



Office of the Public Defender
City and County of San Francisco

Jeff Adachi
Public Defender
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VIA EMAIL AND U.S. MAIL

July 25, 2008

Mr. John Arntz, Director of Elections
Ballot Simplification Committee
Department of Elections
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102

**Re: Public Defender's Office Analysis of the Initiative Measure Entitled
"Enforcement of Laws Related to Prostitution and Sex Workers"**

Dear Mr. Arntz:

Pursuant to your request, the Public Defender's Office respectfully submits the following departmental analysis of the initiative measure "Enforcement of Laws Related to Prostitution and Sex Workers" submitted July 7, 2008, for inclusion on the November 4, 2008 Consolidated General Election ballot.

Background

In California, prostitution-related cases are generally charged as misdemeanors. Individuals who are charged with a prostitution-related offense within the City and County of San Francisco and who cannot afford an attorney are appointed an attorney from the Public Defender's Office misdemeanor unit. Prostitution-related misdemeanor charges may involve allegations of any of the following four activities:

- **Solicitation for prostitution**, defined under Section 647(b) of the California Penal Code, is the act of directing or asking someone to exchange money for sexual activity.
- **Prostitution**, defined under Section 653.20(a) of the California Penal Code, is the act of exchanging money for sexual activity.
- **Loitering**, defined under Section 653.20(c) of the California Penal Code, means to linger without a lawful reason for the purpose of committing a crime.
- **Nuisance**, which is broadly defined under Section 370 of the California Penal Code, is anything that, among other things, is injurious to health, indecent, offensive, or obstructs to the free use of or interferes with the comfortable enjoyment of life or property.

Pandering, the crime committed by a "pimp," is defined under Section 266(i) of the California Penal Code as solicitation of customers for prostitution services and/or recruitment of prostitutes for hire. Unlike solicitation, prostitution and loitering, which are misdemeanors, pandering is a felony offense. Individuals who are charged with pandering who cannot afford an attorney are appointed a lawyer from our felony unit. For the purpose of this analysis, it is assumed that this measure will not affect the investigation into or the prosecution of the felony crime of pandering.

Impact of the Measure on the Public Defender's Office

This initiative measure would prohibit law enforcement agencies from allocating “any resources for the investigation and prosecution of prostitutes for prostitution.” My interpretation of this language is that the ordinance would prohibit the allocation of resources for the investigation and prosecution of prostitution-related crimes such as loitering or committing a public nuisance. Because the ordinance essentially directs law enforcement not to enforce prostitution-related offenses, including loitering and nuisance, I believe that its passage would result in a decrease in the Public Defender's Office misdemeanor caseload.

During fiscal year 2007-2008, our misdemeanor unit handled a total of 340 prostitution-related cases on behalf of 242 clients. 35 of the 242 clients represented by our misdemeanor unit were facing prostitution-related charges in more than one case. Only 9 prostitution-related cases went to trial; not one defendant was convicted. A total of 1,819 attorney hours were devoted to defending prostitution-related cases, at a cost of \$89,449.

This measure would also require the San Francisco Police Department and the District Attorney's Office to “practice consistent and rigorous enforcement of coercion, extortion, battery, rape and other violent crimes, regardless of the victim's status as a sex worker.” Assuming that crimes against sex workers are currently not being investigated and prosecuted to the extent that they should be, if this measure passes, we may experience an increase in the number of these cases being filed in court.

Finally, this measure would prohibit local law enforcement agencies from applying for or receiving “federal and state monies that institute racial profiling as a means of targeting alleged trafficked victims.” I am unaware of any specific grants that are conditioned on the use of racial profiling as a means of curbing sex trafficking. Even so, we see no reason why prohibiting the receipt of such funding would limit or interfere with the investigation into and prosecution of human trafficking.

The California Trafficking Victims Protection Act, which took effect January 1, 2006, makes human trafficking for prostitution or forced labor a felony in California. Since the passage of the California Trafficking Victims Protection Act, I am not aware of any prosecutions for human trafficking under this section. This initiative would not prohibit local law enforcement from enforcing federal law to combat the exploitation of persons who are kidnapped, transported, abused and held captive by sex traffickers.

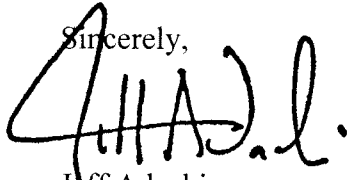
Furthermore, according to the 2004 U.S. Department of Justice report, *Assessment of U.S. Government Activities to Combat Trafficking*, “[t]he largest number of people trafficked into the United States come from East Asia and the Pacific (5,000 to 7,000). The next highest numbers come from Latin America and from Europe and Eurasia, at between 3,500 and 5,500 victims from each.”¹ Victims of human trafficking do not belong to any particular racial, cultural, or ethnic demographic, therefore it would seem that money spent on racial profiling would be money ill spent anyway.

Conclusion

If passed, this measure would slightly decrease the Public Defender’s Office misdemeanor caseload and result in the savings noted above. However, any savings could be offset any new felony related offenses charged if crimes against sex workers are prosecuted more rigorously. Furthermore, I do not believe that de-prioritizing the enforcement of these crimes would jeopardize the investigation into and prosecution of human trafficking crimes.

Thank you for the opportunity to submit comment on this initiative measure. Please call me with any questions at 415-553-9520.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Adachi". The signature is stylized and cursive.

Jeff Adachi
Public Defender

cc: Evan Kirk (email only)
Barbara Carr (email only)

¹ U.S. Department of Justice, *Assessment of U.S. Government Activities to Combat Trafficking*, 2004; available at http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf