb16-146>; SB 275 81st Leg., Reg. Sess. (Nev. 2021) <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7864/Overview>

⁸ Advisory Task Force on HIV Exposure Modernization Report, p. 12. <https://tinyurl.com/yc366nu2>

⁹ SB 1138, 2021 Gen. Assemb., 1st Special Sess. (Va. 2021) <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1138>

¹⁰ "Based on the testimony and information presented to the Commission, and given the varied nature of the Commission's findings, the Commission proposes the following recommendations... 2. Recommend the General Assembly repeal R.I.G.L. §42-56-20.3(e), which requires those convicted of prostitution to pay extra court costs." *Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals Final Report*, Recommendations 2, pp. 7.

¹¹ See R.I. Gen. Laws Ch. 11.34.1, "Commercial Sexual Activity" for penalties associated with each specific statute.

this unnecessarily punitive, but it is also unproductive. In 2023, prostitution-related arrests accounted for less than 0.1% of all arrests statewide¹². There is no meaningful financial benefit to the state, but for those affected, these costs can be debilitating.

Please heed the urges of our organization, numerous local and national advocates, and the Special Commission, and advance H5357 to protect Rhode Island's most marginalized from unnecessary financial hardship.

H5358 - "An Act Relating to Criminal Offenses - Commercial Sexual Activity"

H5358 grants immunity from arrest and prosecution for certain prostitution crimes to victims and witnesses of crime who report that crime to law enforcement, aid in the investigation of that crime, and/or seek healthcare services in relation to the crime

People in the sex trade are uniquely vulnerable to violence and exploitation but frequently do not report crimes perpetrated against them due to fear of their own arrest. This fear leaves victims and witnesses of crime unprotected and without resources, and law enforcement without critical information that would assist in investigating violent crime. This is not merely a hypothetical situation; two years ago, a suspect was arrested in the infamous Long Island Serial Killer case after the murders of several sex workers in New York went unsolved for over a decade. Since the arrest, it has become public knowledge that there were likely sex workers with valuable information about the suspect who were not able to work with law enforcement in the investigation due to the risk of their own arrest.¹³ As a result of the investigation's shortcomings, the suspect continued interacting with and harming sex workers for over a decade while the local community was forced to live with the fear of a serial killer in their midst. In Rhode Island, a study of sex workers between 2014 and 2016 found that 47% of sex workers reported that they had been the victim of or witness of a crime they did not report to the police.¹⁴

As we have testified in the past, and as others will testify today, this is by no means an unprecedented policy. Nine states have existing immunity measures, with similar legislation currently moving through committees in several other states, including New York, Massachusetts, Hawaii, and Nevada. Most, if not all of these bills received bipartisan support and were advocated for by law enforcement, anti-trafficking advocates, sex workers, healthcare providers, etc.

The aim of immunity policies is to ensure there are no barriers to reporting crimes and seeking healthcare, to protect victims, and to bolster law enforcement investigations. This bill removes several potential barriers to reporting: it ensures that immunity is still given to reporters even when they withdraw from participating in an investigation, and it does not require a report to result in prosecution or conviction in order for the reporter to receive immunity. This bill was constructed to ensure the efficacy of the policy, so that victims and witnesses can safely report, but it still has built in safeguards to ensure that it does not go beyond that purpose. Specifically, a report must be made promptly and in good faith and reported crime must have occurred at or around the time of, or be related to, the commercial sexual activity that will not be prosecuted. Additionally, immunity can only be applied for two specific commercial sexual activity charges.

To make communities safer, it is in the best interest of the public to encourage victims and witnesses of crime to come forward, aid law enforcement, and receive needed medical care. In fact, the aforementioned Special Legislative Study Commission Final Report issued in 2023 specifically urged the General Assembly to reconsider these protections.¹⁵

¹² According to data published by the Rhode Island Uniform Crime Reporting (UCR) Program, there were 20,234 arrests statewide January 1 - December 10, 2023. 19 were for prostitution. <https://riucr.nibrs.com/>

¹³ There is excessive media coverage on this issue, but one especially pertinent highlight comes from an October 2023 New York Times article, "*The Gilgo Beach Suspect May Have Hunted Them. Now They're Key Witnesses.*" <https://www.nytimes.com/2023/10/01/nyregion/gilgo-beach-killer-witnesses.html> You may contact me for a PDF of the article.

¹⁴ Burns, Tara. *Sex Work Policy*. 2024.

¹⁵ "Based on the testimony and information presented to the Commission, and given the varied nature of the Commission's findings, the Commission proposes the following recommendations... 9. Re-evaluate and reconsider legislation introduced in 2021 (2021 H-5467) that intended to grant immunity to sex workers if they are victims or witnesses to crimes while engaged in prostitution-related activities." *Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals Final Report*, Recommendations 9, pp. 7.

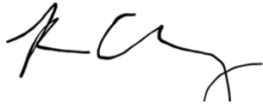
H5358 is a pragmatic, carefully constructed policy that would ensure victims and witnesses feel safe to seek the resources they need while simultaneously giving law enforcement better tools to investigate murder, assault, human trafficking, and other violent crimes. This bill specifically contains the statutory language that would most effectively ensure that all of the above goals are met.

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All three of these bills were recommended policy changes by the Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals that met over the course of two years to provide recommendations on the health and safety impact of revising laws related to commercial sexual activity, identifying the methods of human trafficking and exploitation to develop strategies to reduce these activities, and ensuring accountability in the treatment of marginalized and targeted communities by police.

These bills all ensure that at-risk individuals will have access to needed services without unnecessarily burdening those convicted of commercial sexual activity. We strongly urge you to pass H5348, H5357, and H5358 to promote the health, wellbeing, and social support of all Rhode Islanders.

On behalf of Decriminalize Sex Work,

A handwritten signature in black ink, appearing to read 'Rebecca Cleary'.

Rebecca Cleary, JD

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