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House Committee on Corrections and Juvenile Justice

HB 2779

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Chair Colloton and members of the committee, thank you for allowing me to provide testimony in support of House Bill 2779. I am Chair of the Attorney General Derek Schmidt's Human Trafficking Advisory Board (HTAB). I have been a prosecutor for twenty-three (23) years, the majority of that time spent prosecuting sex crimes and crimes against children, including cases of sexual exploitation and human trafficking. These remarks summarize detailed testimony previously presented to this committee on January 17, 2012 regarding an overview of human trafficking and commercial sexual exploitation in Kansas. At the close of the hearing, many legislators were interested in legislative proposals to combat the problem. On January 23, 2012, AG Schmidt convened a meeting of his newly expanded HTAB to discuss legislative proposals. HB 2779 is the product of that meeting. I firmly support passage of HB 2779.

I. Scope of the Problem of Human Trafficking and Commercial Sexual Exploitation in Kansas

Commercial sexual exploitation and human trafficking are occurring in Kansas at a rate in which the state is currently unprepared to address. Both Wichita and Kansas City have been recognized as major originating cities for human trafficking. Officers located in the Wichita-Sedgwick County Exploited and Missing Child Unit report that sex traffickers often pick up runaways within 48 hours of their being on the streets and transport them to either Dallas or Chicago within 72 hours.¹ While originally noticed in Wichita and Kansas City, human trafficking reports from victim service agencies indicate it is also occurring in many mid-level communities across the state.²

While Wichita and Kansas City have some specialized law enforcement units addressing the problem in their respective communities, the vast majority of Kansas has remained vulnerable ground for human traffickers, facilitators of commercial sexual exploitation and purchasers with no coordinated linkage to the efforts in the larger Kansas communities.

¹ Detective Kent Bauman, Wichita, interview, Exploited and Missing Childrens Unit (EMCU), 2009

² Victim Service Agency Semi-annual Reports to the Office of Attorney General, 2011.

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Both knowledge of the prevalence of trafficking in Kansas and effective response to trafficking remain elusive due to lack of awareness, lack of identification measures, lack of experience in investigating and prosecuting these cases, absence of tracking protocol, and limited strategic response. Kansas law enforcement officers surveyed indicated they feel ill equipped to effectively respond to human trafficking crime and need training in this area. Of those Kansas officers interviewed in a 2009-2010 ongoing face-to-face research survey, 100% expressed a perceived need for training on the following topics associated with human trafficking: current federal and state laws, identifying cases, methods for investigating cases, understanding the rights of victims, and understanding how law enforcement's response to victims impacts the victim's mental health and ability to cooperate with investigations and prosecution.³

As elsewhere in the country, the vast majority of victims of human trafficking in Kansas are not people from other countries, but our own children. Under federal law, any juvenile subjected to commercial sexual exploitation is a victim of human trafficking. This population of juvenile victims of trafficking is at least 250,000 per year nationwide, versus the estimated number of foreign victims at fewer than 20,000.

A. Human Trafficking News in Kansas

On September 22, 2011, an article appeared in the *Wichita Eagle*, *Police officials voice concern over spike in local sex trafficking cases*. Wichita Police noted that sex trafficking cases have more than tripled over the past four years, growing in numbers as follows:

2006 – 11 cases
2007 – 10 cases
2008 – 9 cases
2009 – 17 cases
2010 – 22 cases
2011 – 45 cases⁴

The Wichita Police Department gave a media briefing on the numbers that included an explanation for the increase, a discussion on the difficulty in these investigations and a summary of local proactive measures used to combat the problem. An editorial on the spike in numbers followed:

³ Lüttrell, Vicky. *Human Trafficking in the Midwest: Experience and Perception Among Kansas Law Enforcement Officers – An Exploratory Study*. B.A. thesis. Washburn University, Topeka, 2006. (Unpublished).

⁴ Statistics from WPD Press Briefing on September 21, 2011. Cpt. Michael B. Allred WPD. These statistics are inclusive of cases where EMCU-ICAC have identified high risk victims of potential human trafficking. In 2011, 17 individuals have been charged with felony crimes related to human trafficking type investigations. Of these, one (1) case was charged in Federal Court. One (1) case involved two (2) suspects charged in District Court with Forty (40) felony counts each.

Wichita has a sex-trafficking problem

The idea of Wichita as a hotbed of sex trafficking may seem unfathomable. But the fact that cases have tripled in recent years — from nine in 2008 to 22 in 2010 to 28 already in 2011 — speaks for itself. And it doesn't speak well of Wichita. More staffing next year at the Wichita-Sedgwick County Exploited and Missing Child Unit surely will help, but this trend poses a serious challenge for the community. It's another reason parents need to be attentive to what's going on in their kids' lives, especially online. But its roots are complicated, because many of the girls caught up in this trend start as runaways from abusive homes. Wichita's problem deserves attention from Gov. Sam Brownback, who had such a distinguished record in the U.S. Senate of fighting global human trafficking.⁵

B. Kansas Law Falls Short

In September of 2011, the Kansas City Star published an article criticizing Kansas' law on human trafficking in comparison to other states.⁶ The scoring system referred to in the Kansas City Star article is based upon static factors identified by the Polaris Project, a nongovernmental organization (NGO) funded in part with money from the 2000 Trafficking Victims and Protection Act. The Polaris Project gave us only 4 of 10 points as follows:

Credited Categories:

- Sex Trafficking statute
- Labor Trafficking statute
- Asset Forfeiture
- Lower burden of proof for sex trafficking of minors

Categories still needed:

- Investigative tools
- Training for law enforcement
- Human Trafficking Task Force
- Posting of National Hotline
- Safe Harbor – Protecting Sex Trafficked Minors
- Victim Assistance
- Access to Civil Damages
- Vacating Convictions for Sex Trafficking Victims

⁵ Holman, R. (2011, September 25). Wichita has a sex-trafficking problem. *The Wichita Eagle*.

⁶ McGraw, M. (2011, September 10). Kansas law falls short in combating human trafficking. *The Kansas City Star*.

The score of only four is somewhat misleading as we have an advisory board formed, but not statutorily recognized. The national hotline number is on the AG website: <http://www.ksag.org/page/about-human-trafficking-in-kansas> via a link to the Polaris Project.

In December of 2011, our grade got worse according to Shared Hope International⁷. Shared Hope International, like the Polaris Project, is an NGO whose purpose is to combat human trafficking. Shared Hope gave Kansas an "F." Missouri got a "B." The grade does not reflect how well states enforce their laws, only the adequacy of existing laws. The Protected Innocence Initiative Methodology developed by Shared Hope may be found online at <http://www.sharedhope.org>. Shared Hope assigns point values in their grading process to six categories:

- Criminalization of Domestic Minor Sex Trafficking
- Criminal Provisions Addressing Demand
- Criminal Provisions for Traffickers
- Criminal Provisions for Facilitators
- Protective Provisions for Child Victims
- Criminal Justice Tools for Investigation and Prosecution

C. Recommendations from HTAB

HTAB determined that Kansas law had gaps, particularly with respect to commercial sexual exploitation. Our stand alone statues on human trafficking and aggravated human trafficking have only been "on the books" since 2005. The crimes of human trafficking and aggravated human trafficking are being charged more often in Sedgwick County following the experience of the Exploited and Missing Children's Unit, particularly where traffickers are bringing girls to Kansas to exploit or where traffickers are taking Kansas girls to other locations for sexual exploitation. HTAB found that our current laws aimed at facilitators and purchasers including promoting prostitution and patronizing a prostitute are weak. The language "prostitute" implies a promiscuous, less than credible victim, or even worse, the moniker implies that someone who is a "prostitute," even a child, is no victim at all. The exchange of value for sexual relations is not addressed within our human trafficking statues.

After much discussion, HTAB determined that a legislative package should encompass a number of the topics where Kansas ranked low, recognizing that a comprehensive collaborative approach is needed. The legislative tool box should include enhanced criminalization of conduct, but should also include training, a coordinated response among the stakeholders, placement options and victim services, mandatory fines and establishment of a victims assistance fund and other features.

⁷ Sylvester, R. (2011, December 1). Kansas rates poorly for sex-trafficking laws. *The Wichita Eagle*. McGraw. M. (2011, December 1). States at opposite ends of scale in penalizing sex traffickers. *The Kansas City Star*.

HTAB recommended no changes to our existing laws on human trafficking and aggravated human trafficking at this time while the first aggravated human trafficking case to go to trial awaits hearing and ruling from the Kansas Supreme Court. The first case to be tried under our aggravated human trafficking statute was *State v. Marlin Williams*, 46 Kan. App. 2d 36, 257 P.3d 849 (2011). (Petition for review filed August 5, 2011). The case came from Sedgwick County, investigated by EMCU. The Court of Appeals affirmed the conviction for aggravated human trafficking and found the statute constitutionally sound. We await the decision of the Kansas Supreme Court.

II. Features of HB 2779

Taking into consideration the Kansas experience of where we have come from since 2005 when our human trafficking statutes went into effect, the criticism of the NGO's, the experience and recommendations of the stakeholders who are the "boots on the ground" in this battle, HB 2779 is a starting point that touches on a number of areas within our laws. Key features are:

Training, Victim Assistance, Special Protection for Juvenile Victims

- The AG is authorized to coordinate training for law enforcement agencies
- HTAB is designated the official HTAB for Kansas
- The establishment of a human trafficking victim's assistance fund (HTVAF)
- Fast track expungement for adult offenders of selling sexual relations if subject to coercion
- Provides for protective custody for children who have been subjected to human trafficking, aggravated human trafficking or commercial sexual exploitation of a child (CSEC)
- Fast track expungement for juvenile offenders of selling sexual relations

New Crime of Commercial Sexual Exploitation of a Child to Protect <18's, Enhanced Penalties, Fines, Education

- The new crime of Commercial Sexual Exploitation of a Child is created, increasing the penalties of the former patronizing a prostitute and promoting prostitution of persons <18 to a Severity Level 5 Person Felony for a 1st offense and Severity Level 2 Person Felony for a 2nd offense
- Commercial Sexual Exploitation of a Child <14 carries the penalties of Jessica's Law: life with a hard 25, life with a hard 40 or life.
- Mandatory fines of \$2500 to \$5000
- All fines go to HTVAF
- Educational programs regarding commercial sexual exploitation of children

Elimination of the Moniker “Prostitute,” Affirmative Defense

- Changes “prostitution” to “selling sexual relations”
- Provides an affirmative defense that the offender was a victim of trafficking or CSEC

Demand Reduction, Enhanced Penalties and Fines, Changing the Concept from “Prostitution” to “Buying and Selling Sexual Relations”

- Changes “promoting prostitution” to “promoting the sale of sexual relations”
- Increases penalty from class A person misdemeanor to a Severity Level 9 Felony for a 1st offense, severity level 7 Person Felony for a 2nd offense
- Mandatory fines of \$2500 to \$5000
- All fines go to HTAV
- Changes “patronizing a prostitute” to “buying sexual relations”
- Increases the penalty from a class C misdemeanor to a class A person misdemeanor for a 1st offense, severity level 9 person felony for a 2nd offense
- Educational programs regarding commercial sexual exploitation (John Schools)

Tools for Law Enforcement, Enhanced Penalties

- Makes sexually motivated aggravated human trafficking and CSEC “sexually violent offenses” for purposes of aggravated habitual sex offender status, life time post release supervision and sex offender registration
- Makes CSEC < 14 subject to Jessica’s Law
- Makes sexually motivated aggravated human trafficking <14 and CSEC <14 a crime of “extreme sexual violence” thereby limiting downward departures
- Adds the crimes of human trafficking, aggravated human trafficking, CSEC and buying or selling sexual relations to the list of crimes eligible for wiretap authorization

III. Conclusion

So often, during the trainings and presentations on the topic of human trafficking, members of the audience ask, “Do we really have that here?” The answer is a resounding, yes, we have that in Kansas. Tools are somewhat in place to begin a more comprehensive approach to tackle the problem. We have stand alone statutes criminalizing the *trafficking* conduct, but we need to do a much better job at going after the *facilitators and purchasers* of sex with our children. This legislative package targets that class of offenders and provides some tools for the stakeholders who work with these victims to stop the trafficking and commercial sexual exploitation of our kids.

Judge Pierron wrote in *State v. Marlin Williams*, that our human trafficking statutes are:

“... clearly aimed at preventing the exploitation of minor children . . . *The State has a compelling interest in the well-being of its children and in the exercise of its police powers may enact legislation to protect children from adult predators.*”

We should apply the same compelling interest to protecting children from the facilitators and purchasers, those who engage in commercial sexual exploitation of a child.