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March 5, 2024

**RE: SUPPORT for H7219**

To the House Judiciary Committee,

We would like to express our strong support of H7219, which would modernize Rhode Island's HIV testing protocols for persons convicted under commercial sexual activity laws.

Decriminalize Sex Work is a national organization pursuing a state-by-state strategy to advance legislation protecting the rights, health, and safety of adult consensual sex workers and victims of human trafficking in the United States. We are a group of experts, activists, and advocates, with decades of combined experience in policy, direct services, lived experience, and community engagement. We believe that this bill would ensure that people convicted of commercial sexual activity have access to HIV testing and are empowered to pursue treatment and receive services, without perpetuating stigma.

H7219 makes small amendments to two existing laws. Currently, R.I.G.L. § 23-6.3-4, "Exceptions to Consent Requirements" authorizes healthcare providers to test any person convicted of a violation of any provision of R.I.G.L. title 11, chapter 34.1, "Commercial Sexual Activity" for HIV without their consent. This bill strikes that section of the law so that persons with commercial sexual activity convictions are no longer listed as one of the groups for which consent to testing is not required. Within the Commercial Sexual Activity chapter, R.I.G.L. § 11-34.1-12, "Human Immunodeficiency Virus (HIV)" requires all persons convicted under that chapter to be tested for HIV with or without their consent; it also outlines testing procedures and policies, and the services that must be made available to people who are tested. H7219 keeps the majority of this statute intact, simply removing the language that makes testing mandatory regardless of consent and instead requiring that persons convicted of commercial sexual activity be given the option to be tested for HIV and provided with the associated services.

Ultimately, H7219 maintains existing access to HIV testing, counseling, and treatment for persons convicted of commercial sexual activity but ensures that testing cannot be done without consent. All persons convicted of commercial sexual activity will still be provided the option to be tested for HIV and access services.

Rhode Island's "Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals"<sup>1</sup> issued a report in 2023 recommending the removal of mandated testing.<sup>2</sup> The Commission's recommendation is in line

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<sup>1</sup> The 12-member Commission was established through the passage of House Resolution 5280 in 2021 and met eight times between November 2021 – August 2023 before issuing its Final Report.

<sup>2</sup> "Based on the testimony and information presented to the Commission, and given the varied nature of the Commission's findings, the Commission proposes the following recommendations... 4. Recommend the General Assembly repeal R.I.G.L. §23-6.3-4(a)(7), which requires any individual convicted of prostitution to have an HIV test performed on them." *Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals* Final Report, Recommendations 4, p. 7.

with the prevailing wisdom regarding HIV testing protocols; the Centers for Disease Control and Prevention<sup>3</sup> and the World Health Organization<sup>4</sup> both recommend that testing for HIV never be mandatory, including within vulnerable populations. The principle of informed consent ensures that individuals have agency in their healthcare decisions; informed consent leads to better healthcare outcomes, with patients who are more comfortable seeking care. Additionally, privacy and confidentiality concerns are heightened when working with vulnerable populations, especially in the course of legal proceedings.<sup>5</sup>

Mandated testing can sometimes create unnecessary financial burdens for the state. According to the CDC, 87% of persons living with HIV know their HIV status.<sup>6</sup> Eliminating mandated testing would ensure that state resources are not used for unnecessary testing of persons who already know their status. Additionally, existing law broadly mandates testing for persons convicted under any commercial sexual activity law<sup>7</sup> – including those that require no sexual contact, and even no intent for sexual contact to occur, meaning someone who knows they could not have been exposed to HIV can still be mandatorily tested. Removing mandated testing would ensure that persons convicted of those crimes have access to testing but are able to opt out.

Under this proposed law, all persons convicted of commercial sexual activity will continue to have access to HIV testing, which maintains the purpose of existing law to connect at-risk individuals with critical services. By passing H7219, Rhode Island would join other states in modernizing HIV testing protocol for persons arrested for commercial sexual activity. Colorado and Nevada repealed their mandatory testing laws entirely in 2016 and 2021 respectively.<sup>8</sup> In fact, Nevada's mandated testing repeal came under recommendation from a legislative task force similar to the aforementioned Commission.<sup>9</sup> Virginia passed a law in 2021 that replaced its testing requirement with optional testing and access to services, as proposed here.<sup>10</sup>

This bill would ensure that at-risk individuals will have access to needed services without unnecessarily burdening the state, while ensuring that Rhode Island law aligns with recommendations made by the prevailing health authorities. Please support modernizing Rhode Island's commercial sexual activity and HIV laws by passing H7219.

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<sup>3</sup> "The following recommendations apply to testing for HIV...HIV screening should be voluntary and free from coercion." U.S. Department of Health and Human Services Centers for Disease Control and Prevention, *Sexually Transmitted Infections Treatment Guidelines*, MMWR Recomm Rep 2021; Vol. 70, No. 4, p. 24. <https://www.cdc.gov/std/treatment-guidelines/STI-Guidelines-2021.pdf>

<sup>4</sup> "HIV testing for diagnosis must always be voluntary and consent for testing must be informed by pre-test information. Coerced or mandatory testing is never appropriate," Geneva: World Health Organization, *Consolidated guidelines on HIV testing services*, 2019, p. 12. <https://www.who.int/publications/i/item/978-92-4-155058-1>

<sup>5</sup> The Center for HIV Law and Policy recommends the removal of the mandatory testing statute in Rhode Island due to the ambiguity around the use of test results in other proceedings. See Rhode Island Excerpt from the Center for HIV Law and Policy Sourcebook on HIV Criminalization in the U.S. <https://www.hivlawandpolicy.org/state-profiles/rhode-island>

<sup>6</sup> CDC. *Estimated HIV incidence and prevalence in the United States 2017–2021*. HIV Surveillance Supplemental Report 2023;28(3). <https://www.cdc.gov/hiv/library/reports/hiv-surveillance/vol-28-no-3/index.html>

<sup>7</sup> See, for example, R.I. Gen. Laws § 11-34.1-4 "Loitering for prostitution" and § 11-34.1-6 "Soliciting from motor vehicles for indecent purposes" which do not involve sexual contact; see also § 11-34.1-7. "Pandering or permitting prostitution", which applies only to third parties to commercial sexual activity.

<sup>8</sup> SB 16-146, 70th Gen. Assemb., 2nd Reg. Sess. (Colo. 2016) <https://leg.colorado.gov/bills/sb16-146>; SB 275 81st Leg., Reg. Sess. (Nev. 2021) <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7864/Overview>

<sup>9</sup> Advisory Task Force on HIV Exposure Modernization Report, p. 12. <https://tinyurl.com/yc366nu2>

<sup>10</sup> SB 1138, 2021 Gen. Assemb., 1st Special Sess. (Va. 2021) <https://lis.virginia.gov/cgi-bin/legpp604.exe?212+sum+SB1138>