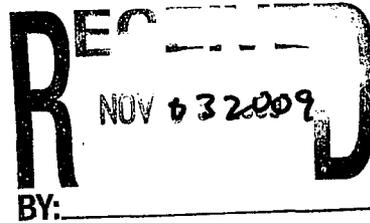


128 DORRANCE STREET, SUITE 220  
PROVIDENCE, RI 02903  
401.831.7171 (t)  
401.831.7175 (f)  
www.riaclu.org



November 2, 2009

Randy Rosenbaum  
Executive Director  
RI State Council on the Arts  
One Capitol Hill  
3rd Floor  
Providence, RI 02903

Dear Randy:

Dangers to freedom of speech can arise in the unlikeliest of places, and I'm writing to make you, and others in the artistic community, aware of one such situation.

As you may know, the issue of prostitution and sex trafficking seemed to dominate the R.I. General Assembly's discussions this year. Last week, the legislature unanimously approved amendments to the state's "sex trafficking" law that we believe go far beyond the legitimate issue of trafficking, and instead have potentially serious ramifications for the exercise of First Amendment rights in plays, films, photography and other media.

Specifically, the bill makes it a felony – punishable by up to 40 years in prison – to, among other things, recruit, employ, transport, or persuade a minor to participate in a commercial "sexually explicit performance," or to benefit financially in any way from a minor's participation in such conduct. The problem is with the legislation's incredibly broad definition of this term.

A "sexually explicit performance," as defined in the bill, requires no sexual explicitness whatsoever; indeed, it doesn't even require nudity. Rather, it only requires an intention to "appeal to the prurient interests" of the patron or viewer, "whether public or private, live, photographed, recorded, or videotaped." One can easily think of numerous well-known films, plays, photographs and other First Amendment activities where a minor's performance would clearly meet this definition, and thus potentially turn any individual involved in, or profiting from, its production into a "sex trafficker." From an MTV video, to the filming of *Lolita* or just about any teen sex comedy, to the display of artful photography of minors – involvement in any of these activities in Rhode Island may now be a felony.

Some (though not all) of the proponents of this legislation would likely argue that "legitimate" artists have nothing to fear, but it is hard to reconcile that with the deliberately broad language that was adopted in the bill and which, after all, was hardly necessary to go after

what most people would normally consider to be “sex trafficking.” And in a state that has, in the past few decades, witnessed a raid of a RISD student and faculty art exhibition, censorship of a John Lennon art exhibit, and the arrest of an eminent photographer on “child pornography” charges, the chilling effect of this legislation cannot be so easily discounted.

We therefore wanted to make the artistic community aware of this bill and its potential impact. I encourage you to share this information with others. Unfortunately, it is probably too late to prevent this bill from becoming law, as it will undoubtedly be in the Governor’s hands for approval any day. In case there is time, though, I encourage you to contact the Governor’s office about this. In any event, I wanted to make sure you knew of this threat to artistic freedom.

If you have any questions about this, please feel free to let me know. I have taken the liberty of including a copy of the legislation for your reference.

Sincerely,



Steven Brown  
Executive Director

Enclosure

2009 -- H 5661 SUBSTITUTE B

LC01936/SUB B

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO CRIMINAL OFFENSES - TRAFFICKING OF PERSONS AND  
INVOLUNTARY SERVITUDE

Introduced By: Representatives Giannini, DaSilva, Corvese, Petrarca, and Gablinske

Date Introduced: February 25, 2009

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-67-2 of the General Laws in Chapter 11-67 entitled "Trafficking  
2 of Persons and Involuntary Servitude" is hereby amended to read as follows:

3 **11-67-2. Involuntary servitude.** -- (a) Whoever knowingly subjects, attempts to subject,  
4 or engages in a conspiracy to subject another person to forced labor ~~in order to commit a or~~  
5 commercial sexual activity either by:

6 (1) Causing or threatening to cause physical harm to any person;

7 (2) Physically restraining or threatening to physically restrain another person;

8 (3) Abusing or threatening to abuse the law or legal process;

9 (4) Knowingly destroying, concealing, removing, confiscating or possessing without that  
10 person's consent any actual or purported passport or other immigration document, or any other  
11 actual or purported government identification document, of another person; or

12 (5) By using intimidation; shall be guilty of a felony and subject to not more than twenty  
13 (20) years imprisonment or a fine of not more than twenty thousand dollars (\$20,000) or both.

14 ~~(b) In cases involving a minor between the ages of seventeen (17) and eighteen (18)~~  
15 ~~years, the defendant is guilty of a felony, and subject to not more than thirty (30) years~~  
16 ~~imprisonment, or a fine of not more than thirty thousand dollars (\$30,000), or both;~~

17 ~~(c) In cases in which the minor had not attained the age of seventeen (17) years,~~  
18 ~~defendant is guilty of a felony, and subject to not more than forty (40) years imprisonment, or a~~

1 will examine and report upon the extent of the existence of human trafficking for commercial  
2 sexual activity within the State of Rhode Island. The task force shall consist of the attorney  
3 general or his or her designee; the superintendent of the Rhode Island State Police or his or her  
4 designee; the director of the Municipal Police Training Academy or his or her designee; the Chief  
5 of Police of the City of Providence or his or her designee; the President of the Rhode Island  
6 Police Chiefs Association or his or designee; the public defender or his or her designee; and the  
7 director of the Rhode Island Commission on Women or his or her designee.

8 (b) Additionally, the governor, the president of the senate and the speaker of the house  
9 shall each appoint three (3) members of the public who have a special expertise dealing with  
10 victims of crimes; the behavioral needs of women and children; social welfare issues such as the  
11 financial, healthcare, housing and literacy needs of women, children and low-income individuals;  
12 social justice and human rights issues; issues facing immigrants and non-citizens, civil rights;  
13 and/or specialized training in human trafficking and the needs of victims of human trafficking.

14 (c) A quorum of the committee shall consist of at least eight (8) of its members. The task  
15 force shall elect a chairperson.

16 (d) On or before December 31, 2010, the task force shall submit to the Governor, the  
17 Attorney General, the Speaker of the House of Representatives and the President of the Senate a  
18 report setting forth its findings as to the extent to which human trafficking for commercial sexual  
19 activity is occurring in this State and making such recommendations as it deems appropriate for  
20 legislative and executive action relating to the enforcement of this chapter and the provision of  
21 social services to victims of human trafficking.

22 **11-67-8. Reporting.** – On or before January 15, 2010, and semi-annually thereafter, each  
23 law enforcement agency in this state shall file with the Governor, the Attorney General, the  
24 Speaker of the House of Representatives and the President of the Senate a report concerning the  
25 agency's enforcement of this chapter during the preceding six (6) month period. Each semi-annual  
26 report shall contain, but need not be limited to, the following information:

27 (1) The number of persons arrested pursuant to section 11-67-2, section 11-67-3,  
28 subsection 11-67-6 (b), and subsection 11-67-6 (d).

29 (2) Of those arrested, the number of persons convicted, placed on probation, whose case  
30 is filed pursuant to section 12-10-12, whether those persons pled guilty or nolo contendere or  
31 were found guilty after trial by judge or jury;

32 (3) The fines and/or sentences of those persons identified pursuant to subdivision (2) of  
33 this section; and

34 (4) A summary of the amounts of fines levied and the lengths of sentences identified