

Representative Matt Claman
State Capitol Room 118
Juneau, AK 99801

1 March 2017

SUPPORT FOR ALASKA HOUSE BILL 112

Dear Representative Claman,

We are writing to support House Bill 112 which seeks to amend Alaska's sexual assault statute to prohibit police officers from sexually penetrating or having sexual contact with individuals who are involved in active criminal investigations as victims, witnesses or defendants, to the extent that it amounts to an abuse of authority. At present, police officers in Alaska are only prohibited from sexually penetrating people in their custody and sources indicate that police are using sexual intercourse or sexual contact as an 'investigative tool' to determine whether an individual is a sex worker or a victim of human trafficking.¹ Such conduct is an abuse of authority and in some instances amounts to rape and/or entrapment.

International human rights law guarantees everyone's right to be free from torture and other ill-treatment, health, liberty and security of the person, access to justice, a fair trial (including pre-trial due process rights) equality and non-discrimination, and remedies for abuses, among other things. Significantly, rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals,² as well as by UN and regional human rights bodies.³ These bodies have recognized that rape by a state agent is an exertion and abuse of power that gives rise to pain and suffering, physical or mental, justifying characterization as an act of torture. Sexual violence by state officials in the course of their official duties also violates the right to bodily integrity as protected, in part, by the constitutional right to due process and equal protection under the law.⁴

Those involved in criminal investigations do not relinquish their human rights simply because they are suspected of committing a crime or being involved in or associated with criminal actions. Additionally, state officials such as police officers should not be permitted to abuse their authority and commit sexual violence with impunity.

The human rights of sex workers and human trafficking victims are particularly at stake under HB 112. These individuals suffer high rates of violence and abuses and are highly vulnerable to human rights

¹ See Community United for Safety and Protection, Expanding protection for sexual assault victims: A report in support of AK House Bill 112, 2017; see also KTVA Alaska, Liz Raines, 'Legal loophole lets undercover officers have sex with prostitutes, group alleges', 31 January 2017, available at: <http://www.ktva.com/legal-loophole-lets-undercover-officers-sex-prostitutes-group-alleges-365/>.

² See for instance Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; Prosecutor v. Zejnir Delalic, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras. 475-496, 943, 965; Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.

³ See for instance Interim Report of the Special Rapporteur on torture to the General Assembly, UN Doc A/55/290 (2000), para. 5; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/7/3, 15 January 2008, paras. 34-6; Aydin v. Turkey, European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; Fernando and Raquel Mejia v. Peru, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3)(a); Almonacid Arellano et al. v. Chile, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.

⁴ See U.S. Const. amend. XIV, United States v. Contreras, 950 F.2d 232, 236, 244 (5th Cir. 1991); see also Andrew J. Simons, Being Secure in One's Person: Does Sexual Assault Violate a Constitutionally Protected Right?, 38 Boston College Law Review 1011, 1997.



violations. All too often, this violence occurs at the hands of law enforcement. Amnesty International recently conducted research on sex work in Norway, Argentina, Hong Kong, and Papua New Guinea.⁵ In the latter three, we documented violence by police against sex workers, in some cases amounting to torture. Most sex workers that we spoke to did not, or were reluctant to, seek police protection from, or redress for, violence and crime.

- In some situations, police were the perpetrators of violations against sex workers.
- Often sex workers reported that the police treat them like criminals, and as a result they fear prosecution or penalization if they go to police. In some cases, sex workers felt the police will not take them seriously if they report a crime.
- In Papua New Guinea, sex workers said they are afraid to report crimes to the police, who are often the perpetrators of abuses against them. They believed it was pointless to seek equal protection of the law as sex work is, in effect, illegal.⁶
- In Buenos Aires, sex workers reported often facing violence at the hands of police and law enforcement officials more than from clients, making them reluctant to report abuses to the police.⁷
- In Norway, many women we interviewed expressed reluctance to report incidents of violence to the police unless it was severe and life threatening. Reasons included fear of negative consequences such as being evicted; arrest or detention; deportation; surveillance leading to clients' arrest and subsequent loss of livelihood; fines; confiscation of money; discrimination; and exposure of their identity.⁸
- Sex workers in Hong Kong told us that if they are victims of crime, they are unlikely to seek police help. Sex worker organizations told us that police rarely follow up on reports from sex workers and instead typically blame or insult them.⁹ Additionally, police, in some circumstances, 'receive sexual services' in the course of their investigations.¹⁰

Our research made it clear that, in general, sex workers feel unable to seek state protection from violence and crime, making them extremely vulnerable to violence, entrapment, extortion and harassment by state officials. While our research primarily focused on sex work, this analysis also applies to human trafficking victims who are also often investigated and punished under laws that criminalize commercial sex and anti-trafficking measures.

Notably, violence against sex workers and others presumed to be involved in unlawful commercial sex is compounded by criminal and other punitive laws and policies against sex work which inhibit individual's ability to seek state protection from violence and and/or compel them to operate in covert ways that compromise their safety. In most countries, including the USA (and US states), law enforcement is not adequately focused on the protection of sex workers and trafficking victims from violence but instead on prohibition of commercial sex through enforcement of criminal law. This creates an adversarial relationship between sex workers, trafficking victims and law enforcement

⁵ See Amnesty International reports: Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016); "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (Index: AMR 13/4042/2016); The human cost of crushing the market: Criminalization of sex work in Norway (Index: EUR/36/4034/2016).

⁶ Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016).

⁷ "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (Index: AMR 13/4042/2016).

⁸ The human cost of crushing the market: Criminalization of sex work in Norway (Index: EUR/36/4034/2016).

⁹ Amnesty International, Sex workers at risk: A research summary on human rights abuses against sex workers, 2016, p. 12-13.

¹⁰ Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016), p. 22-23.



officials that compromises the safety of sex workers and trafficking victims and offers impunity to perpetrators, including law enforcement officials themselves, of violence and abuse against sex workers and trafficking victims.

Alaska's current sexual assault statute appears to entrench an individual's vulnerability to violence, allowing such violence to go unpunished. This implicates a wide range of human rights, infringes on ethical principles of policing, and runs afoul of Alaska's legal 'due diligence' obligations to prevent, investigate, prosecute and punish violence. Instead of protecting people from violence, the legal framework enables violence against individuals who likely face a range of stigma and discrimination in society, and who may already be reluctant to seek police protection from violence and crime.

Amnesty International therefore supports HB 112 and its objective to prevent unlawful violence by police officers against those involved in criminal investigations. We call on the Alaska state legislature to ensure that sex workers, human trafficking victims and all people under police investigation can enjoy full and equal protection under the law, as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, entrapment, extortion and all other crimes.

Yours sincerely,

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