



LETTER OF SUPPORT

BILL NO: Senate Bill 179
TITLE: Amending human trafficking and related crimes; creating certain new crimes; requiring certain training for commercial driver's license applicants; addressing offender registration, expungement of juvenile adjudications (more).
COMMITTEE: Judiciary
HEARING DATE: March 7, 2017

Dear Judiciary Committee:

Shared Hope International is a national non-profit organization dedicated to combating the egregious human rights violations incurred by the prevalent sex trafficking of children within the United States. By pursuing comprehensive, victim-centered approaches to combat domestic minor sex trafficking, we have found that children from all types of home environments and socioeconomic statuses are vulnerable to the manipulative approaches used by traffickers who pose as boyfriends, recruiters for modeling agencies, and the like.

Under the Protected Innocence Challenge, Shared Hope has outlined the minimum legal components essential to protect children from sex trafficking, including ensuring that minors engaged in commercial sex are provided access to justice and that offenders are appropriately identified and held accountable as the drivers of the sex trafficking industry. Shared Hope International supports Senate Bill 179, as modified by the balloon amendment, because it acknowledges that buyers of sex with children play an equal role in creating and sustaining a market that thrives on the commercial sexual exploitation, abuse, and rape of children and promotes consistent identification of child sex trafficking victims. As amended, SB 179 seeks to increase buyer accountability and victim protection in six key and comprehensive ways:

- (1) SB 179 adds specific buyer conduct to the definition of "Aggravated human trafficking," clarifying that buyers of sex with children are trafficking offenders and shall be identified by the courts as such.
- (2) SB 179 seeks to eliminate both a mistake-of-age and consent defense for offenders prosecuted under the human trafficking and aggravated human trafficking offense.
- (3) SB 179 provides an affirmative defense to child sex trafficking victims in a prosecution for human trafficking offenses.
- (4) SB 179 permits minors to receive expungement relief for offenses committed as a result of trafficking and sexual exploitation victimization, except for the felony offenses outlined in K.S.A. 2016 Supp. 38-2312.
- (5) SB 179 permits child sex trafficking victims and victims of sexual exploitation to access crime victims compensation regardless of compliance with the limiting factors delineated in K.S.A 2016 Supp. 74-7305, including engagement in unlawful activity at the time of the event, reporting of the crime to law enforcement within 72 hours, and cooperation with law enforcement agencies.
- (6) SB 179 creates the new offense of "Promoting travel for child exploitation," which will close an important gap in state law and prohibit the sale of travel services for the purposes of committing a human trafficking or sexual exploitation of a minor offense.

Together, these amendments prioritize the protection of child sex trafficking victims and further strengthen the deterrent effect of Kansas' laws in combating the demand for child sex trafficking victims. Adding buyer conduct to the definition of aggravated human trafficking acknowledges that buyers of sex

with children fuel a marketplace for the commercial sexual exploitation of children; without buyers driving the demand, we would not have traffickers providing the supply. Recognizing buyers as trafficking offenders is not only just, it provides appropriate penalties for those who offend and increases deterrence for prospective buyers. With clear applicability to buyers under the trafficking law, persons who choose to pay to engage in the rape of a child can be prosecuted for committing a severity level 1, person felony offense, which carries a minimum prison term varying between 12-21 years depending on the offender's criminal history. Without the amendments made by SB 179, a buyer convicted of purchasing sex with a child under the commercial sexual exploitation of a child offense could face as little as 2.5 years in prison; this fails to reflect the seriousness of the offense in comparison to the penalties proposed under SB 179. Adding buyer conduct to the definition of child sex trafficking and increasing penalties accordingly for these offenders affirms this state's commitment to fully and comprehensively eradicating child sex trafficking.

Further, amending the definition of "Aggravated human trafficking" to include buyer conduct under K.S.A. 2016 Supp. 21-5425(b)(5), as done through the balloon amendment to SB 179, facilitates the state's interest in consistently identifying and protecting child victims of sex trafficking. Acknowledging buyers as trafficking offenders clarifies that any minor engaged in commercial sex is a victim of child sex trafficking, regardless of whether a trafficker has been previously identified and convicted. This clarification is crucial for allowing all minor victims to receive imperative services and protections, including the post-judicial relief delineated in SB 179 that are specific to child sex trafficking victims.

If passed, SB 179 would also eliminate a consent defense for offenders prosecuted under the human trafficking and aggravated human trafficking offenses. Prohibiting offenders from raising a defense that the minor consented to the commercial sex act aligns with the widespread protection we provide to children. We have long held that minors do not have the cognitive capability to make decisions that insulate them from harm; resultantly, minors are unable to enter into contracts, purchase cigarettes, enlist in the military, and most applicable here, consent to sexual relations. Permitting a defense that a minor consented to his or her own rape is immaterial in a prosecution and contrary to the protective ideals we have established in almost all other circumstances related to children. Further, without the elimination of such a defense, the burden is unfairly shifted to the child to prove that he or she did not consent to the commercial sex act, which consequently re-traumatizes the child and shields the offender from full liability.

Additionally, SB 179 seeks to extend protections for minor victims of sex trafficking by providing an affirmative defense under the human trafficking statute for these children. The availability of this defense is important for ensuring that child victims are not punished twice—once by their traffickers and secondly by the justice system. Too often, traffickers coerce minor victims into committing crimes on their behalf; sometimes such crimes amount to trafficking conduct. However, failing to recognize that such criminal conduct is committed out of the child's victimization fails to identify the true perpetrator of the crime. SB 179 seeks to ensure that these children are not twice condemned.

In addition to extending protections for child victims under the trafficking offense, SB 179 removes barriers to accessing crime victim's compensation and avenues for the expungement of juvenile records. Both of these amendments are important for recognizing and extending the opportunities for post-judicial relief. Amending K.S.A. 2016 Supp. 38-2312 to permit minor victims convicted of non-violent offenses to expunge records at the time of or after the final adjudication discharge allows minors to rebuild their lives without the constraints of a criminal record. Oftentimes survivors of child sex trafficking are limited in their educational, employment, and housing choices due to delinquency records obtained during their victimization. Permitting record expungement at the time that an offense is discharged allows minor victims to choose pathways that are healthy, safe, and empowering without fear that their criminal history will close such doors. Furthermore, in acknowledging the unique nature of child sex trafficking, SB 179

seeks to eliminate constraints under the victim's compensation law that are inappropriate for cases of sex trafficking and commercial sexual exploitation. If passed, SB 179 would amend K.S.A. 2016 Supp. 74-7305 to allow child sex trafficking victims to receive full compensation regardless of a minor's: (1) contributing conduct to the crime; (2) engagement in unlawful activity at the time of the crime; (3) failure to report the "criminally injurious conduct" to a law enforcement officer within 72 hours after its occurrence; (4) lack of cooperation with appropriate law enforcement agencies. Such amendments are appropriate for the nature of child sex trafficking and commercial sexual exploitation of children; at its core, the crime of child sex trafficking under state law necessitates the minor's involvement in criminal conduct. Additionally, the presence of trauma and violence, coupled with a child's cognitive limitations, is unfavorable for a child's ability to meet such qualifications as delineated under K.S.A. 2016 Supp. 74-7305.

Lastly, SB 179 creates the new offense of "Promoting travel for child exploitation." This new provision is important for interrupting formal operations that are created for the purpose of facilitating and profiting off of the commercial sexual exploitation of children. Child sex tourism laws that prohibit the selling of travel services will reduce incentives for traffickers and facilitators who seek to expand their "business" prospects.

SB 179 strengthens Kansas' commitment to ensuring offender accountability and victim protection. We commend the Committee's dedication to this issue and encourage you to support SB 179.