

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 123-FN, granting immunity from prosecution for prostitution for reporting a sexual assault.

Hearing Date: April 20, 2021

Time Opened: 1:05 p.m.

Time Closed: 1:24 p.m.

Members of the Committee Present: Senators Carson, Gannon, French and Whitley

Members of the Committee Absent : Senator Kahn

Bill Analysis: This bill provides immunity from prosecution for prostitution for a person reporting to law enforcement that such person or another person is the victim of a sexual assault.

Sponsors:

Rep. Klein-Knight

Rep. Cushing

Rep. Welch

Rep. Bouchard

Rep. Roy

Who supports the bill: 102 people signed up in support of the bill. Full sign in sheet available upon request.

Who opposes the bill: 2 people signed up in opposition to the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Klein Knight

- Gave the bill's legislative history.
- Women are trafficked and held hostage by abusers that tell them they can't get out of the situation because they are doing something illegal.
- There was testimony from sex workers last year on this bill and some of their stories were very hard to hear.
- This bill only applies where someone has come forward to make a claim that they were assaulted.
- A person cannot get in trouble and then after the fact claim they were sexually assaulted.
- SB122 is moving to the House from the Senate and has the same language as this.

Pamela Keilig (Coalition Against Domestic and Sexual Violence) (provided written testimony)

- The fear of being arrested should never prohibit a victim for reporting that they have been sexually assaulted.
- The unique responses caused by sexual violence can make it challenging to come forward and sex workers are particularly vulnerable.
- Sexual assault is one of the most underreported crimes and this bill will help eliminate the barriers victims might face when deciding to come forward.
- This will align NH with federal policy and ensure compliance with the Violence Against Women Act (VAWA).
- In 2005 VAWA was reauthorized with landmark changes, specifically affecting the response of law enforcement agencies and health care facilities to victims of sexual assault.
- These changes specify that victims are not required to participate in the criminal justice system or cooperate with law enforcement to receive a forensic medical exam, be reimbursed for the exam, or both.
- This bill will ensure NH remains eligible for the funding from VAWA.
- No rape victim who comes forward should be arrested as a consequence.
- Senator Whitley asked for more information about the VAWA funding.
 - Will provide the Committee with more exact details. The state receives money through the Department of Justice and that is allocated to legal services, crisis centers, law enforcement, and medical providers.
- Senator Gannon asked about the concern of false accusations.
 - Understands that under this bill it is in the course of reporting the sexual assault that someone is granted immunity. Does not think the false accusation aspect applies.

Honorable Joe Hannon

- Current law allows for victims of violent crimes to be victimized again.
- It is dangerous for our communities to allow sexually abusive individuals to go unchecked.
- Has witnessed and provide medical treatment to several victims who refused to file charges due to fear of prosecution for drugs or prostitution.
- His wife is an emergency room physician who had the same experience.
- In light of the fact that people often do not come forward for any kind of rape and we have a population that is much more likely to be raped in the course of their work, it becomes very important to give this consideration to sex workers.
- 45-75% of sex workers experience sexual violence globally.
- A 2004 report to the United Nations stated that police violence against sex workers is a pattern that includes sexual assault, harassment, public searches, and rape.
- Because of the stigmatizing notion that sex workers cannot be victims of sexual assault, sex workers are usually left out of the national conversation.
- Sex workers have 32-55% chance of experiencing sexual violence in a given year.

- Implying sex workers are a special class of people that need to lie is discriminatory and reveals a certain level of bias.

Crystal DeBoise

- People generally come forward in these cases when they are assisted by a social worker or community leader.
- Has never seen a sex worker, in the midst of being arrested, trying to formulate a defense based on victimhood.
- Coming forward is a thoughtful and important thing that is a service to society.
- Strongly supports making this broader to cover other crimes like robbery, physical assault, and human trafficking.
- Criminals pose as clients of sex workers because they know it is a shadow area, they can take advantage of.

Summary of testimony presented in opposition:

Katherine Cooper (Association of Criminal Defense Lawyers)

- This bill invites false accusations of sexual assault to avoid prosecution for prostitution.
- House testimony spoke to how evidence gathered during a medical exam would not be used to support a prosecution for prostitution. Has no problem with that.
- This bill is structured in a way that any time a prostitute is arrested they will be able to avoid conviction by claiming either truly or falsely that they were sexually assaulted.
- Very aware of the dangers prostitutes face but these transactions can also have many different power dynamics and nuances.
- It is not accurate or fair to categorize all prostitutes as victims and all purchasers as evil men.
- If the goal of this is to help prostitutes avoid victimization, then legalization and regulation of prostitution is the proven way to reduce the abuse, the spread of disease, and the trauma.
- Senator French asked if the charges and penalties for hiring a prostitute are the same as for a sexual assault.
 - No, they are separate statutes. There is a variety of types of penalties, and it depends on whether it is a severe assault. If this bill was re-drafted would like to see assault to be included and not just sexual assault.
- Senator French asked if a sex worker says they were assaulted to get out of charges, would the penalties for the buyer increase substantially in opposition to just prostitution.
 - It would likely add a charge of sexual assault against the buyer. This creates an incentive to lie in order to get out of prosecution. We don't want people to lie, but we all know that it happens.