



Testimony of

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Hearing To Consider Senate Bill 851

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Chairman Greenleaf and Members of the Judiciary Committee, thank you for the opportunity to weigh in on your state’s consideration of SB 851 and the importance of “safe harbor” legislation. As the Co-founder and Director of Law and Policy of Human Rights Project for Girls (Rights4Girls), a national human rights organization dedicated to eradicating child sex trafficking in this country and improving our collective response towards trafficked youth, this is an issue of grave importance to our work.

As a human rights attorney and advocate, my work consists primarily of educating federal policymakers about domestic child sex trafficking and advising them throughout the legislative process on issues affecting vulnerable young women and girls in the U.S. In fact, I worked very closely on a new federal law¹ that provides incentives to states to adopt “safe harbor” legislation and promotes alternatives to detention for trafficked youth. Moreover, as a judicial educator for the National Council of Juvenile and Family Court Judges (NCJFCJ), I train judges all across the country on how to improve both the delinquency and dependency systems’ response towards trafficked youth. As part of these trainings, we stress the importance of recommending treatment and referrals to community-based programs and services in lieu of detention for this victim population. Through my work at the national level, I can tell you that the field is recognizing the detrimental effects of criminalization on this population and moving away from that approach in favor of treatment and alternatives to arrest and detention.

Position on SB 851

Having worked closely on a bipartisan federal law that has several key components echoed in SB 851, I would like to voice our enthusiastic support for this important bill. First, we were pleased to see the creation of the victims’ fund financed by fines against perpetrators. This provision follows the model we created under the newly passed Justice for Victims of Trafficking Act, which was signed into law by the President in May.² In a time where state and federal resources for victims’ services are scarce, we strongly support the concept of forcing perpetrators to offset the negative consequences of their behavior by paying into a victims’ fund.

With respect to the “safe harbor” provisions of the bill, we believe that arresting and prosecuting child victims of trafficking is a harmful approach. While we recognize that in some cases, arrest and/or detention may have a “stabilizing” effect or be the first opportunity for intervention for some child victims, we cannot ignore the deeply traumatizing and stigmatizing effects that these practices have either. If we truly believe that these children are in fact victims of crime, then it makes no sense to allow them to be treated as perpetrators and arrested and prosecuted for a crime.

¹ Justice for Victims of Trafficking Act, P.L. 114-22.

² Ibid.



I ask you to consider, in what other situation would we promote the arrest and prosecution of victims of child abuse in order to assist them or help them heal?

There is ample research that shows that victims of child sex trafficking are some of our most wounded and vulnerable children. Data from a number of states shows that many, if not most trafficked children come from our child welfare system.³ Moreover, a tragically common narrative among these children is that they have suffered past physical and often sexual abuse before even falling victim to sex trafficking. In fact, one American survivor of child sex trafficking told me that the foster care system to her, was the perfect training ground for a life of exploitation. She said this was because it was in foster care where she first became familiar with the concept of being tied to money; and it was in foster care where she learned the duality of being cared-for and being raped by her caretaker. These realities etched into her mind from such an early age made the transition into a life of sexual exploitation a seamless one for her.

Once trafficked, children endure repeated violence and rape, not only at the hands of their traffickers, but also from countless buyers who pay to rape and violate them. Compounding that trauma with the added trauma of arrest and prosecution is unconscionable. Arresting any child, particularly when they are a victim, is a violation of their rights, in our opinion. It not only infringes on their human rights but leaves them further traumatized and often, with an arrest or juvenile record that can impede their ability to access future education or job opportunities.

Another fact to consider is that criminalizing these youth only reinforces what traffickers already tell them— that if they run or try to get help, society will see and treat as criminals and throw them into jail.

As advocates, we do not support approaches that further victimize victims—especially children. In our view, these children need healthcare as well as comprehensive trauma-informed, gender-responsive services. Yes, we do recognize the reality that some of these children can be resistant or run from care, but all of the most promising programs throughout the country have open-door policies precisely because they recognize this fact. What many of them note is that once these children have established trust or relationships with providers and staff, they often come back, and for longer and longer periods of time. It also makes perfect sense that these children would find it particularly hard to trust adults due to their extensive histories of being betrayed or abused often by the very people entrusted to care for them. Trafficking victims need to approach treatment and services at their own unique pace. In our experience from working with providers and survivors all across the country, services and interventions will only be

³ Child Welfare and Domestic Child Sex Trafficking Fact Sheet, available at: <http://rights4girls.org/wp-content/uploads/r4g/2015/03/CW-and-DCST.pdf>



effective once children are ready to receive them. Therefore taking a “rescue” type approach especially through prosecution is not an effective way of helping these children heal, because as we have seen over and over with this population, they have to be ready to seek help.

Another useful analogy to make this point more clearly is to compare this dynamic to that of a domestic violence situation involving two adults. The trauma-bonds between the two partners are not unlike the bond between trafficked children and their pimps/exploiters. The argument to arrest child victims for their own protection would be like arguing that battered women should be arrested and charged with a crime, because we are afraid that if we do not prosecute or detain them against their will, they are likely to return to their abusive partners.

It is telling that we recognize the absurdity of this approach in the context of adult women, yet we want to hold traumatized children to an even higher standard of behavior.

Ultimately, it is important to understand that what child trafficking victims experience is serial commercial rape. It is not “prostitution” because most of these children are too young to even consent to sexual activity in the first place. In addition, under federal law, these children are by definition, victims of a severe form of trafficking in persons.⁴ Yet despite these facts, something gets lost when the rape of these children is commodified.

We must ask ourselves why is it that when the act of rape is paid for, it suddenly loses all characteristics of being construed as rape or child sexual abuse? In any other instance, what happens to these children would be contemplated and prosecuted as statutory rape, sexual assault of a minor, child endangerment, etc. But instead, we continue see these children as complicit or consenting to their own repeated abuse and in need of a juvenile justice response.

We must see these children differently. We must understand that there is no such thing as a child prostitute, only victims and survivors of child rape. Child sex trafficking victims must be viewed, must be treated as we treat all other victims of child sexual abuse and afforded the same services, protections, and interventions to help them heal.

Failure to do so not only causes further harm, trauma, and long-term negative consequences to these youth– but it also shields their abusers from accountability. Shifting our lens to see these children as the victims and their buyers and exploiters as the true culprits is what is truly needed to effect real and meaningful change.

⁴ Trafficking Victims Protection Act, P.L. 113-4.



Some promising approaches

Although “safe harbor” laws vary from state to state, most seek to prohibit the prosecution of trafficked minors in favor of a referral to services.

Some “safe harbor” states define all child sex trafficking victims as “dependent” and therefore subject to child welfare supervision. As a result, this allows these children to fall under family or dependency court jurisdiction, so there is still an opportunity for judges to oversee their cases without a delinquency charge going on the child’s record (whether for prostitution or any other nonviolent offense). Other states have changed their child abuse laws to encompass child sex trafficking regardless of whether the parent or caretaker participated in the abuse (a barrier to child welfare intervention in some states).

In order to address safety concerns, some states allow law enforcement to take children into “temporary protective custody” but make clear that this custody does not allow them to be held in any place that houses juvenile or criminal offenders. Instead, these children are taken to a Child Advocacy Center (CAC), emergency shelter, or child welfare assessment center until a determination can be made as to whether that child should become a dependent.

Finally, in Los Angeles, California, where there is no “safe harbor” legislation, advocates have pioneered a new protocol for first responders that would avoid arrest of trafficked children entirely. The county has dramatically reduced the number of arrests for child victims of sex trafficking by implementing their groundbreaking Law Enforcement First Responder Protocol for Commercially Sexually Exploited Youth.⁵ The protocol ensures that law enforcement and other first responders “can identify victims of sexual exploitation and work collaboratively with County agencies and community-based organizations to avoid arrest, keep them safe and provide them with the services they need to escape exploitation. Identifying and engaging youth at this first point of contact will help keep victims of extreme sexual abuse from being criminalized.” County officials have had tremendous success with this protocol.

We highly recommend an examination and adoption of this innovative approach to stop the arrest of child victims of sex trafficking and help them achieve safety and healing. Such an approach would be an excellent compliment to the “safe harbor” law that you are contemplating.

Thank you again for the opportunity to share my thoughts and experiences with you today. We are grateful for your leadership on this issue and to your commitment to assisting the most vulnerable children in our society. Please continue to think of us as a

⁵ Los Angeles County Law Enforcement First Responder Protocol, available at: <https://www.lacounty.gov/law-enforcement-first-responder-protocol-for-csec>



resource while you consider policies and protocols to address child sex trafficking in the Commonwealth.

Respectfully,

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