



Dave Yost • Auditor of State

House Criminal Justice Committee

Dave Yost, Auditor of State

Senate Bill 4
September 19, 2017

Chairman Manning, Vice-Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee, thank you for allowing me to testify today in support of Senate Bill 4.

Ohio has made some strides in the fight against human trafficking:

- The governor and the attorney general each have panels that are focused on the issue.
- Every Ohio police officer is required to be trained in the dynamics of human trafficking.
- School districts also are required to include such training in safety and violence-prevention programs.

But it's nowhere near enough.

While it is good that we are here, committed to the fight, it also is a tragedy. By that I mean that it's a tragedy that -- 152 years after the end of the Civil War -- we STILL haven't eradicated slavery.

Right now there are people who are trapped in involuntary servitude as exploited laborers or sex workers.

Today's slave-masters do not imprison with chains of iron... no, today's slave-masters use the chains of addiction, chains of fraud and psychological manipulation.

Those chains are harder than iron... for we can cut an iron link, but who can break the invisible chains hidden in the mind?

For decades, our society was blind to the scale of the problem and blind to those trapped in it. Only recently have we realized that those we punish for the crime of prostitution are not criminals, but victims... many of them abused since they were children and raised to believe that they are worthless and deserve nothing better than to be bought and sold by others.

Once the nightmare of trafficking is over, many of these individuals start another battle – putting their lives back together and starting over. They fight drug addiction and mental trauma. And while recovering, as if those challenges weren't hard enough, the journey is made even more difficult when they are foreclosed from employment or housing because of their trafficking past.

SB 4 helps remove these obstacles to rebuilding their lives. The bill provides for the expungement of certain criminal offenses where it can be shown that the offender's participation in those offenses was the result of human trafficking. The bill strikes a balance between the need to prosecute and convict offenders on voluntary criminal acts and the competing aim to allow victims of this heinous practice, whose free-will was compromised, to get a second chance at life.

Prosecutors have a valid concern as to where to draw the line on offenses qualifying for expungement under the proposed law. Existing R.C. § 2953.38 allows for expungement of certain prostitution offenses (solicitation, R.C. § 2907.24; loitering to solicit, R.C. 2907.241; and prostitution, R.C. § 2907.25) where the "person's participation in the offense was the result of the person having been victim of human trafficking." SB 4 expands the list to all convictions except aggravated murder, murder, and rape. Some see this expansion as a bridge too far.

To address this concern, the Senate amended the bill with a balancing test that judges can use for the most serious offenses – first and second degree felonies. In these cases, if the court determines those offenses were the result of trafficking, the court would weigh the interests of the applicant and the state according to the following factors:

1. The degree of duress under which the applicant acted in committing the offense to be expunged, including but not limited to the history of force, or threatened force against the applicant or another; whether the applicant's judgment or control was impaired by the administration any drug, intoxicant, or controlled substance; the threat of withholding food, water or drugs.
2. The seriousness of the offense sought to be expunged;
3. The relative degree of physical harm done to any person in the commission of the offense sought to be expunged;
4. The length of time since the commission of the offense;
5. If the statute of limitations has not run, whether the State represents to the Court that criminal proceedings against the applicant are likely to still be initiated;
6. Whether the applicant is currently subject to supervision as a result of the offense.

Let me briefly address an argument frequently levied against this bill. Opponents claim a defendant can always raise a duress defense in the case of trafficking, and let the trier of fact – the jury – decide whether it is a mitigating factor to the crime. Or, they argue, if duress was

raised and ultimately rejected by the jury in favor of a conviction, why should that conviction be erased through expungement? These arguments ignore the realities of the court and this particular type of crime. First, duress is very limited in Ohio. It requires the threat to be contemporaneous to the commission of the act. When these victims are being peddled and abused, the pimp is down the road or in a car, not holding a gun to their head. Furthermore, most victims of trafficking don't even know they are being trafficked when they are charged and brought to court for solicitation or prostitution. They are in mortal fear of the pimp (who is either in the courtroom or outside), in the midst of trauma and drug abuse, and wouldn't dare try to incriminate for fear of retribution. The witnesses to the duress – the pimp and his victim – will never testify.

Some recent language crafted by Representative Dever, in conjunction with the Ohio Justice and Policy Center, would further narrow the scope of what can be expunged. Though not in this version of SB 4, I support the addition of this language. To those offenses already excepted out of the bill, it would add the following:

- Aggravated Arson, R.C. § 2909.02;
- Criminal Possession of chemical, biological, radiological or nuclear weapon or explosive device, R.C. § 2909.26(B);
- Criminal use of chemical, biological, radiological, or nuclear weapon or explosive device, R.C. § 2909.27;
- Contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance, R.C. § 2927.24 (B);
- Terrorism, R.C. § 2909.24.

Before closing I want to acknowledge the incredible work being done by Judge Paul Herbert here in Franklin County. As many of you are aware, he initiated the CATCH Court to help trafficking victims break the cycle of prostitution, get help for drug addiction, and ultimately claim ownership over their lives. I witnessed the work being done in the CATCH Court firsthand and was humbled by the courage and compassion of the participants.

I would like to thank Senator Kunze, Senator Oelslager and President Obhof for their leadership on this issue, as well as Representative Dever who has worked on this issue in the House. I'd also like to thank Judge Amy O'Grady, Sue Pohler, Belinda Jones, and other advocates who have come together to work on this legislation. Thank you Chairman Manning and members of the committee; I would be happy to answer any questions you may have at this time.