



**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**

December 21, 2006

Governor-elect Eliot Spitzer
Transition Office of the NYS Governor-Elect
2 Park Avenue, Suite 1400
New York, NY 10016

Dear Governor-Elect Spitzer:

We congratulate you upon your election as Governor and wanted to take this opportunity to introduce our Committee to you. The Sex and Law Committee of the New York City Bar Association ("City Bar") studies how gender affects the formulation and operation of law and policy. We address issues ranging from gender discrimination and reproductive rights to domestic violence and same-sex relationships. Our membership includes attorneys from government agencies, law firms, not-for-profit organizations and law school faculty. In furtherance of our agenda, we have become immersed in three issues of importance to all New Yorkers: the trafficking of human beings for sexual and labor servitude; the ability of nursing mothers to express breast milk while at work; and the delivery of balanced sex education programs to teenagers in school.

I. The Need For Anti-Trafficking Legislation In New York

The City Bar has a specific interest in human trafficking laws as victims of both labor and sexual servitude - many of them women - arrive continuously at the doorstep of the Immigrant Women and Children Project (a program of the City Bar Justice Center, the pro bono affiliate of the City Bar). At this project, our attorneys assist victims of trafficking in legalizing their immigration status, but they continue to be troubled by the lack of resources and services available to address the countless other issues faced by the victims. In addition, while trafficking is already a federal crime, the U.S. Department of Justice lacks the resources to prosecute smaller-scale trafficking operations or those with a single victim. That is why New York needs its own trafficking legislation.

It is with this principle in mind that the Sex and Law Committee began analyzing the various trafficking bills introduced in the New York State Legislature. Having looked closely at the chronological versions of the bills in both the Assembly and the Senate, we

are of the opinion that the version of the bill that passed the Assembly last spring, A.1898-D, with the modifications suggested below, would provide comprehensive and effective trafficking legislation in this state. We set forth below our basis for this belief, as well as our recommendations for some additional modifications to the bill.

In general, the act of trafficking a person for labor or sexual servitude requires that the victim be coerced, in one form or another, to perform services or commercial sexual activity for the pecuniary benefit of the trafficker. It is accomplished through a variety of means, all of which are set forth in the definitional section of A.1898-D. With minor modifications, we believe A.1898-D lays out a fairly comprehensive, and not overly broad, definition of these means of trafficking. In addition, A.1898-D provides a necessary and comprehensive “social services” section (Article 12) so that trafficking victims will have access to social services in order to effectively and confidently work with authorities on the criminal aspects of their case and to free their lives from abuse.

Many trafficking victims have escaped horrific situations; yet have no place to go and no financial means to buy even basic necessities. They often do not fit the traditional definition of a domestic violence victim and thus may be denied entry into domestic violence shelters, leaving these victims essentially homeless. While the issues of their immigration status are being resolved, they have no access to benefits and face hunger, isolation, homelessness language barriers and potential post-traumatic stress or other mental health disorders. A.1898-D goes a long way towards giving victims the services they need, beyond simply providing the means to prosecute the crime.

In addition, in contrast to the version of the bill that passed the Senate last spring, S.3914-B, A.1898-D gives trafficking victims a private cause of action against traffickers, the right to seek restitution, an affirmative defense based on their status as trafficking victims, a prohibition against the exploration of a trafficking victim’s sexual history in any prosecution for trafficking, and a prohibition against a “consent” defense if the victim is under the age of 17.

While the Committee applauds these benefits of A.1898-D, we would like to take this opportunity to highlight below some of our remaining concerns about the bill:

(1) Causing Or Threatening To Cause Financial Harm Should Be Included As A Means Of Creating Servitude

Although earlier versions of the bill included “causing or threatening to cause financial harm” as a means of creating labor or sexual servitude, it does not appear in A.1898-D. The Committee believes it should be reintroduced to the bill so that the full array of trafficking scenarios can be prosecuted.

For instance, the City Bar Justice Center and others who aid trafficking victims have represented several clients from around the world who were sent as children by their parents to live with wealthy families in the U.S. in the hopes of receiving a better education. However, often the families do not send the children to school and instead

force them into a life of domestic servitude, basically enslaving them to do household chores for fourteen hours a day, seven days a week. Some victims receive zero salary or are subject to having the trafficker send a meager “salary” directly to relatives in the victims’ home countries, often the very same relatives who have forced them into servitude. This gives the perpetrators further control by leaving the victim without access to pocket money to make phone calls, buy basic necessities or allow for any travel or means to escape their situation. Because these victims might not be *physically* abused or threatened, we are concerned that their cases could not be prosecuted under the current language in A.1898-D.

While we believe the inclusion of financial harm is particularly important, we understand that there is a valid concern that if the financial harm language is too broad, it could inadvertently capture employment disputes and other behavior not related to trafficking. For these reasons, we suggest the following definition of “financial harm”:

"Financial harm means exerting financial control over another person by wrongfully taking, obtaining or withholding compensation, wages or pay, when such wrongful taking, obtaining or withholding is done with the purpose of inducing or maintaining a person's compliance with conditions of labor servitude or sexual servitude."

This language mirrors the limiting language contained in A.1898-D’s definition of the “abuse of law or legal process.” *See* § 136.00(12).

(2) The Means Underlying Labor Servitude and Sexual Servitude Should Be Identical

(a) Deception and Fraud as a Means of Creating Both Labor and Sexual Servitude

The Committee is concerned that varying definitions as between labor and sexual servitude will lead to confusion and inconsistent prosecutions. In some instances, a distinction makes good sense, such as where a sex trafficker who subjects a victim to circumstances likely to lead to rape may be prosecuted on an aggravated trafficking charge. There is no similar justification, however, for distinguishing the means used to create the servitude. Thus, we recommend that the means of “deception and fraud” which currently appears only under the definition of sexual servitude, be included under labor servitude.

We share concerns, however, that this language must not be too broad and should not encompass standard labor disputes. We propose the following language that we believe would result in the prosecution of true trafficking cases:

“deception or fraud constituting conduct intended to induce a person to engage in or maintain a person’s engagement in labor or sexual servitude by false or fraudulent pretenses, representations or promises.”

(b) The Grounds for Enhanced Penalties Should be the Same for Labor and Sexual Servitude

As it currently stands, the crime of first degree trafficking requires three or more persons for sexual servitude, yet requires five or more persons for labor servitude. This distinction is unnecessary. As with sexual servitude, first degree trafficking for labor servitude should require that three or more person be trafficked. In addition, first degree trafficking should include the crime of trafficking a person for more than 30 days in either labor *or* sexual servitude.

(3) The Penalty Levels Should Be Increased

A.1898-D contains lower penalty levels than A.1898-B. We believe that the current penalty levels are too low and will not serve to sufficiently deter the crime of trafficking.

As it currently stands, trafficking a person for sexual or labor servitude is a Class D felony. By way of analogy, grand larceny in the third degree is a Class D felony. Therefore, stealing a person's stereo system out of their home, so long as it exceeds \$3,000 in value, warrants the same punishment as forcing and subjecting a young woman to sexual 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 someone's stereo.¹

Moreover, existing penal law section 230.33 punishes "compelling prostitution" of a person under the age of sixteen as a Class B Felony. It is axiomatic that trafficking a person for sexual servitude in the first degree (also under the age of 16) should be a class B felony. Therefore, trafficking a person for sexual servitude in the first degree must be raised to a class B felony and the other offenses should flow downward from there.

(4) The Issue Of Demand

The Committee believes that the sex trafficking industry is fueled by the *demand* for commercial sex. While we understand that the issue of demand needs to be addressed in a trafficking bill, the Committee remains of the opinion that one who patronizes a prostitute cannot be presumed to be *knowingly* patronizing a trafficking victim. There should nonetheless be real deterrents in place for those who demand commercial sex, particularly from minors. The City Bar is in the process of studying and discussing the most effective and fair method to provide such deterrents, and will issue its position in the near future.

¹ Notably, if the actor obtains the stereo by instilling in the victim a fear of physical injury, the crime becomes a Class C felony. *Penal Law § 155.40*.

(5) Sex Tourism

A.1898-B originally contained a prohibition against sex tourism. New York should have a law making it clear that sex tour businesses are subject to prosecution if they operate here. The provision that appeared in A.1898-B is sufficiently narrow as to protect against misapplication: “A person is guilty of promoting sex tourism when he or she knowingly sells or offers to sell travel-related services that include or facilitate in-state or out-of-state travel for the purpose of engaging in sexual servitude or patronizing a trafficking victim.” We believe this provision presents no risk of confusion or misapplication vis-a-vis the other provisions of the bill and should be reintroduced into A.1898-D.

II. “Expressing At Work” Bill

The Sex and Law Committee also urges the Governor-elect’s support for A.252, a bill that would require employers to permit nursing mothers to express breast milk in the workplace. This bill is critical to the health and well-being of children, with little cost to employers and significant long-term savings for employers in missed work days due to child illness and other healthcare costs.

Summary of the Bill

The bill would require employers to provide their breastfeeding employees with reasonable unpaid break time or permit breastfeeding employees to use paid break time or meal time each day, to express breast milk for up to three years following a child’s birth. It would also require employers to make reasonable efforts to provide space in close proximity to the work area for an employee to express breast milk in private. Finally, it would prevent employers from discriminating against employees who choose to express breast milk in the workplace.

Current Status of the Bill

A.252 first passed the Assembly during the 2001-2002 legislative session. In total, this bill has passed the Assembly and been delivered to the Senate four times. The latest action on the bill was taken on January 17, 2006, when it was referred to the Senate Labor Committee by a unanimous vote. As of this writing, the bill is without a Senate sponsor.

The Importance of Breastfeeding

It is beyond dispute that breast milk is the best and most complete source of nutrition for infants. Both the American Academy of Pediatrics² and the U.S. Surgeon

² American Academy of Pediatrics, Breastfeeding and the Use of Human Milk Policy Statement, 100 Pediatrics 1035 (1997), found at www.aap.org/policy/re9729.html (Dec. 1997).

General³ recommend that babies be fed exclusively with breast milk for the first six months of life, because it contains the ideal combination of carbohydrates, proteins, and fats, as well as the digestive enzymes, minerals, vitamins, and hormones that infants require.⁴

Breast milk has been proven to have important health benefits for children. Breast milk contains valuable antibodies from the mother that result in breastfed babies having fifty to ninety percent fewer infections than formula-fed babies.⁵ Those antibodies can never be added to formula,⁶ which lacks more than two hundred components of human milk. Breastfed children have a lower risk of becoming overweight, a decreased risk of a wide variety of infectious diseases, including bacterial meningitis, bacteremia, diarrhea, respiratory tract infections, necrotizing enterocolitis, urinary tract infection, and late-onset sepsis in preterm infants.⁷ In short, breast milk contains all of the nutrients a child needs for optimal health, growth, and development, many of which can only be found in breast milk.

In addition, breastfeeding provides enormous health and economic benefits to mothers. Numerous studies have shown that breastfeeding mothers have a lower risk of reproductive cancers, including ovarian and uterine cancers, and that breastfeeding may reduce the risk of breast cancer.⁸ A recent study published in the Journal of the American Medical Association found that each year of breastfeeding reduces a mother's risk of developing Type 2 diabetes by fifteen percent, regardless of other risk factors such as diet, exercise and smoking.⁹ Breastfeeding also saves families hundreds or thousands of dollars per year on formula and visits to health care providers.¹⁰ In fact, total medical expenditures are approximately twenty percent lower for breastfed than for formula-fed infants.¹¹

Breastfeeding also provides benefits to employers. Studies show that because breastfed babies are healthier, their parents are less likely to miss work caring for a sick child.¹² Having healthy babies raises productivity by increasing worker satisfaction and

³ HHS Blueprint for Action on Breastfeeding, Department of Health and Human Services Office on Women's Health ("HHS Blue print"), found at <http://www.4women.gov/breastfeeding/index.cfm?page=233.aqw23aqw23>.

⁴ Id.

⁵ Id. at 10; See also Roni Rabin, Breastfeed or Else, N.Y. Times, June 13, 2006, found at <http://select.nytimes.com/search/restricted/article?res=F70810FD38550C708DDDAF0894DE404482>.

⁶ Id.

⁷ Report 2 of the Council on Scientific Affairs, Factors that Influence Differences in Breastfeeding Rates, found at www.ama-assn.org/ama/pub/category/15169.html.

⁸ See HHS Blueprint at 10-11; <http://www.lalecheleague.org/NB/NBJulAug01p124.html>; Liz Galst, Babies Aren't the Only Beneficiaries of Breast Feeding, N.Y. Times, June 22, 2003, at WH4 (listing the numerous maternal health benefits of breastfeeding, including decreased postpartum bleeding, improved bone re-mineralization, and speedier return to pre-pregnancy weight).

⁹ See Randall Neustraedter, Breastfeeding Prevents Diabetes in Mothers, November 29, 2005, found at <http://www.hpakids.org/holistic-health/articles/200/1/Breastfeeding-Prevents-Diabetes-in-Mothers>.

¹⁰ HHS Blueprint at 11.

¹¹ Id.

¹² One study indicated that women who breastfed once returning to work missed less time from work due to infant illness, and when they did miss work, their absences were shorter than those of mothers who did not

decreasing absenteeism.¹³ In addition, the employer potentially benefits from lower medical costs as a result of the children's need for fewer doctor's visits.¹⁴

Recognizing the tremendous benefits of breastfeeding, in 2000 the federal government launched a campaign to promote breastfeeding, as part of its Healthy People 2010 goals.¹⁵ The breastfeeding goals of Healthy People 2010 are the following: that 75% of women breastfeed during the early postpartum period, 50 percent breastfeed after six months, and 25% breastfeed after one year.¹⁶ The nation is far from meeting these numbers. In 2004, only 31.9% of infants were being breastfed when they were six months old.¹⁷ In 2005, although 21 states in the United States achieved the national *Healthy People 2010* objective of 75% of mothers initiating breastfeeding; only 11 states achieved the objective of having 50% of mothers breastfeeding their children at 6 months of age, when the majority of working mothers are back at work.¹⁸

The Lowest Breastfeeding Rates Are Among Low-Income Women

Low-income women breastfeed at far lower rates than middle and upper-income women.¹⁹ Removing work-related barriers to breastfeeding is critical to increasing the frequency of breastfeeding among all women, but it is particularly critical to low-income women. Low-income women are the least likely to be able to express breast milk at work without the protections provided by this bill. This is because many low-income women in non-professional jobs may not work in or have access to private areas, such as a private office with a door to close, and many may have severe constraints on their break time.

breastfeed. See Rona Cohen, Marsha B. Mrtek, and Robert G. Mrtek, Comparison of Maternal Absenteeism and Infant Illness Rates Among Breast-feeding and Formula-feeding Women in Two Corporations, published in the American Journal of Health Promotion, Nov./Dec 1995, Vol. 10, No. 2, found at <http://www.mchservicesinc.com/article.htm>. See also HHS Blueprint at 11; Janet Gemignani, Easing New Moms' Return to Work: Lactation Programs for Female Employees (Dec. 1997), located at www.findarticles.com/p/articles/mi_m0903/is_n12_v15/ai_20435035 (describing a joint study in which the Los Angeles Department of Water and Power and the Aerospace Corporation found that mothers' absenteeism was reduced by 28 percent and sick child health care claims were cut by 36 percent as a result of their lactation programs).

¹³ The National Women's Health Information Center, Benefits of Breastfeeding, found at www.womenshealth.gov/breastfeeding/index.cfm?page=227.

¹⁴ HHS Blueprint at 11.

¹⁵ Center for Disease Control, Breastfeeding Promotion and Support, found at <http://www.cdc.gov/breastfeeding/promotion/index.htm>.

¹⁶ U.S. Department of Health and Human Services, Health Resources and Services Administration, Child Health USA 2003, found at <http://mchb.hrsa.gov/chusa03/pages/intro.htm>.

¹⁷ U.S. Department of Health and Human Services, Health Resources Services Administration, Women's Health USA 2006, found at http://www.mchb.hrsa.gov/whusa_06/healthstatus/maternal/0331b.htm.

¹⁸ U.S. Department of Health and Human Services, Health Resources Services Administration, Rates of Prenatal Care and Breastfeeding Rising in U.S. Report Says, October 17, 2006, found at <http://newsroom.hrsa.gov/NewsBriefs/2006/child-health-usa.htm>.

¹⁹ According to a 2005 study by the CDC, only 32% of women with incomes below the poverty line were exclusively breastfeeding after three months, compared to 46% of women with incomes at or greater than 350% above the poverty line. Likewise, only 30% of women below the poverty line were breastfeeding after six months, compared with 49% of women whose incomes were at or greater than 350% above the poverty line.

Indeed, the difficulty low-income women have expressing breast milk at work may account in part for the sharp difference in breastfeeding rates among low, middle-, and upper-income women.²⁰ A recent New York Times article documented the stark contrast between the experiences of a corporate Starbucks employee and a Starbucks employee working behind the counter.²¹ The employee who worked behind the counter had only the customers' bathroom and her limited break time during which to express breast milk, in contrast to the corporate Starbucks employee who had access to the company-sponsored lactation room where she could breastfeed comfortably and in private, while expressing her breast milk using the company-provided breast pump. This law will enable low-income, as well as professional workers, to continue to provide the benefits of breast milk to their children after they have returned to work.

The Need to Express In the Workplace

Full-time employment at 12 weeks postpartum is one of the strongest predictors for the discontinuance of breastfeeding.²² Working moms nurse an average of 16 weeks, whereas nonworking moms nurse an average of 25 weeks.²³ Research suggests that the lack of support for breastfeeding mothers at work contributes to the decline in breastfeeding when new mothers return to work.²⁴ Conversely, when mothers' breastfeeding efforts are supported in the workplace, working mothers breastfeed at rates comparable to stay-at-home mothers.²⁵ Currently, although nearly sixty percent of women with children under the age of three are employed outside the home,²⁶ only one-third of large employers provide a private, secure space where women can breastfeed.²⁷

The inability to express breast milk at work can endanger the health of the mother and her child. Unless they express breast milk during the day, breastfeeding mothers cannot maintain their milk supply and they will be forced to stop breastfeeding, often sooner than the mother would have liked. Further, lactating women who are forced to go for periods of several hours or more without expressing breast milk may suffer painful

²⁰ See Jodi Kantor, On the Job, Nursing Mothers Find a 2-Class System, N.Y. Times, September 1, 2006, found at www.nytimes.com/2006/09/01/health/01nurse.html?ei=5070&en=de2e73f4fe9e1323&ex=

²¹ Id.

²² Report 2 of the Council on Scientific Affairs, Factors that Influence Differences in Breastfeeding Rates, found at www.ama-assn.org/ama/pub/category/15169.html.

²³ CBS News Correspondent Emily Senay, January 24, 2001, New Study Finds Breastfeeding Delivers Health Benefits for Children.

²⁴ Id.

²⁵ See Rona Cohen and Marsha B. Mrtek, The Impact of Two Corporate Lactation Programs on the Incidence and Duration of Breast-feeding by Employed Mothers, *American Journal of Health Promotion*, July/August 1994, Vol. 8, No. 6, located at <http://www.mchs-services-inc.com/article.htm>.

²⁶ In 2004, 57.3% of women with children under the age of three had outside employment. See United States Department of Labor, Women in the Labor Force: A Databook, Table 7, p. 20, found at <http://www.bls.gov/cps/wlf-databook-2005.pdf>.

²⁷ Roni Rabin, Breastfeed or Else, New York Times, June 13, 2006.

breast engorgement. The consequences of being unable to express breast milk include mastitis, plugged ducts or breast infection.²⁸

Text of the Proposed Bill

The Committee seeks the Governor-elect's support for the passage of A.252 with certain modifications, as reflected below by the underscored language. The proposed changes, modeled after successful legislation in other states, are intended to clarify and strengthen the bill, while striking a reasonable balance between an employee's need to express breast milk and the employer's operations.

"Section 1. The labor law is amended by adding a new section 206-c to read as follows:

RIGHT OF NURSING MOTHERS TO EXPRESS BREAST MILK. AN EMPLOYER SHALL PROVIDE REASONABLE UNPAID BREAK TIME OR PERMIT AN EMPLOYEE TO USE PAID BREAK TIME OR MEAL TIME EACH DAY TO EXPRESS BREAST MILK FOR HER NURSING CHILD FOR UP TO THREE YEARS FOLLOWING CHILD BIRTH. THE EMPLOYER SHALL MAKE REASONABLE EFFORTS TO PROVIDE A ROOM OR OTHER LOCATION, OTHER THAN A TOILET STALL, IN CLOSE PROXIMITY TO THE WORK AREA, WHERE AN EMPLOYEE CAN EXPRESS MILK IN PRIVACY. NO EMPLOYER SHALL DISCRIMINATE OR RETALIATE IN ANY WAY AGAINST AN EMPLOYEE WHO CHOOSES TO EXPRESS BREAST MILK IN THE WORK PLACE. A REFRIGERATOR SHALL BE MADE AVAILABLE FOR STORAGE OF EXPRESSED BREAST MILK FOLLOWING GUIDELINES FROM THE AMERICAN ACADEMY OF PEDIATRICS AND CENTERS FOR DISEASE CONTROL TO ENSURE THAT BREAST MILK IS PROPERLY TREATED TO AVOID WASTE.

Section 2. "Employee" means any person employed for hire by an employer in any employment. "Employer" includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service, including the state and any political subdivision of the state. "Reasonable efforts" means any effort that would not impose an undue hardship on the operation of the employer's business. "Undue hardship" means any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation.

Section 3. An employer who violates any provision of this chapter shall be subject to a civil penalty in the amount of five hundred dollars (\$500) for each violation.

²⁸ Elizabeth N. Baldwin, La Leche League International, A Look At Enacting Breastfeeding Legislation, April 4, 1999.

Non-Discrimination

Although New York does exempt breastfeeding from public indecency laws, current law does not protect women who are discriminated against for expressing breast milk in the workplace.²⁹ This is a key component of the legislation.

Similar State Legislation

Numerous states, including California,³⁰ Connecticut,³¹ Georgia,³² Hawaii,³³ Illinois,³⁴ Minnesota,³⁵ Mississippi,³⁶ Oklahoma,³⁷ Oregon,³⁸ Rhode Island,³⁹ Tennessee,⁴⁰ and Virginia, have enacted legislation similar to the proposed bill.⁴¹ Like these states and the many corporations that have adopted in-house programs to support lactating employees, New York has a strong interest in ensuring that new mothers can return to the workforce without compromising the health of their children.

III. The Healthy Teens Act

The Healthy Teens Act (A.6619-C) is a bill seeking to amend New York's public health law and the state finance law to establish an age-appropriate sex education grant program. This Bill seeks to create a program within the Department of Health so that the Department can make grants, from amounts annually appropriated, to school districts, boards of cooperative educational services, school-based health centers, and community-based organizations with a proven history of success in reaching the adolescents of New York State. The grants will assist the entities in conducting a thorough and comprehensive education program aimed at preventing unwanted pregnancies and occurrences of sexually transmitted diseases among youth of this state. The proposed legislation would prioritize funding for communities most in need of comprehensive sex education, which would be based in part on the rates of pregnancy and of sexually transmitted infections among adolescents within a particular community.

²⁹ See *Martinez v. NBC, Inc.*, 49 F. Supp. 2d 305 (S.D.N.Y. 1999) (holding that lactation or breast pumping is not a disability within the meaning of the Americans with Disabilities Act, and that plaintiff was not similarly situated to male employees, as required for a *prima facie* case of "sex-plus" discrimination).

³⁰ West's Ann. Cal. Labor Code § 1030, CA LABOR § 1030.

³¹ C.G.S.A. § 31-40w, CT ST § 31-40w.

³² Ga. Code Ann. § 34-1-6, GA ST § 34-1-6.

³³ Hawaii Rev. Stat. § 378-2, Hawaii Rev. Stat. § 378-10.

³⁴ 820 I.L.C.S. 260/10, IL ST CH 820 § 260/10.

³⁵ M.S.A. § 181.939, MN ST § 181.939.

³⁶ Miss. Code § 17-25-7, Mississippi Code of 1972.

³⁷ Oklahoma Code Ann. Title 40, § 435.

³⁸ 2005 Oregon Laws Chap. 466, SB 618.

³⁹ RI Gen. Laws § 23-13.2-1.

⁴⁰ Tenn. Code Ann. § 50-1-305.

⁴¹ Although Texas and Washington do not have laws requiring employers to permit the expression of milk in the workplace, both states have laws providing for the designation of worksites that are supportive of breastfeeding as "mother-friendly" and "infant-friendly," respectively. See Tex. Health Code Ann. § 165.001 *et seq.* (1995); Wash. Rev. Code § 43.70 (2001).

The Healthy Teens Act passed the Assembly in 2005 and was delivered to the Senate Rules Committee, where no action was taken.

The Sex and Law Committee has analyzed the Healthy Teens Act and believes that it represents a fair and balanced approach to this divisive issue.

The Need For This Legislation

A sex education program can only be considered comprehensive when it is medically accurate, age-appropriate, free from bias, and includes information about contraception *in addition to* abstinence. A program that contains all of these elements is the most effective way to help young people learn relationship and decision-making skills, postpone intercourse, reduce their number of sexual partners, decrease their chance of facing an unintended pregnancy, and reduce their chance of contracting a sexually transmitted infection. As thoroughly discussed in the New York Civil Liberties Union's legislative memo in support of the Healthy Teens Act⁴², comprehensive sex education is particularly important given New York's high incidence of unintended pregnancies, sexually transmitted diseases such as gonorrhea, and HIV/AIDS.

Yet, currently in New York State, the only funding for sexuality education is provided by federal and state matching programs that prohibit the teaching of any methods to reduce the risk of pregnancy, other than abstinence until marriage. Federal regulations for these "abstinence-only" programs permit mention of contraceptives only to highlight their failure rates. It is up to each local schools district to decide whether to provide students additional sex education instruction.⁴³ This is difficult to do without a mandate or funding stream.

The Committee believes that New York has a responsibility to offer comprehensive and accurate information to our young people. By ignoring the reality of teen sexual activity and presenting only one option to teens, the "abstinence-only" model fails to protect sexually active young people from unintended pregnancy and disease.

Activity in Other States

Many other states have comprehensive sex education programs in place, and, in fact, some states have gone even further and rejected federal funds from "abstinence-only" programs. For example, in New Jersey, Governor Corzine recently rejected the federally funded "abstinence-only" programs. In an October 24, 2006 letter from the Commissioners for the New Jersey Department of Health and Senior Services and the Department of Education to U.S. Department of Health and Human Services Secretary Michael Leavitt, the State of New Jersey informed the federal government of its decision, explaining that the "abstinence-only" guidelines contradict the core curriculum of the

⁴² See New York Civil Liberties Union legislative memo on the Healthy Teens Act, available at www.nyclu.org/leg_m13_2005.html, and footnotes contained therein.

⁴³ *Id.*

comprehensive sex education program that New Jersey has had in place for more than 25 years. The Governor's office went on to caution that accepting federal "abstinence-only" dollars might ultimately cost the State *more* money because students may require additional sex education to clarify the misinformation that is taught in "abstinence-only" programs.⁴⁴

The Practical Effect Of The Healthy Teens Act

This law is extremely balanced in its approach. Among other things, the bill would require sex education programs to: (i) be age-appropriate and medically accurate; (ii) teach that abstinence is the only sure way to avoid pregnancy and sexually transmitted infections; (iii) provide accurate, unbiased information about the benefits and side effects of all contraceptives and barrier methods in preventing pregnancy and sexually transmitted infections; (iv) teach skills for responsible decision-making concerning sexual and intimate relationships; (v) discuss the influence of alcohol and drug use on decision-making; (vi) allow for discussion concerning the role of religious, ethical and moral values in sexual and intimate relationships; (vii) encourage parental involvement and family communication about sexuality; and (viii) help students develop healthy attitudes, strong self-esteem and valuable life skills in all of these areas.

In addition to improving the emotional and physical health of New York State's young people, the Healthy Teens Act will also have positive economic effects by, among other things, reducing New York's health care costs and limiting the funds necessary to clarify misinformation from "abstinence-only" programs.

IV. Conclusion

The Sex and Law Committee greatly appreciates the time given to read these recommendations and looks forward to a productive term for the new Governor. To that end, we strongly urge the ultimate passage of A.1898-D, A.252 and A.6619-C, with the modifications we have suggested above.

Respectfully,
/s/

Maria Cilenti
Chair
Sex and Law Committee
(646) 734-6965

⁴⁴ See Siecus, Sexuality Information and Education Council of the US, Policy Updates, October 2006, available at <http://www.siecus.org/policy/PUupdates/pdate0285.html>. According to Siecus, New Jersey joins Maine, Pennsylvania and California in deciding to reject "abstinence-only" funding.