



Testimony by
Shea Rhodes, Esq.
Director of the Villanova Law Institute to Address Commercial Sexual
Exploitation
September 29, 2015
Re: SUPPORT for SB 851 – “Safe Harbor”

Dear Chairmen and Members of the Committee:

Thank you for this opportunity to speak with you about Senate Bill 851. My name is Shea Rhodes and I am the Director of the Institute to Address Commercial Sexual Exploitation at Villanova University School of Law. The mission of the Institute to Address Commercial Sexual Exploitation is to educate and provide technical assistance to those who respond to commercial sexual exploitation in Pennsylvania, promoting victim-centered, multidisciplinary collaboration. The CSE Institute fulfills this mission by collaborating with community partners, social service providers, policymakers, and legal system representatives to identify and implement effective solutions for the complex crimes of sex trafficking and commercial sexual exploitation. We equip policymakers and the broader community with the knowledge they need to improve the legal system’s response to commercial sexual exploitation in order to support survivors and hold perpetrators accountable. In keeping with Villanova University School of Law’s Catholic and Augustinian mission, we aim to create a community in which every human being is treated with dignity, compassion, and respect. During our first academic year, 2014-15, we provided

training and technical assistance to more than 1000 individuals in fifty governmental and nongovernmental organizations throughout Pennsylvania and nationally. It is the belief of the CSE Institute that Safe Harbor laws are one of the most effective, victim-centered, policy tools that states can utilize to protect minor victims of sex trafficking.

As members of this Committee may be aware, last year, at the request of Senators Greenleaf and Leach, the CSE Institute developed a report that analyzed Safe Harbor laws in the United States. As part of this work, the CSE Institute identified best practices, reviewed outcomes of enacted Safe Harbor legislation, and, based on this research, drafted model legislation for Pennsylvania, to address the fact that our state is in the minority in the US when it comes to providing child victims of sex trafficking and commercial sexual exploitation with the appropriate services, tools, and resources. This model legislation is now Senate Bill 851. With the enactment of Senate Bill 851, Pennsylvania can join the majority of states that provide fundamental protections for vulnerable children.

As I mentioned earlier, Pennsylvania has made strong strides towards ending human trafficking. Act 105, the Commonwealth's one-year-old human trafficking law, finally gave Pennsylvania a clear and distinct definition of "sexual servitude" or sex trafficking¹. Act 105 brings the Commonwealth's criminal statute in line with the Federal criminal statute.² Act 105 clearly recognizes that any child who is induced to engage in commercial sex is a per se victim of sex trafficking. There is no question of consent. Therefore, these children must be treated by law enforcement and prosecutors in a victim-centered manner.

¹ "Sexual Servitude" Any sex act or performance involving a sex act for which anything of value is directly or
(1) A minor.
(2) Any other individual by any of the means set forth in section 3012 (b) (relating to involuntary servitude).
42 Pa.C.S. §3001

Unfortunately, many of these children are still misidentified or revictimized by Pennsylvania's criminal justice system through the pursuit of charges against them for misdemeanors and low-level offenses that were a direct result of their exploitation. Treating these children like criminals not only defies Act 105, but shows a serious failure to comprehensively understand the crime of sex trafficking and commercial sexual exploitation. Senate Bill 851 gets it right in both the spirit and the letter of the law. It will eliminate the gaps in victim protection and provide a framework for a statewide, multi-disciplinary approach to combat the sexual exploitation of minors.

There is a purpose for law enforcement and prosecutorial discretion, which I firmly believe in, but there is no discretion to be exercised with victims of child sexual abuse. There is no question that a child cannot consent to engage in prostitution and that he or she is being victimized by those that traffick him or her and by those that that buy sex from him or her. Pennsylvania and Federal laws already recognize this. Child victims of sex trafficking and sexual exploitation are severely traumatized rape victims. Here, the ONLY discretion to be exercised by law enforcement and prosecutors in the Commonwealth is in carving out immunity for them. Their encounters with the criminal justice system should never be adversarial or punitive.

As a former prosecutor, I know that law enforcement believes arresting and charging these children is the only way to intervene – in order to ensure their safety – in order to ensure they receive treatment – and to ensure that traffickers are successfully prosecuted. Unfortunately, the success of other states in creating victim-centered criminal justice reform clearly shows that this belief is paternalistic and misguided. It has been suggested that arrest, detention, and filing adjudicatory petitions are tools to keep these children safe and ensure successful prosecutions

² “Sex Trafficking of Children or by Force, Fraud, or Coercion” 18 Pa.C.S.A §1591

against traffickers. Yet, there is no other victim of any other crime where the criminal justice system is used to connect victims with services and ensure prosecutions of offenders. I understand the reluctance to relinquish “the twist” or “the hold” over victims that a delinquency petition offers in the criminal justice system. But we cannot afford to keep working with this same approach. To effectively combat sex trafficking, we need to alter our strategy. We need to update our laws. We cannot continue to perpetuate victim trauma. We must convey intelligence of the crime and compassion for the child, and stay focused on who the real criminals are in these situations.

This legislation provides a powerful protection for children who are victimized by those that sexually exploit them. Senate Bill 851 recognizes that these children are the victims of child sexual abuse and are not committing a crime; indeed the crime of prostitution is being committed on them. For instance, in section 3012(b)(12) of Act 105 the Pennsylvania legislature recognized that traffickers use drugs as a means of forcing and coercing their victims into sex trafficking³. Senate Bill 851 takes the legislature’s decision one step further by recognizing that the child victims of sex trafficking use of drugs and drug possession is a common result of being a victim of sexual exploitation. These children should not be punished by the criminal justice system for crimes that are being committed to them.

Forming trust between the victim and law enforcement is essential and this trust begins when law enforcement encounters child victims of sex trafficking. Traffickers deliberately use the criminal justice system as a means of coercion against their victims. In section 3012(b)(4) of Act 105, the Pennsylvania legislature recognized that traffickers abuse or threaten to abuse the legal system against their victims. Victims are regularly told by their traffickers that law

³ Means of subjecting an individual to involuntary servitude. – A person may subject an individual to involuntary servitude through any of the following means:

(12) “facilitating or controlling the individual’s access to a controlled substance”. 42 Pa.C.S. §3012(b)(12).

enforcement will not help them and that, in fact, law enforcement does not want to help. They are told by their traffickers they are criminals; prostitutes, nothing more than garbage. Then, when law enforcement puts handcuffs on these children, charges them with crimes, and the criminal justice system locks them in secure detention centers, that message is reinforced. Senate Bill 851 sends a different message. It shows Pennsylvania understands that these victims did not cause their own exploitation.

Law enforcement and prosecutors already have effective tools to use to ensure victims and witnesses cooperate with their prosecutions – bench warrants and material witness petitions. In addition, victims who are treated with a victim-centered approach can establish rapport with prosecutors and become better witnesses. In essence, victims are a crucial channel through which law enforcement can combat trafficking and target traffickers. A field assessment in Arizona conducted by Shared Hope International and complete with interviews from prosecutors confirms this dynamic. A respected and trusted victim with access to services becomes an empowered witness on the road to recovery. According to the assessment, “The prosecutorial entities interviewed indicated a strong interest in victim-centered prosecutions, acknowledging the benefits of working with victims who have had access to services. Prosecutors [in Arizona] reported that giving victims time to access services and become more stable can extend the trial process substantially, but also benefits the prosecution because victims who received services and established rapport with prosecutors are better witnesses.”⁴

I have witnessed this in the courtroom, both as a prosecutor and as a child advocate. As a prosecutor, I was part of the team that created the problem solving or treatment court, Project

⁴ “Demanding Justice Arizona: A Field Assessment of Demand Deterrence and Enforcement and Justice for Victims” Shared Hope International.

Dawn Court⁵, which is a diversion court designed specifically for adult women with multiple convictions for prostitution. Some of the women in the program have over 50 convictions for prostitution. Clearly, the rehabilitative aspect of the criminal justice system was failing these women, who all are victims of commercial sexual exploitation. Another member of the Project Dawn Court team, public defender Mary DeFusco, sits on the CSE Institute’s Board of Advisors. She has been a public defender for over 30 years and has represented thousands of adult women who have been charged with prostitution offenses. Every client she has spoken with in the Project Dawn Court was a victim of childhood sexual abuse. Imagine where those women would be today if they been recognized as a victims of child sexual abuse– and had the opportunity to engage with a team of social workers and therapists who were victim centered and trauma informed – who were a consistent and kind presence in their life and ensured they always knew and were aware that trauma services were available.

I have personally spoken with more women than I can count, both in the Project Dawn Court, residents of Dawn’s Place⁶ and my own clients that I represent in a private capacity in criminal, adjudicatory and child dependency matters, whose encounters with law enforcement and prosecutors were less than humane. This is highlighted through the experience of one of my dearest friends and professional colleagues, Anne Marie Jones. Anne Marie is a graduate of the Project Dawn Court. She is now employed by Dawn’s Place as a Peer Specialist. In this role, she works with current residents to support them in their path through trauma therapy and healing. Ann Marie was victim of child sexual abuse and trafficked on the streets of Philadelphia for over a decade. Anne Marie has recounted to me many stories of being humiliated by law enforcement – on one occasion she was brutally raped by a “john” – a purchaser of sex - and when she

⁵ At the request of President Judge Marsha H. Neifield, I continue to sit on the Oversight Committee of the Project Dawn Court.

⁶ Dawn’s Place is the Greater Philadelphia region’s only residential treatment program for women who are victims of sex trafficking or commercial sexual exploitation. I sit on the Board of Directors of Dawn’s Place.

attempted to report the crime to the police, she overheard one police officer say to another “what do you want to help her for, she’s just a whore.” How many crimes go unreported to law enforcement due to these negative interactions that victims of commercial sexual exploitation have with police? Victims of sexual exploitation, especially minor victims, need to be able to trust law enforcement and not fear being criminalized, themselves, for what has happened to them. One unreported crime of sexual violence is one too many.

Through my private practice as a child advocate, I have represented child victims of commercial sexual exploitation and assisted with trafficking prosecutions in Philadelphia County. I have provided technical assistance to the Dauphin County District Attorney’s Office – including assisting with the interviews of child trafficking victims. The only way to ensure that these children are safe from their traffickers and will report to law enforcement the horrific crimes of sexual abuse and rape is to treat them with the dignity and respect that all victims deserve.

The Human Rights Project for Girls co-authored the recently released study “The Sexual Abuse to Prison Pipeline: The Girls Story” along with the Georgetown Law Center of Poverty and Equality and the Ms. Foundation for Women. The study reported that “... In a perverse twist of justice, many girls who experience sexual abuse are routed into the juvenile justice system because of their victimization. Indeed, sexual abuse is one of the primary predictors of girls’ entry into the juvenile justice system. A particularly glaring example is when girls who are victims of sex trafficking are arrested on prostitution charges — punished as perpetrators rather than served and supported as victims and survivors.” One of the key policy recommendations this report makes to states is to enact laws that grant “Immunity from arrest and prosecution when the charging offense is directly related to the child’s exploitation and victimization.” That is precisely the intent of Senate Bill 851.

Beyond immunity, this legislation features other critical forms of assistance for child victims of commercial sexual exploitation. It will allow Pennsylvania's child welfare agencies to develop specialized victim services including: housing, education, employment, therapy, mental health services, substance dependency treatment, medical care, clothing, case management services, tattoo removal, or any other needs the victims may have. This is an important feature of the legislation, as our perspective shifts from focusing on the primary institutions of the criminal justice system to identifying safe and secure spaces for victims that do not retraumatize or revictimize a child.

Senate Bill 851 further identifies the need for the Pennsylvania state police to provide training to intake officers and law enforcement, prosecutors, and other staff focusing on (1) methods to identify a sexually exploited child, (2) methods to interview and engage with a sexually exploited child, and (3) relevant information to assist in accessing victim's services.

Additionally, to support system change, Senate Bill 851 also establishes a fund created through fines imposed on convicted traffickers. The fund will be used to enhance victim services and increase public awareness about human trafficking in the form of an anti-demand campaign. Lastly, Senate Bill 851 uniquely creates a form of special relief to restore victim's autonomy and dignity in a provision to provide for brand and tattoo removal. This is monumental for the healing process of victims who want to cover-up or remove a physical reminder of the violence they have endured.

Finally, the federal government has incentivized states to implement Safe Harbor legislation. Section 601 of the Justice for Victims of Trafficking Act - Stopping Exploitation Through Trafficking Act provides financial incentives for states that statutorily "treat a minor who has engaged in, or has attempted to engage in, a commercial sex act as a victim of a severe

form of trafficking in persons” and facilitate victim access to services⁷. In addition, HR 4980 “Preventing Sex Trafficking and Strengthening Families Act” requires foster care and adoption services and other state entities to identify, document, and report children who are or are at risk for becoming victims of sex trafficking. The Pennsylvania Department of Human Services Office of Children and Youth has convened a team of dedicated professionals to ensure that Pennsylvania is compliant with HR 4980. I am part of that team, as are others that are here today to testify. In the terms and tone of these federal laws, Senate Bill 851 is model legislation.

In conclusion, by enacting Senate Bill 851, the Commonwealth of Pennsylvania has the opportunity to be the leading state on how child victims of commercial sexual exploitation are treated. Foremost, **this legislation ensures that we protect**, rather than prosecute, child victims of sexual exploitation. Second, Senate Bill 851 **identifies and creates a framework for child services agencies** to establish appropriate victim services for these minor victims of sex trafficking. Third, Senate Bill 851 **requires police training** to support the effective identification of child victims of sexual exploitation. Finally, this legislation **establishes a fund** to provide services for child victims of sexual exploitation. Pennsylvania has made strong strides towards eradicating human trafficking in our state, but child victims of sex trafficking, need further protections and resources. Safe Harbor will help Pennsylvania send a message that you cannot buy and sell children for sex in Pennsylvania. I encourage this committee to support

⁷ TITLE VI—STOPPING EXPLOITATION THROUGH TRAFFICKING SEC. 601. SAFE HARBOR INCENTIVES. “(2) from an applicant in a State that has in effect a law that—(A) treats a minor who has engaged in, or has attempted to engage in, a commercial sex act as a victim of a severe form of trafficking in persons; (B) discourages or prohibits the charging or prosecution of an individual described in subparagraph (A) for a prostitution or sex trafficking offense, based on the conduct described in subparagraph (A); and (C) encourages the diversion of an individual described in subparagraph (A) to appropriate service providers, including child welfare services, victim treatment programs, child advocacy centers, rape crisis centers, or other social services.”

Senate Bill 851 and protect Pennsylvania's child victims of sexual exploitation.⁸ Thank you for your time and consideration.

⁸ THERE IS NO SUCH THING AS A CHILD PROSTITUTE "They are, by law, victims of sex trafficking. Indeed, under any other set of circumstances, we would call them what they are: victims of rape, statutory rape or the sexual abuse of a minor.....The danger of referring to them as "prostitutes" or "child prostitutes" is that the term leaves open the possibility that consent was involved, or that it is somehow different from other forms of rape or sexual abuse of minors, when in reality that is not the case." Rights4Girls "No Such Thing" Campaign.