

APPENDIX A



THE PENNSYLVANIA INTERBRANCH COMMISSION FOR GENDER, RACIAL, AND ETHNIC FAIRNESS

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TESTIMONY IN SUPPORT OF SB 851

Submitted by:
**Lisette M. McCormick, Executive Director, The Pennsylvania
Interbranch Commission for Gender, Racial and Ethnic Fairness**

THE SENATE JUDICIARY COMMITTEE SEPTEMBER 29, 2015

Good afternoon. My name is Lisette McCormick and I am the Executive Director of the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness ("Commission"). On behalf of the Commission and its Domestic Violence and Sexual Assault Victims Committee¹, I want to thank you for your invitation to speak before the Senate Judiciary Committee today and to register our strong support for the passage of Senate Bill 851.

In sum, we believe that children who are victims of sex trafficking need laws to ensure that they are not penalized for crimes committed against them or for crimes they are coerced by their traffickers into committing. Senate Bill 851 accomplishes this by

¹ The members of our Domestic Violence and Sexual Assault Victims Committee include Lucille Marsh, Esq., Chair; Roberta D. Liebenberg, Esq.; Ellen Kramer, Esq., PCADV; Joyce Lukima, PCAR; Bernadette Eyler Smith; Honorable Deborah Curcillo; Judy Hale Reed, Esq.; and Steven V. Turner, Esq.

immunizing them from criminal prosecution for those offenses, and diverting them from the criminal justice system to more appropriate human service providers, who offer safe long-term housing, education, life-skills training, and counseling. Not only is this the right thing to do for these vulnerable and exploited children, it is also the best way to help law enforcement target the pimps and traffickers.

By way of background, the Commission was established in 2005 as a means of implementing the recommendations from the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System² (“Supreme Court Committee”). After three years of study, the Supreme Court Committee produced the Racial and Gender Bias Report (“Racial and Gender Bias Report”) in 2003. The report consists of 550-pages, covering fourteen individual topics, and concludes with 173 recommendations for addressing the deficiencies discovered in the system.

Two of the key areas of concern studied by the Supreme Court Committee were the experiences of domestic violence and sexual assault victims within the justice system, as set forth in Chapters 10 and 11 of the Racial and Gender Bias Report. The Committee’s research revealed that in Pennsylvania, as in other states, there is a systemic failure to understand the nature of domestic violence and sexual assault; to recognize its brutal and long-lasting effect upon victims; to resist the temptation to blame the victim; and to understand and appreciate ethnic and cultural contexts of both offenses. The Committee concluded that better training of all persons involved with domestic and sexual assault cases is necessary to ensure that these cases are handled more effectively and that victims are treated with sensitivity. In particular, it was recommended that training about domestic and sexual violence should be provided to judges, court staff, prosecutors, defense attorneys and police.

While human trafficking was not one of the specific topics investigated by the Committee, our Commission began researching and working to address it several years ago, as it shares many commonalities with both domestic violence and sexual assault offenses.

As you may know, human traffickers use force, fraud or coercion to enslave their victims through labor or commercial sex. They prey on vulnerable populations, such as runaway and at-risk youth, substance abusers, undocumented migrants, and marginalized groups. Traffickers frequent various places in order to recruit child and adult victims including homeless shelters, schools, train and bus stations, parks, playgrounds, courtrooms, bars and restaurants. They may assume the role of recruiters, transporters, and/or guardians. In the end, their motive is to reap billions in illicit profits.

² Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System (“Racial and Gender Bias Report”), at www.pa-interbranchcommission.com.

In Pennsylvania, the victims of sex and labor trafficking are adults and children of both sexes. Pennsylvania is particularly vulnerable to human trafficking because it is a “pass-through” state, as well as a destination for human trafficking. As a pass-through state, our highways are used by traffickers to move victims between trafficking hotspots in Ohio, New Jersey and New York, and to connect with the I-95 corridor along the eastern seaboard from New York to Maryland, Washington, D.C., Georgia and Florida. Truck stops are known as common locations for sex trafficking. In addition, Pennsylvania is regularly ranked in the top 15 states from which the National Human Trafficking Resource Center Hotline receives calls. The hotline has received 2,359 calls from Pennsylvania since 2007, including 248 calls this year and 56 human trafficking cases reported this year. The Center emphasizes that for every call received, there are many more instances of human trafficking occurring.

In light of these facts and our mission to address various forms of sexual violence perpetrated against young victims, our Commission made it a top priority several years ago to bring awareness to this growing problem in Pennsylvania. The Commission’s goal is to create a multidisciplinary approach to fairness for victims caught in commercial sexual exploitation in Pennsylvania.

- In October of 2011, our Commission hosted a full-day comprehensive training session for law enforcement, prosecutors, and child protective services workers. The training was conducted by two members of the Dallas Texas Anti-Human Trafficking Unit which has a long track record of identifying victims before arrest, assisting them with services, and enlisting their help in prosecuting the traffickers. Attendees were taught how to identify high-risk victims, interview the victims, and better use existing human trafficking laws against the perpetrators of these heinous crimes.
- Our Commission advocated for the passage of a statute mandating the posting of hotline information and continues to monitor enforcement of the law. The Commission also advocated for the passage of the new anti-human trafficking law that amended the definition of the crime of human trafficking, to make it easier for prosecutors to use in seeking convictions of traffickers; increased the severity of the grading and sentences for the crime; and provided for the care of the victims of human trafficking. The Commission remains involved in monitoring the implementation of the new law, including coordinating training for prosecutors and law enforcement on the details of the new law.
- Our Commission is also collaborating with anti-human trafficking coalitions throughout the state, such as the Southwestern Pennsylvania Anti-Human Trafficking Coalition, and the Pennsylvania Alliance Against Trafficking of Humans (“PAATH”), a new group established under the new trafficking law to

coordinate efforts to address human trafficking in the state and assist human trafficking victims.

- Finally, over the past several years, our Commission has conducted many educational presentations for the legal community (prosecutors, defense attorneys, judges and court staff), church groups and individuals and organizations that may come into contact with victims of trafficking. Other educational efforts engaged in by our Commission include publishing an article on human trafficking for a legal journal, that included among other things, a list of the physical and social indicators of sex trafficking and the locations where traffickers may be frequenting to find victims. We also highlighted human trafficking on the cover of our 2010/2011 annual report, which we presented to the public in Philadelphia in late 2011. More recently, in March of 2013, we proposed, planned and moderated a panel discussion on human trafficking at the 25th Annual Meeting of the National Consortium on Racial and Ethnic Fairness in the Courts in Washington, D.C.

As mentioned earlier, our Commission began its efforts to eradicate human trafficking in Pennsylvania as a part of our work in addressing the treatment of victims of domestic violence and sexual assault in the court system. During the course of our more recent research, we have discovered commonalities between human trafficking and domestic and sexual violence. For example, just as domestic violence does, human trafficking occurs every day - in plain sight and behind closed doors. Perpetrators use a relationship of trust to their advantage in both offenses. Abusers and traffickers can be anyone - neighbors, spouses, intimate partners, friends, acquaintances, community leaders, business owners, faith leaders, pimps, or drug traffickers. Victims of the offenses can be anyone - children, women and men of any nationality, socio-economic status, race, age, and faith. Abusers and traffickers often threaten their victims into a life of silence and compliance. Intimate partner violence and human trafficking sharply curtail or take away a person's freedom. Often, victims have experienced repeated attacks of violence throughout their lifetime and suffer from severe trauma as a result. They are usually in need of intensive mental health and other services in order to return to a normal life again.

Human trafficking and sexual assault share an even greater affinity. Both are traumatic crimes, premised upon the power, control, abuse, and exploitation of another human being. Sexual violence occurs in almost every type of human trafficking situation, including the commercial sex industry and in cases of forced labor. Human trafficking victims often endure multiple sexual assaults on a daily basis. Adult victims are rendered incapable of consenting to the sexual acts they commit by the vicious abuse they suffer at the hands of their traffickers; juvenile victims, by the abuse as well as their age.

Where the offenses of domestic violence and sexual assault differ from human trafficking, however, is the manner in which the victims are treated by the justice

system. Unlike domestic violence or sexual assault, law enforcement's typical response to a situation involving prostitution is to prosecute the victim, not the traffickers or pimps, without consideration of whether the incident could involve human trafficking. This response is particularly egregious in cases in which juveniles are involved. Children are at enormous risk of falling victim to human traffickers. An estimated 100,000 to 300,000 American children are sold for sex each year. The average age of entry into the commercial sex industry in the United States is between 12 and 14 years old. Statistics show most of these children live only five to seven more years and are likely to be forced to have sex with over 2,000 men each year.

In spite of these facts, law enforcement files criminal charges against these children who have been trafficked, but in all likelihood, would not consider treating juvenile victims of sexual assault in this manner. Indeed, these victims of sexual assault are treated with great sensitivity by the police and the courts, as they should be. The trials of their abusers are conducted in closed courtrooms; the juveniles are prepared for the court experience by showing them the courtroom before trial or explaining procedures in detail; they are protected from cross examination, which is softened by defenders to avoid alienating the jury; they are often accompanied by a child advocate and in some cases, a special team of advocates is made available to them; they are accorded additional credibility by judges and a more positive response to delays in reporting an offense; and there is a greater interest in convictions and stiffer penalties when the sexual assault victim is a juvenile. Why do we not provide the same considerations to juveniles who are forced by their traffickers to prostitute themselves? In our view, there is no acceptable answer to that question.

Some argue that while trafficked individuals may be sexually assaulted, they also commit other crimes in the course of their victimization, which leads to the filing of criminal charges against them. In most of these cases, the crime they are charged with is prostitution. How does prostitution differ from sexual assault when juveniles are involved? Due to their age, they cannot legally consent to rape. But even if they could, how do juveniles willingly consent to having sexual relations with as many as 20 men per day under conditions which mirror enslavement? They are beaten, starved, forcibly injected with drugs, threatened, isolated, and otherwise abused by their captors. These juveniles are clearly victims, and they are incapable of freely consenting to the acts with which they are charged, most of which, such as drug possession, loitering, and theft, are inherently related to being prostituted and sexually assaulted.

Others assert that the filing of criminal charges is necessary as a means of removing the child from the trafficker, but the problem with that argument is that criminal charges compound the trauma experienced by juvenile victims, and reduce their ability to recover from their ordeal. Moreover, the charges filed against the juvenile victims of human trafficking result in their detention in unsafe, jail-like facilities and in criminal records that cripple their future prospects.

While juvenile adjudications are not considered convictions and juveniles are not considered criminals, the collateral consequences of being adjudicated delinquent are

significant and can be devastating for a young life. A juvenile adjudication can result in an immediate impact on the ability to obtain employment or acquire licenses for certain professions and to obtain financial aid for higher education. It can also negatively impact a child's school attendance, immigration status, driving privileges, and access to public housing.

The collateral consequences of juvenile detention are equally or more devastating for a child. "Detained youth, who are frequently pre-adjudication and awaiting their court date, or sometimes waiting for their placement in another facility or community-based program, can spend anywhere from a few days to a few months in locked custody. At best, detained youth are physically and emotionally separated from the families and communities who are the most invested in their recovery and success. Often, detained youth are housed in overcrowded, understaffed facilities—an environment that conspires to breed neglect and violence."³ Detention has a profoundly negative impact on young people's mental and physical well-being, their education, and their employment. Juvenile incarceration can lead to depression, suicide and self-harm. Moreover, statistics show that incarcerating youth can reduce a child's future earnings and ability to remain in the workforce. "Educational researchers have found that upwards of 40 percent of incarcerated youth have a learning disability, and they will face significant challenges returning to school after they leave detention. Most importantly....research...suggests that the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety."⁴

A prime example of how these victims may be helped without the need for the filing of criminal charges or detention in criminal facilities, and at the same time, assist in the subsequent prosecution of the traffickers, is the Covenant House in Philadelphia. Covenant House Pennsylvania, which has been serving homeless and runaway youth in Philadelphia for the past 42 years, provides a network of safe places for youth who have been trafficked. Specifically, its outreach team works with domestic victims on the street to assist them with immediate needs and get them the long-term help they need to escape exploitation. In addition to helping the trafficking victims that they find, Covenant House also seeks to prevent it in the first place, by providing runaway and homeless youth with a place to stay that's safe from the pimps and predators of the street. In a study of youth that had been involved in commercial sexual activity, Covenant House in New York found that almost half (48%) said that they found themselves in that position because they did not have a place to stay.

³ http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf

⁴ http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf

In addition to Covenant House, there are other residential facilities in Pennsylvania that provide a safe home and extensive services to victims of commercial sexual exploitation. Some of those programs include Dawn's Place in Philadelphia and Living in Liberty in the Pittsburgh area. Several branch locations of the Salvation Army throughout Pennsylvania also provide housing and social services to these victims.

Finally, the Dallas, Texas Police Department operates the High Risk Victims and Trafficking Unit run by Sergeant Byron Fassett and Detective Catherine De La Paz. The unit focuses on identifying potential victims of sex trafficking through court records and rescuing them before they are arrested by police. They arrange safe housing for the victims, and mental health and other counseling that they desperately need. Over time, they develop trusting relationships with these victims who are then able to provide testimony during the prosecutions of their traffickers. The unit locates over 200 sex trafficking victims per year and it has successfully prosecuted hundreds of sex traffickers in the 20 plus years since the unit was formed. Sergeant Fassett and Detective De La Paz regularly conduct extensive training sessions for law enforcement and prosecutors throughout the country, including the one in Allegheny County sponsored by our Commission in October of 2011.

In closing, we urge you to vote in favor of this important legislation that will help the child victims of human trafficking to recover from their trauma and provide critical evidence needed to prosecute the **real** criminals in these cases.

Thank you for your time and consideration.