



**The Sex and Law Committee of
The Association of the Bar of the City of New York
-and-
The Office of Legislative Affairs- (212) 382-6655**

June 4, 2007

Hon. Eliot Spitzer, Governor
Executive Chamber
Capitol Building
Albany, NY 12224

Dear Governor Spitzer:

The Sex and Law Committee of the New York City Bar Association would like to offer you our congratulations on the passage of anti-human trafficking legislation in the State Senate and Assembly. After several years of negotiations, it is heartening to see legislation that would increase penalties for perpetrators while offering much needed services to victims. The Committee believes this legislation sends a strong message that New York will not tolerate this form of modern day slavery.

While the Committee urges you to sign this legislation, we must also note that improvements in this law are still necessary for New York to provide full protection to trafficking victims. We ask that you consider addressing the following key omissions from A.8679/S.5902 in future legislation:

(1). First, as detailed in our memo dated December 21, 2006 (a copy of which is attached), we believe that a strong trafficking bill would give a private right of action to trafficking victims, so that they can seek damages directly against the traffickers for injuries sustained during servitude. The ability of private citizens to hold accountable those who cause them injury is a powerful deterrent against further unlawful activity, particularly since government agencies, due to limited resources, cannot investigate, pursue and prosecute every crime or unlawful act committed against individuals. It also serves to greatly empower victims who have suffered human indignity and degradation.

(2). Second, future legislation is needed to protect victims of sex trafficking, as defined under this legislation, from being prosecuted for prostitution. Victims of sexual servitude are often arrested and convicted for prostitution. These convictions can be an insurmountable obstacle when attempting to legalize a victim's immigration status.

Preventing or expunging these convictions would allow victims to make full use of federal anti-trafficking law and is something the Committee believes is an absolutely essential tool in the fight against human trafficking.

(3). Third, the Committee believes that the definition of labor trafficking is too narrow. To ensure that all incidents of labor trafficking are covered under the definition, the catchall provision that appears in the definition of sex trafficking should be included in the definition of labor trafficking. This provision states that sex trafficking can be accomplished by an actor intentionally:

“(5). Using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following: . . .

(h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.”

The Committee would propose that the underscored catchall provision of subparagraph (5)(h) be included under the definition of labor trafficking as well, for no other reason than to capture the more difficult labor trafficking cases where perhaps physical force or violence is not involved, but where the trafficker employs more subtle intimidation and threats. By its very terms, the language will not inadvertently capture civil wage and hour disputes.

(4). Fourth, the Committee believes that a Class D penalty for labor trafficking is too low. By way of analogy, grand larceny in the third degree is a Class D felony. Therefore, embezzling a check, or shoplifting a necklace, so long as it exceeds \$3,000 in value, warrants the same punishment as forcing and subjecting a person to labor servitude by causing or threatening to cause physical injury to her. It cannot be that New York wants to send the message that a coercive and violent act yields the same punishment as stealing a necklace. At a minimum, we believe the bill should contain an aggravated labor trafficking provision, whereby the use of physical force, or threats of physical injury, would elevate the penalty to a Class C felony.

The Committee greatly appreciates the opportunity to submit its thoughts and concerns regarding the current trafficking legislation and, once again, we applaud the extraordinary efforts of the Governor’s office, the Senate and the Assembly in bringing the bill to fruition.

Respectfully,

Maria Cilenti
Chair
Sex and Law Committee
New York City Bar Association

Cc: Robin Forshaw
Mariya Treisman