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2015 Unintended Consequences how making sex trafficking a felony might hurt sex slaves

Susan L. Aumann, a Republican delegate from Baltimore County, looked stern as she testified on HB 241, a bill that will make it harder for kidnappers to keep people in sexual slavery (it has a companion bill in the Senate).

“You have all seen and heard the movie, ‘Taken,’” she told her colleagues on the Judiciary Committee on the afternoon of Feb. 20, before describing the plot of the 2008 Liam Neeson film and entering it into the record as part of her testimony: “I just want to give you that kind of image.”

The image Aumann wanted to use to drive testimony on her bill was of innocent preteens kidnapped and forced into sexual slavery. That she used a fictional, Hollywood story to do it seems telling, but it is a real problem in the U.S., and Maryland is uniquely situated as a hot spot for it, Aumann said, because of the highways and airports in the state.

“Trafficking” in Maryland is defined as “tak[ing] or caus[ing] another to be taken into a place for prostitution,” and here, trafficking an adult is only a misdemeanor. The felony charge applies only to those who pimp out children under age 18. According to other testimony, Maryland is one of only two states where this is so, and therefore sex traffickers flock to the state.

“We speak to these traffickers all the time,” Corporal Chris Heid of the Maryland State Police told the committee. When the pimp has a prostitute who is 18 or older, “they were not concerned at all,” he said. But in one case, when the police found out the girl was just 17, that “completely changed everything for him.”

Among those testifying in favor of the bill were Jessica Emerson, a legal fellow with the Women’s Law Center, Amanda Rodriguez from the Governor’s Office of Crime Control and Prevention, and Del. Susan McComas (R-Harford County), who heads the Women’s Caucus of the state legislature. She called the bill “one of the major legislative priorities of our caucus during the 2015 session.”

No one spoke in opposition, but Jacqueline Robarge would have, she says.

Robarge runs Power Inside, a nonprofit dedicated to helping women who trade sex for survival or shelter get their lives together. She says that making more non-trafficking-related crimes felonies will, paradoxically, hurt the most vulnerable people who use sex to get safety and shelter. “The so-called anti-trafficking movement is really a law-enforcement-based criminalization effort to sweep everything into a victim-perpetrator paradigm,” she says.

Robarge has been working in Baltimore for almost 15 years, trying to get people social services,

drug treatment, and housing even though they are, often, using drugs and prostituting themselves. She says more police and heavier penalties won't help, but that the views and experience of people like her are overshadowed by a crop of "rescue" groups that tend to equate all prostitution with "trafficking"—and are shaping laws in that image.

"The groups that are purporting to rescue . . . are causing my clients in the real world—not in the theoretical world, but the real world where I work—to have a felony," Robarge says. The criminal records tend to sink these women deeper into poverty and street life, she says, and the law makes distinctions that don't really exist. "So we had a 19-year-old jailed because she rented a motel room for a 17-year-old friend," Robarge says. The woman and the girl live together for safety, she says, but the law treated them completely different: "So one was arrested for trafficking," Robarge says. "The other was 'rescued.'"

One of the rescue groups Robarge says is well-meaning but problematic is The Samaritan Women, a nonprofit that opened in 2011 that houses up to 14 adult women at a time, according to Amanda Weikel, who also testified in favor of the bill.

"She brings up an excellent point," Weikel says of Robarge. "We also recognize the risk that you could be snagging someone who is being trafficked—like the bottom girl."

In a sex-trafficking organization, Weikel explains, the male pimp may use one of the older prostitutes as a sort of manager and recruiter, called a "bottom girl." "She's been there the longest," Weikel says. "She might be doing this for a night off or to sleep in the pimp's bed or avoid a beating."

Weikel says her group supports several proposed amendments to the bill that would restore some prosecutorial discretion "so we wouldn't see those in that situation being punished."

Robarge says the problem goes further, though, because prosecutors (and cops and judges) tend to be anything but kind to sex workers. And even people who try to help sex workers—by offering a lift or a couch, for example—could be prosecuted as "traffickers" if this bill passes.

At the center of the dispute is the question: Do sex workers have agency? Or are they all mere victims? The ur-statistic auguring universal victimhood is this, as Weikel recites without prompting:

"I really balk at the term 'sex work.' It's not a profession . . . the average age of induction into prostitution in the state of Maryland is 11 to 14. No 12-year-old girl wakes up one morning and says 'I think I'll sell myself in prostitution.' The average life expectancy then is seven years. So she works that long, now she's used up, she can't make any money for the pimp, she's been in the game too long, so he dumps her somewhere. If he's in Baltimore he might dump her on Wilkens Avenue. It's the graveyard for the girls.

"She's 19 now, and anyone passing by, seeing what she's doing, they'll think 'well, she chose

that life.”

Although the FBI has repeated the claim that the average child prostitute starts at age 12, others, including the Atlantic Monthly, have questioned the validity of that statistic—and the tendency of rescue groups and governmental organizations to conflate it with the idea that the average age that all prostitutes began was 12. Chris Hall traced the statistic to page 92 of a 2001 study, ‘The Commercial Sexual Exploitation of Children in the U. S., Canada and Mexico,’ by Richard J. Estes and Neil A. Weiner.

The figure, Hall points out, came from the researcher’s interviews with more than 100 child prostitutes. “The Estes and Weiner passage isn’t a conclusion about sex workers at large, or even abused and exploited children;” he wrote. “It is a description only of their sample group.”

Robarge has little patience for the either-or argument. Sex work for the people she works with is contingent, driven by financial need and interpersonal chaos, but is usually not a case of complete victimhood or complete agency, she says. “There is a middle ground—not victims, not empowered sex workers, but a middle ground,” Robarge says. “It’s often survival sex . . . it’s part of the street culture and the drug culture.”

It is not clear yet how HB 241 and its companion, Senate Bill 904, will fare this session.

“We’re the number one consumers of slaves worldwide,” Weikel says. “We’re not the land of the free.”