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Testimony to Subcommittee on Human Resources of the Committee on Ways and Means – 2/19/2014

Thank you for the opportunity to testify this morning on this important issue.

As you noted in your advisory, Washington State has been a leader in this nation on anti-sex and human trafficking legislation since former state Rep. Velma Veloria began championing this effort in the Legislature in 2002. Washington was the first state to outlaw human trafficking and, between 2002 and 2013, the Legislature passed 33 anti-trafficking bills.

But sex trafficking, as well as all forms of human trafficking, is a pervasive and ever-changing social problem. It occurs in a wide variety of forms, from mail-order bride trafficking, including two murders, to false advertisements for au pairs, and to the coercion of minors and children being trafficked via the internet. Unfortunately, though, thirty-three anti-trafficking bills over eleven years only begin to address this horrifying commodification of human beings.

Domestic sex trafficking of minors came to light in the mid-2000s, with considerable awareness brought by former U.S. Congresswoman and Washington State Senator Linda Smith and Shared Hope International, API Chaya, the Committee for Children, Seattle Against Slavery, and YouthCare among others. Progress has certainly been made. Major legislation, Senate Bill 5718, passed in 2007, creating a new crime of commercial sexual abuse of a minor, replacing the crime of patronizing a juvenile prostitute. Follow-up legislation passed in 2009 permitted prosecutors to divert cases in which minors agreed to participate in wraparound services such as counseling (HB 1505), and, in 2010, SB 6476 strengthened penalties for those who engage in commercial sexual abuse of a minor. Also in 2010, SB 6330 permitted placement of informational posters on sex and labor trafficking in highway rest stops to coincide with increased risk during the Winter Olympics held in British Columbia. And in 2011, HB 1874 authorized law enforcement officers to conduct surveillance operations on suspected sex trafficking with the victim's consent.

Treating victims of trafficking, especially children and minors, as victims rather than criminals has been an important component of the laws we've enacted. Children are not prostitutes, they are victims. They are coerced or forced into this practice by criminals and need to be protected and assisted, not jailed.

Another important component to the way sex trafficking of minors is being addressed in Washington is by meeting head on the challenges that technology and the internet pose when addressing this problem. Twelve bills became law in 2012 (see handout), including a bill that was the first of its kind in this country, relating to the online advertiser *backpage.com*. SB 6251 created a new crime of publishing adult escort ads involving minors, while providing an affirmative defense for advertising businesses that verify the age of the individual depicted in the ads.

It was passed unanimously by the Legislature as well as garnered the support of the state Attorney General. Unfortunately, *backpage.com* sued the state in federal court charging the new law violated the First Amendment and the 1996 Federal Communications Decency Act. After the case was settled, SB 5488 passed in 2013 which repealed the law and imposed an additional fine of \$5,000 for using online ads to facilitate the commercial sexual abuse of a minor.

Some of the other crucial legislation that came out of the 2012 session were the criminalization of compelling a person with a disability into the act of prostitution (SB 6254), increasing fees for those who patronize a prostitute and redirecting those fees to increase enforcement prevention of prostitution (HB 1893, HB 2692), and criminalizing the ordering, luring, or attempting to lure a minor or a person with a cognitive disability into any motor vehicle (SB 6258).

Four other laws enacted last year created a new Commercially Sexually Exploited Children Statewide Coordinating Committee (SB 5308) and a new Statewide Coordinating Committee on Sex Crimes (HB 1291), required training on recognition and prevention of sex trafficking and commercial sexual abuse and exploitation of minors to be completed by new teachers (SB 5563), and allowed a victim up to 14 years of age to testify outside the presence of his/her abuser and that victim consent cannot be used as a defense (SB 5669). The technologies and internet components of trafficking will continue to be a challenge, particularly for our younger generations, as the internet permeates most aspects of their lives.

The internet also makes apprehending the real perpetrators of these crimes – the pimps and ‘johns’ who pay for sex or sexual exploitation of minors – a significant challenge. When one ad is taken down, another pops up in its place. And in many ways, the streets have been replaced with social media – which have also proven to be an effective tool of information gathering, coercion and the preying upon vulnerable individuals, especially minors.

But in our ongoing efforts in Washington to support victims of trafficking rather than prosecute them, we have begun to take steps to allow our law enforcement to go after these perpetrators more vigorously. Several bills are making their way through the Legislature this year, including SB 6017 which allows law enforcement to seize materials used in connection with child pornography and commercial sexual abuse of a minor, and to keep more of the assets in order to defray the cost of investigations and reapply the funds to future investigations in this area.

Another bill, SB 6434, provides additional significant forfeiture authority when dealing directly with those who pay for sex or sexual exploitation of minors, or those patronizing a prostitute. And SB 6435 would hold those who sexually exploit a minor financially responsible for restitution to the victim, in the form of attorney fees, medical bills, lost income, etc. Another is HB 1292 that would vacate conviction records of minors for prostitution

offenses. I am also pleased that Senate Joint Memorial 8003 has passed the Senate this year. It requests that Congress amend the Federal Communications Decency Act of 1996 to reflect the current scope of the internet and take into account the role IPOs play in the advertising and profiting from sexual exploitation of minors.

As Washington shares an ocean border with Asia and Russia and a land border with Canada, we unfortunately have long been a gateway for trafficking victims coming into the U.S. But the internet has opened all borders, resulting in an almost irrelevance of having to leave a town or a residence for arranging for sex trafficking to occur—among those brought into our country as well as our own citizens. We must address these 21st century challenges which can and do have devastating effects on young lives. I appreciate your holding this hearing today and, as such, am optimistic that the federal and state governments working together and with our local and national NGOs and other organizations, we will continue making progress.



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Landmark Washington State Accomplishments to Prevent and Respond to Human Trafficking and Sexual Exploitation of Minors

TASK FORCES

- **HB 2381 (2002)** created the **Task Force against Trafficking of Persons**—the first of its kind in the nation—directed to measure and evaluate the state's progress in trafficking prevention activities, identify available programs providing services to victims of trafficking, and recommend methods to provide a coordinated system of support and assistance to victims of trafficking (Veloria). *Task Force Reports issued in 2002, 2004, 2005 (see below).*
 - <http://www.commerce.wa.gov/Documents/OCVA-HT-2002-HT-Report.pdf>
 - <http://www.commerce.wa.gov/Documents/OCVA-HT-2004-Task-Force-Report.pdf>
 - <http://www.commerce.wa.gov/Documents/OCVA-HT-2005-Task-Force-Report.pdf>
 - (2006) Task Force funding was renewed and the task force was directed to create a Comprehensive Response to Human Trafficking—a coordinated system containing seven components, including prevention, victim identification and victim services.
- **SB 5308 (2013)** created the **Commercially Sexually Exploited Children Statewide Coordinating Committee** to examine laws and practices of local and regional entities to address issues relating to commercially and sexually exploited children and make recommendations for statewide protocols, laws and practices (Kohl-Welles). *RCW 7.68.*
- **HB 1291 (2013)** created the **Statewide Coordinating Committee on Sex Crimes** to oversee the distribution of funds collected from trafficking crimes to services for victims of sex trade, including revenue collected from impounding vehicles when the driver is involved in exploiting a sex trafficking victim. Fifty percent of revenue from fees and fines for sex crimes must be spent on preventative and rehabilitative services for victims of sex trafficking (Orwall). *RCW 43.63A.740, 9.68A.105, 9A.88.120, 9A.88.140, 43.280.*

PREVENTION EFFORTS

- **SB 6412 (2002)** the International Matchmaking Organization Act—also the first of its kind in the nation—established protections for prospective foreign spouses of Washington residents who go through online international marriage brokers by requiring the brokers to notify recruits in their native language that background check and marital history information is available for prospective spouses who are Washington residents (Kohl-Welles). *RCW 19.220.010*.
- **HB 1826 (2003)** increased protections for prospective foreign spouses by also making personal history information available to them, including spousal abuse and founded child abuse (Veloria). *RCW 19.220.010*.
- The Federal International Marriage Brokers Regulations Act (**2006**) was signed into law as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005. *Pub. L. No. 109-162, 119 Stat. 2960 (2006)*.
- **SB 5850 (2009)**—the first legislation of its kind in the nation—required international labor recruiters and domestic employers of foreign workers to disclose federal and state labor laws to employees and required health care professionals be provided with information to help identify human trafficking victims (Kohl-Welles). *RCW 19.320.020*.
- **SB 6332 (2010)** built on SB 5850 enacted in 2009, added nonimmigrant workers to the list of employees who must be provided with federal and state labor laws, and established civil penalties for labor recruiters and employers who fail to do so (Kohl-Welles). *RCW 19.320.010*.
- **SB 6330 (2010)** allowed informational posters on domestic trafficking, including trafficking of minors and a “1-800” number, to be placed at rest stops throughout the state which could be very helpful for individuals being taken to international events, such as the Winter Olympics which were held in British Columbia (Kohl-Welles). *RCW 47.38.080*.
- **HB 1874 (2011)** authorized law enforcement officers to conduct surveillance operations on suspected human-trafficking and commercial sexual abuse activities with the consent of the victim. It also authorized prosecutors to request assistance from minors in the undercover surveillance of telephone communications in trafficking investigations without putting youth in danger (Dickerson). *RCW 9.73.210 and .230*.
- **SSB 5563 (2013)** requires training on recognition and prevention of commercial sexual abuse and exploitation of minors to be completed by new teachers, and of all school employees in their orientation and every three years thereafter. The Washington Coalition of Sexual Assault Programs, in consultation with other organizations, must update existing educational materials informing parents and other interested community members about how to prevent children from being recruited into sex trafficking, among other issues (Kohl-Welles). *RCW 28A.410.035, 28A.300.145, 28A.400.317*.

SURVIVOR SERVICES

- **SB 5127 (2005)** created requirements for state agencies to develop written protocols for the delivery of services to victims of human trafficking (Kohl-Welles). *RCW 7.68.360*
- (2005) State funding was provided for legal aid to undocumented immigrants who are victims of sexual assault, domestic violence, or human trafficking.

- **SB 6339 (2007)** added victims of human trafficking to the list of persons eligible for the state’s address confidentiality program (Kohl-Welles). *RCW 40.24.010*.
- **HB 1505 (2009)** allowed prosecutors to divert cases in which a minor is alleged to have committed the offense of prostitution, if the juvenile agrees to participate in a program that provides wraparound services, including mental health counseling (Dickerson). *RCW 13.40.213*.
- **SB 5482 (2011)** authorized local governments to use affordable housing funds to provide housing assistance to victims of human trafficking and their families (Kohl-Welles). *RCW 36.22.178, .179, and .1791*.
- **SB 6255 (2012)** allowed minors who were convicted of prostitution resulting from being trafficked by force, fraud, or coercion to request the court to vacate the conviction (Fraser). *RCW 9.96.060 and Chapter 9A.88 RCW*.
- **SB 5669 (2013)** allows for a victim up to 14 years of age to testify outside the presence of her or his abuser. This bill also tightens current laws addressing trafficking, clarifies that victim consent cannot be used as a defense in the prosecution of a trafficking crime, including when an abuser utilizes an online platform to recruit or sell the victim for sex (Padden). *RCW 9.68A.090, 9.68A.100, 9.68A.101, 9.68A.102, 9.68A.103, 9A.44.020, 9A.44.128, 9A.44.150, 9A.82.010, 13.34.132, 9A.40.100*.

PENALTIES

- **HB 1175 (2003)** created two human trafficking crimes, both class A felonies, and expanded the definition of criminal profiteering to include the crime of trafficking—making Washington the first state in the nation to criminalize trafficking and specify criminal and civil penalties (Veloria). *RCW 9A.40.100*.
- **SB 6731 (2005)** prohibited sex tourism—making WA the second state in the nation to do so (Fraser). *RCW 9A.88.085*.
- **SB 5718 (2007)** created four new crimes relating to child sexual exploitation: commercial sexual abuse of a minor (CSAM) that replaced the crime of patronizing a juvenile prostitute, promoting CSAM, promoting travel for CSAM, and permitting CSAM. It also added an additional one-year penalty to the sentence for a conviction of the most serious crimes of child sex abuse if the offender paid to engage in the abuse (Kohl-Welles). *RCW 9.68A.100 through .103*.
- **SB 6476 (2010)** strengthened penalties for the crime of commercial sexual abuse of a minor and required development of training for law enforcement officers (Stevens). *RCW 9.68A.100, .101, and .105, and 9A.88.140*.
- **SB 5546 (2011)** amended the crime of human trafficking to include the illegal harvesting or sale of human organs and broadened the scope of the crimes to hold criminals accountable when caught transporting a person despite not knowing whether the person would eventually be forced into prostitution or manual labor (Kohl-Welles). *RCW 9A.40.100 and .010, 9.95.062, and 10.64.025*.
- **SB 6251 (2012)** created a new crime, making it illegal to knowingly publish an escort ad on-line or in print that involves a minor (Kohl-Welles). *Chapter 9.68A RCW*. (Was repealed following federal court injunction based on a finding that law violated the federal Communications Decency Act and the First Amendment.)

- **SB 6252 (2012)** added the crimes of commercial sexual abuse of a minor and promoting commercial sexual abuse of a minor to the list of offenses that may constitute a pattern of criminal profiteering activity (Kline). *RCW 9A.82.010 and .100.*
- **SB 6253 (2012)** authorized law enforcement agencies to seize any proceeds or property that facilitate the crimes of commercial sexual abuse of a minor (Eide). *Chapter 9A.88 RCW.*
- **SB 6254 (2012)** criminalized the act of compelling a person with a disability that renders the person incapable of consent to engage in an act of prostitution (Delvin). *RCW 9A.88.070.*
- **SB 6256 (2012)** added to the list of gang-related crimes the promotion of sexual abuse of a minor that provides the gang with an advantage, control, or dominance over a market sector (Conway). *RCW 9.94A.030.*
- **SB 6257 (2012)** defined sexually explicit acts with regard to sex trafficking and promoting the sexual abuse of a minor (Roach). *RCW 9.68A.101 and 9A.40.100.*
- **SB 6258 (2012)** criminalized ordering, luring, or attempting to lure a minor or a person with a cognitive disability into any transportation terminal or into a motor vehicle (Stevens). *RCW 9A.40.090.*
- **SB 6103 (2012)** prohibited anyone from practicing reflexology or representing himself or herself as a reflexologist unless certified as a reflexologist or licensed by the health department as a massage practitioner (Keiser). *Chapter 18.108 RCW.*
- **HB 1983 (2012)** increased the fees imposed against individuals convicted of promoting or patronizing prostitution (Parker). *RCW 9A.40.100, 9A.44.128, 9A.88.120, 9.68A.105, 3.50.100, 3.62.020, 3.62.040, 10.82.070, and 35.20.220.*
- **HB 2692 (2012)** increased the additional fine a person must pay when convicted of patronizing a prostitute and requires those fees be used to pay for increased enforcement and prevention programs (Orwall). *RCW 9A.88.130, 3.50.100, 3.62.020, 3.62.040, 10.82.070, and 35.20.220.*
- **HB 2177 (2012)** prohibited the duplication or distribution of child pornography as part of the discovery process in a criminal prosecution, and instead required the material to be made reasonably available to the prosecutor, defense attorney, and expert witnesses who may testify at trial (Ladenburg). *Chapter 9.68A RCW.*
- **SB 5488 (2013)** imposes a \$5,000 fine on top of existing penalties for using online ads to facilitate the commercial sexual abuse of a minor. The bill defines an internet advertisement as a statement in electronic media that would be understood by a reasonable person to be an implicit offer for sexual contact or sexual intercourse in exchange for something of value (Kohl-Welles). *RCW 9.68, 9.68A.*

2014 PENDING LEGISLATION

- **HB 1292 Prostitution Convictions:** Allows a victim of Trafficking, Promoting Prostitution in the first degree, or Commercial Sex Abuse of a Minor to vacate the record of a related prostitution conviction regardless of whether he or she has pending criminal charges for prostitution; has a subsequent conviction for prostitution; or has had the record of another prostitution conviction vacated. (Orwall)

- **SB 6252** Felony Sex Offenders: Requires the Sex Offender Policy Review Board to review and make recommendations to the legislature regarding the process used by the Department of Corrections for identifying housing providers for the housing voucher program, residence restrictions for sex offenders based on crime of conviction and risk level, and the impact of city and county ordinances. (Dammeier)
- **SB 6434** Patronizing a Prostitute: Subject the following types of property to seizure and forfeiture:
 - all conveyances, including aircrafts, vehicles, or vessels used or intended to be used to facilitate the crime of patronizing a prostitute; and
 - all money, negotiable instruments, securities, or other tangible or intangible property of value that is furnished or intended to be furnished by a person in exchange for patronizing a prostitute. (O'Ban)
- **SB 6435** Sexual Exploitation of a Child: Requires a court, in addition to other civil or criminal penalties authorized by law, to order a person convicted of sexual exploitation of children to pay restitution to the victim for the full amount of the victim's losses. (O'Ban)
- **SJM 8003** Communications Decency Act: Requests Congress to amend the Communications Decency Act. (Kohl-Welles)
- **SB 6017** Sex Crimes/Seizures & Forfeiture: Revises the distribution proceeds from sex crime-related seizures to allow local law enforcement to recoup cost of forfeiture proceedings and requires balance of funds be applied to enforcing laws against prostitution and child sexual exploitation. (Kohl-Welles)
- **HB 1791** Trafficking: Expands the definition of "sex offense" to include Trafficking in the first degree when force, fraud, or coercion is used to cause the trafficked person to engage in a sexually explicit act or a commercial sex act or when a person under 18 years old is caused to engage in a sexually explicit act or a commercial sex act. (Parker)
- **HB 2644** (Ryu) and **SB 6339** (Fraser) Involuntary Servitude: Creates the offense of *Coercion of Involuntary Servitude*, defined as:
 - withholding or threatening to withhold or destroy documents relating to a person's immigration status; or
 - threatening to notify law enforcement officials that a person is present in the United States in violation of federal immigration laws.

For more information about Washington bills and laws, go to www.leg.wa.gov.

Guest: Treat sexually exploited children as victims, not prostitutes

Washington state must do more to ensure child victims of sex trafficking are in fact treated as victims of sexual exploitation, according to guest columnists Jeanne Kohl-Welles and Debra Boyer.

(Originally published in Seattle Times on Thursday, September 26, 2013)

By [Jeanne Kohl-Welles](#) and [Debra Boyer](#)

EVERY night in King County, 300 to 500 children are out on the streets, lured and forced into prostitution.

We must do more to ensure child victims of sex trafficking are in fact treated as victims of sexual exploitation and provided protection and services — a lifeline essential to helping them get off the streets.

Our state has taken major steps to combat human trafficking, but there is a major barrier to services for commercially sexually exploited children. Child victims of sex trafficking who have been forced into prostitution continue to be treated as offenders and placed in the juvenile-justice system rather than provided services afforded other victims of child sexual abuse and sexual assault.

While we still need better data-collection methods, we know that since 2008, 210 children have been arrested as prostitutes in Washington.

While we've made policy changes to better support these victims, their legal status remains unclear. As they go through the justice system, they yo-yo back and forth between being treated as victims and as criminal offenders.

Offender-focused treatment for these sexually exploited children results in mistrust of those responsible for their well-being and safety. That mistrust drives them back to pimps and traffickers.

The juvenile-justice system has never been completely successful in addressing this problem. It still falls short of offering the noncriminal response needed by traumatized and exploited children.

We need to move children who are exploited sexually and commercially out of the juvenile-justice system, which is designed to work with criminals.

We need to formally and legally redefine them. They are not offenders, they are victims — a status already established under federal law. They would still be arrested and charged if they committed another crime — stealing a car, or selling drugs, for instance.

But children are not prostitutes. They are prostituted through coercion, not choice, and the law should reflect that. If we take this step, both symbolically and legally, we can reduce mistrust of service providers and reduce the chances of child victims returning to the streets and pimps.

We should legally define this type of sexual exploitation as what it is, child abuse, and place it under the purview of Child Protective Services. That agency, along with Adolescent Services provided through the state Department of Social and Human Services and community-based services, could provide housing and treatment for child victims as they come off the streets.

Next legislative session, we expect legislation will be introduced to redefine victims and provide additional support for them. We're going to work with advocates, prosecutors, agencies and the victims themselves to find exactly what solutions will work best. This is the next step in protecting trafficked children and reducing the sexual exploitation of children.

Judge our society by how we take care of our most vulnerable. Few are more vulnerable than sexually exploited children.

State Sen. Jeanne Kohl-Welles, D-Seattle, left, has sponsored legislation combating human trafficking and child exploitation. Debra Boyer is the author of the study "Who Pays The Price?" on child-sexual exploitation in Washington.

