

# Senate Judiciary Committee

*Jennifer Horgan 271-7875*

**HB 180**, increasing the penalty for buyers under the law regarding trafficking in persons.

**Hearing Date:** April 15, 2021

**Time Opened:** 2:31 p.m.

**Time Closed:** 2:59 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, French, Whitley and Kahn

**Members of the Committee Absent :** None

**Bill Analysis:** This bill changes the penalty for a person who pays to engage in sexual contact with another person under the age of 18 who is a victim of human trafficking and inserts a lesser offense based on the age difference between the victim and the offender.

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**Sponsors:**

Rep. Massimilla

Rep. Katsakiores

Rep. Ebel

Rep. Klee

Rep. Mangipudi

Rep. Egan

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**Who supports the bill:** Rep. Massimilla; Rep. Chase; Rep. Pedersen; Rep. DiLorenzo; Rep. Freitas; Rep. Cloutier; Rep. Ward; Rep. Dutzy; Rep. Vail; Rep. Oxenham; Rep. Dontonville; Rep. Schmidt; Rep. Hamer; Rep. Bouchard; Rep. Hakken-Phillips; Hon. Booras; Bob Dunn, Roman Catholic Bishop of Manchester; Darlene Pawlik; Jasmine Marino; Jean Lewandowski; Sonia Prince; Margaret Watson; Nancy Davis; Keith Davis; Beth Scaer; Charles Townsend; Janet Lucas; Ellen Kolb; Eric Pauer; Barbara D. Reed; Joan Hamblet

**Who opposes the bill:** Chief David Goldstein, NHACP; Joi Smith, NHCADSV

**Who is neutral on the bill:** Katherine Cooper, NHACDL

**Summary of testimony presented in support:**

**Representative Massamilla**

- Reviewed the history of the bill.
- This bill raises the penalties for purchasers of sex with a minor to a class A felony if the buyer is over the age of 20.
- The House Criminal Justice Committee amended the bill to say buyers 20 and under would only be charged with a class B felony.

- This bill attempts to eliminate the distinctions between traffickers and buyers by recognizing the equal role buyers play in creating a supply and demand marketplace.
- This creates the same penalty for a buyer as a trafficker.
- In 2017 the National Criminal Justice Reference Service reported that 41 states have statutes that made penalties for the buyers as high or almost as high as the federal penalties.
- The federal penalties range from a minimum of 10 years up to life imprisonment.
- Although NH cannot quantify the rate of child exploitation, human trafficking has been reported in every county.
- The National Human Trafficking Hotline says there have been eight trafficking cases and four indictments. In 2018 there were 29 investigations into human trafficking with 79% involving sex trafficking.
- A Boston psychology study by Melissa Farley et al stated that buyers are most likely to be between 20-75 years old, white males with incomes \$20,000 – \$140,000, 44% college degree and 40% married.
- Sex trade is founded on demand.
- Penalties are not simply put in place as deterrents but as mechanisms to hold offenders accountable.
- The Governor has supported this bill in the past.
- Agrees with the concerns on the age carve out.
- Agrees the word ‘trafficking’ needs to be included in III-a of the bill.

**Bob Dunn** (Roman Catholic Diocese of Manchester)

- Human trafficking is a major concern for the church.
- Pope Francis has called human trafficking a crime against humanity.
- The NH Human Trafficking Collaborative Taskforce was created to address the urgent need for a coordinated response to the human trafficking threat in NH.
- The fact that that Taskforce exists speaks to how seriously law enforcement view the problem.
- Thinks everyone who was a supporter of HB180 in the House was happy without the carve out.
- Thinks the carve out was a political issue, as there were folks on the Criminal Justice Committee that wanted to see the carve out.
- Does not think it is ideal for it to be there, but the question is if it is necessary in order to pass both bodies.

**Darlene Pawlik**

- Is a juvenile sex trafficking survivor from NH. Shared her personal experience of abuse, being sold on her 14<sup>th</sup> birthday, and often being bought specifically to be abused or raped.
- Supporting this bill as originally written would be great.
- Agreed to the age carve out because young people are stupid.

- Does not like the way the amendment is written, as it is too vague and confusing.

### **Summary of testimony presented in opposition:**

#### **Chief David Goldstein** (Association of Chiefs of Police)

- Has worked cases involving trafficking and prostitution.
- The Chiefs are deeply committed to increasing protections for victims of human trafficking.
- Supported initial spirit of the bill to raise the offense to a class A felony.
- Encourages the Committee to reconsider the original language of the bill.
- Crimes of human trafficking are devastating to the victims and their families.
- There is no reason this offense should remain a class B felony at any time.
- The House amendment to the bill created a lesser offense of a class B felony based on the buyer's age.
- This is wholly inappropriate and goes against the federal standards.
- This is not an issue of being in a relationship, it is the intentional purchase and objectification of a human being.
- Senator French asked if there are often cases where buyers are under the age of 20.
  - Doesn't know if he can answer that objectively. Has certainly seen it, but to put an actual number on it would be very difficult. Referenced the book *How to Lie with Statistics*.
- Senator Kahn asked if they supported the bill in 2020.
  - Believes they did but would have to go back to look at that.
- Senator Kahn asked if the Chiefs support the original version of this bill.
  - Yes.

#### **Joi Smith** (NHCADSV) (provided written testimony)

- Served as a CORE member of the NH Human Trafficking Collaborative Taskforce.
- Statistics show there was an increase in the number of victims in 2020.
- Out of the total number of confirmed victims, 53% were victims of sex trafficking and 43% were victims of labor trafficking. Nearly 40% were minors.
- One of the most common form of trafficking in NH is familial trafficking.
- NH must work towards holding suppliers and purchasers accountable.
- Creating an exception does not allow us to acknowledge trafficking as the severe and horrific crime that it is.
- The Coalition supported the bill as originally introduced.
- The original language would bring NH closer in line with the federal law and it would be consistent with other states.
- Has significant concerns with the amendment that was put in by the House with the lesser felony for persons under the age of 20.
- There is no place for this type of carve out and it sends the message that the age of the buyer somehow makes the crime and level of exploitation less severe.

- Sex trafficking is the exploitation of a person through force, fraud or coercion and it is in no way comparable to a relationship, and therefore introducing a “Romeo and Juliet” clause is inappropriate.
- Urges the Committee to remove the House carve out.
- Senator Carson asked why the age carve out is for 20 years old when a person is considered an adult at age 18. Also asked if this says a 13-year-old can legally consent and the buyer would only get a class B felony.
  - That is what the concern is with this amendment.

**Neutral Information Presented:**

**Katherine Cooper** (Association of Criminal Defense Lawyers)

- Testified to this problem in the House.
- The way the statute is drafted, III-a does not include an element that a person who is the victim has been trafficked.
- The actual elements of the statute are the same as RSA 645:2 that sets out the same crime of asking or paying for sex with someone under the age of 18.
- The intention of this statute is to include that a person has been trafficked.
- When a statute is analyzed in a jury trial, just because it is housed under a title that includes trafficking does not mean it is an element of the offense.
- Senator Whitley asked if she raised this in the House.
  - Did and has raised this before in the Senate when the statute was originally passed.

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Date Hearing Report completed: April 20, 2021