

BILL NO: Assembly Bill 1402
TITLE: An act to amend Sections 647 and 653.22 of the Penal Code, relating to prostitution.
COMMITTEE: Public Safety
HEARING DATE: April 25, 2017
POSITION: OPPOSITION

Dear Assembly Committee on Public Safety:

On December 29, 2016, Assemblyman Travis Allen’s op-ed,¹ titled “California Democrats legalize child prostitution” was published in the Washington Examiner. While misguided and concerning, public pushback on state’s legislative efforts to provide immunity for child sex trafficking victims is nothing new. However, Assemblyman Allen’s proposed bill, Assembly Bill 1402 is distressing. Assemblyman Allen’s bill is not a call to action to prioritize the safety of children; rather, AB 1402 calls on the state to criminalize child sex trafficking victims, rather than protect them. This piece of legislation undermines years of work by stakeholders and experts in the field, and it will have real and long-lasting harmful effects on the vulnerable children in this state.

For the last six years, Shared Hope International, a national non-profit organization led by former Congresswoman Linda Smith, has been working alongside states to develop and enact statutory responses that protect and empower child sex trafficking victims. Among such efforts is the prioritization of drafting and passing legislation, such as Senate Bill 1322 (2016), that removes criminal liability for minors engaged in commercial sex. Such efforts are not rooted in “liberal agendas,” as Assemblyman Allen has implied, but instead, are rooted in extensive research, field guidance, and best practices. In the last six years, Shared Hope has supported over 19 states and D.C., including California, in passing laws that prevent minors from being prosecuted for prostitution offenses; seven additional states have stepped up to the plate this legislative session to pass similar laws. Like California, these states are not “legalizing child prostitution” as Assemblyman Allen’s op-ed claimed. Instead, these states are recognizing that children who are engaging in commercial sex **are victims, not criminals.**

Children under 18 years of age cannot legally join the military, enter into a contract, or vote in any local, state, or national election. Further, children cannot legally purchase cigarettes, obtain a tattoo, or in the state of California, consent to sexual intercourse. As a society, we recognize the cognitive decision-making skills that minors are equipped with and thus, actively shield children from entering into commitments and behaviors that are potentially harmful. The success of Senate Bill 1322 was imperative for closing a historical loophole in California state law; even though minors could not legally consent to sexual intercourse, they could be held criminally liable for engaging in such acts if they were paid by an adult to do so. This not only misplaced the criminality, it re-victimized children who had already suffered rape by an adult.

On January 4, 2017, Assemblyman Allen made a guest appearance on the Bill O’Reilly Show. When pushed by Mr. O’Reilly as to consequences of SB 1322 Assemblyman Allen stated, “The California Democrats may have had good intentions in legalizing prostitution but there is absolutely no way that this will have good consequences. ... Legalizing prostitution cannot be the answer.” Further, Assemblyman Allen claimed, “The District Attorneys are up-in-arms about this. This takes away the ability for them to

¹ Assemblyman Travis Allen, “California Democrats legalize child prostitution,” Washington Examiner, December 29, 2017. washingtonexaminer.com/california-democrats-legalize-child-prostitution/article/2610540

use plea bargains The pimps will now say to the minors, ‘Look, if you get approached by a cop on the street corner, just tell him to basically go away and he’s violating your constitutional rights,’ and there’s nothing that cop can do.” While attention grabbing, this argument is not based on current state law.

- 1) Senate Bill 1322 was the result of bi-partisan support and collective efforts of legislators, sex trafficking survivors, and service-providers in this state. Demanding that minors engaged in commercial sex are treated as victims is not only just, it aligns with our society’s collective commitment to protecting children from harm, and in the unfortunate moments that such harm cannot be prevented, that we provide rehabilitation and refuge to these children. Extensive research shows that children who engage in commercial sex do so in an effort to survive, or because a manipulative adult reaps a direct and substantial benefit from the child’s victimization. Regardless of the reason, a child engaging in commercial sex has been failed by his or her community in some way. Prosecuting the child for his or her victimization fails the child twice.
- 2) Removing criminal liability under the prostitution statute for minors under 18 does not “legalize child prostitution,” as stated in Assemblyman Allen’s op-ed. Non-criminalization operates starkly different than legalization; where legalization permits the buying and selling of sex with a child, non-criminalization ensures that the adults who purchase sex with a child are held criminally liable while minors are provided a protective, victim-centered response. Under current law, purchasing sex with any minor under 18 remains illegal.
- 3) Stripping district attorneys of the ability to coerce minors into accepting a plea deal in exchange for evidentiary information is progress, not a problematic consequence. Holding charges over a minor’s head mimics a trafficker’s behavior and perpetuates the cycle of fear. Rather, best practices show that responding to child sex trafficking through a coordinated, victim-centered safety and services plan facilitates cooperation amongst victims and prosecutors. A relationship built out of mutual trust and respect is essential for obtaining important, corroborating evidence to convict trafficking perpetrators. However, cases against traffickers are not lost causes even when victims, oftentimes due to fear of violent retaliation, are unable to cooperate in investigations and prosecutions. Rather, Cal. Penal Code § 633.5 (Recording by party to communication) and Cal. Penal Code § 629.52 (Ex parte order for interception) authorize single-party consent for audiotaping and wiretapping in human trafficking investigations. Such tools permit law enforcement and prosecutors to obtain the necessary evidence to successfully bring charges against and convict traffickers, while preventing the re-victimization of victims.
- 4) SB 1322 prevents law enforcement, who encounter a minor engaged in commercial sex, from arresting and referring a minor for criminal or delinquent charges. However, SB 1322 does not strip law enforcement of their ability to appropriately respond to such cases. To the contrary, SB 1322 amended Cal. Penal Code § 647(b)(2) to read, “Notwithstanding paragraph (1), this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.” Under § 305 of the Welfare and Institutions Code, a commercially sexually exploited minor would meet the conditions necessary for temporary custody without a warrant.

Cal. Welf. & Inst. Code § 305(a), (d) (Dependent Children—Temporary Custody and Detention) permits temporary custody without warrant in circumstances in which

“[T]he officer has reasonable cause for believing that the minor is a person described in Section 300, and in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left in unattended poses an immediate threat to the child’s health or safety. In such cases in which the child is left unattended, the peace officer shall first attempt to contact the child’s parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child.”

Equipping law enforcement officers not only with the ability, but the requirement to act in such cases is contrary to the notion that “there’s nothing [a] cop can do.”

For the reasons outlined above, Shared Hope International strongly opposes AB 1402. We commend the Committee’s thoughtful dedication to the issue and encourage the Committee members to stand alongside us in demanding protection, not prosecution, for some of our most vulnerable children.