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PRESENTATION BEFORE THE
SPECIAL LEGISLATIVE COMMISSION TO STUDY ENSURING RACIAL EQUITY AND OPTIMIZING HEALTH AND SAFETY LAWS AFFECTING MARGINALIZED INDIVIDUALS
February 28, 2022

Thank you for inviting the ACLU of Rhode Island to testify before your commission. Our organization strongly supported the creation of this commission, as it is, in our view, unquestionably worth engaging in a thorough examination of the health, safety, and personal privacy costs that are inflicted by prostitution laws, including their impact on marginalized individuals. I am hopeful that this testimony will assist you in that regard.

Introduction

There are three preliminary points I wish to make at the outset of this presentation.

1. The ACLU has a long-standing position on the issue of sex work decriminalization. For over 40 years, the ACLU has opposed laws criminalizing sexual activity among consenting adults. While I hope to largely present fact-based information, committee members should be aware that my presentation has been developed, and is being provided, through this lens.

   Our organization takes this position for at least three key reasons. First, these laws have traditionally represented a direct form of discrimination against women. Their persistent and inevitable selective enforcement disproportionally criminalizes, and thus harms, female sex workers. Second, we consider prostitution laws to be an invasion of personal privacy. Whether a person chooses to engage in purely private sexual activity for recreation or in exchange for something of value should be a matter of individual choice – not government interference. And third, because the "crime" involves consensual parties, police are left to use entrapment techniques to enforce these laws, and these techniques are dubious and troubling. Nothing in Rhode Island's history in enforcing prostitution laws undercuts these concerns. To the contrary, as I hope to show, that history reinforces them.

2. The focus of my presentation is on the statutory history of this issue and its consequences in Rhode Island only. I will not be approaching the topic from a national perspective, although there is much research that has been done from that outlook. I will, however, note that two years ago the National ACLU issued a detailed research report on the topic of sex work decriminalization, entitled "Is Sex Work Decriminalization the Answer: What the

Research Tells Us."[1] The report reviewed over eighty empirical studies that have considered and researched the impact of the criminalization and decriminalization of prostitution. Since I will not be addressing this broader perspective, I think it is worth highlighting that report's conclusion:

> *"In sum, the research points to negative impacts of criminalization on the physical safety, health, and financial well-being of sex workers, with repercussions for clients seeking consensual sex between adults. These findings are only amplified when specifically examining the impact of the criminalization of sex work on marginalized communities, including LGBTQ people, people of color, and immigrants. People without adequate financial resources, such as those living in poverty, are also more harmed by the criminalization of sex work.*
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> *"Overall, the evidence suggests that going from less to more prohibitive laws on adult consensual sex work is damaging to sex workers and appears to have little impact on curbing trafficking or other crimes. Conversely, as laws move down the continuum from more to less prohibitive or restrictive on consensual sex work, workers experience less harm, and there is no strong evidence to indicate negative impacts on crime, health, or safety."*

Of particular relevance, the report relies partially on research that has been conducted on Rhode Island. The thirty-year period between 1980 to 2009, when indoor prostitution was legal in the state, has provided researchers an opportunity to examine some of the effects of prostitution decriminalization in ways that would not otherwise be possible. Since I claim no expertise on those studies, I will simply point out that the research documented a significant decline in both sexually transmitted diseases like gonorrhea and in sexual assaults in Rhode Island during that time period.[2]

3. There are two notes I want to make on the terminology used in this presentation. I will often use the term "prostitution" rather than "sex work," and generally refer to the impact that prostitution law has had on women in particular, rather than all individuals. These choices are made for specific reasons.

   Though as an organization we generally use the phrase "sex work" to refer to the activities referenced in this presentation, the state laws and court cases that I will be examining routinely use the term "prostitution," and is therefore referenced as such in this context. And while our organization understands that the criminalization of consensual commercial sex activity has an impact on all individuals regardless of gender identity, that impact in Rhode Island – like elsewhere – disproportionately falls on women engaging in sex work, and hence my use of that word throughout this presentation.

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[1] https://www.aclu.org/report/sex-work-decriminalization-answer-what-research-tells-us
[2] https://www.nber.org/system/files/working_papers/w20281/w20281.pdf

History of Prostitution Law in Rhode Island

***COYOTE v. Roberts* (1976)**

The logical starting place for reviewing the history of prostitution laws in Rhode Island is by examining the case of *COYOTE v. Roberts,* which was filed in federal district court here in 1976. At the time, state law made it a felony to engage in prostitution or "any other lewd or indecent act." The R.I. Supreme Court had broadly construed this term, in decisions involving the interpretation of a related statute criminalizing private sexual activity, to encompass all extramarital sexual intercourse as well as any "unnatural" form of copulation regardless of the participants' marital status.[3] The national organization COYOTE, their COYOTE's Rhode Island chapter and a pseudonymous prostitute decided to challenge the constitutionality of this law.

As the Court in *COYOTE* noted in explaining the reach of the prostitution law: "Criminal sanctions could be imposed without regard to whether the sexual activity was a commercial venture undertaken for financial gain, or whether the activity was undertaken in private with the full consent of two adult parties." The statute also banned what the Court called "certain preliminary or preparatory activities," such as loitering to solicit prostitution, transporting a person for prostitution, and aiding and abetting a person to commit an indecent act. These activities were all felonies and were criminal "without regard to the publicness of the activity, the mutuality of consent, or the financial motivation of either participant."[4]

COYOTE's legal challenge was based on two major grounds. First, that the law was overbroad and that it "impermissibly infringed on constitutionally protected rights of privacy and association." Importantly, they did not challenge the *public* aspects of the prohibition, such as the ban on loitering to solicit for prostitution. Instead, the lawsuit insisted that, as long as the activity was private, constitutional protections for private sexual activity and private solicitation shielded this conduct from criminal penalties regardless of whether an element of financial remuneration was involved.

Secondly, the suit argued that the statute was discriminatorily enforced in violation of constitutional guarantees of equal protection of the laws, in that it was women who were almost exclusively arrested and charged with its violation even though, on its face, the statute was gender neutral. A substantial amount of evidence presented to the court corroborated this claim.

In that regard, the court, in a supplemental opinion, pointed to revealing testimony provided by the officer in charge of prostitution arrests in Providence. The officer acknowledged that from 1959 through 1975, prosecution for violations of the prostitution statute was primarily focused on punishing females. Although males were arrested, they were not prosecuted. Instead, they were used as witnesses to prove the "crime" against the female.[5]

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[3] See, e.g., *State v. Milne*, 187 A.2d 136 (R.I. 1962) (The legislative intent in enacting statutes governing sex offenses was "obvious" in seeking to proscribe "all unnatural sexual copulation … along with normal extramarital sexual intercourse."; *State v. Santos*, 413 A.2d 58 (R.I. 1980) ("[W]e hold that the right of privacy is inapplicable to the private unnatural copulation between unmarried adults.")

[4] *Coyote v. Roberts*, 502 F.Supp. 1342 (D.R.I. 1980)

[5] *Coyote v. Roberts*, 523 F.Supp. 352 (D.R.I. 1981)

Between 1974 and 1977, the City indicated that 846 women were arrested and charged with prostitution. In the same period, 251 males were arrested, but the City only provided evidence that three of those males were actually charged with a crime. The Police Department also acknowledged that it used a total of 55 male undercover officers for prostitution investigations during the 1974-77 period, while employing no female undercover officers in 1974-75 and only four in both 1976 and 1977.[6] These practices only began to change upon the filing of the lawsuit.

The 1980 Amendments

After discovery in the lawsuit was completed, the case was put in the hands of the federal judge for a decision. Before a ruling addressing the constitutional claims was issued, however, the Rhode Island General Assembly significantly amended the law. The legislature appeared motivated to act at that time for two reasons. The first, and obvious one, was to address the pending lawsuit. Second, there was a neighborhood outcry in the West End of Providence about pervasive and overt streetwalking taking place there, and the situation had become a political headache. Officials concluded that the best way to resolve it was to change the statute in certain ways, notably by streamlining the process in the hope that speedier convictions would stem the increase in street-based prostitution that was angering the residents.

Specifically, a major impediment to more expeditious prosecutions under the law then in effect was the status of prostitution as a felony. This required a more cumbersome charging process and obviously heightened the consequences for individuals who were charged with the crime, increasing their motivation to challenge the arrest. In its place, the General Assembly changed the crime of "loitering to solicit for prostitution" to a petty misdemeanor. The bill was drafted so that making this change eliminated the need for jury trials and further limited the opportunities for appeals by defendants. The phrase "for pecuniary gain" was also added to the law, and the prohibition against committing the act of prostitution itself or any other "indecent act" was deleted.

As a result of those revisions to the law, as well as a change in Providence's discriminatory enforcement procedures, the parties to the lawsuit agreed to dismiss the case as moot. Below is an excerpt from the court decision analyzing the dismissal of the case because, importantly, it belies the notion that the 1980 law created an unintentional loophole that prompted the need for the eventual 2009 "fix."[7] Instead, it shows that the decriminalization of prostitution brought about by the revised statute was known and acknowledged. As the judge wrote in his 1980 opinion:

> *"…The statute is now directed at suppressing specifically that type of sexual activity commonly regarded as 'prostitution.' More significant for present purposes, the amendments appear to have decriminalized the sexual act itself, even when undertaken for remuneration. Thus, it appears to the Court that § 11-34-5 now outlaws only certain preliminary or preparatory activities (securing, transporting, receiving into a house or conveyance, etc.), and then only when pecuniary gain is somehow involved.*

[6] *Coyote v. Roberts*, 502 F.Supp. 1342, 1352 (D.R.I. 1980)

[7] The decision was issued in the context of the court's consideration whether the plaintiffs were entitled to an award of attorneys' fees on the grounds that their suit was responsible for the change in the law favorable to them.

> *"The core of plaintiffs' claim was that the State could not constitutionally bar consenting adults from engaging in purely private sexual activity, irrespective of whether the motivation of one of the participants was economic.* ***As the Court reads the statutes, neither the amended version of § 11-34-5 nor the new § 11-34-8 purport to outlaw such activity."*** (emphasis added)

In case there still was any doubt about the scope of the new law, the court cited the *Attorney General's* official interpretation of the changes that had been approved by the legislature: In a footnote, the court pointed out: "The Attorney General apparently has no quarrel with the Court's view of the import of the May 1980 amendments. His post-trial memorandum, which first raised the question of mootness, argues: **'***Insofar as the amended statute no longer prohibits private consensual sexual activity between adults,* plaintiffs' case would appear to be moot.'" (emphasis added)

In short, it couldn't be clearer that the impact of the amended law was known and noted at the time to have constituted a decriminalization of private commercial sex activity. Later cries about an unintentional "loophole" in the law are nothing but revisionist history.

The (Non-)Fallout from the 1980 Amendments

Perhaps the most significant thing to note about the fallout from the 1980 changes is that, for two decades, there was none of real note. The decriminalization of indoor prostitution caused no discernible outcry from public officials or state residents, and life in the Ocean State went on. In fact, in 1998, in a case called *State v. DeMagistris*, the Rhode Island Supreme Court affirmed the clear reading of the statute's reach that the federal judge had pointed out in the *COYOTE* case.[8] In *DeMagistris*, the defendant lured women into posing as models for him and then sought to have sex with them, and to film them having sex. The defendant was charged with a series of offenses, including a violation of the state's prostitution law. But the Supreme Court pointed out the limited reach of that law to *public, commercial* sexual activity:

> *"[W]e believe that the Legislature enacted § 11-34-8 primarily to bar prostitutes from hawking their wares in public-whether this is done by strutting up and down a public street or by calling out to passersby from the shadowed stoop of a privately owned building. . .*
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> *"Because [the statute] is directed at the public solicitation of prostitution, its reach simply does not extend to . . . the securing of would-be actors for pornographic movies when such solicitation occurs either over the telephone or within the confines of private residences. If [the defendant] had directed his recruitment efforts at public passersby or motorists, we would have a different case before us. Although other sections of the penal code proscribe defendant's challenged conduct, § 11-34-8 does not."*

[8] *State v. DeMagistris*, 714 A.2d 567 (R.I. 1998)

In fact, both before and after the *DeMagistris* ruling – and all the way until 2005 – the only legislation dealing with prostitution that was introduced into the General Assembly were bills that would have increased the penalties for public prostitution ("loitering for indecent purposes") for second and third-time offenders.[9] There were no "loophole fixing" bills to be seen.

In 2003, five years after that ruling, an attorney, relying on the clear commands of the statutory language, as well as the *COYOTE* and *DeMagistris* court decisions, successfully obtained the dismissal of clearly inappropriate charges that had been brought against some sex workers. The timing coincided with the rise of so-called "Asian spas," and law enforcement attention became increasingly focused on indoor commercial sex activity. In particular, the Providence Police began routinely raiding spas where prostitution – and, as the police additionally claimed, sex trafficking – was purportedly taking place. Stymied by not being able to charge the alleged sex workers under the prostitution law, Providence began mounting a vigorous campaign to amend that law so that it would once again explicitly bar any prostitution, whether indoors or outdoors. This revision, police claimed, was essential for them to be able to go after sex traffickers, and it was at this time that talk about the prostitution "loophole" began to flourish.

Legislation to "close the loophole" was first submitted in 2005. After a five-year legislative battle, the General Assembly finally enacted in 2009 the law that now exists on the books and that criminalizes all prostitution, whether engaged in publicly or privately.[10] Along the way to its passage, though, there are some important points to be made.

At the time, as is true today, much conversation centered around the need to recriminalize prostitution in order to crack down on trafficking, with no distinction made between the act of consensual, commercial sex activity and trafficking. This inappropriate conflation of human trafficking with consensual sex work was at the heart of Providence's pitch for amending the law.

In our testimony on the legislation as it was considered by the General Assembly over those five years, we routinely pointed out that there were already numerous laws on the books, not amended by the 1980 statute, that could appropriately address human trafficking. Those laws, which were clearly applicable to anybody who might be responsible for engaging in sex trafficking, included the imposition of felony penalties for pandering, harboring prostitution, and deriving support or maintenance from prostitution. But, as always, it was the women who generally got arrested during the various raids that Providence police undertook.

Indeed, the evidence was stark that the pre-2009 law presented no barrier to police being able to arrest women for (public) prostitution offenses. According to Department of Corrections statistics for 2008, prostitution constituted the most common offense for which women were incarcerated at the Adult Correctional Institutions both pretrial and following conviction.[11] Yet here were Providence officials demanding tools that would lead to locking up even more women at the ACI.

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[9] See, e.g., http://webserver.rilegislature.gov/billtext97/housetext97/h5094.htm; http://webserver.rilegislature.gov/billtext00/housetext00/h6775.htm

[10] http://webserver.rilegislature.gov/billtext09/housetext09/h5044b.htm

[11] https://web.archive.org/web/20090604063107/https:/doc.ri.gov/administration/planning/docs/FY08%20Population%20Report.pdf

Even worse, some officials pushed the morally indefensible argument that arresting the women was necessary to get them to provide information about their traffickers. In other words, arresting and incarcerating people whom the police claimed were victims was a needed "tool" to force their cooperation with police. The idea that trafficking victims should be thrown in prison under the guise of helping to "free" them was, in our view, an extraordinarily cruel public policy, and one that forced women who were truly being trafficked to trade one set of bars for another.

Disturbingly, the raids resulting from Providence's crackdown on prostitution had another extremely harmful effect. The police began referring arrested women to federal Immigration and Customs officials for processing and potential deportation when police suspected they were not lawfully in the country. The result was that women, supposedly being helped by the police, could end up being detained for months – much longer than if they'd actually been convicted of prostitution – while they awaited deportation. This practice was not just inexcusable on its own terms, it could only have served to discourage undocumented women from coming forward to seek help from the police if they were being abused or trafficked.

The 2009 Law

In any event, in 2009 the General Assembly finally passed the law that closed the alleged "loophole." However, despite the supposed impetus for this legislation and the claims of the Providence Police Department, the statute provided very limited protection for the supposed victims of human trafficking. Specifically, the new law allowed women to point to their trafficking only in the context of mounting an affirmative defense to the criminal charges. That is, only after the woman had been arrested, possibly detained at the ACI, and then finally brought to trial could she try to mount a defense – with the burden of proof falling on her – that she had been a victim of trafficking and therefore should be acquitted.[12] This approach struck us as not only unhelpful, but particularly baffling given the widespread recognition that trafficking victims are extremely fearful of their traffickers and highly unlikely to offer evidence against them.

Secondly, the new law also allowed for the seizure and forfeiture of any property, including money, that a woman owned if police claimed that the property was derived directly from the proceeds of prostitution. As a result, under the extremely low burden imposed on police under state forfeiture laws, women could lose whatever little money or property they had if they were arrested, making any efforts to turn their lives around even more difficult.[13]

Third, in a separate piece of legislation approved a year later, the General Assembly amended another statute to provide that special court fees imposed on any person pleading or convicted of prostitution under the old statute applied to convictions under the new law.[14]

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[12] R.I.G.L. §11-34.1-2(c)

[13] In 2014, the General Assembly repealed the forfeiture provision in this section and moved it to the section of the law prohibiting "pandering or permitting prostitution." webserver.rilin.state.ri.us/PublicLaws/law14/law14075.htm. The breadth of the "pandering" statute deserves separate scrutiny. While largely aimed at "pimps" and others involved in directing prostitution, it also broadly makes it a felony for any person to "aid or abet or participate in" any acts prohibited by the chapter, meaning that sex workers helping each other out could be charged for violating this provision.

[14] http://webserver.rilegislature.gov/billtext10/housetext10/h7893a.htm. See Section 21.

The Enforcement of the Prostitution Law Since 2009

In the successive years since the passage of the 2009 law, there have been many instances of enforcement that demonstrate the extremely harmful effects of that law on women.

Every so often, a prostitution street sting is conducted by a local law enforcement agency. The sting receives some media attention, but ultimately has no lasting effect, other than embarrassing and penalizing consenting adults engaged in sexual conduct for a fee. In fact, by humiliating and charging johns for seeking consensual sex and by giving sex workers arrest records in the name of "helping" them, the law's major effect is just to make the lives of sex workers much more difficult and dangerous.

At about the same frequency, police will raid a massage parlor or a strip club like the Foxy Lady and claim to have acted in an effort to address the problem of human trafficking. It is not our intent to suggest that human trafficking never occurs. Sex trafficking is a scourge, and efforts to eradicate it are to be applauded. However, conflating prostitution with trafficking does nothing to help trafficking victims while consenting adults are pursued and arrested. And the fact is that these raids rarely end up with the filing of trafficking charges, but they do often result in arrests of the sex workers – the people supposedly being helped by these raids.

I would like to briefly review two incidents in this regard, as they exemplify the problems that these laws perpetuate.

The first is a Cranston police raid in 2016. In March 2016, the Cranston Police Department issued a news release announcing the results of a sting operation that, in their own words, was aimed at "targeting human traffickers, specifically those victimizing juveniles." According to this same release, no fewer than eight law enforcement agencies were involved in the operation. Yet, one news report noted that the sting led to only one arrest for trafficking and one arrest for pandering. Instead, the biggest impact of the operation appears to have been the arrest of fourteen "johns" for "procuring sexual conduct for a fee" and fourteen other individuals for engaging in prostitution.

The second incident involved a raid on the Foxy Lady nightclub in Providence in 2018.The temporary closure of the Foxy Lady further exemplifies the serious, deeply discriminatory problems with prostitution laws and their enforcement.

Although the Foxy Lady had been providing adult entertainment for decades, it had never been called before the Providence Board of Licenses until a police sting in December of 2018 resulted in three female employees being charged with soliciting for prostitution. The Board then took the extraordinary step of permanently revoking the Foxy Lady's entertainment and liquor licenses, throwing more than 200 people out of work just a week before Christmas.

The Board did so after concluding, without any direct evidence, that club owners had "created an environment for tolerating prostitution." Notably, the owners were not accused of *promoting* prostitution at the establishment in any way, or even *tolerating* prostitution there. Rather, their offense was that they had *"created an environment" for tolerating it*.

Given the lack of previous licensing violations at the club, the fact that the employees had been arrested and not yet convicted, and the nature of the alleged crime – a non-violent (and not even consummated) misdemeanor offense whose only victim, the police report itself acknowledged, was "society" – the extreme punishment imposed was inexplicable and unconscionable.

The unfairness is compounded when one learns that the sting operation at the club was initiated because a female employee had, a few weeks earlier, been the victim of a sexual assault by a customer, *and the club sought the police department's help*. Yet, thanks to the police and the Board of Licenses, it was women who bore the brunt of the punishment. Three of them faced criminal charges and had their names and photos splashed across the media. Dozens more were suddenly out of work and without a paycheck – all under the guise, once again, of "protecting" them.

As galling as this moral hypocrisy was, the true outrage was in comparing the punishment meted out to the Foxy Lady with the penalties imposed against other licensees who had run into much more serious trouble with the law. In a "friend of the court" brief we filed in support of the Foxy Lady's challenge to the license revocation, we examined how the Board of Licenses had, in instances of misconduct committed by other nightclubs, taken a much more lenient approach. Only two examples need to be cited here to make the point. In one instance, a bouncer at a club stabbed a patron, and the club was given a two-week license suspension; in another, a patron shot a pistol into the air while in the club, and the owners deleted the surveillance footage of the incident, yet the punishment imposed was a reduction in club hours for 90 days.[15]

Continued Blatant Disparities in Enforcement

These incidents aside, the statistics also confirm that, more than 40 years after the data in the COYOTE case documented blatantly discriminatory enforcement of the law, these disparities still abound. Our office filed an Access to Public Records Act request with Providence to obtain their prostitution arrest data for 2016-2019. The information provided to us revealed that Providence arrested 79 people on prostitution-related charges during these years. That data further showed that 77 of those arrests were for engaging in prostitution, while only two were for solicitation. In all, in a somewhat startling case of déjà vu back to the COYOTE case, 94% of the people arrested on prostitution charges during this very recent time period were women.[16]

An identical APRA request we filed in Woonsocket found similarly shocking figures, with 89% of all prostitution offense arrests involving women. The police reports procured from Woonsocket through this request further presented another disturbing find. Most of these arrests occurred through sting operations, and a handful of the narrative reports filed by the police officers which described the incident leading to the arrest claimed that the prostitute asked them to touch them sexually to prove that they were not a police officer. In these reports, the police officer matter-

[15] Amicus Curiae Brief of the ACLU of Rhode Island, *Gulliver's Tavern v. City of Providence*, No. 2018-351-M.P. https://riaclu.org/sites/default/files/181231_brief_FoxyLady.pdf

[16] In citing these statistics, we do not, of course, mean to suggest that arresting more men, or johns, would be the solution. We believe the activity should be decriminalized for all consensual participants.

of-factly notes obliging with this request. The power and authority given to police to create the crime, arrest individuals for it, and in the process permit them to engage in such outrageous conduct, is deeply distressing and should be condemned without hesitation. But, unfortunately, that conduct is a natural consequence of a law that gives police the power to arrest people when the only alleged victim is "society."

Finally, an examination of the enforcement of the prostitution laws cannot end without a look at the issue of race. To examine the racial impact of prostitution arrests, we reviewed the Uniform Crime Reports for Rhode Island for recent years.[17] It will likely not be a surprise to anybody on this commission that prostitution arrests, as is true of the criminal justice system overall, reflect significant racial disparities. Out of all the reported arrests in the state between 2015 and 2018 for engaging in prostitution, 59 out of 250 arrests – 23.6% – were of African Americans. In 2019, there were many fewer arrests of Black individuals, but if you combine them with the arrests of Asians, 31% of all prostitution arrests in that year were of people in these two racial demographics.

Recommendations and Conclusion

In 2009, the Rhode Island General Assembly took a step backward when it decided to crack down on prostitution by allegedly fixing a so-called "loophole" in the law that allowed for indoor commercial sex activity. All this has done is make criminals out of people engaging in consensual behavior and put sex workers in more, not less, danger. It is unquestionably time for a fresh review of that law and the adverse consequences that have flowed from it. We offer a series of recommendations below:

1. The report from the National ACLU considering the decriminalization of sex work, "Is Sex Work Decriminalization the Answer: What the Research Tells Us," provides strong empirical reasons to take the important step of decriminalizing prostitution once and for all. That report also contains many other "big picture" suggestions, and we refer you to that document for guidance and more details.

2. We realize that that this suggestion – as sensible as we believe it is – is most likely not politically feasible. As an alternative, we strongly urge the commission to recommend amending state law to restore the pre-2009 landscape, such that truly private, consensual sexual activity remains appropriately out of the reach of criminal laws. Whether private sex work itself is decriminalized or not, law enforcement would still have the tools to address legitimate issues of sex trafficking. Readoption of the 1980 statute would at least stop many of the sex workers themselves from being further victimized.

In recognition that adoption of either of these two policy changes will likely take time, we believe that there are a handful of smaller steps that the Rhode Island legislature can and should take in the meantime to reduce the harmful impact of the current laws. We urge this commission to recommend their adoption:

[17] https://risp.ri.gov/ucr/index.php

1. Repeal the statute that requires those convicted of prostitution to pay extra court costs. R.I.G.L. §42-56-20.3(e).

2. Enact a statute that bars law enforcement from contacting immigration officials about individuals whom they have arrested for prostitution.

3. Repeal the stigmatizing statutory requirement that any individual convicted of prostitution have an HIV test performed on them. R.I.G.L. §23-6.3-4(a)(7).

4. Repeal the statute that imposes additional penalties for engaging in prostitution within 300 yards of a school. R.I.G.L. §11-34-11.

5. Pass legislation (introduced this year as 22-H 6637) that makes it abundantly clear that police officers cannot claim consent as a defense to having sex with any individual who is formally in their custody.

6. Once an individual has claimed that they were the victim of coercion or trafficking, place the burden of proof on law enforcement officials to prove the contrary rather than on the arrested individual. R.I.G.L. §11-34-1.2(c).

7. Pass legislation (introduced last year as 21-H 5467) that grants immunity to sex workers if they are victims or witnesses to crimes while engaged in prostitution-related activities.

Finally, we would encourage consideration of specially exempting prostitution-related offenses from some forms of penalization that generally apply across the board for criminal offenses. These could include the elimination of all miscellaneous court fees imposed for convictions (beyond the specific one for prostitution cited in recommendation #1); establishing, as suggested by Michael DiLauro from the Public Defender's office, a higher standard of proof before a person can be found to have violated their probation or parole for engaging in a prostitution-related offense[18]; and reducing the penalties for prostitution to those of a violation, eliminating the possibility of jail time for this activity.

I hope that this background is helpful for the commission's work. I remain available to answer any questions commission members have about our testimony. Thank you again for the opportunity to testify before you on this important topic.

Submitted by: Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island

[18] See *In re Lamarine*, 527 A.2d 1133 (R.I. 1987).