



WICHITA STATE
UNIVERSITY
CENTER FOR COMBATING
HUMAN TRAFFICKING

Testimony Regarding SB 179
In Support After Concerns and Recommendations are Amended
Presented to the Senate Judiciary Committee
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Dear Chairman and Members of the Committee,

My name is Dr. Karen Countryman-Roswurm and I am the Founder and Executive Director for the Center for Combating Human Trafficking at Wichita State University. In this role, I bring nearly 25 years of personal, professional direct-practice, and academic research-based expertise^{1,2} to the anti-trafficking movement in an effort to more effectively 1) prevent human trafficking; 2) promote holistic health and prosperity among those who have survived trafficking; and 3) build the capacity of multidisciplinary professionals around the country to do the same. My staff and I fulfill this mission of the Center through the provision of: 1) Direct Services through our *Prevention for Prosperity™* program and *Pathway to Prosperity™* survivor support program; as well as 2) Cross-Discipline Education; 3) Training utilizing our research-based *Lotus Anti-Trafficking Model™*; 4) Consultation and Technical Assistance; 5) Research; and 6) Public Policy Development. With the aforementioned in mind, it is with commitment and honor to the anti-trafficking movement, and the belief that those who have survived the abuse and exploitation of trafficking can become whole and prosperous contributing members of our community, that I submit this testimony.

As I begin, I want to be clear that I appreciate the anti-trafficking efforts of our Governor, Sam Brownback and Attorney General, Derek Schmidt^{3, 4}, as well as the many others across our great state, with whom I have had the pleasure to work alongside over the past two decades. Together, we have made great strides in combating perhaps the most severe form of abuse and exploitation among Kansas' most vulnerable.

However, as with any social justice movement, and in addressing real-life issues with unique individuals, we are faced with complexities that demand that we stop to assess and evaluate the dynamic consequences of our actions^{5, 6, 7, 8, 9, 10, 11}. We must ask ourselves, "What are the results of our activities?" We must transparently humble our hearts and minds and assess whether we have inadvertently caused harm. And while the hearts and minds of our Governor and Attorney General may be pure in protecting the young lives of girls and boys sold for labor and sexual purposes, we must consider, "What are the additional motives that breathe into the application and effects of such legislation?"

Chairman and Members of the Committee, I began meeting with Governor Sam Brownback more than 19 years ago advocating for the Runaway and Homeless Youth Act and later, the Trafficking Victims Protection Act (TVPA) of 2000³. In 2009, I began working with Attorney General Derek Schmidt in an effort to support developing anti-trafficking legislation in Kansas^{3, 4}. Throughout the journey of these partnerships, consistent with the trends of the anti-trafficking movement around the country, our primary intentions were to 1) remove criminalizing language regarding, and thus re-traumatizing treatment to, those victimized; 2) shift public perception and paradigms regarding those abused and exploited through trafficking; 3) support effective treatment options to those who have survived human trafficking; and 4) reduce demand for, and commodification of, humans for labor or sexual services^{3, 4, 12, 13, 14, 15}. In short, the intent was to protect our communities vulnerable from being exploited and prosecute those who acted

as perpetrators. Unfortunately, while well-intended, assessing the results of such action appear to conflict with what we had originally intended^{1, 3, 4, 7, 8, 9, 10}. For example:

1. At a time when we see a decrease in criminalization of minor boys across Kansas¹⁶, and while more “victims” appear to be “rescued” from human trafficking, the reality is that more girls are being detained for sexually-related “offenses.” Worse yet, while the intention of removing the terms “prostitution” or “prostitute” from legislation in reference to trafficked minors was to decrease ill-treatment, it actually further harmed those victimized. After all, rather than being held in correction facilities due “prostitution” charges, we now see an increase in minors, who as misunderstood “surviving victims,” are being charged with human trafficking^{8, 9, 10, 11}.
 - a. Since the implementation of our current anti-trafficking legislation in 2012, we have seen a consistent climb in the number of minor females who, clearly under the duress of a trafficker, are being detained on human trafficking, commercial sexual exploitation, or other charges relative to their experience of abuse and exploitation. Specifically, between 2014 and 2016 Sedgwick County Juvenile Detention Facility (JDF) “housed” 59 unique juveniles who were human trafficking survivors (117 duplicated)^{8, 9, 10}. Of these survivors, it is important to note that 100% were minor females. The majority were 16 and 17 years of age. Demonstrating their history vulnerability, not to mention our community’s responsibility to serve and protect them, 41% were already in the custody of our Department of Children and Families.
 - b. In one particular recent case involving a young woman who was trafficked between the ages of 13-17, legal entities have fought to make motions to charge her as adult (e.g. motion for adult prosecution/map hearing) despite the state’s settled plea with her trafficker which included his admittance that he (Tyler Brown) trafficked her^{9, 10}. At one time our state’s, “star human trafficking survivor,” whose story¹⁷ was utilized to garner popularity amongst representatives and raised thousands in the name of “helping fight trafficking,” such young person quickly became the target of human trafficking charges when she chose to no longer participate in investigations^{17, 9, 10}. She quickly went from being viewed as a victim to a perpetrator due to minimal comments made to one other known runaway who now sits in Sedgwick County Jail on her own human trafficking charges (through other communication records, this other young woman, who we also believe to be a victim in the case of Tyler Brown, made comments assisting in the recruitment and training of 5 additional victims). The dynamics of human trafficking, including the power and control her trafficker maintained over her while he was detained (e.g. through calls from jail as well as threatening calls from his family members), was not considered.

If not assessed critically by those of us who have survived and overcome human trafficking, who work with human trafficking survivors daily, and who have spent decades fully committed to understanding the nuances and complexities of human trafficking, this newly proposed and amended legislation could inadvertently take us further down this road of criminalizing victims of human trafficking. In short, I am concerned about the consequences of language in the proposed and amended legislation that could, while inadvertent, cause harm to the very minors that we are all trying to protect.

I do want to recognize that there are some strengths with this newly proposed and amended legislation. Specifically, we appreciate the progress with the new child sex tourism law (e.g. new section 2) as well as the new expungement law for trafficking victims (e.g. new section 1, d).

However, along with these strengths are some significant questions/concerns over language that we believe will have a very harmful and lasting impact to those who have already had to survive abuse and exploitation. To reiterate, these questions/concerns stem from lived experiences, work experiences directly serving victims and survivors of human trafficking, and through significant research and case study. We have categorized our primary questions/concerns into the following 3 categories 1) Protection and Treatment of Victims/Survivors 2) Demand Reduction and Prosecution of Perpetrators 3) Prevention and Intervention through Awareness and Training.

Protection and Treatment of Victims/Survivors

While presented as legislation that further protects and more appropriately responds to the treatment needs of victims and survivors of human trafficking, this newly proposed and amended legislation appears to not only lack understanding of the true dynamics that occur within human trafficking, but also take us nearly a decade backward in the following ways:

1. The language utilized further supports the current concerning trend across our state to prosecute survivors, the “low hanging fruit,” rather than the true perpetrators^{8,9,10}—those who drive the demand for the purchase of humans for labor or sexual purposes and those who traffick such persons.
 - a. It is important for those making decisions about this legislation to understand that those who are victimized through trafficking most frequently present as “imperfect” “survivor-victims” who, acting out of years of trauma “induce” other victims under the control of a trafficker to engage in various labor or sex acts. Consistent with the anti-trafficking literature, as well as pimp/trafficker manuals and historical slave-control tactics, it is typical for a trafficker to utilize a “bottom” to “induce.” He does this for a variety of reasons but particularly in an effort to 1) to eliminate proof and/or not be directly connected to the crime of abuse and exploitation and 2) to keep his victims hating one another and loving him. In this manner, they do not have the collective strength to leave him. Instead, fearful of the wrath he might bring, they maintain control of each other, and often act jealous and competitive of one another in bidding for his “love,” “support,” “affection.” In this manner, he remains an untouchable, omnipotent controller.
2. The law needs to clarify the dynamics of a labor and/or sex trafficking survivor. With this, it is critical that protections be added for those trafficked as minors so that they cannot be held in detention until they are adult only to be motioned for adult prosecution. Additionally, it is critical for the healing and recovery of victims, that they not be added to the sexual abuse list with the Department of Children and Families, particularly prior to a full and appropriate investigation being completed. At this point, any victim who causes upset with law enforcement or social service providers due to an unwillingness to participate in investigation (a typical behavior of sex trafficking survivors whose traffickers maintain control of them while released in the community or even while detained through family and stable pressures), can be added to this list simply through uninvestigated accusations. Such actions not only prevent survivors from being accepted into educational programs, but such “classaction” prevents employment opportunities, housing options, and further drive victims into a life of abuse and exploitation.
3. While expungement/vacatur is now made possible with this newly proposed legislation, it is in conflict with the other linguistic changes that, due to the continued misunderstanding of this crime, have proven to support the criminalization of victims. Proving one is a victim, and not a criminal, will occur at the burden of the victim/survivor of human trafficking who, as a defendant

with less-than-adequate legal support, is fighting against the strong resources of a team of state attorneys.

4. Specifically, in the amendment to the HT/CSEC Law (Section 5; b; 4) replacing the term “obtaining” with “inducing” seems to broaden focus away from those who are buyers or traffickers to those who as victims, are forced, frauded, or coerced to act as “bottoms” within a trafficker’s “stable.” Consistent with federal legislation standards, and in an effort to focus on the prosecution of the true perpetrators rather than those who are victims, we suggest the use of terms “obtain,” “patronize,” “solicit.”
5. With the aforementioned in mind, the law does very little to financially support or make holistic service provision available to those who have survived labor and sex trafficking. Not to mention, connected to the statement that they cannot be an offender and yet more and more victims are being criminalized as traffickers, these services appear inaccessible. Furthermore, currently the one and only staff-secure shelter site is struggling to even stay open due to lack of funding.

Below are several examples of state legislation that, consistent with Shared Hope Internationals, Protected Innocence Challenge, could serve as guides when addressing the aforementioned concerns:

Kentucky:

Under Ky. Rev. Stat. Ann. 529.120, “Notwithstanding 529.020 [Prostitution] or 529.080 [Loitering for prostitution], if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen, then the minor shall not be prosecuted for an offense under KRS 529.020 or 529.080.” Additionally, Ky. Rev. Stat. Ann. 630.125 prevents DMST victims from prosecution for status offenses, stating, “If reasonable cause exists to believe that the child is a victim of human trafficking as defined in Ky. Rev. Stat. Ann. 529.010, the child shall not be charged or adjudicated guilty of a status offense related to the conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.”

Montana:

Mont. Code Ann. 45-5-709 prevents minors from being prosecuted for prostitution or other non-violent offenses related to the child’s victimization. 45-5-709 states, “(1) A person is not criminally liable or subject to proceedings . . . for prostitution, promoting prostitution, or other nonviolent offense if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking. (2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings . . . for prostitution or promoting prostitution if the person was a child at the time of the offense. (3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings . . . is presumed to be a youth in need of care . . .”

North Carolina:

Under N.C. Gen. Stat. 14-204 and 14-205.1, minors are immune from prosecution for prostitution *and* solicitation of prostitution offenses.

North Dakota:



Under N.D. Cent. Code 12.1-41-12(1) minors are immune from prosecution for prostitution offenses and other offenses committed as a “direct result” of the child’s victimization, including: misdemeanor forgery, misdemeanor theft, insufficient funds or credit offenses, manufacturing or possession of controlled or counterfeit substance offenses, drug paraphernalia offenses.

South Carolina (pending legislation, HB 1322, would amend this provision but retains non-criminalization for prostitution and trafficking offenses if committed by a victim of trafficking):

Prevents minors from being prosecuted for a prostitution offense or an offense under the human trafficking statute if the offense was a committed as a “direct result of, or incidental or related to” trafficking.

Demand Reduction and Prosecution of Perpetrators

This newly proposed and amended legislation does not adequately address demand through an emphasis on prosecution of sex buyers and traffickers. Specifically, in regards to the amendments of the trafficking law and the CSEC law, the changes in language actually do more to protect the buyers and traffickers. Additionally, such linguistic changes appear to support the increasing prosecutory trend of surviving victims:

1. In New Section 1; HT Law Section 5 (1 and 2) the terms “knowingly” and “intentionally” do more to protect perpetrators than hold them accountable. Consistent with the *mens rea* standard in federal legislation, TVPRA 2008, we suggest the use of reckless disregard including the standards of *deliberate ignorance* and *willful blindness*¹⁸.
2. Furthermore, in regards to the HT Law, our concern is that by replacing “obtains” with “induces,” we are broadening the focus away from buyers in a manner that will be used to further prosecute trafficking victims. If the intention is to reduce the demand of buyers, this could be more directly accomplished using the language that was used to clarify the federal law (e.g. terms “patronizes and solicits” were added by the Justice for Victims of Trafficking Act in 2015 or the term “purchases” is often used by other states to expressly reach buyers).
3. It is important to note here that primary prevention of human trafficking truly occurs at the level of demand reduction. With this, those who drive the demand for the commodification of humans for labor or sex, the buyers, are the ones who actually have the most to lose and yet far too frequently, our laws and policies do little to threaten their security. Surely, we can see that for those who purchase humans, a low fee and/or a misdemeanor charge with a potential for diversion is not an effective deterrent for buyers of sex. Strangely, missing out on the opportunity to truly address this form of abuse and exploitation at the root, we address only our community’s most vulnerable and marginalized, who serving as “low hanging fruit,” are further traumatized, re-exploited, criminalized, and driven deeper into a continued life of violence.
4. With regard to the CSEC law amendments, we have a few concerns about the impact of the amendment, including the fact that it appears to require that payment for sex with a minor be rendered directly to the minor in order for the law to be violated. Money is often not provided directly to the minor but rather, a facilitator. If the minor is provided money, they are required to hand it back over to the pimp. Additionally, consistent with federal law, survival sex (exchange of sexual relations for food, clothes, shelter, or other basic needs) is also deemed sex trafficking and in this case, there may not be an exchange of money at all.
5. It appears that it may be useful to clearly distinguish between a victim (including the unique dynamics of a trafficker’s stable) as well as a facilitator, seller, and buyer.

Prevention and Intervention through Awareness and Training

Finally, while recognizing the extraordinary efforts of our Attorney General and his Victim Services Coordinator in educating and supporting anti-trafficking efforts across Kansas (e.g. due to continued awareness victim assistance grantees are identifying more human trafficking survivors in their programs), we are concerned about the intentions and direct-practice implications of who, how, what, and why anti-trafficking awareness education is provided.

1. Much awareness and education that has occurred across the state and in fact, across the country has resulted in inadvertent harm due to unintentional and/or poorly informed providers. The consequences have resulted in an increase of identification but have left us asking, “What happens after the rescue? Victims need holistic treatment services, not prosecution.”^{8, 13, 14, 15}
2. We are familiar with the Attorney General’s relationship with Truckers Against Traffickers¹⁹. And while we support the work of this organization, it is important to clarify the context of this relationship and how the education noted in the legislation will be provided. Additionally, it is critical to understand that while truck stops and truckers are at times involved in sex trafficking, this is not true with many of our cases. Some questions to explore include:
 - a. How will this education be funded?
 - b. Who will be providing this education?
 - c. How are these educators familiar with the realities of human trafficking?
 - d. What are their personal thoughts, beliefs and paradigms regarding those who have survived human trafficking?
 - e. Is the education curriculum/program research or evidence-based?
 - f. How has such program proven effective? After all, we have already written in legislation the application of identification and intervention assessment tools that, due to lack of funding, resulted in no more than well-intended but ineffective practices (e.g. an assessment tool must be designed through research and evidence and is not just a series of random, unexplored questions)^{8, 9, 10, 15, 20}.
 - g. Why are truckers the only profession being targeted for trafficking training?
 - h. If funded through the forfeiture of assets or the state victim assistance funds, why don't we use the money to train other multidisciplinary professionals (e.g. police officers, educators, prosecutors and public defenders who are going to be dealing with traffickers and victims directly, etc.)?
3. Additionally, it is important to note that there are a handful of programs across our state who have done anti-trafficking work for decades and desperately need support. It seems appropriate that resources for such programs be supported and expanded through a request for proposal process.

I wish that I could remain blinded by the idealistic belief that I once had—the belief that, “Surely, our local and state representatives along with our multidisciplinary professionals want to protect and serve those who have been victimized and survived the horrors of human trafficking.” But as stated by several great leaders throughout history, “Laws alone won’t be enough, hearts must change.” After all, it is one’s heart that informs the brains linguistic translation. And as it stands today, the judges role of “upholding the law,” often equates to decisions made based upon the manipulated “evidence” presented by representatives and law enforcement entities who publicly joke about their derogatory beliefs that those trafficked are “hoes” and “whores” and who even worse, have threatened and physically assaulted the victims and survivors of human trafficking. At times, addressing these contextual truths seems insurmountable, but with a joined commitment to transparent conversation and accountability when applying the law, I am hopeful that we can create a state that says, “You may not be the “perfect victim,”

but you are a victim none-the-less. And while we have historically thrown away our most vulnerable girls and boys, we will do so no more. We will protect you. We will strip down the institutionalized systems that have demonstrated control and hate toward you. And we will support the structures and opportunities that empower you to becoming the person you were created to be.”

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