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**Interested Party Testimony on Substitute House Bill 431
Human Trafficking Law Project at
Case Western Reserve University School of Law**

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December 2, 2020

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Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas, and members of the committee, thank you for allowing the Human Trafficking Law Project at Case Western Reserve University the opportunity to provide interested party testimony regarding Substitute House Bill 431.

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The Human Trafficking Law Project provides trauma-informed legal services and social service referrals to juvenile and adult survivors of human trafficking across Northeast Ohio, as well as populations facing a high-risk of trafficking victimization. As a teaching clinic, law and social work students work directly with clients under the supervision of licensed attorneys and social workers. Our program assists with a wide variety of legal issues, including protection orders, criminal record sealing, asylum and T-Visa applications, social security benefits, identity theft, debt negotiation, and landlord-tenant issues. We also strive to support community awareness through trainings and outreach, and we partner with other local agencies to combat human trafficking through interprofessional collaboration.

We appreciate the dedication of Representatives Abrams and Carfagna, the Cosponsors of House Bill 431, and this legislative body to protecting victims of human trafficking in the state of Ohio. As an organization that is also invested in best serving trafficking survivors, we would like to call this committee's attention to three issues with Substitute House Bill 431, particularly in light of the amendments that were made on November 10th, 2020. While we share many of the same concerns as other groups who have testified during prior hearings in front of this committee and the House Criminal Justice Committee, we would like to highlight a few concerns with provisions of this bill that we do not believe have been addressed at length. Specifically, these concerns surround the "soliciting"

offense, the sentencing provisions for the “engaging in prostitution” offense, and the sexual exploitation database.

I. Continued Criminalization of Persons Living with HIV under Ohio’s Soliciting Statute

The November 10th amendment to HB 431 separated buying¹ and selling² sex into two separate offenses, and in doing so made a number of changes to the existing soliciting statute, Ohio Revised Code Section 2907.24. Unfortunately, these changes did not remove an existing provision of the statute that is incredibly harmful to trafficking survivors. We urge the bill sponsors and this committee to consider further amending the solicitation statute by removing the separate offense of “engaging in solicitation after a positive HIV test.”³ This provision causes sex workers and human trafficking victims to be wrongfully penalized for their HIV status and publically reveals individual’s statuses as HIV positive. This can be very damaging for human trafficking victims and sex workers. Making a person’s HIV status public information can put them at higher risk of discrimination based on their status. Further, laws that criminalize HIV positive individuals can discourage individuals from seeking necessary medical care or testing.⁴

Additionally, we would like to note that this harmful provision would only apply to “sellers” and not to “buyers” under this bill. To be clear, we do not advocate for the expansion of this provision to buyers. We applaud the exclusion of this antiquated provision from the new criminal offense of “engaging in prostitution.” However, we urge this committee to also stop criminalizing and publicizing survivors’ HIV status by removing the separate offense of “engaging in solicitation after a positive HIV test” from R.C. § 2907.24.

¹ Line 398.

² Line 310.

³ Line 438.

⁴ *National LGBTQ Task Force. (2017). The Intersection of Sex Work and HIV Criminalization. Retrieved from https://www.thetaskforce.org/wp-content/uploads/2014/09/Sex-Work-HIV-Toolkit-FINAL-R2_0.pdfhttps://www.hivlawandpolicy.org/sites/default/files/Sex%20Work%20HIV%20Toolkit%20FINAL%20R2_0.pdf*



II. Sentencing Provisions for the New “Engaging in Prostitution” Offense

Second, we would like to call your attention to one of the sentencing provisions under the new criminal offense of "engaging in prostitution." This bill requires individuals who are convicted of the “engaging in prostitution” offense to attend treatment or educational programs (commonly referred to as “John Schools”) to prevent recidivism.⁵ Our main concern lies with the lack of explanation around what guidelines these educational programs would follow and that there is no mention of how these programs would be funded. The lack of clarity around John Schools can lead to funding being spent on programs that are inefficient and have no oversight. We also question the effectiveness of these programs. Research regarding the effectiveness of John Schools has shown to be contradictory. Some studies claim that such programs reduce recidivism; however, researchers question the methodology and believe alternative explanations can be made for the decrease in recidivism.⁶ Researchers have also raised concerns about how these programs could create more dangerous conditions for sex workers and trafficking victims.⁷

III. The Sexual Exploitation Database

We share many of the concerns regarding the sexual exploitation database that have already been outlined in prior testimony, including the lack of evidence of the effectiveness of this type of program. While some of these concerns have been addressed by amending the bill to authorize only a pilot program to study its effectiveness, even a pilot database has the potential of causing harm to trafficking survivors and sex workers. Further, the database would likely disproportionately harm transgender and male survivors and sex

⁵ Lines 400-409.

⁶ Rachel Lovell & Ann Jordan, *Do John Schools Really Decrease Recidivism? A methodological critique of an evaluation of the San Francisco First Offender Prostitution Program* (2012), <https://esplerp.org/wp-content/uploads/2012/05/John-Schools.Lovell.Jordan.7.12.pdf>

⁷ Eleanor Levine, *The Impact of John Schools on Demand for Prostitution, in Broadening the Scope of Human Trafficking Research: A Reader* (2019), <https://cappress.com/pdf/HeilNichols2eOnlineOnlyChapters/heil%20nichols%20online%20chapter%2003%20Levine.pdf>

workers. Transgender and male survivors and sex workers are at risk of being incorrectly identified as buyers of sex, which could cause them to be charged under the “engaging in prostitution” offense.⁸ This would cause them to be placed on the public sexual exploitation database, which could consequently ‘out’ transgender or male sex workers or survivors and increase their risk of exposure to discrimination or violence.⁹

Thank you again for allowing the Human Trafficking Law Project to submit this interested party testimony on Substitute HB 431. We hope to work closely with this committee and the bill sponsors in passing a House Bill that will both prioritize the health and safety of human trafficking victims and sex workers and will help reduce human trafficking within the state of Ohio. Should you have any questions or wish to speak more regarding this testimony, please contact Maya Simek, director of the Human Trafficking Law Project, at 216-368-2766 or mms48@case.edu.

⁸ Researchers studying john-shaming initiatives similar to the database proposed in this bill have raised concerns about law enforcement misidentifying transgender and male sex trafficking victims and sex workers as buyers and placing them on buyer registries. *See, e.g.,* Rachel Lovell, Misty Luminais, & Karen Coen Flynn, *Structural Misgendering of Transgender Sex Workers in Chicago Via Mug Shots? A Case Study of Practicing in the Social Sciences*, 40 *Practicing Anthropology* 48 (2018); Erin Fitzgerald, Sarah Elspeth, Darby Hickey, Cherno Biko, & Harper Jean Tobin, *Meaningful Work: Transgender Experiences in the Sex Trade* (Dec. 2015), https://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf

⁹ Jurisdictions that have posted offender information online have experienced challenges with “inappropriate uses” of the information, such as targeted harassment and “vigilante” actions. Michael Shively, Kristina Kliorys, Kristin Wheeler, & Dana Hunt, *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts*, Final Report 52 (April 30, 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>.