

ACLU OF RI POSITION: SUPPORT

**TESTIMONY ON 23-S 913,
AN ACT RELATING TO CRIMINAL OFFENSES –
COMMERCIAL SEXUAL ACTIVITY**

June 1, 2023

Over the past decade, a number of research briefs have pointed to Rhode Island’s lengthy period of decriminalization of indoor sex work as a case study to support the efficacy of a permanent policy structured around such decriminalization.¹ In 2009, when legislation was enacted which closed this purported “loophole” in our commercial sexual activity statutes, our organization objected to its passage, noting that criminalization deprived sex workers of their autonomy and adversely impacted their safety. As such, we appreciate the opportunity to provide testimony in support of this bill which would decriminalize consensual commercial sexual activity in Rhode Island.

The ACLU of RI has long opposed laws which criminalize consensual sexual activity between adults. 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 disproportionately 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, that history reinforces them. As a matter of both criminal justice and public health, then, the decriminalization of this victimless offense is the appropriate policy to enact in order to address the adverse consequences which have arisen from its implementation.

Every so often, local law enforcement agencies conduct street stings of both sex workers and “johns.” The sting typically receives media attention but has no lasting effect beyond embarrassing and penalizing consenting adults for seeking sexual conduct for a fee. By humiliating and charging “johns” for consensual sex and by purporting to “help” sex workers by giving them arrest records, the law’s effect is only to make the lives of sex workers more difficult and dangerous.

¹ For example, [the research](#) documented a significant decline in both sexually transmitted diseases like gonorrhea and in sexual assaults in Rhode Island during that time period.

At about the same frequency, police will raid a massage parlor or a strip club – such as the 2018 Foxy Lady arrests – and claim to have acted in an effort to address the problem of human trafficking. However, these raids rarely end with the filing of trafficking charges while routinely resulting in the arrests of sex workers – the people supposedly being helped by police enforcement of these laws.

Human trafficking is a scourge, and efforts to eradicate it are to be applauded. However, the conflation of sex work with sex trafficking does nothing to help trafficking victims. Some police have even stated that one reason that they arrest female sex workers for prostitution (and, disproportionately in Rhode Island, female sex workers are those who are most often arrested) is with the intent of using the criminal charges as a tool to force alleged victims of trafficking to cooperate with the police in “naming names.” Yet, we emphatically reject the notion that the only way such individuals can be helped is if they are first put in handcuffs. Not only is this approach morally disconcerting, it has failed miserably as a practical matter as well.

Finally, we note that a few years ago the National ACLU issued a [detailed research report](#) on the topic of sex work decriminalization. The report reviewed over eighty empirical studies that have considered and researched the impact of the criminalization and decriminalization of prostitution. 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.”

“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.”

In short, the decriminalization of sex work would ensure that sex workers are able to care for their health, safety, and autonomy without inappropriate stigmatization. It would ensure that our criminal justice system is not being utilized to take unnecessarily punitive action against individuals engaging in consensual behavior. And, importantly, it would center important tenets of privacy and self-determination and ensure that the law is not being used to criminalize individuals, especially women, to fulfill a specific moral narrative or “make an example” out of individuals for a news headline. We urge passage of this legislation.