TESTIMONY OF NEW YORK STATE ASSEMBLYWOMAN AMY R. PAULIN

TO THE NEW YORK CITY COUNCIL COMMITTEE ON WOMEN'S ISSUES

HEARING ON THE TRAFFICKING VICTIMS PROTECTION AND JUSTICE ACT A.9804/S.7212

June 11, 2012

Speaker Quinn, Chairperson Ferreras, and members of the Committee on Women's Issues, thank you for holding this hearing on the important issue of human trafficking. My name is Nancy Fisher, chief of staff to New York State Assemblywoman Amy R. Paulin, chair of the Assembly Standing Committee on Children and Families. I submit the following testimony on behalf of Assemblywoman Paulin.

With the passage of two landmark laws, the 2007 anti-human trafficking law and the Safe Harbor Act of 2008, New York State criminalized sex trafficking and labor trafficking and, for the first time, acknowledged that many individuals facing prosecution for prostitution are themselves victims and often, sexually exploited children who most need our protection.

Having the benefit of a few years experience with these two laws, we have learned that there are gaps and inconsistencies in the law that we need to address to improve our response to human trafficking. Working closely with advocates and prosecutors, I authored the bill, the Trafficking Victims Protection and Justice Act (A.9804/S.7212), the subject of your hearing today. This legislation builds on the foundation we laid by ensuring that the penalties fit the crimes, by providing additional tools to prosecutors and law enforcement to go after and hold accountable the real criminals – the buyers, the traffickers and the transporters — who fuel this massive, heinous industry, and by increasing access of victims to social services to enable them to break the vicious cycle of dependency and humiliation.

I want to highlight a few of the important provisions. The bill:

- creates the felony sex offense of "aggravated patronizing a minor," aligning the penalties for patronizing with those for statutory rape
- matches the ages of victims in each degree of patronizing offense with the ages in the corresponding degree of rape offense
- recognizes that livery and limousine drivers have become central players in human trafficking and includes them as persons who may be prosecuted for permitting or promoting prostitution
- clarifies that providing marijuana and ecstasy to a prostituted person to impair her judgment constitutes sex trafficking
- gives prosecutors the investigative tools they need to make a case against traffickers by authorizing eavesdropping and video surveillance when there is probable cause.

Those working with the law also realized that trafficking victims, often children, need better access to social services to make a clean and permanent break from the lure of prostitution. To address this issue, the bill authorizes the providers of social and legal services, often the first to interact with trafficking victims and to develop trusting

relationships, to make referrals for social services in addition to law enforcement and district attorneys.

In addition, the legislation allows cases involving 16 and 17 year olds arrested for prostitution to be moved from criminal court to family court so that they can be treated as PINS (Persons in Need of Supervision.)

Lastly, this law eliminates the term "prostitute" in the Penal Law. No where else in the Penal Law is an individual identified by the crime he or she allegedly commits – i.e. "murderer" or "robber." Realizing that the stigma attached to the word "prostitute" applied mostly to women, it was obvious that the term "prostitute" had to be addressed as a gender issue as well as a legal term.

I am heartened that we are working collectively to better understand the enormity of human trafficking knowing that we need to do even more to end it. I am grateful that the City Council and the Committee on Women's Issues are taking a leading role in addressing this issue and thank you for your support.

Thank you.

Written Testimony on Behalf of the National Organization for Women New York City Chapter

On

Trafficking Victims Protection and Justice Act

Good afternoon. Thank you for this opportunity to testify on behalf of the National Organization for Women of New York City. NOW-NYC launched its campaign End the Business of Trafficking in the Fall of 2006. The New York State Anti-Trafficking Coalition, which NOW-NYC is a steering committee member, succeeded in passing New York's first anti-trafficking law in 2007.

As you will surely hear today, the TVPJA is a critically important piece of legislation. In the five years since New York made human trafficking a crime, we've learned a lot. A lot about how to investigate these crimes, what will give prosecutors the tools they need to stem the tide of exploitation. We need higher penalties and we need the ability use wiretaps.

You are all familiar with the recent Manhattan case involving a father and son team who brought women into New York for prostitution. That case was built on wiretaps, the threats of violence, the times and places of the crime were documented as a result. But that wiretap was issued not to catch a trafficker, but for financial crimes.

We need to hold livery and limo drivers who we are seeing more and more as traffickers themselves, operating brothels-on-wheels as law enforcement targets in the growing web of the prostitution industry- which "imports' women and entraps the most vulnerable Americans – young women, many of the them girls of color. As you may recall, a woman sat before the Council and testified last Fall about how she was taken from her home in Mexico at 20 years old, brought to New York City and forced into prostitution. When business was slow, her traffickers would give her to a limo driver. He would drive her from customer to customer, she would be warned, "this is a very good client, so you better do whatever he wants to make him happy."

If we want to obtain measurable results in the war on organized commercial sex and labor exploitation – we need better laws. That's not everything, but it's the place to begin. Without strong and effective laws, we'll continue to see:

Traffickers who brazenly operate in our neighborhoods, advertise in our newspapers and online, set up makeshift brothels known as "10 day houses" and supply existing massage parlors, brothels and escort services with a fresh supply of women, many of them still children. I know a woman who on her first night in New York, was put in a brothel in Flushing, Queens, with a timer at her side and a waiting room of men there for their turn. The price was \$35 for 15 minutes of sex. I've met girls, teens and even pre-teens, put out on the street by older, abusive, conniving, threatening men. Upon arrest, rather than be treated as the abused children that are, they are routinely made into criminals.

We need to do just one simple thing: Bring New York law in line with Federal law. Children are trafficking victims. That's the only civilized thing to do.

Labor traffickers are part of well organized networks that bring people into the United States and hold them in indentured servitude or by coercion and force to work on farms, construction sites, and as domestic workers throughout New York State. To what degree does this happens in New York City – in homes, nail salons, restaurants, factories, beauty parlors...we don't exactly know.

The amount of misery is unimaginable and unmeasured.

You should all know that the bill we are here talking about today has been – so far- gutted. The Codes Committee in the New York Legislature wants to block every provision I've talked about and more. It won't see the light of day, unless everyone in this room says that just can't happen.

The New York City Council has shown a real concern, compassion and sense of duty to rid our great city of human trafficking. We applaud all that you have done. But we need your help now more than ever on this. New York City is where trafficking thrives. This is where so much of the suffering takes place. I ask that you make an enthusiastic endorsement of this bill and a forceful demand for its passage.

Emily Amick, Equal Justice Works Fellow Funded by Morgan Stanley and Simpson Thacher & Bartlett Sanctuary for Families' Center for Battered Women's Legal Services Testimony before the New York City Council on the Trafficking Victims Protection and Justice Act Monday, June 11, 2012

I am an attorney at Sanctuary for Families' Center for Battered Women's Legal Services. Since its inception in 1984, Sanctuary has provided shelter, counseling, economic empowerment, and legal representation and assistance to tens of thousands of victims of domestic violence and hundreds of trafficking victims. Sanctuary for Families was one of the founding organizations and is currently the chair of the New York State Anti-Trafficking Coalition. While we were pleased with the passage of a comprehensive anti-trafficking law in 2007, our work is far from complete. As long as trafficking victims are prosecuted as criminals rather than protected as victims, as long as the sellers and buyers of human bodies are not held accountable for their vicious crimes, New York State is turning its back on these victims while aiding and abetting their exploiters. Sanctuary for Families joins the New York State Anti-Trafficking Coalition in calling for the immediate and full passage of the Trafficking Victims Protection and Justice Act.

Current New York law misses the brutality of human trafficking. The business of selling women and children traps thousands of people in lives dominated by traffickers' and patronizers' violence. If victims escape, the scars, emotional and physical, are huge. Psychological torture and physical violence—beatings and rapes—are virtually universal.

Making the crime of pimping minors trafficking per se

Under the federal Trafficking Victims Protection Act, selling a minor for sexual purposes is trafficking; there is no requirement that prosecutors prove fraud, force or coercion. The federal law rightly reflects the reality that the selling of a child for sex is an inherently coercive crime. New York's law should reflect this reality as well.

The selling of a child for sex is a horrifically exploitive crime that victimizes our most vulnerable children. The victims, most often girls of color from poor communities, urgently need the protection of our State law. People who are selling girls for sex are some of the most vile offenders in our State – our State law must recognize the crime they are committing as the serious crime of sex trafficking.

Defending trafficked people from criminal prosecution

An affirmative defense to prostitution, as proposed in the TVPJA, would protect trafficked people from criminal prosecution, proactively combat trafficking and eliminate the need for post-conviction challenges. Defense attorneys who represent people arrested for prostitution are critically situated to identify trafficking victims. If there were an affirmative defense of sex trafficking, defense attorneys would have an ethical obligation to ask their clients about their experiences in prostitution and would begin to bring evidence of sex trafficking to the attention of prosecutors and the courts.

In 2010, New York State amended its Criminal Procedure Law to enable sex trafficking victims to vacate prostitution convictions. Although opponents expressed concerns that the new provision would "open the floodgates to false claims" nothing of the kind happened. Indeed, very few convictions have been vacated to date. Similarly, an affirmative defense to prostitution, which requires victim self identification and substantial corroboration, is equally unlikely to open the floodgates.

New York State Jury Instructions state that the evidence that supports an affirmative defense must be of such convincing quality as to outweigh evidence of the contrary. This significant burden would require defense attorneys to thoroughly investigate circumstances of trafficking and provide highly probative evidence of exploitation to prosecutors. Consequently, making "trafficking" an affirmative defense to prostitution will assist defendants only in those cases where there is substantial and persuasive evidence of trafficking. Far from leading to a flood of wrongly exonerated criminals, it will encourage investigation and evidence gathering and ultimately lead to more evidence-based prosecutions and trafficker accountability.

Raising the penalty for sex trafficking

The penalty for sex trafficking should be raised from a non-violent B felony to a violent B felony. Trafficking is a brutally violent crime. At minimum victims are subjected to repeated, serial rapes. Victims are forced to have sex with five to ten buyers or more a night for years and are at constant risk of violence from the men who buy them. Traffickers themselves routinely rape victims, beat them and sometimes even brand them as their property.

Making sex trafficking a Class B violent, as opposed to a non-violent felony, would ensure that the penalty is commensurate with the severity of this particularly brutal and predatory offense. Class B non-violent crimes are generally property crimes. Sex trafficking belongs with the serious assaults, kidnapping and arson of Class B violent felonies.

Under current law traffickers face a minimum penalty of 1-3 years and a maximum of 8 1/3- 25 years of prison time. As a violent B felony, these vicious traffickers would face a minimum penalty of 5 and a maximum of 25 years. Under federal law, when the trafficker uses force fraud or coercion, there is a mandatory minimum sentence of 15 years. Thus, the minimum State sentence for trafficking would be one third that of the Federal, if sex trafficking were to become a violent B felony.

Raising the penalty for people who buy sex from children.

The TVPJA creates the crime of aggravated patronizing a minor, where buyers of sex from children who actually sexually assault the child, face a penalty commensurate with their crime. It is critical that 17-year-olds be included as protected victims under this new law.

Under New York's Safe Harbor Act, any child under 18 in a situation of commercial sexual exploitation is considered a sexually exploited child. The people who buy sex from a 17-year-old should be punished for the sexual abuse of an exploited child. It is not excessive for people who buy sex from a 17-year-old child to be charged with a nonviolent E felony. In our State, people are charged with an E felony offense when they damage someone's property in excess of \$250. This means that defendants face a higher penalty for damaging someone's car than for raping a child. We must send a message that New York State takes the crime of buying a child for sex seriously.

Acknowledging that prostituted children are victims

New York State continues to prosecute 16- and 17- year olds, mostly girls, for prostitution and incarcerates them rather than offering them safe housing and counseling as victims. This in spite of the fact that our state law identifies all children under eighteen in prostitution as sexually exploited children.

Having been abused by trusted adults, sexually exploited youth are further abused by pimps, pedophiles, and traffickers, who prey on their vulnerability, especially their need for caretaking and support. What these young people need are shelter, counseling, and other services specially tailored to help them escape abuse and heal, not stigmatization and re-victimization by the legal system.

Instead of being stigmatized and punished, sexually exploited youth need counseling and health care to address the psychological and physical trauma they have suffered. They need short and long-term housing to rebuild their lives safe from what Rachel Lloyd, the Executive Director of GEMS, calls psychological and physical kidnapping by pimps. Above all, they need to know that society sees them not as criminals or prostitutes but as young people who, with the right kind of assistance, can overcome past hardships and realize their potential.

This City Council resolution is important. We need to send a strong message to the legislature that the Trafficking Victims Protection and Justice Act is of critical

importance to the protection of trafficking victims in New York State and that we urgently need the leadership of both the Assembly and the Senate to break through the log jam created by the dynamics of the two houses' Codes Committees that so often impede progress in our State.

Sex trafficking is a vicious crime, invariably carried out by serial perpetrators, that destroys the lives of victims and detrimentally affects our poorest communities. The perpetrators are exploiters of the worst kind, who prey on young girls and profit by selling them as sex slaves. I am grateful for the leadership of New York City Council in the effort end sex trafficking in New York State and I urge the legislature to pass the Trafficking Victims Protection and Justice Act.

Sarah Dolan Advocate Counselor Sanctuary for Families Testimony before the New York City Council June 11, 2012

Good afternoon. It's a pleasure and an honor to testify before you today. My name is Sarah Dolan, and I work for Sanctuary for Families on one of its newest projects: Services to Access Resources and Safety, or STARS. The STARS project acknowledges the unique needs of women who have been arrested for prostitution, many of whom are survivors of sex trafficking, and seeks to provide them with trauma-sensitive counseling and case management services as an alternative to incarceration. As the Advocate Counselor, I am based full-time in the Bronx Criminal Court and work in conjunction with Bronx Community Solutions, itself a project of the Center for Court Innovation. Working with women on an individual and group basis, I conduct counseling sessions, provide safety planning and case management services, and link victims to a range of other legal, health, and social services.

Funded by the federal Office on Violence Against Women, the project's mandate in the broadest sense is to shift society's understanding of women arrested for prostitution from one of "offender" to that of "victim". Widely seen as the perpetrators of the crime of prostitution, these women are, in fact, the victims — of a lifetime of racial, ethnic, and economic oppression; of childhoods filled with sexual abuse and other trauma; of husbands, boyfriends, pimps and johns who exploit their vulnerability and often perpetrate acts of violence against them; and of the law enforcement and criminal justice systems which regularly fail to identify them as trafficking victims and instead, criminalize and punish them.

Passage of the Trafficking Victims Projection and Justice Act would go far to reverse this trend of criminalization and to recognize these girls and women as the victims they are. In particular, there are three elements of the proposed legislation that would have an enormous positive impact on my clients' lives. The first of these is the provision that establishes trafficking as an affirmative defense to prostitution. This would essentially require defense counsel to investigate their clients' trafficking histories before arraignments, effectively preventing innocent women from getting a damaging criminal record, and providing prosecutors with valuable information on potential sex traffickers in the process. In my counseling work, I make a point to ask each of my clients what she would ultimately like to do with her life, and to this day, not one single client has

dreams of being a nurse, a home attendant, or a sales clerk. Indeed, one client, Tracey, spent months getting her home attendant certification only to be told by the Department of Health that she was ineligible for employment due to her criminal history of prostitution. What the DOH didn't know is that her arrests occurred when she was being forced into prostitution by her brutal pimp. Had the TVPJA been in effect, her defense attorney would have learned of her victimization behind the prostitution charge and would have been able to refer her to the services she desperately needed, instead of allowing her to receive the conviction that further stigmatized her and later prevented her from legal employment.

The second provision I'd like to speak to is a semantic one. In social work, we speak of "people-first language", an attempt to destigmatize our clients and recognize them as unique individuals, rather than identify them by their illness ("schizophrenics") or their crime ("prostitutes"). Currently, the New York State Penal Law refers to women who have been sex trafficked and arrested for prostitution as prostitutes, the only instance in our Penal Code in which someone is identified by the crime he or she has allegedly committed. Elsewhere, the criminal code refers to people as defendants, rather than "murderers" or "robbers". Women who have been sex trafficked internalize this demeaning and stigmatizing language to such an extent that one client told me she had essentially given up on a better life, saying "the police tell me I'm a ho and that that's all I'm good for, so why should I try to be anything different?". After a lifetime of sexual trauma, often first at the hands of a family member, then later by their boyfriends, pimps, and johns, these women have been taught that their value lies exclusively in their bodies. When law enforcement and the criminal justice system, by referring to them as prostitutes, essentially tell them the same, there is little incentive for these women to view themselves as anything different. Changing the terminology in the Penal Law to reflect the individuality of these women is the first step in helping them recognize their own worth and potential.

Lastly, I'd like to discuss the provision that increases the penalty for sex trafficking from a Class B nonviolent felony to a Class B violent felony. It's true that some of the tactics used by sex traffickers and pimps to coerce their victims are not, on the outside, blatantly violent. Initially, they utilize subtle yet manipulative grooming techniques like promising their victims love and security, something few of my clients have experienced elsewhere in their lives. Some traffickers later coerce these women into the commercial sex trade by convincing them of an imagined debt or by threatening to bring shame to their families. However, the real violence happens on the streets and

in the cars and hotels where traffickers force their victims to sell their bodies each night and where the women experience unimaginable sexual and physical trauma. Traffickers often use physical violence to scare their victims into submission, but even when they do not, the inherent violence of the multiple rapes they inflict upon their victims by selling them over and over again night after night merits a charge – a Class B violent felony – worth of their violent crime.

I therefore urge City Council to pass a resolution calling for the passage of the Trafficking Victims Protection and Justice Act. It is the logical next step for New York State to take in ensuring that women and girls forced into the commercial sex industry are recognized and treated as the victims they truly are.



P.O. Box 1003, Bowling Green Station · New York, NY 10274

June 11, 2012

Thank you for this opportunity to briefly share.

Restore's mission is to end sex-trafficking in New York and bring complete care and hope to every foreign-born survivor. We have met with approximately 100 exploited women each year over the past three years. We have partnerships with the Queens Criminal Court and Midtown Community Court and collaborate with other services providers as well as government agencies such as the Department of Homeland Security, FBI and the District Attorney's office of Manhattan and Queens. Restore operates the region's only long-term safehouse for foreign-national survivors of sex-trafficking and will open a second safehouse later this year.

We urge the Council to pass this resolution.

Each year thousands of girls and women are tricked, coerced or manipulated into coming to our great state and our great city and then sexually exploited. The Trafficking Victims Protection and Justice Act is non-partisan, common-sense legislation that will not only increase accountability for buyers and traffickers, but strategically improve the protection of victims and prevent re-victimization. It should be passed with all the current provisions.

Let me just highlight a smart provision that will make a real difference in deterrence. For many of the exploited women we work with, they were driven around in livery cars by drivers who were aware of what was happening. This bill amends the Penal Law so that a driver who engages in a business or enterprise of transporting people for prostitution can be prosecuted. It makes complete sense. Most livery car drivers are hard-working immigrants who have legitimate jobs. A message to them that they would be prosecuted for this can easily "tip" them into deciding not to take part in trafficking, thus making it more difficult for traffickers to transport victims.

We have seen too many girls and women suffer way too much -- and too many predators get away with way too much. This legislation is a part of the solution to bring justice, provide services and hope, and again show the nation that New York is a leader in combating modern-day slavery.

Thank you for your time.

Jimmy Lee Executive Director Restore NYC





TESTIMONY OF JAMES F. PURCELL CEO

COUNCIL OF FAMILY & CHILD CARING AGENCIES CHIEF EXECUTIVE OFFICER

BEFORE THE

NEW YORK CITY COUNCIL COMMITTEE ON WOMEN'S ISSUES JUNE 11, 2012

Good afternoon, I am James F. Purcell, the CEO of the Council of Family and Child Caring Agencies (COFCCA). COFCCA is the primary statewide membership organization for child welfare services providers, representing over 100 not-for-profit agencies that contract with the New York City Administration for Children's Services and the county departments of social services to provide foster care, preventive services, adoption, and aftercare services as well as education for children on our facility campuses. Our member agencies serve nearly all of New York City's at-risk children in preventive services programs and foster care.

On behalf of the vulnerable children and families served by these agencies, I thank Chair Julissa Ferrerras and members of the committee for your leadership in protecting sexually exploited youth. Your efforts to protect these young victims have brought much needed attention to this issue and furthered the efforts of the Children and Families committees in the New York State Legislature.

The crimes of sexual exploitation and trafficking require the dual response of prevention and assistance to the victims. Many of our agencies provide much needed help to the victims of sexual exploitation. You will hear from some of them today. However, we all understand that helping the victims is not enough—there must be a way to prevent more such abuse. COFCCA strongly supported the Committee's Resolution calling on the Village Voice media to stop accepting adult services advertisements on its online classified site, backpage.com, because it serves as a platform to traffic minors and adult victims for sex, and we strongly support the new Resolution calling upon the New York State Legislature to pass and the Governor to enact A.9804/S.7212, the "Trafficking Victims Protection and Justice Act".

It is our understanding that the "Trafficking Victims Protection and Justice Act" will strengthen the current Safe Harbor Act by making our laws more sensitive to victims and facilitating prosecution of exploiters. Currently, State law and the Federal Trafficking Victims Protection Act recognize that prostituted individuals under the age of 18 are sexually exploited youth. The Federal Law, however, establishes that all prostituted children are trafficking victims. A.9804/S.7212, will make State law consistent with Federal law by removing the New York State's requirement of coercion in prosecutions for the sex trafficking of children.

The Trafficking Victims Protection and Justice Act will also bring the penalties for an individual convicted of patronizing a minor into line with those of someone convicted of raping a minor of the same age. Doing so recognizes the exploited nature of the victim. In the words of Rachel Lloyd, founder of GEMS and a former victim, "Calling men who buy sex from children "johns" minimizes the harm they do. At the very least, they are statutory rapists and child abusers."

This bill will further protect victims who are 16 and 17 years of age by no longer treating them as criminal defendants. Under this bill they would be accorded the protections and services as part of PINS (Persons in Need of Supervision) proceeding. The bill will also close current loopholes that allow the use of livery and limousine drivers to facilitate sexual exploitation, and it will categorize the use of drugs to control or coerce a victim as a form of sex trafficking.

For all these reasons, we join the New York City Council Committee on Women's Issues in urging the New York State Legislature to pass and the Governor to enact the Trafficking Victims Protection and Justice Act.

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