Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

Testimony before the Senate Committee on Judiciary and Public Safety Senate Bill 49 Wednesday, August 14, 2019

Thank you Chair Wanggaard and committee members for holding a public hearing on Senate Bill 49. This bill is incredibly important to protecting child victims of sex trafficking in Wisconsin.

Under current law, an individual who is under the age of 18 cannot legally consent to sexual relations. In spite of this law, minors who have been forced into having sexual relations because of trafficking can still be prosecuted for prostitution. As such, Wisconsin law currently penalizes trafficked children for a crime they cannot legally consent to committing.

Not only have trafficked children undergone serious trauma, but Wisconsin law currently allows them to be punished for a situation that was out of their control. Senate Bill 49 makes a very simply change to statute. The bill in front of you prohibits the prosecution of a minor for prostitution.

This simple change to the law is vital to ensure children who have been sex trafficked are recognized as victims, not criminals. Victims of sex trafficking often have undergone incredible trauma that will affect them for the rest of their lives. The law should not also plague these victims with a Class A misdemeanor on their records. In addition to allowing victims to lead lives without a conviction on their record, by eliminating the threat of prosecution, the bill will encourage children to come forward to law enforcement. Traffickers will no longer be able to use the threat of prosecution for prostitution as a way to keep children inside the cycle of abuse they undergo while being trafficked.

It is crucial for Wisconsin to join other states and pass this legislation to protect our minors and ensure they have access to the services they need after being trafficked, not to a prostitution conviction.

I'd like to thank Senator Johnson and Representatives Steineke and Billings for their work on this bill. Last session, this bill was passed on a 5-0 vote in this committee and a voice vote on the senate floor. I hope to have your continued support for Senate Bill 49.



JILL BILLINGS STATE REPRESENTATIVE

Rep. Billings Testimony in Support of Safe Harbor for Trafficked Youth (SB 49)

Good morning Chairperson Wanggaard and members of the committee. I thank you for holding a public hearing on SB 49. This bill would move our state further in protecting sexually exploited children by treating them as child-victims, rather than criminals. SB 49 prohibits charging a minor with the crime of prostitution. This legislation is identical to 2017 SB 344 which passed out of this committee and the state senate unanimously on a voice vote.

Sexually exploited children exist in my district and in your district. The trafficking of children is happening in urban areas, rural areas, and has been reported in all 72 Wisconsin counties. Sexually exploited children tend to be at-risk, vulnerable youths with troubled backgrounds; many are homeless or drug dependent. According to the U.S. Department of Justice's Anti-Human Trafficking Task Force an estimated 70 to 90 percent of youth victims of sex trafficking have histories of sexual abuse.

Currently, children who are forced into commercial sex practices can be prosecuted for the crime of prostitution, causing victimization and burdening a child with a criminal record. Sexually exploited children are often vulnerable to criminal charges, incarceration or detention for actions taken while under the emotional and physical control of their traffickers. SB 49 can alleviate the harm caused by criminalizing sexually exploited children by prohibiting the practice of charging minors with prostitution.

SB 49 is the next step we can now take in Wisconsin after the passage of 2015 Act 367, authored by Rep. Amy Loudenbeck, which mandates a Child Protective Service (CPS) agency initiate an investigation into all cases of alleged child sex trafficking by a caregiver or non-caregiver. It also requires law enforcement to report suspected cases of trafficking of a minor to the local CPS agency. 2015 Act 367 was a vital step in aiding sexually exploited children by ensuring trafficked kids are treated as victims and are provided the services they need.

Our neighboring states, including Illinois, Indiana, Michigan and Minnesota, have found success in passing similar Safe Harbor legislation. By passing this legislation we would be joining 25 other states and the District of Columbia that have adopted some type of immunity for trafficked youth, according to a 2018 Shared Hope International report. Other states have found that decriminalizing child prostitution along with providing services, has helped to identify and rehabilitate child sex trafficking victims, while also bringing the real criminals (traffickers/buyers) to justice. By treating children as victims, the adversarial relationship between minors and legal system intent on prosecuting them erodes. Instead it can create a reformative and therapeutic environment in which child victims speak candidly about their traffickers to law enforcement.

In Minnesota, convictions of sex traffickers have shown a dramatic increase since passing its hallmark Safe Harbor legislation in 2011. According to the Human Trafficking in Minnesota: A Report to the Minnesota Legislature January 2017, prior to this legislation, Minnesota had 8 people convicted of sex trafficking. After passage in 2012, that number quadrupled to 32 convicted. By 2016, 45 traffickers were convicted. Legal officials in Minnesota credit the increase in convictions to the passage of Safe Harbor. Trafficked children are one of the most vulnerable groups in our state, and it is imperative that these children see law enforcement and the court system as allies and a means of liberation from their traffickers.

SB 49 will put Wisconsin's criminal laws into alignment with both federal law, neighboring states laws and Wisconsin's own laws. By adopting SB 49, Wisconsin law will no longer conflict with the Federal Trafficking Victims Protection Act, which treats coerced children as victims, even if they have engaged in criminal prostitution activity. It also aligns our own state statutes. The 2015 Wisconsin Act 367 also included "sex trafficking" as child abuse under Wisconsin Chapter 48 (the Children's Code). Therefore, currently our statutes are misaligned by defining a child as a victim under Chapter 48, while still being considered a criminal under Chapter 944. Furthermore, the Wisconsin statutes include many laws that make it a crime to have sex with a child. It therefore stands to reason that if some Wisconsin laws treat minors as victims of sexual predation, all Wisconsin laws should treat minors as victims of prostitution, not criminals.

Each year Wisconsin does more to protect sexually exploited youth. I believe this is the next step in a process of bringing awareness and changing our approach to addressing this serious issue. I ask you to join me in protecting our vulnerable youth by supporting SB 49. Thank you.



LaTonya Johnson

WISCONSIN STATE SENATE

6тн DISTRICT

Senate Committee on Judiciary and Public Safety Testimony on Senate Bill 49 August 14, 2019

Good morning Chairman Wanggaard and members of the committee,

Thank you for the opportunity to testify on behalf of this very important proposal—SB 49—which prohibits children under the age of 18 from being prosecuted for acts of prostitution – a Class A misdemeanor. This bill is tremendously important considering that under Wisconsin law it is illegal for any child under the age of 18 to consent to sexual activity.

SB 49 brings Wisconsin law in line with federal law which treats children engaged in commercial sex acts as sexually exploited children and victims of child abuse, not criminals. This bill also aligns our state with Illinois, Minnesota, and Michigan by helping to end the practice and stigma of labeling these minors as criminals by charging child trafficking victims with prostitution. My hope is that it will make it easier for law enforcement and child welfare authorities to convince these children that they have done nothing wrong and are in no way responsible for the horrific acts they were forced into by their traffickers.

This bill does not legalize prostitution—this is illegal and will remain so. This bill only prevents our child victims from being charged with prostitution while providing them with the opportunity to get the services, counseling, and treatment they need to go on to lead healthy, productive lives as an adult.

This bill will also not encourage traffickers to seek minor victims. The average age of a child when they are first trafficked for sex is 13 years old, and between 70 and 90% of these children already have a history of abuse before falling into the hands of a human trafficker. Children are already a trafficker's prime target, and the sooner we can earn the child's trust and get their cooperation, the sooner we can put their trafficker behind bars. Treating these children like criminals for acts that they were forced into leaves them wondering who to trust, and that mistrust makes cooperating with prosecutors less, not more, likely.

Wisconsin is known as a human trafficking hub, a place where pimps and traffickers can come and steal our children off of our streets, forcing them into sexual slavery in places like Chicago, Las Vegas, and other parts of the county and little to nothing can be done to rescue them.

Prosecuting our children for crimes they had no choice but to commit does nothing to help put an end to this trend. We care about our kids, and while we are all working hard to protect them, the children who do fall victim to this terrible criminal enterprise deserve SB 41 instead of a criminal record.

Once again, thank you to my co-authors, Senator Darling, Representative Billings, and Rep. Steineke for their hard work on this bill, and thank you, committee members, for your consideration of this important proposal.



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To:

Members of the State Senate Committee on Judiciary and Public Safety

From:

Wisconsin Coalition Against Sexual Assault (WCASA)

Date:

August 14, 2019

Re:

Senate Bill 49, Child Sex Trafficking Legislation

Position:

Support

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a statewide membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 60 sexual assault service provides located throughout the state that offer support, advocacy and information to survivors of sexual assault and their families.

WCASA thanks Chairman Wanggaard for bringing this important piece of legislation forward for a hearing today. We also thank the leading sponsors of the bill, Senators Darling and Johnson and Representatives Billings and Steineke and for their leadership on this legislation in both houses. Additionally, WCASA appreciates the long, bipartisan list of over 50 other cosponsors of Senate Bill 49.

The National Center for Missing and Exploited Children (NCMEC) estimates that of the more than 23,000 endangered runaways reported to NCMEC in 2018, one in seven were likely victims of child sex trafficking.ⁱ Additionally, the average age of entry into prostitution is between 12 and 14.ⁱⁱ This data requires a significant shift in our thinking as well as our policy.

WCASA believes we should treat sex-trafficked children as victims of sexual exploitation – not as criminals. This legislation seeks to do just that. Most victims have a prior history of abuse long before pimps and johns abuse them. iii As a result, we should focus our efforts on addressing the complex trauma histories of child sex trafficking victims by providing specialized services, rather than criminalizing them.

Treating sex-trafficked children as delinquents or criminals is self-defeating and harmful. It hinders victim cooperation, which is necessary to convict the real criminals – pimps and johns. The current approach also increases distrust of law enforcement and child protective services, which hinders efforts to prosecute perpetrators. Most importantly, the isolation of detention and the stigma of being treated as a delinquent serve only to exacerbate individuals' feelings of guilt and shame, ultimately re-traumatizing child victims.^{iv}

This legislation is also a key component to dismantling racial disparities in the juvenile justice system. Arresting and prosecuting a child for prostitution is one of the main entry points to the juvenile justice system, also known as the sexual abuse to prison pipeline. Girls of color experience a higher burden of sexual violence and are more likely to be incarcerated for their responses to trauma. Furthermore, the juvenile justice system is poorly equipped to handle the impacts of trauma on child victims, which not only compounds the harms inflicted by the underlying abuse, but also increases the risk for further sexual victimization.

Finally, SB 49 would help bring state law in line with the federal Trafficking Victims Protection Act (TVPA), which treats prostituted minors as victims of sexual exploitation instead of as delinquents or criminals. Treating victims as delinquents conflicts with our other child sexual assault laws, which maintain that children under 18 cannot consent to sexual intercourse. Prosecuting them for prostitution implies a willingness and consent that is not legally sustainable.

We believe this legislation is the logical next step in Wisconsin's efforts to combat child sex trafficking. While current law allows for a court to enter a consent decree or deferred prosecution agreement under the Juvenile Justice Code or adult criminal statutes, these measures are within the discretion of the court. Thus, child sex trafficking victims can still be treated as delinquents for prostitution unlike in Illinois and Minnesota. WCASA believes a clear prohibition on prosecuting a child for committing an act of prostitution is needed for child trafficking victims.

We thank you for your attention to this matter and for your continued efforts to reduce the prevalence of human trafficking in Wisconsin. If you have any questions, you can reach me at ianh@wcasa.org.

¹ National Center for Missing and Exploited Children. Available at http://www.missingkids.com/theissues/trafficking

^{II} Sherman. Annie E. Casey Foundation. Detention Reform and Girls: 13 Pathways to Juvenile Detention Reform. 2005.

iii Geist. "Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors," *Legislation and Policy Brief*: Vol. 4: Iss. 2, Article 3. 2012.

[™] Ibid.

V Saar, Epstein, Rosenthal, & Vafa. The Sexual Abuse to Prison Pipeline: The Girls' Story. Available at: https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf bid

vii Ibid.

The Human Trafficking Task Force of Greater Milwaukee is the community response to eradicating Human Trafficking through coordinated services, education and awareness, and informed policy change. Our members come from direct service agencies, religious organizations, labor groups, and the community at large.

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At the recent Assembly hearing on Safe Harbor, one of the committee members asked what some of the biggest misunderstandings were about Human Trafficking. The first is that jail is a real threat to trafficking victims. These young people are already living in a special kind of hell with their traffickers. They may have been beaten, raped, verbally and physically abused, and still they defend their trafficker. Jail may be a threat to us, but we aren't living their lives.

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Personally, I know that if my teen came to me and told me they wanted to rent their body to strangers for money, I would call someone for help for my child. I would reach out to whoever was willing to help. I would not want them placed in jail.

The third is that this is an inner city problem, mostly affecting girls of color. We know that all 72 counties in Wisconsin have an issue with Human Trafficking. Social media is the traffickers best friend and internet access is available everywhere in the state. The opioid epidemic is also changing the face of trafficking. Wherever young people are vulnerable, predators will find them.

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As she was leaving the meeting, she was going home to Illinois for a visit with her family to try to repair their relationship. It had been years since she had seen her family, and now she felt strong enough to return for the weekend. She had come that far because she was with people who she knew cared about her.

It is time for us to believe the victims and the survivors, and not the pimps and traffickers. The survivors tell us that jail does not help. The traffickers know that arresting these young victims only reinforces their brainwashing that no one cares about them. Arrests may be a quick and easy answer. But, there is nothing quick or easy about the life these young victims are being forced to live. Their only hope is for us to care for and love them harder than their trafficker abuses them. It is not quick, it is not easy, and it is the right thing to do.

Because we know how important it is for someone to finally do the right thing by these young people, we at the Human Trafficking Task Force of Greater Milwaukee are her in support of SB49.

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CHILDREN & THE LAW SECTION

To:

Members, Senate Judiciary and Public Safety Committee

From:

State Bar of Wisconsin, Children & the Law Section

Date:

August 14, 2019

Re:

Support for SB 49 – Safe Harbor

The State Bar of Wisconsin's Children & the Law Section strongly supports SB 49, Sen. Darling's Safe Harbor legislation, which removes the ability to charge a child with prostitution. A child under the age of 18 cannot consent to sexual behavior and should not be considered a criminal, but rather a victim and survivor of sexual exploitation.

Children are victims of a crime when they are being sex trafficked. They are being forced to have sex and possibly engage in other illegal activities. The Children & the Law Section supports SB 49 as it prevents victims of a heinous crime from being prosecuted. This is especially important in trafficking cases, as these situations are hard to identify as such because they are complicated and involve coercion, manipulation, and often the use of physical force.

WI attorneys have seen an increase in the number of children that are victims of sex trafficking over the last several years. According to the Milwaukee Homicide Review Commission Report of April 15, 2013, at least 77 youth were trafficked in the Milwaukee area from August 2010-August 2012. Thirty one youth (40%) had a CHIPS case, JIPS case or both at Milwaukee County Children's Court. The majority of the youth were 16-17 years old (52%) and almost a third of the youth were 12-15 years old (32%). Experts in the field believe this is a gross underestimation of the number of children sexually exploited in the Milwaukee area.

This is not an issue exclusive to Milwaukee. The sexual trafficking of children occurs in both rural and metropolitan areas. Between 2007-2017, 1523 reports from Wisconsin were made to a trafficking hotline, with calls coming from all 72 counties. According to the National Human Trafficking Resource Center, data collected from a 2012 study indicates that after Milwaukee, its hotline received the second highest number of calls from Verona, WI, a population of less than 11,000.

Victims come from every race, gender, age, socioeconomic class, and ethnicity. Child victims of trafficking are exploited for commercial sex, survival sex, and labor purposes. Traffickers often use force, fraud, manipulation, and coercion to exploit their victims.

In addition to the trauma induced from sex trafficking, arrest and prosecution for prostitution can further traumatize victims, as well as leave him or her with a profound distrust of law enforcement, often preventing victims from seeking assistance. Furthermore, the criminal record that results from being an arrest can act as a barrier to future employment and other opportunities.

SB 49 is a tremendous step forward in protecting the innocent lives of Wisconsin youth who are victims of sex trafficking, and for the reasons outlined, the Children & the Law Section supports this legislation.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only. The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



HON. BRAD D. SCHIMEL Judge

Barb Dassow Court Reporter (262) 970-4768

COUNTY OF WAUKESHA



Liz Deputy Clerk (262) 548-7564

Michelle Legal Clerk (262) 548-7548

CIRCUIT COURT BRANCH 6

515 W. Moreland Boulevard PO Box 1627 Waukesha, WI 53187-1627

Dear Chairperson Wanggaard and Members of the Senate Committee on Judiciary and Public Safety and Chairperson Snyder and Members of the Assembly Committee on Children and Families:

Thank you for the opportunity to submit testimony in support of SB 49/AB 41, which provides immunity from prosecution for trafficked minors. Let me begin with a shocking statistic: according to the National Center for Prosecution of Child Abuse (NCPCA), one out of every three homeless teenagers is lured toward victimization by traffickers within 48 hours of leaving home. These youths are vulnerable to every type of exploitation. Traffickers are experts at spotting vulnerable youth.

As awareness of this horrific crime expands, we are better able to understand this crime and see this crime in ways which we may not have recognized before. Trafficked individuals should be recognized as victims, not willful prostitutes or criminals, especially when it comes to children. A child engaged in a commercial sex act is by definition a victim of human trafficking. Youth are often lured into trafficking by someone pretending to love them and are kept in by deceit, manipulation, fear, force and often drug abuse.

The most troubling aspect of trafficked youths is the long-term trauma suffered by the victims. Victims must recover from unimaginable abuse, but the most we are able to work with is to find a path for a healthy future. They need to finish school or receive additional training so that economic independence is possible.

The victims have health risks to overcome as drug addiction is often induced or exploited to control the victim. Traffickers not only take away a victim's freedom while they are being trafficked, but they also create physical and psychological barriers that impact the victim's freedom in the future.

Coordination between law enforcement, district attorneys, victim-witness professionals, and human services is key to ending both the supply and demand aspects of human trafficking. Following a report to law enforcement, victims require significant advocacy and assistance.

Putting together this new understanding that a trafficked youth is not a criminal, but a victim, and the need for this victim to rebuild their lives, it is important that these minors are not treated as criminals by the criminal justice system. These victims should be provided services and an understanding that they can trust law enforcement which can lead to further cooperation and an enhanced opportunity to catch the "big fish upstream." If a victim doesn't know where their next meal will come from, or where to find shelter,

or whether they will be protected from the reach of a trafficker, it is difficult for traumatized youth to come forward and trust law enforcement and/or social services.

This all may sound odd coming from someone who was previously a career prosecutor for 29 years. Prosecutors do not normally support immunity laws that tie the hands of police and prosecutors, and I do not come to this position of support lightly. When a similar bill was proposed several legislative sessions ago, I had concerns about law enforcement losing the ability to immediately remove a youth from a trafficking situation to protect that minor and do further investigation.

Because Wisconsin's child protection laws did not allow county departments of social services to open up a case to protect a child from a person who did not meet the definition of a "caregiver" for the child, an immunity statute would then have left both law enforcement and social workers from being able to intervene to help a trafficked child. I was worried than that the traffickers would actually use the immunity to better exploit their child victims, because they would know that law enforcement would be powerless to take the child into any kind of custody, even protective custody. If a person cannot be legally prosecuted for a crime, then law enforcement would be without reasonable suspicion of criminal activity that would give them authority to detain the person against their will. If they cannot detain the child, then they are powerless to remove the child from the oversight of the trafficker. They would never get the chance to build a rapport with the trafficking victim and gain their trust so we can try to help the child and hold the trafficker accountable.

I had those concerns then, and if there had been no other changes to the law in Wisconsin, I would still be opposed to immunity legislation. However, the law in Wisconsin has changed dramatically. The implementation of 2015 Wisconsin Act 367 has assuaged my concerns and leaves me fully supportive now of enacting this legislation.

As of May 29, 2017, if law enforcement has reason to believe that a child is being trafficked, they must refer the case to child welfare services. 2015 Wisconsin Act 367 requires law enforcement to make a referral to child welfare services when there is a reported case of child abuse in which a person who was not a caregiver of the child is suspected of permitting, encouraging or allowing a child to engage in prostitution or trafficking for purposes of a commercial sex act. That gives the officer authority to detain and take the child into protective custody under our child protection laws rather than the criminal code.

An officer can now remove the child from the oversight of the trafficker and detain them long enough for services to be put in place. And it will not be a criminal arrest or prosecution, which can create long-term impediments to the child trying to recover psychologically, socially, and economically. The act of commencing prosecution can be a severe impediment to healing and restoration for that child. If we acknowledge the child is a victim of trafficking, then why would we brand them a criminal?

The 2015 Wisconsin Act 367 also authorizes and requires the child welfare agency to investigate such reported cases. Prior to Act 367, human services did not have the authority to intervene in non-caregiver cases. With the passage of 2015 Wisconsin Act 367, Wisconsin went a long way toward better protecting minors in danger.

SB 49/AB 41 will not solve all of the challenges we face with from scourge of child sex trafficking, and will not be a perfect solution in all cases, but it is a step in the right

direction to ensuring victims understand that they are indeed victims and that there are people in the criminal justice and social services systems who want to help them. If we can perhaps instill trust in the justice system, we have a better chance to connect the victim with necessary services so that they may heal and escape the horrendous life as a trafficked individual.

If we are going to be successful in building cases against traffickers, our real target, we need victims to be with us, to provide the information we need to unravel the trafficker's network and to eventually testify in court. If we expect victims to stand with us, they need to know they can trust us to help. This bill will help move us in that direction. It is the right thing to do. Thank you for taking up this important issue.

If I may be of further assistance, or if you have questions or concerns, please do not hesitate to contact me. Best wishes in your deliberations.





August 14, 2019

To: The Honorable Van Wanggaard and Members of the Committee on Judiciary and Public Safety Regarding: SB 49

Dear Chairman Wanggard and Committee Members,

I am representing the Lutheran Office for Public Policy in Wisconsin, a statewide advocacy ministry of the Evangelical Lutheran Church in America. We advocate for just policies, especially related to hunger and poverty and care for God's creation.

SB 104 & SB 316: We support SB 104 because making sexual contact between a law enforcement officer and person in their custody a criminal act could provide another barrier to victimizing anyone safeguard for potential victims. SB 316 protects the health of pregnant women and their children.

During the last five and one half years, I have

- learned that this state law will put us in alignment with federal law.
- heard from direct service providers that the system of holding sex trafficked youth in jail is not
 working. We need to focus on getting them to human services, and continuing to support state
 budgets that provide that funding.
- witnessed a former attorney general, Brad Schimel, move from being against this bill to being in support of it to the extent of testifying that he had a change of heart at a hearing.
- heard Judge Ramona Gonzalez who drove from La Crosse to testify that sex trafficking of
 youth is a serious problem in our state and that even though there is good will between judges,
 who don't want to charge youth for prostitution, that they still charge youth with "lewd and
 lascivious behavior," that can go on a youth's record in place of prostitution.
- observed my colleagues in other states watch this same type of bill pass. Those states include Pennsylvania and Georgia. We are behind Georgia.

We ask that you support this bill, but not only that. We respectfully ask that you support bringing this bill to the floor and encourage the assembly to not let this bill disappear again, the way we sometimes let young people disappear.

Thank you for your consideration.

Reverend Cindy Crane, Director

But Jesus called the children to him and said, "Let the little children come to me, and do not hinder them, for the kingdom of God belongs to such as these." Luke 18:16