

House Committee on Judiciary,

In August of 2022, a business in Brattleboro called “Rainbow Therapeutic Spa” was raided by a joint team of Vermont State Police and Homeland Security.¹ Following this culmination of what was described as a yearlong human trafficking investigation, media stories mentioned the women living and working at the spa only in passing. Lack of attention to the agency and experiences of alleged trafficking victims is routine in these cases, and frustrates the efforts of anti-trafficking organizations like The Ishtar Collective. Despite our attempts to learn what happened to these women during and after this investigation; we at The Ishtar Collective found ourselves wondering how to help protect the rights and dignity of these workers in the absence of public information. That conversation and subsequent research exposed a loophole that not only harms sex workers and trafficked people, but also drug users, women of color, and teenagers.² The Ishtar Collective is proud to testify in favor of House Bill 22, an act relating to sexual exploitation of a person who is being investigated by law enforcement.

In 2018 this committee helped to pass a law closing what is known as the “consent loophole”, an issue brought to national attention after the brutal assault of Anna Chambers,³ a teenager who was handcuffed and raped by two NYPD officers who later claimed the sex was consensual. Since then many states have passed laws explicitly forbidding sexual contact between law enforcement and people who are either detained or in custody. This advancement in the understanding of how consent is affected by power and authority is fantastic progress, but most of these states, including Vermont, have neglected to include one very important phrase in the language of their Police Sexual Violence laws. In every state except Maine,⁴ Colorado,⁵ and Montana,⁶ it is legal for law enforcement officers to have sexual contact with people they are investigating.

The amendment proposed in H.22 adds only a few lines to the law, but

would have an outsized impact on the lives of the people most vulnerable to Police Sexual Violence. In the course of our research for this testimony we have identified more cases of law enforcement officers using the cover of an “investigation” to extort sex than we can reasonably expect this committee to read through. These cases range from undercover officers allowing massage parlor workers to get as far as actually performing manual stimulation on them,⁷ to extorting free sex from escorts by threatening arrest.⁸ The constant in all these stories is that abusers are using law enforcement authority to prey upon women they believe have no recourse.

There are no public allegations that any sworn law enforcement officers received sexual services at Rainbow Therapeutic Spa during the course of their investigation. This does not mean that law enforcement officials in Vermont are immune from the national pattern of investigative sexual abuse. In 2015, a lawsuit brought by a former Rutland police officer exposed an internal investigation from 2012; one that dealt with racism, theft, violence, and sexual misconduct.⁹ The alleged sexual misconduct included the targeted investigation of female drug users with the purpose of demanding sex in exchange for not prosecuting.¹⁰ The officers subject to the investigation both resigned quietly, but it was determined that none of this conduct was actually illegal. The suit brought by the former officer was settled for close to \$1 million, but none of the women who were manipulated ever received vindication that what they experienced was sexual assault.

More recently, in the summer of 2022, Sheriff Peter Newton was arrested for the domestic abuse and rape of his partner—whom he had met and begun having sexual relations with in the course of an investigation into her previous domestic abuser.¹¹ Horrifically, this predation by law enforcement officials on women who have experienced prior sexual or domestic abuse is not unusual.¹²

It is easy for Police Sexual Violence to thrive in the environment of a criminal or civil investigation. Cases under investigation are by necessity a

secret to the public, and possibly to an officer's own colleagues. A woman with young children¹³, an addiction, or who is on parole or engaging in criminalized behavior is teetering on the edge of the crack in the system, and it's a long way down. We know that there are sexual predators among us. Some of them are law enforcement. Making it impossible for those predators to claim that their victims consented makes these women measurably safer.

An officer need not be using a false premise or outright extortion to perpetrate Sexual Violence. Under Vermont's own Chapter 72 definitions, "incapable of consenting" has three meanings; including "the person is incapable of understanding the nature of the conduct at issue".¹⁴ This may not be the context in which that line was meant to be interpreted, but it cuts close to the heart of the issue nonetheless. It is simply not possible to give true informed consent for sexual contact if one is unaware that contact may be used as evidence against them by the law. This committee recently heard testimony on H.40, an act relating to nonconsensual removal of or tampering with a condom. You agreed that removing a condom without a partner's knowledge represents a change in circumstance so severe as to modify the original consent. We hope you will agree that the circumstances described in this testimony merit the same consideration.

No law regarding Police Sexual Violence is comprehensive unless it includes language explicitly forbidding law enforcement from engaging in sexual contact with a person under investigation. The inclusion of this language in state law makes Vermont a safer place for all of us.

The Ishtar Collective

¹Bob Audette, *Virginia woman cited in human trafficking raid*, Bennington Banner, August 11 2022, https://www.benningtonbanner.com/local-news/virginia-woman-cited-in-human-trafficking-raid/article_150e7382-19b1-11ed-b2f9-8b9effdc49f1.html

²Elliot McLaughlin, *Police Officers in the US were charged with more than 400 raped over a 9-year period*, CNN, October 19 2018, <https://www.cnn.com/2018/10/19/us/police-sexual-assaults-maryland-scope/index.html>

³Albert Samaha, *An 18-year-old said she was raped while in police custody. The officers say she consented*, BuzzFeed News, February 7 2018, <https://www.buzzfeednews.com/article/albertsamaha/this-teenager-accused-two-on-duty-cops-of-rape-she-had-no?bfsource=relatedmanual>

⁴State of Maine, *An Act to Prohibit Certain Sexual Acts and Sexual Contact by Law Enforcement Officers in Performance of Official Duties and to Amend the Law on Obstructing Criminal Prosecution*, Law, June 20 2019, https://legislature.maine.gov/legis/bills/bills_129th/chapters/PUBLIC438.asp

⁵State of Colorado, *An Act Concerning Sex Offenses Committed by a Peace Officer*, Law, may 28 2019, https://leg.colorado.gov/sites/default/files/2019a_1250_signed.pdf

⁶State of Montana, *An Act Revising Consent Law; [...] Providing that a Person Who is a Witness in a Criminal Matter is Incapable of Consenting to Sexual Contact with the Officer or investigator in the Criminal Case; [...]*, Law, 2019, https://leg.mt.gov/bills/mca/title_0450/chapter_0050/part_0050/section_0010/0450-0050-0050-0010.html

⁷Dylan Segelbaum and Sam Ruland, *Police can have sex with people they're investigating. A bill would make it a crime in PA*, Times Online, August 12 2020, <https://www.timesonline.com/story/news/crime/2020/08/12/police-can-have-sex-with-people-theyre-investigating-bill-would-make-it-crime-in-pa/42205043/>

⁸Siri Kale, *Police are allegedly sleeping with sex workers before arresting them*, Vice, May 3 2017, <https://www.vice.com/en/article/59mbkx/police-are-allegedly-sleeping-with-sex-workers-before-arresting-them>

⁹Mark Davis, *Ugly accusation of Rutland police misconduct surface in lawsuit*, Seven Days, September 9 2015, <https://www.sevendaysvt.com/vermont/ugly-accusations-of-rutland-police-misconduct-surface-in-lawsuit/Content?oid=2868888>

¹⁰Farah Stockman, *Sex, drugs, and racist policing in Rutland, VT*, The Boston Globe, August 26 2015, <https://www.bostonglobe.com/opinion/2015/08/26/institutionalized-racism-bernie-sanders-backyard/xaw14yZbg0KnBPZDK73cSP/story.html>

¹¹John Flowers, *Sheriff declines to step down after his arrest*, Addison Independent, June 30 2022, <https://www.addisonindependent.com/2022/06/30/sheriff-declines-to-step-down-after-his-arrest/>

¹²TCR Staff, *Predators behind the badge: confronting Police Sexual Misconduct*, The Crime Report, March 12 2020, <https://thecrimereport.org/2020/03/12/predators-behind-the-badge-confronting-hidden-police-sexual-misconduct/>

¹³Elizabeth Tang, *Sexual assault by police is a systemic problem that demands a systemic remedy*, National Women's Law Center, October 15 2021, <https://nwlc.org/sexual-assault-by-police-is-a-systemic-problem-that-demands-a-systemic-remedy/>

¹⁴State of Vermont, *Title 13; Chapter 72; Subchapter 1; § 3251*, State Statutes, 2018, <https://legislature.vermont.gov/statutes/section/13/072/03251>