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June 15, 2006

Assemblyman Jeffrey Dinowitz
Room 627 LOB
Albany New York 12248

Re: A1898B

Dear Assemblyman Dinowitz:

I write as President of the District Attorneys Association of the State of New York to convey the Association's views on the above-mentioned legislation. Let me begin by stating that the Association supports the concept of enacting legislation addressing the problem of human trafficking. While we believe that existing penal law statutes already provide felony charges that cover many of the most egregious aspects of sex trafficking - for example, rape, kidnapping, unlawful imprisonment, compelled prostitution, assault, coercion, and enterprise corruption, among others, we agree that there is substantial value in having clearly defined offenses that explicitly cover the trafficking of persons for forced sexual activity or labor servitude. Such legislation will increase awareness among law enforcement of the nature and extent of human trafficking and send a strong message to victims that New York finds such conduct intolerable and will aggressively prosecute traffickers. We also understand that victims of trafficking are in urgent need of support services and applaud your efforts to make such resources and services available.

The Association has carefully studied the B version of your proposed legislation and would like to offer some suggestions for making the bill clearer and stronger. Some of the current language appears to cover types of innocent or unrelated conduct which we believe it was not your intent to include within the scope of the bill and other provisions may result in the imposition of severe sanctions on individuals for unknowing or inadvertent conduct. In addition, some of the changes made to certain sections from the A version to the B version are not carried out uniformly throughout the bill. This letter briefly outlines some of our thoughts. We are happy to discuss the legislation in more detail with you or your staff.

Other provisions of the bill raise difficulties as well. The bill bars someone charged under its trafficking for sexual servitude provisions from raising as a defense any of the following: 1) the fact that the purported victim consented to the sexual activity 2) the fact that the parties were married to each other and 3) in the case of a minor under 17, that the actor had cause to believe that the victim was at least 17 years old. In light of the broad definition of commercial sexual activity as outlined above, these defenses may be appropriate in some cases. In any event, some provision should be made to take into account facts and circumstances that may demonstrate that defendant acted innocently and without any criminal intent.

Proposed section 136.25 entitled " Accomplice liability" appears to be unnecessary in light of the existing penal law article 20 which already imposes accessorial liability on those who intentionally aid another in criminal conduct.

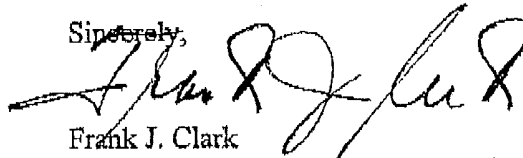
Proposed section 136.20 related to benefitting from trafficking is confusingly worded. It places the word "knowingly" in the wrong place, thus criminalizing those who know they receive money rather than those who know they participate in trafficking conduct.

These examples, while not exhaustive, demonstrate some of the areas where this legislation could be clarified and strengthened. We can provide further detail upon request.

We also suggest that legislation dealing with human trafficking include a public education component to raise awareness in the community and encourage reporting of trafficking activity as well as a training component for law enforcement on both the identification of human trafficking cases and effective investigative and prosecutorial techniques for responding to these cases. Finally, we suggest that witness protection resources be made available so that victims courageous enough to come forward to testify can receive emergency services and safe housing during the pendency of the prosecution.

We hope these comments prove helpful and we stand ready to assist you as you continue to move forward on this legislation.

Sincerely,



Frank J. Clark
President, District Attorneys Association
of the State of New York
Erie County District Attorney

Cc: Hon. Dale Volker, NYS Senate
Hon. Joseph R. Lentol, NYS Assembly