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**Testimony by  
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November 13, 2017  
Re: SUPPORT for SB 554 – “Safe Harbor”**

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Dear Chairmen and Members of the Committee:

Thank you for this opportunity to express my support for Senate Bill 554. My name is Shea Rhodes and I am the Director and Co-Founder of the Institute to Address Commercial Sexual Exploitation (CSE Institute) at Villanova University Charles Widger School of Law. The mission of the CSE Institute is to educate and provide technical assistance to those who respond to commercial sexual exploitation in Pennsylvania, the United States and beyond, promoting victim-centered, trauma-informed multidisciplinary collaboration. 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.

We center the experiences of survivors to inform the development of policies and best practices to combat commercial sexual exploitation and are committed to engaging the survivor community in shaping our positions. We aim to create a community in which every human being is treated with dignity, compassion, and respect inspired by Villanova Law's Catholic and Augustinian mission. The CSE Institute fulfills our mission by collaborating with survivors, 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.

In 2015, the CSE Institute conducted a national analysis of safe harbor laws and pending legislation. In our analysis, we identified best practices and reviewed outcomes from jurisdictions where such laws were implemented. Fundamentally, each safe harbor law protects children from prosecution for offenses they were induced or compelled to commit as a result of their sexual exploitation. The more robust versions of safe harbor include provisions to enhance victim services and facilitate access to those services. Based on our analysis, we drafted model legislation which deliberately included provisions for the development of specialized services, tools, protocols and resources to aggressively combat child sex trafficking in the Commonwealth. The model legislation was adapted into the first draft of Safe Harbor for Sexually Exploited Children, Senate Bill 851 (2015).

Since that time, the CSE Institute has been significantly involved in the collaborative negotiations and the thoughtful amendments to Pennsylvania's safe harbor bill. From this perspective, we are confident that safe harbor remains one of the most effective, victim-centered

policy tools that state governments can utilize to protect child victims of sex trafficking and commercial sexual exploitation.

Therefore, I urge the Pennsylvania legislature to pass SB 554 for the following reasons. The first and most simple reason is this bill, if enacted, will resolve a contradiction that currently exists in our state laws. Second, when compared to national trends, Pennsylvania is already behind in legislative responses to sex trafficking and commercial sexual exploitation. From both political and moral perspectives, the Commonwealth cannot afford to slip further behind. Finally, and most importantly, this bill will ensure that the children in our state are not criminalized for being victims of exploitation.

Senate Bill 554 will close the gaps in our Comprehensive Human Trafficking Statute (“Act 105”) and Child Protective Service Laws (18 Pa.C.S. § 3001, *et. seq.*, 23 Pa.C.S. § 6301, *et. seq.*). Under current federal and state law, a child who is purchased or sold for sex is a victim of human trafficking. Further, the sexual exploitation of children is a codified form of child abuse (23 Pa.C.S. § 6320). When a child is sexually exploited, commercially or otherwise, there is no question of consent. Sexually exploited and trafficked children are the victims of sexual violence and are not committing a crime when someone buys them for sex; indeed they are the victims of the crime of prostitution.

However, currently, the Juvenile Act in Pennsylvania does not exclude children from being charged with the crime of prostitution (42 Pa.C.S. § 6301, *et. seq.*). Anyone under the age of 18 can be arrested and charged with prostitution for being bought or sold for sex despite the fact that elsewhere in our laws, that same child in the same situation is a lawfully recognized victim of child abuse. At best, these inconsistent laws are confusing, embarrassing, and legally

untenable. At worst, they are a detriment to victims and an inference with our statewide efforts to combat human trafficking.

The potential for law enforcement agencies throughout the Commonwealth to take completely divergent responses when a victim is encountered, can lead to widespread misidentification of sexually exploited children. Therefore, it is imperative that sexually exploited and trafficked children always be treated in a victim-centered manner immediately upon identification by law enforcement.

Criminalizing sexually exploited children not only defies existing law, but it shows a serious failure on the part of our government to comprehend the crimes of sex trafficking and sexual exploitation of children. SB 554 will eliminate that failure. This legislation clarifies and streamlines our statewide response, thereby reinforcing the understanding that sexual exploitation of children is **always** child abuse, no matter if it is commercialized. There is no such thing as a child prostitute<sup>1</sup> – period.

For years, criminal immunity for minors has been at the forefront of anti-trafficking policy. Upon passage of SB 554, Pennsylvania will join the twenty-one other states and the District of Columbia that already provide this fundamental protection for vulnerable children. The defining features of SB 554 -full immunity for prostitution, specialized services, an established fund, and advanced law enforcement training- combine to make one of the best examples of safe harbor legislation in the nation. The bill goes beyond blanket protection of child

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<sup>1</sup> “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. <http://www.rightsforgirls.org/>

victims of trafficking, and really empowers our government and other stakeholders to do more for this vulnerable population.

In 2015, The Human Rights Project for Girls (“Rights4Girls”) co-authored the 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 “... [I]n 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 state governments is to enact laws that grant “[i]mmunity from arrest and prosecution when the charging offense is directly related to the child’s exploitation and victimization.” That is precisely the core of what SB 554 proposes to accomplish.

Beyond immunity, this legislation features other critical forms of assistance for trafficked and sexually exploited children that will enhance our existing state laws. Senate Bill 554 will empower 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 other needs the victims may have. To support systemic change, SB 554 mandates the establishment of a fund financed through fines imposed on convicted traffickers and sex buyers. The fund will be used to enhance victim services and increase public awareness about human trafficking in the form of an anti-demand campaign.

Senate Bill 554 also addresses the importance of providing additional training to law enforcement officers. Police, as first responders, are in an advantageous position to identify child victims. Presently, law enforcement officers are mandated reporters of child abuse. Again, sexual exploitation and human trafficking are codified forms of child abuse, so police are already responsible for making that determination. Therefore, when a sexually exploited child is encountered, law enforcement is responsible for reporting that information to the National Crime Information Center database (23 Pa.C.S. § 5703). Senate Bill 554 will support this ongoing practice by mandating training that will teach police methods to identify a sexually exploited child. In addition the training will also focus on improving law enforcement's interactions with child victims by instructing police on how to interview and engage with these children. Police will also be armed with information to facilitate a victim's access to services.

Given the complex criminal nature of sex trafficking, it is not uncommon for a sexually exploited child to be forced or compelled to engage in other illegal activities, such as criminal trespass or possessing a controlled substance. 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 trafficking<sup>2</sup>. Senate Bill 554 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. Likewise, Act 105 included a vacatur provision for adult victims of trafficking to nullify convictions for certain crimes committed as a direct result of their victimization (18 Pa.C.S. § 3019(d)). This indicates that Pennsylvania's lawmakers already appreciate the connection between related crimes and sexual exploitation. In

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<sup>2</sup> 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).

place of immunity, SB 554 proposes a diversion protocol for child victims who commit any of the offenses eligible under the vacatur statute, with the addition of false identification to law enforcement.

As a former prosecutor, I understand why members of law enforcement might believe 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. Indeed, 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. Furthermore, I have witnessed firsthand that a respected and trusted victim, who is not treated in a punitive or adversarial manner, can be an empowered cooperative witness on the road to recovery.

It is important to keep in mind that Senate Bill 554, if passed, would not be the premiere instance where immunity is statutorily granted under certain circumstances. The Pennsylvania legislature has already established this practice with respect to a different scenario that, like sex trafficking, is related to public health and safety. The drug overdose response immunity law mandates the protection from charging and immunity from prosecution for individuals who make a good faith effort to help someone else experiencing a drug overdose event (35 Pa.C.S. § 780-113.7).

I understand the reluctance to relinquish “the twist” or “the hold” over victims that a delinquency petition offers in the juvenile justice system. But we cannot afford to keep working with this same approach. Arrest and prosecution can lead to re-traumatization and manifest distrust of law enforcement, hindering our ability to assist and support child victims. Not to

mention the collateral consequences of a criminal record can negatively impact the child's life years into the future. At a minimum we cannot permit a child to be arrested because another person wanted to buy her for sex.

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 critical understanding of the crime and cultivate compassion for the child, while staying focused on who the real criminals are in these situations. Now is the time to pass Safe Harbor Sexually Exploited Children.

Thank you again for this opportunity to advocate for this comprehensive and robust example of safe harbor legislation. If passed, SB 554 would re-establish the Commonwealth's position as a leading jurisdiction in child protection and the fight against human trafficking. I look forward to that change. Thank you for your time and consideration.