

BILL NO: House Bill 2740
TITLE: Relating to trafficking in persons.
COMMITTEE: Senate Judiciary
HEARING DATE: May 24, 2017
POSITION: SUPPORT

Dear Senate Judiciary Committee Members:

Shared Hope International is a 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 for protecting children from sex trafficking, including extending such protections to all minors under 18 years of age.¹ Shared Hope International supports House Bill 2740 because it closes an important gap in state law and raises the protected age of minors to 18 years, aligning with both federal law and the laws in 46 other states and D.C.² This bill simultaneously prioritizes the protection of child sex trafficking victims, while increasing accountability for offenders; whereas the current law permits offenders to raise a defense that she or he did not employ force, fraud, or coercion against a 16 or 17 year old, HB 2740 acknowledges the inherent vulnerability of children and determines such means as irrelevant to the offense.

Amending Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) to raise the age from 15 to 18 years clarifies the cognitive differences in minors and adults. Unlike adults, children have a more limited ability to gauge harm and decipher a dangerous adult from a harmless one. Certainly some cases of child sex trafficking include kidnapping or force; however, many more involve grooming a child into compliance through seduction, befriending, or fulfillment of the child's physical or emotional needs. While such means fall outside the bounds of force, fraud, or coercion, the end result of repetitive rape and exploitation is the same. Regardless of the means employed, we must protect older minors to the same extent as we do their younger counterparts.

Additionally, removing the force, fraud, or coercion requirement for older minors under Or. Rev. Stat. § 163.266(1)(c) increases accountability for offenders. The harm caused by an adult who sells or purchases sexual acts with a child is no less mitigated because he or she did not use force, fraud, or coercion to do so. Permitting criminal liability for any person who traffics a child, regardless of the means employed or actual knowledge as to the child's age, is imperative for addressing the realities of this crime. Excusing such offenders from culpability under the state's core sex trafficking statute is not only unjust, it also

¹ See attached: Shared Hope's Issue Brief on Force, Fraud, or Coercion requirements in child sex trafficking statutes.

² See attached: Shared Hope's National State Law Survey on Force, Fraud, or Coercion requirements in child sex trafficking statutes.

directly impacts which child victims can receive the protections and services specifically afforded to sex trafficking victims.

HB 2740 strengthens Oregon's commitment to ensuring victim identification and protection, in addition to offender accountability. We commend the Committee's dedication to this issue and encourage you to support HB 2740.

ISSUE BRIEF

SECTION 1.1

Area of Law	Criminalization of Domestic Minor Sex Trafficking
The Policy Goal	The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.
The Reason	The vast majority of states have human trafficking laws; however, within these statutes there are variations in coverage. States must enact human trafficking laws that are consistent with each other and federal law in scope and penalty so as to prevent migration of trafficking crimes to more lenient states or onto tribal lands. First, human trafficking laws must clearly address the crime of sex trafficking for the purposes of prosecution and victim identification. To ensure identification of sexually exploited children as victims and to prevent traffickers from escaping criminal liability through manufactured evidence of consent, all minors under the age of 18 should be deemed unable to consent to involvement in commercial sex acts, thus rendering the element of force, fraud or coercion irrelevant in domestic minor sex trafficking cases. Many state statutes accomplish this goal through the use of the words “any means” when addressing sex trafficking of minors under 18. Enacting laws that specifically criminalize trafficking of minors for commercial sexual exploitation without requiring proof of force, fraud or coercion is necessary to facilitate the prosecution of purchasers, traffickers and facilitators of commercial sex acts with children.

Examples of Legislative Solutions

The following are excerpts from statutes with the following: (1) language specifically criminalizing the commercial sexual exploitation of children or prostitution of children; (2) definition of a “minor” as a child under the age of 18; and (3) absence of any required elements of force, fraud or coercion to accomplish the trafficking of a minor.

D.C.

D.C. Code § 22-1834(a) (Sex trafficking of children) states, “It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.”

Hawaii

Hawaii specifically criminalizes the sex trafficking of a minor under Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking), which states, “(1) A person commits the offense of sex trafficking if the person knowingly: (a) Advances prostitution by compelling

or inducing a person by force, threat, fraud or intimidation to engage in prostitution, or profits from such conduct by another; or (b) advances or profits from prostitution of a minor; provided that with respect to the victim’s age, the prosecution shall be required to prove only that the person committing the offense acted negligently.

Louisiana

A separate statute makes sex trafficking of children a crime without regard to use of force, fraud, or coercion when a minor under 18 is used in a commercial sex act. La. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) states, “A. It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity. (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section. (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section. (4) For any person to knowingly

facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person. (5) For any person to knowingly advertise any of the activities prohibited by this Section. (6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section. B. For purposes of this Section, (1) “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

Massachusetts

Mass. Gen. Laws ch. 265, § 50(a) (Human trafficking – Sexual servitude) provides that “[w]hoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000.” Pursuant to Mass. Gen. Laws ch. 265, § 50(b) “Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years.”

Montana

Mont. Code Ann. § 45-5-702(1) (Trafficking of persons) states that “[a] person commits the offense of trafficking of persons if the person purposely or knowingly: (a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or (b) benefits, financially or by receiving anything of value, from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.” Mont. Code Ann. § 45-5-704(1) (Sexual servitude) states, “A person commits the offense of sexual servitude if the person purposely or knowingly: (a) uses coercion or deception to compel an adult to engage in commercial sexual activity; or (b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.” Tennessee directly addresses human trafficking through

Tennessee

Tenn. Code Ann. § 39-13-309 (Trafficking a person for a commercial sex act), which states, “(a) A person commits the offense of trafficking a person for a commercial sex act who: (1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person’s provision of a commercial sex act; or (2) Recruits, entices, harbors, transports, provides, purchases or obtains by any means another person for the purpose of providing a commercial sex act.” Tenn. Code Ann. § 39-13-301(15) defines “commercial sex act” as (A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.

Wisconsin

Wis. Stat. § 948.051 (Trafficking of a child) states, “(1) Whoever knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a) is guilty of a Class C felony; (2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1); (3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.” For the purpose of this law, a child is defined as “a person who has not attained the age of 18 years.” Wis. Stat. § 948.01(1). “Commercial sex act” means sexual contact “for which anything of value is given to, promised, or received, directly or indirectly by any person.” Wis. Stat. § 940.302(1)(a).

National State Law Survey: Force, Fraud, or Coercion

State ¹	Proof of force, fraud, or coercion <i>IS NOT Required</i> when victim of sex trafficking victim is a minor	Proof of force, fraud, or coercion <i>IS Required</i> when victim of sex trafficking is a minor	Statute contains a <i>mens rea</i> requirement as to the minor's age
Alabama		X	-
Alaska	X		-
Arizona	X		-
Arkansas	X		-
California	X		-
Colorado	X		-
Connecticut	X		-
Delaware	X		-
DC	X		Yes. D.C. Code § 22-1834(a) states, "It is unlawful for an individual or business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years."
Florida	X		-
Georgia	X		-
Hawaii	X		Yes. Haw. Rev. Stat. Ann. § 712-120 states, "A person commits the offense of sex trafficking if the person knowingly . . . (b) advances or profits from prostitution of a minor; provided that with respect to the victim's age, the prosecution shall be required to prove only that the person committing the offense acted negligently."
Idaho	X		-
Illinois	X		-
Indiana	X		-
Iowa	X		-
Kansas	X		-
Kentucky	X		-
Louisiana	X		-
Maine	X		-
Maryland	X		-
Massachusetts	X		-
Michigan	X		-
Minnesota	X		-

¹ Evaluations of state law are based on legislation enacted as of May 22, 2017. For related policy goals, background information, and select statute highlights, please visit http://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_1.1.pdf.

Mississippi	X		-
Missouri	X		-
Montana	X		-
Nebraska	X		-
Nevada	X		-
New Hampshire	X		-
New Jersey	X		-
New Mexico	X ²		-
New York		X ³	N/A; N.Y. Penal Law § 230.34 does not distinguish between offenses committed against a minor or adult.
North Carolina	X		-
North Dakota	X		-
Ohio		X ⁴	-
Oklahoma	X		-
Oregon		X ⁵	Yes. Or. Rev. Stat. § 163.266(1) states, “A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, obtain by any means and: . . . (c) The person knows or recklessly disregards the fact that the other person is under 15 years of age and will be in used in a commercial sex act.”
Pennsylvania	X		-
Rhode Island	X		-
South Carolina	X		-
South Dakota	X ⁶		-
Tennessee	X		-
Texas	X		-
Utah	X		-
Vermont	X		-
Virginia	X		-
Washington	X		Yes. Wash. Rev. Code Ann. § 9A.40.100(1) states, “A person is guilty of trafficking in the first degree when: (A) Recruits, harbors, transports, transfers,

² Force, fraud, or coercion is required for a facilitator conviction under the New Mexico trafficking law.

³ Pending New York SB 5988 and AB 6823 seek to remove the force, fraud, or coercion requirement for all minors under 18.

⁴ Ohio’s human trafficking law only eliminates the requirement to prove force, fraud or coercion when the victim is under 16 years of age or the victim is 16 or 17 and the defendant is in a position of authority or trust as described in Ohio Rev. Code Ann. § 2907.3(A)(5), (6), (7), (8), (9), (10), (11), (12), or (13).

⁵ Oregon’s human trafficking law only eliminates the requirement to prove force, fraud, or coercion when the victim is under 15 years of age; pending Oregon HB 2740 seeks to remove the force, fraud, or coercion requirement for all minors under 18.

⁶ South Dakota HB 1118, enacted on March 9, 2017, amended S.D. Codified Laws § 22-49-1 to remove the force, fraud, or coercion requirement for minors.

National State Law Survey: Force, Fraud, or Coercion

			provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact . . . (B) that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act”
West Virginia	X		-
Wisconsin	X		-
Wyoming	X		-
Totals	46 states & DC do not require proof of force, fraud, or coercion when the victim is a minor.	4 states ⁷ require proof of force, fraud, or coercion when the victim is a minor.	4 states have a DMST statute that includes some <i>mens rea</i> requirement as to the minor’s age.

⁷ Two states, New York and Oregon, have pending legislation to remove the force, fraud, or coercion requirement for all minors under 18.