

Proponent Testimony on Ohio H.B. 461

Dr. Jeff Barrows
Founder, Gracehaven

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze, and members of the Criminal Justice Committee, thank you for this opportunity to testify today regarding H.B. 461, a bill that will change Ohio's definition of child sex trafficking.

My name is Dr. Jeff Barrows, and I have been engaged in the fight against human trafficking for 14 years. During that time, I consulted with the United States Trafficking in Persons Office within the State Department regarding the health consequences of human trafficking, engaged in training health care professionals on human trafficking and served on the Health and Human Services' Technical Working Group on Health and Human Trafficking. In 2008, I Founded Gracehaven, the only specialized residential treatment facility for victims of child sex trafficking in Ohio. In addition to the work of residential rehabilitative care, Gracehaven conducts prevention training within schools, training over 6500 students here in central Ohio this past year. We also engage in case management of victims of child sex trafficking serving over 65 boys and girls here in Franklin County last year. We are one of the very few organizations in Ohio that specifically focuses on serving the young people who are the subject of this bill.

Here in Ohio, the Attorney General's office has estimated that a minimum of 1000 youth under the age of 18 are entrapped in child sex trafficking at any one time.¹ Research by Dr. Celia Williamson at the University of Toledo has found that if a minor enters commercial sexual exploitation prior to age 18, the average age of becoming sexually exploited in Ohio is 13.²

In addition to my work with Gracehaven, I've had the opportunity to travel all over the country training health care professionals to recognize and respond to victims of human trafficking. As part of the trainings that I lead, I routinely talk about the Trafficking Victims Protection Act (TVPA), the federal legislation that deals with human trafficking.³ The TVPA clearly defines sex trafficking of a minor under the age of 18 as any form of commercial sexual exploitation without regard to consent, force, fraud or coercion. This is because Congress has adopted the view that a minor under the age of 18 is unable to give consent to any form of commercial sexual exploitation.

In the years following the passage of the TVPA in 2000, all 50 states including Ohio passed legislation criminalizing human trafficking in all its forms. Each of these state laws incorporated a definition of child sex trafficking. A 2017 report by Shared Hope International found that laws in 47 states mirror the TVPA's definition of sex trafficking of a minor, while only 3 states chose to define sex trafficking of a minor differently than the federal government.⁴

Ohio is one of those 3 states.

In addition, Ohio is the only state that created a gray zone for 16 and 17 year olds entrapped in commercial sexual exploitation by making the necessity to prove whether the minor was compelled within that sexual exploitation contingent upon the relationship of the minor to the facilitator. With certain relationships, necessity to prove compulsion is not present, but with other relationships, the necessity to prove compulsion is required in order to obtain a conviction.

The fact that Ohio law regarding sex trafficking of a minor is different than every other state's law as well as the federal government's statute does not necessarily mean that the Ohio statute is wrong. However, it does require a close examination regarding the validity of the reasoning behind this unusual statute as well as its potential consequences. This is also essential because of the horrific nature of child sex trafficking. In other words, is there a proven factual basis for Ohio's statute and does the consequence of differing from other state and federal laws regarding sex trafficking of a minor result in some form of beneficence or maleficence.

The reason that the TVPA does not require proof of force, fraud, or coercion for a minor <18 involved in a commercial sex act is because Congress adopted the view that a minor under the age of 18 was incapable of giving consent to commercial sex. Implicit in Ohio's statutes on sex trafficking of a minor is the view that it is possible for a 16 and 17 year old to give consent for a commercial sex act. As stated, Ohio differs from the federal government and 94% of the other states in that view.

Scientific studies regarding the development of the adolescent brain increasingly conclude that full development of the pre-frontal cortex, the "mature adult" portion of our brain, is not completed until the person reaches the mid-twenties in age. The frontal lobes have been shown to be critical for response inhibition, emotional regulation, and future planning. The more mature and developed the pre-frontal cortex is, the better the person can reason through a decision and make a fully informed judgment. In other words, maturity of the pre-frontal cortex strongly correlates with whether a decision can be termed truly consensual. This means that during adolescence and early adulthood, critical decisions made by the emotional portion of the brain without adequate input from the pre-frontal cortex are probably not fully informed, often resulting in poor decision-making, especially when it comes to high-risk behaviors such as engaging in commercial sex.

This concept is supported by a study showing important psychosocial functions such as perspective and the ability to limit impulsivity in decision-making continues to develop until the age of 19.⁵ Another study by the same authors shows that the ability to resist social coercion especially in emotionally charged situations such as commercial sexual exploitation is still developing in minors.⁶ This common sense recognition is consistent with the position held by the FBI that "children can never consent to prostitution. It is always exploitation."⁷

Jennifer Ann Drobac has written an excellent article in the UC Davis Journal of Juvenile Law and Policy describing the developing ability of a minor to give consent, and is only one example of many articles now appearing within the legal literature.⁸ Therefore, current scientific evidence shows that rather than lowering the age of consent below 18 for high-risk behaviors such as commercial sex, consideration should be given to even increasing the age of consent. Thus it appears to me that not only is Ohio at odds with 94% of other states, the Ohio statute is also at odds with current scientific evidence regarding the ability of an adolescent to truly give informed consent to commercial sex.

Secondly, our Ohio law defining sex trafficking of a minor has the potential of causing harm by allowing 16 and 17 year olds to be criminalized for acts of prostitution. Depending on the degree of understanding of this Ohio law in various jurisdictions across the state, this has the potential of preventing that minor from receiving services for their victimization and instead having them placed in confinement often within juvenile detention. In addition, criminalizing the act of commercial sex for a minor greatly impacts their self-image causing them to view themselves as criminals rather than as victims. It raises the question of why Ohio would criminalize an activity that the federal government and 94% of other states view as a form of severe victimization.

In addition to the potential harm inflicted upon these minors, the fact that Ohio law differs from the federal statute as well as other state statutes has the potential of causing confusion among prosecutors within different jurisdictions. This was described in a recent article within the Journal of Law and Criminal Justice.⁹ The article details several ways in which inconsistency between state and federal laws regarding sex trafficking of minors can cause harm rather than helping sex trafficking victims.

In summary, current scientific evidence indicates that the immaturity of the adolescent brain limits the ability of a minor <18 to give proper consent to high-risk behaviors such as commercial sex. This negates their complicity within the criminal act of commercial sex, thus rendering them a victim rather than a criminal. Secondly, the fact that Ohio's definition of child sex trafficking differs from the federal definition and the majority of other state definitions has the potential to cause significant harm to both the individual victim as well as the ability to properly prosecute the actual criminal.

I therefore urge the Criminal Justice Committee to approve this bill so that Ohio's law regarding sex trafficking of minors will finally mirror the federal statute and come into agreement with the vast majority of other states.

-
- ¹ Report of the Ohio Attorney General's Commission to Study Trafficking In Persons. Available online at: <http://www.ohioattorneygeneral.gov/TraffickingReport>
- ² Williamson C. Perdue T. Belton L. Burns O. Barrows J. Smouse T. et. al. "Domestic Sex Trafficking in Ohio: A Study of Five Ohio Cities". (2012) Research and Analysis Sub-Committee Report of the Ohio Attorney General's Commission to Study Human Trafficking.
- ³ U.S. Congress, Trafficking Victims Protection Act of 2000. Available online at: www.state.gov/documents/organization/10492.pdf
- ⁴ Shared Hope International Center for Law and Policy. National State Law Policy: Force, Fraud, or Coercion. (2017). Available online at: http://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Force-Fraud-or-Coercion.pdf
- ⁵ Cauffman, E. and Steinberg, L. "(Im)maturity of Judgment in Adolescence: Why Adolescents May be Less Culpable than Adults". (2000). *Behav. Sci. Law* 18: 741-760.
- ⁶ Steinberg, L. et. Al. "Are Adolescents Less Mature Than adults? Minors' Access to Abortion, The Juvenile Death Penalty, and the Alleged APA 'Flip-Flop'". (2009). *American Psychologist*. Vol.64, (7), 583-594.
- ⁷ Statement of Chris Swecker, Assistant Dir., Criminal Investigative Div., Fed. Bureau of Investigation, in his testimony before the 109th Congress' Commission on Security and Cooperation in Europe. Text is available online at: <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1011&context=humtraffdata>
- ⁸ Drobac JA. "Developing Capacity: Adolescent Consent at Work, at Law, and in the Sciences of the Mind". *UC Davis Journal of Juvenile Law & Policy*. (2006) 10(1): 1-68.
- ⁹ Songs P. "Caught in the Middle: Domestic Minor Sex Trafficked Persons". *Journal of Law and Criminal Justice*. (2017). Vol. 5, No. 1, pp.11-17.