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Child Abuse and Child Trafficking: The Need for Safe Harbor

Testimony of
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The Support Center for Child Advocates (*Child Advocates*) is Philadelphia's lawyer pro bono program for abused and neglected children. At *Child Advocates*, we work to change the story for children. For more than 40 years, we have offered the skills and dedication of lawyer-social worker teams, and last year we represented a record-high 1,100 children and youth aged from birth to 21. While our direct service work is Philadelphia-focused, we work with partners across the Commonwealth of Pennsylvania and the nation on the development of effective policy and practice for vulnerable children. We attempt to offer a balanced, candid and constructive assessment of what our children need and how we are all doing for our kids.

We focus today on issues related to the population of children and youth who are or may be trafficked for sex or for work, and in particular the protections and operations of Safe Harbor legislation such as Senate Bill 554. In Project PROTECT (Philadelphia Response & Outreach To End Child Trafficking"), *Child Advocates* engages in direct representation, local resource development, macro-level advocacy and initial preparation of prevention strategies and programs, in preparation for a more expansive multi-year effort to end child trafficking in Philadelphia. We see young people with these issues and experiences through our representation of children in Philadelphia's juvenile human trafficking court, known as WRAP Court ("Working to Restore Adolescent Power").

It has been well documented that, for most survivors of trafficking, the trauma of being trafficked is compounded by other previous experiences with victimization including maltreatment and sexual abuse. Survivors are likely to exhibit high levels of mental health problems related to their traumas, including symptoms of posttraumatic stress

disorder (PTSD).¹ Therefore, it is imperative to understand the impact that trauma has on individual functioning in order to avoid perpetuating victim trauma. The core experiences of trauma are isolation and disempowerment.² Incarceration and the juvenile justice system compound these experiences. Additionally, institutional placement mimics the trafficking experience by removing youth from their communities and from potential supports, and delays the opportunity to begin building healthy, trusting relationships that are paramount to trauma recovery.

Clients have repeatedly shared with us the ways in which their traffickers weaponized fear of law enforcement and prosecution in order to keep them obedient and discourage them from seeking help. One client, sixteen years old when she was sold for sex, told me how her trafficker convinced her that, if she went to the police, she would be the one who ended up with a criminal record. She remembers being told, “You want to go to the police? Fine. They’ll lock you up. You’re just a prostitute. You think they’ll protect you? You’re the one having sex for money.” Our client was lucky because the officers who she came into contact with recognized what was happening to her: instead of arresting her, they helped her escape and focused on prosecuting her trafficker. But survivors shouldn’t have to rely on luck—they deserve to be protected by the law.

Some of the arguments against safe harbor involve the misguided belief that incarceration can keep a young person “safe.” In fact, it is likely to do the opposite. Survivors suffering from traumatic sequelae are likely to further “emotionally deteriorate” in custody because detention centers are not designed for the treatment and services that they need.³ Just as we do not lock up domestic violence survivors in the name of keeping them safe and, we must not treat survivors of sex trafficking differently.

Senate Bill 554 takes important steps towards recognizing and treating survivors of sex trafficking as victims, rather than criminals. But it does not automatically protect victims from prosecution of all crimes related to their victimization. By making that avoidance of delinquency proceedings on some charges conditional on “successful” engagement with treatment and social services⁴, we run the risk of perpetuating the role of the trafficker. Traffickers often control victims through punishment and reward.

¹ Hossain, M., Zimmerman, C., Abas, M., Light, M., & Watts, C. The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women. *American Journal of Public Health*, 100(12), 2442-2449 (2010).

² Herman, J.L. (1992). *Trauma and Recovery: The aftermath of violence—from domestic abuse to political terror*. New York, NY: Basic Books.

³ Sue Burrell, Youth Law Center, The National Child Traumatic Stress Network, “Trauma and the Environment of Care in Juvenile Institutions” (August 2013), available at http://www.njcn.org/uploads/digital-library/NCTSN_trauma-and-environment-of-juvenile-care-institutions_Sue-Burrell_September-2013.pdf, p. 2.

⁴ SB 554 states that “If treatment and social services are unsuccessful while the dependency petition is pending, as evidenced by the child’s behavior, and the county agency believes that juvenile justice services are necessary and warranted, the county agency shall refer the child’s case to the juvenile probation department or district attorney’s office for the commencement of delinquency proceedings.”

Holding the threat of criminal proceedings over a survivor is not likely to motivate compliance and, in fact, may make it more difficult for a survivor to engage in treatment and services. It is well recognized that posttraumatic reactions can result in trauma survivors acting out their distress “in ways that appear disorganized, disobedient, or out of control.”⁵ Survivors need to know that it is OK to mess up, to not be perfect, and to understand that we will not punish them because of their reactions to trauma. Recovery doesn’t happen on a predictable timeline, or even in a linear fashion. But with time, consistency from providers, and non-coercive engagement, recovery is possible from even the worst trauma imaginable.

We also recommend revision of the Juvenile Act definition of dependency as it relates to trafficked youth. Although the diversion of survivors from the juvenile justice system to the child welfare system is an important step in connecting victims with necessary services for recovery, the child welfare system can also contribute to their trauma. Under current state law, minor victims of trafficking must generally be adjudicated dependent under one of the qualifying definitions of dependency (colloquially known as “grounds”) in order to receive services through the child welfare system.⁶ Some of these victims, including our clients, have parents who have tried but have been unable to protect their children from traffickers and the victim’s own behavior – “habitual disobedience”— is viewed as the basis of adjudication.⁷ This behavior is often the result of trauma related to the experience of being trafficked or related to the trauma bond the child has formed with their trafficker. Despite the behaviors being a symptom of their victimization, the child is found “ungovernable” by the court. This use of this finding in cases of trafficking is neither trauma-informed nor appropriate given the circumstances.

An alternative dependency ground that focuses on having been a victim of trafficking, rather than on the behaviors that may follow, should be made available. California recently passed an amendment to its dependency grounds extending this option by including the following language: “The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as

⁵ Patricia K. Kerig & Julian D. Ford, National Child Traumatic Stress Network, Trauma among Girls in the Juvenile Justice System, available at http://www.nctsn.org/sites/default/files/assets/pdfs/trauma_among_girls_in_the_jj_system_2014.pdf, p. 7.

⁶ 42 Pa.C.S. §6302 Definition of dependent child”.

⁷ “The child ... has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision ...”. Id. (emphasis added).

commercially sexually exploited children.”⁸ We encourage Pennsylvania to explore language of its own.

There is an additional gap in legal protections for minors who have been trafficked. Recent federal legislation (Justice for Victims of Trafficking Act of 2015 or “JVTA”) amended the Child Abuse Prevention and Treatment Act in order to ensure that child victims of trafficking would be considered victims of child abuse, neglect, and sexual abuse regardless of whether the perpetrator was a parent, guardian, or custodian. In response to the requirements of JVTA, Pennsylvania passed Act 115 of 2016. Among other changes, Act 115 amended the definition of “perpetrator” to include “[a]n individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000.”⁹ This change reflected the exact language utilized by JVTA and it represents an excellent beginning to holding traffickers accountable for the abuses they perpetrate against some of our most vulnerable citizens.

But this new law has created an inadvertent gap. Pennsylvania’s own human trafficking statute defines a trafficker as a person who “recruits, entices, solicits, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to involuntary servitude.”¹⁰ Under the current state definition of perpetrator, however, only traffickers whose acts involved “recruitment, harboring, maintaining, transportation, provision, or obtaining” for purposes of labor or “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting” for purposes of commercial sex are considered to be perpetrators of child abuse because those are the acts included in section 103 of the Trafficking Victims Protection Act of 2000¹¹. A trafficker who solicited or enticed a child victim into labor trafficking or enticed a child victim into sex trafficking escapes this accountability. In order to remedy this, we recommend that Pennsylvania explore an amendment that would include all acts related to trafficking as defined under both federal and state law.

We strongly support SB 554. By requiring that minors be granted immunity from prosecution of prostitution and obstruction of a highway, SB 554 Safe Harbor recognizes that there is no such thing as a “child prostitute.” When we incarcerate victims, we compound their trauma; we do not keep them safe, we contribute to their victimization. Thirty-four other states have already learned this lesson and passed safe

⁸ CA Welf. & Inst. §300(b)(2).

⁹ 23 Pa.C.S. §6303

¹⁰ 18 Pa.C.S. § 3011(a)(1).

¹¹ 114 Stat. 1466, 22 U.S.C. §7102.

harbor laws that protect child survivors of trafficking.¹² It is time that Pennsylvania does the same.

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¹² United States Department of State, 2017 Trafficking in Persons Report, available at <https://www.state.gov/documents/organization/271339.pdf>