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February 25, 2021

The Hon. Steve Bradford, Chair
Senate Committee on Public Safety
Hon. Committee Members
State Capitol, Room 2031
Sacramento, CA 95814

RE: SB 382 (Caballero) – SUPPORT AND SPONSORSHIP

Dear Chair Bradford and Honorable Members of the Committee:

The Children's Advocacy Institute at the University of San Diego School of Law, which for over 30 years through legal education, legislative and regulatory advocacy, and litigation has sought to advance the well-being of California's children, is pleased to sponsor SB 382, a common-sense and clarifying measure aimed at better preventing those who sexually traffic children from continuing to lure, influence, groom, intimidate, or otherwise hold sway over their child victims.

The “Rampant” Scope Of The Enduring Tragedy That Is The Sexual Exploitation Of Children For Profit.

Broadly and technically speaking, the commercial sexual exploitation of children (CSEC) encompasses any type of sexual activity involving a child in exchange for goods, services, or money, given to the child or in almost all cases, to the exploiter.

The problem is shamefully vast. Estimates by the International Labor Organization are that there are 4.8 million victims worldwide of sexual exploitation. Of those 4.8 million, over 99% of victims are children; namely, young women and girls.¹ According to the Los Angeles County Department of Public Health, “[CSEC] is a

¹ <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

rampant and fast-growing problem: Three of the nation's 13 high-intensity child prostitution areas as identified by the FBI are located in California: Los Angeles, San Francisco and San Diego metropolitan areas."² The true rate at which children are trafficked is under reported, so the full extent to which California's children are under threat of this emotional trauma and physical violation is unknown.

"As Close To True Evil As I Have Ever Seen": The Uniquely Pernicious Hold CSEC Exploiters Have Over Their Exploited Children, Whose Life Expectancy While Exploited Is A Mere Seven Years.

However, when criminal authorities do catch up to an exploiter and criminal charges are brought, a small oversight often occurs that can have dire consequences for the traumatized child victim. Restraining orders are not routinely requested during a criminal case where an exploiter is charged with child sexual exploitation. This is a uniquely important omission in CSEC cases because of the unique nature of the crime, both of which raise the possibility of continued and repeated abuse:

(1) the unique emotional vulnerability of the victims who are not only children (the average age when trafficking begins is 12)³ but almost always already profoundly traumatized children -- runaways, abused and neglected foster youth, overwhelmingly prior victims of sexual molestation; and

(2) perpetrators are frighteningly expert in bonding themselves to their victims emotionally: "The pimp/trafficker creates a seemingly loving and caring relationship with the child in order to establish trust and loyalty. ... The manipulation tactics used by the exploiter ensures that the child will remain loyal to him/her despite acts of violence and severe victimization against the child."⁴ "[E]xploiters have developed sophisticated techniques to keep young children compliant and willing to work in dangerous and violent situations. ***Employed against a young girl or boy who feels alone, violence, manipulation, and isolation are***

² http://file.lacounty.gov/SDSInter/dmh/211312_2014_DMH_CSEC_Fact_Sheet_FINAL.pdf

³ It is important to underscore that the CSEC market is for children *who look like children*; these are in the main *not girls who are passing for the age of majority*. The reinforce this, the price charged by those who would be subject to the restraining orders under this bill to the men who pay to rape children rises as the age of the child decreases.

⁴ Ibid.

horribly effective tactics.”⁵ As the California Child Welfare Council chillingly summarized:

“Even if a CSE[C] victim does not experience extreme forms of violence firsthand, it makes threats against a victim or her family entirely plausible and extremely effective from the exploiter’s perspective. Thus, manipulation, violence, and fear of violence keep a child in his exploiter’s grasp. One survivor expert likens the tactics exploiters use to cult recruitment tactics.”⁶

Indeed, experts use phrases like “Stockholm Syndrome” and “brainwashed” to describe the overwhelming psychological power grip of pimps over their child victims. *See, e.g.,* Shackelford, Anzete, *Human Trafficking Awareness Training*, p. 57.⁷ As one experienced clinician who works with survivors of numerous crimes has bluntly observed about these perpetrators, they are “**as close to true evil as I have ever seen ...**”⁸

Keeping these children away from their exploiters is a life-and-death matter for them as “***the average life expectancy of an exploited child is a shockingly short time: seven years.*** Homicide and HIV/AIDS account for a majority of the deaths.”⁹

Commonly, victims of crimes recoil at the idea of ever again encountering the person who committed the crime against them. For the reasons described above, this is tragically not so for the child victims of CSEC. Children who are sexually exploited for profit *are likely to want to return to being exploited*. Many do not even view themselves as victims at all.¹⁰ “[CSEC] victims often relapse to exploitation many

⁵ *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California*, California Child Welfare Council, p.1 available at: http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System_Collaboration-in-CA.pdf, at p. 14., emphasis added.

⁶ *Id.* at 16.

⁷ https://calswec.berkeley.edu/sites/default/files/full_day_human_trafficking_training.pdf p. 57

⁸ <https://www.youtube.com/watch?v=kWKFP0o6Su8>

⁹ *Ibid.*, emphasis added.

¹⁰ “Additionally, many CSEC are not able to see themselves as victims; and either rationalize or actively deny that they are being exploited.” *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California*, California Child Welfare Council, p.1 available at: http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System_Collaboration-in-CA.pdf While generally speaking adults always have more options than children, women who are subject to domestic violence also frequently, additionally, and tragically suffer from being controlled by their abusers. <https://iocdf.org/wp-content/uploads/2014/08/Assessment-Tools.pdf> This is why domestic violence is repeatedly, explicitly, and properly singled out in Penal Code section 136.2.

times before they permanently leave their exploiters, and interventions *must take this cycle into account.*”¹¹

In courtrooms that routinely address the needs of abused and neglected children in or out of foster care, lawyers and judges routinely -- almost every case -- issue orders that establish boundaries between the child and the adults in their lives. When CSEC cases are heard there, orders preventing the exploiter from having contact with the child-victim are frequently issued and often issued *sua sponte*.

Current Law Doesn’t Work

The same should be commonplace in our criminal courts but it is not. There are two reasons for this.

The first reason is simply custom and practice. District Attorneys do not as routinely seek and judges do not as routinely issue restraining orders in criminal cases. This even though they could.

Which leads to the second reason. Before additions to the Penal Code explicitly permitted -- and therefore motivated -- DAs and judges to seek restraining orders in domestic violence cases, the law permitted such orders to issue under the general statute permitting for so-called Criminal Protective Orders or “Stay-Away” Orders. Such orders in domestic violence cases were rare, however, which is why the law, was amended *to showcase domestic violence restraining orders in eight different explicit mentions*. See Penal Code section 136.2(a)(1)(G)(ii), (2), (e)(1)-(2), (h), and (i)(1)-(2))

When it comes to the code educating judges and DAs about the availability of restraining orders in CSEC cases, CSEC victims are similarly situated (i.e., invisible) to victims of domestic violence before these amendments. Penal Code section 136.2 currently contains a means by which orders can be issued in CSEC cases, but it is so hard to find that the judges with whom we have consulted about this bill made no mention of its existence. Here are the relevant subdivisions of Penal Code section 136.2, emphasis supplied for reference and contrast:

(i) (1) When a criminal defendant has been **convicted of a crime involving domestic violence** as defined in Section 13700 or in Section

¹¹ http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System_Collaboration-in-CA.pdf at p. 2, emphasis supplied.

6211 of the Family Code, a violation of subdivision (a) of **Section 236.1**, Section 261, 261.5, 262, subdivision (a) of Section 266h, or subdivision (a) of Section 266i, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, **the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court.** This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail or subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim's immediate family.

In this subsection addressing convictions, the highlighted Penal Code section 236.1 is to subdivision (a) addressing forced labor. Subdivisions (b) and (c) of the same statute addressing CSEC specifically are not explicitly cited. Those subdivisions become eligible for orders only derivatively, through the reference to crimes for which a defendant is required to register pursuant to Penal Code section 290(c). Even experts do not seem to be aware of this.

The same is true with Penal Code section 136.2 (e)(1) addressing orders issued upon being charged with a crime, except that Penal Code section 236.1 – not (a), none of its subdivisions -- is mentioned at all.¹²

Enter SB 382 (Caballero)

As proposed to be amended, SB 382 will simply clarify that current law permits and sets standards for orders protecting CSEC as a part of criminal prosecutions. Given the unique vulnerability of CSEC to continued exploitation, and the seven year life expectancy for them, such a modest clarification of current law comparable to the

¹² (e) (1) When the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence or a violation of Section 261, 261.5, or 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, shall be marked to clearly alert the court to this issue.

welcome and needed clarity benefitting victims of domestic violence who face a similar risk, is overdue.

Please support SB 382 (Caballero).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Howard', is written over a light yellow rectangular background.

Ed Howard
Senior Counsel, Children's Advocacy Institute

cc Hon. Members of the Committee: