

Testimony of Prof. Claude d'Estrée

Director – Human Trafficking Center, Josef Korbel School of International Studies, University of Denver
cdestree@du.edu

RE: SB 15-030 "A Bill for an Act Concerning Removing Culpability for Prostitution for a Victim of Human Trafficking"
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Colorado Senate Committee

My name is Prof. Claude d'Estrée (pronounced klōd des-TRAY). I am on the faculty of the Josef Korbel School of International Studies at the University of Denver (DU) where I am the Director of the Human Trafficking Center. Before joining the faculty at DU I was at the U.S. Attorney's Office in Washington, DC. I have been working directly on issues of human trafficking for 17 years. The Human Trafficking Center, begun in 2002, is the only two-year, graduate level training program on forced labor, human trafficking, and international labor migration issues in the U.S. It uses sound research methods to produce reliable and transparent data and make it available to government and non-government agencies, law enforcement and lawmakers to help produce rational policy around human trafficking issues.

I am also a Special Rapporteur at UN.GIFT (United Nations Global Initiative to Fight Human Trafficking) and was appointed by the Governor to a four-year term on the Colorado Human Trafficking Council. My remarks here represent the opinion of the Human Trafficking Center, but not the Colorado Human Trafficking Council. The Colorado Human Trafficking Council, having just recently been formed, has not had the opportunity to consider the Bill before you, or for that matter, any other human trafficking related Bills that are presently pending.

I am here, along with my colleagues Ms. Monica Petersen and Mr. Rex Hamaker, to testify on behalf of passage, with some modifications, of Senate Bill 15-030. I have some general remarks and my colleagues will have some specific recommendations.

Let me begin by suggesting that you might read an excellent report put together by The City University of New York School of Law. It is entitled "Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims"

<http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf>

I will leave a few copies for the Committee to read.

Survivors of human trafficking within the commercial sex industry are often twice victims. In the case of prostitution they have been forced to engage in an illegal activity by the trafficker and then prosecuted and convicted of engaging in those illegal activities by the State. The age of the victim should not matter. If she or he is a minor then the law automatically should be treating them as victims of human trafficking. No affirmative defense is even needed. However, women and men in their 20's, 30's 40's and beyond are presumed guilty until proven innocent. A victim may be forced into prostitution when they are a minor and continue in that activity after they reach the age of majority. How is it that under the age of 18 they are presumed innocent and magically after the age of 18 we ascribe agency to them and they are presumed guilty. It can be years, even decades later that someone with a prostitution conviction may come to realize that they were indeed trafficked. Present and past victims have had their lives shattered. Putting one's life back together and healing from the experience can take many, many years. Having a prostitution conviction only re-victimizes the victim. A prostitution conviction can make getting a job difficult or impossible, travel can be restricted, social services are more difficult to access and the conviction creates a psychological and emotional barrier to healing. There are often other related criminal charges, in addition to prostitution, when someone is a victim of human trafficking. This issue needs to be addressed as well.

Some have raised the issue that this Vacatur Law will open the floodgates. This has not happened to the other 20 plus states that have enacted Vacatur Laws. The same fear was raised when the T-Visa was created for victims of human trafficking. The T-Visa is a temporary 4-year visa that allows a victim of human trafficking to remain in the U.S. and work. They are available for the victim, their spouses, their children and their parents. Five thousand T-visas are available each year. Only 13% of available T-visas have been granted.

I would like to put on record the Best Practices as identified by the CUNY School of Law report entitled "Clearing the Slate" that I referenced earlier.

1-Broad definition of victim of trafficking.

Federal and state laws often define trafficking slightly differently. In order to provide the broadest possible remedies, statutes should allow for vacatur for survivors who meet the definition of trafficking victims under either state law or federal law, rather than restricting relief to victims under the state law definition.

2-Broad scope of convictions vacated.

Trafficking survivors are often forced to perform a range of criminal activities in addition to prostitution. In order to provide the appropriate scope of relief, statutes should allow for vacatur of all convictions that arise out of the trafficking situation. They should also apply retroactively to convictions that occurred prior to the passage of vacatur laws.

3-No unreasonable proof requirements.

The hidden nature of trafficking, coupled with fear of law enforcement and trafficker retaliation, makes it difficult for trafficking survivors to provide corroborating evidence or report victimization in a timely manner. Statutes should not require a specific type of documentation, proof, or corroborating evidence. However, they should create a presumption that a survivor's convictions resulted from the trafficking situation where there is official documentation certifying the survivor as a trafficking victim.

4-No additional conditions on relief.

Statutes should not require that survivors obtain permission from prosecutors to seek relief, cooperate with law enforcement, or prove that they have left the sex industry or been rehabilitated as conditions of relief.

5-No unreasonable time limitations on seeking relief.

Trauma, fear of retaliation, or other situations may prevent trafficking survivors from seeking out services or pursuing remedies. Given the complex circumstances of survivors, statutes should not impose absolute time limitations (statutes of limitations) on motions seeking to vacate convictions.

6-Confidentiality.

Statutes should include confidentiality provisions to protect the survivor's identity.

7-Relief should effectively erase convictions.

To provide the strongest relief for survivors, statutes should require vacatur when the statutory requirements are satisfied.

8-Judicial discretion to expand relief. Given that it may be impossible to anticipate the circumstances facing a trafficking survivor, courts should be authorized to take additional action consistent with the purposes of the vacatur remedy.

9-Resources to ensure availability of remedy. A vacatur statute is meaningless if survivors are not able to file motions seeking relief. Legislatures should ensure availability of the remedy by funding legal representation for individuals eligible for relief.

I strongly recommend passage of the Colorado Vacatur Law. In fact, I urge you to make it more robust, more expansive so that victims of human trafficking can finally be given a fair chance to re-start their lives with a clean slate.

Thank you.

Good afternoon. My name is Monica Petersen and I am a research fellow at the Human Trafficking Center (or HTC), and a graduate of the Josef Korbel School of International Studies at the University of Denver. I have spent the past year and half researching gender, development, and human trafficking under the guidance of Professor d'Estree and the HTC.

Among the most challenging goals of effective social justice is the reintegration of individuals or populations who have experienced, or are currently experiencing, forms of social disadvantage. Experiences of social disadvantage are wide-ranging, and are the social service needs for reintegration. Whether these reintegration needs concern those newly released from prison, refugees, or victim survivors of criminal activities, societies fair best when individual wellbeing is supported, as the most progressive means to achieve collective welfare.

The bill on the table today has the potential to do just that type of support, in removing the criminal records of human trafficking survivors previously charged with prostitution. Individuals with criminal records must often deal with various forms of discrimination. Whether that is finding employment or housing opportunities, stigma from friends and family, or simply individual perceptions of being a convicted criminal, these can be impeding factors to social reintegration.

If an individual was forced to commit the criminal offense on their record, as a victim of human trafficking, it is in the best interest of both the individual and the society to which he or she belongs, to remove that charge as an unfair impediment to his or her social wellbeing.

Therefore, this bill is certainly an enlightened legislative move for the state of Colorado, as we continue to expand our outreach and support to cases of human trafficking within our state borders.

There are three aspects of this bill I want to touch on, for you all to keep in mind as this legislation, hopefully, moves forward. These aspects might be coined the "before, during, and after" of the bill, so to speak.

Before this bill goes into affect, speaking on behalf of our colleague consensus at the HTC, we feel that a specific phrasing should be added to the bill, to include fair and equal possibilities for individuals with both recent and past prostitution records, who received that conviction as a result of being sex trafficked.

Following the bill's statement on page 2, line 11 and page 3, line 2, which states: "An official determination or documentation is not required to assert an affirmative defense [to grant a motion] pursuant to this subsection, but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates the presumption... the offense was a direct result of being a victim."

We would like to see the following phrase added to line 14 on page 2, and line 5 on page 3, following the present phrasing regarding official documentation from a government agency, to read:

"or an official testimony from an individual or organization with human trafficking expertise indicating that the defendant was a victim at the time of the offense." Such testimonies might include those from advocates at Praxis, Colorado Organization for Victims Assistance (COVA), Laboratory to Combat Human Trafficking (LCHT), or HTC, as organizations with established human trafficking expertise in the Denver community.

Our concern, is that under the bill's present wording, individuals who were convicted of prostitution before cases of "sex trafficking" were readily identified by law enforcement, will be imposed with a burden of proof if these trafficking survivors did not or have not worked with a *government agency* concerning their case. Likewise, recent convictions may not have interacted with anyone from a *government agency* who appropriately identified them as a sex trafficking survivor, or with whom they felt comfortable discussing the details of exploitation in their prostitution conviction.

Adding the previously stated phrasing to the Colorado bill would allow for a more expansive coverage of the best practices for this type of legislation, as Professor d'Estree has brought up. In particular, our added wording is mindful of the best practice for victims to be defined broadly, which acknowledges the diversity of lived experiences of trafficking, and that unreasonable burdens of proof or time limitations on seeking relief not be imposed on survivors.

I also want to add to acknowledge that while this later best practice may raise concerns for some that "everyone" with a prostitution record will assert a sex trafficking defense, however, including the possibility for official testimony from advocates with human trafficking credentials is meant as both a check and balance for this bill. Furthermore, similar concerns were raised with issuing "too many" T-visas under the TVPA and we have seen no such influx of people dishonestly taking advantage of that legislation.

Finally, our "during and after" recommendations for this bill are an optimistic ideal, so I will be brief, to leave you with some food for thought on the best potential for this particular type of legislation.

We realize that training judges around issues of human trafficking and how to best identify cases of trafficking would be a costly, and therefore unlikely initiative, for the state to undertake in relation to this bill. Nevertheless, the ideal is that we continue to encourage judges and lawmakers in the state to attend human trafficking trainings on their own accord, which occur at various times during the year and throughout the state. Accessible information about these trainings would obviously need to be made accessible to members of the Colorado justice system.

Likewise, the "after" concern, which would actually be ongoing if implemented, is some sort of monitoring and evaluation of the outcomes of this bill. Again, this recommendation obviously requires funding sources, but the ideal is that we as a state are able to collect and evaluate data on the efficacy of human trafficking interventions and how best to improve their implementation in future endeavors.

These ideals of training and monitoring and evaluation efforts might be something for the Human Trafficking Council to take under their jurisdiction. In conjunction with adding a bit of clarification to the present bill, social reintegration and tackling the social disadvantages faced by human trafficking survivors with prostitution convictions on their records.

Thank you very much for your time.

I am Rex Hamaker, a student at the University of Denver and an Associate of the Human Trafficking Center. I was a French major, and when people ask what I can do with that degree, the answer today is testify before the Colorado Senate Judiciary Committee. I taught English in Saudi Arabia for 5 years, which opened my eyes to the prevalence of trafficking. I'm happy to be back in America not only because it is my home, but also because as opposed to overseas, here I can do something about trafficking.

First I would like to share a brief anecdote about the impact of this kind of law for trafficking victims. Then, I have both praise for this bill as well as reservations about its scope.

The following true story comes from the *Clearing the Slate* report. "Marta, a 32-year-old Latina woman trafficked into the U.S., described her convictions as 'serious obstacles to obtaining an education and moving forward.' She would like to apply to be a home health attendant to make enough money to afford her daughter's speech therapy and dreams of owning a house one day. However, she explained: The convictions make it difficult for me to complete courses to become a home attendant. The application for a home attendant program requires information about criminal records. I do not want to lie about my criminal record, but I also don't want to reveal it and be rejected from the courses. So I put the papers away. I can't go back, and I can't go forward."

For people like Marta, this bill is of vital importance.

I find the scope of the bill limited. It also seems to be in keeping with the focus of Colorado legislation and law enforcement on sex. The Human Trafficking and Slavery report from the Colorado Commission on Criminal and Juvenile Justice presented to this committee in 2013 showed that most investigations and convictions with regards to human trafficking between 2006 and 2013 were related to the prostitution of minors. HB 14-1273 also shows a focus on child sex trafficking in having 79 words in its section on labor and 290 for sex. The difference primarily consists of a broader definition for child sex trafficking than for any other form (including child labor trafficking) as well as a list of inadmissible defenses for defendants in child sex trafficking cases (again not available in child labor cases). Having another bill before us today that focuses only on sex trafficking and only on the sex part of sex trafficking continues the tradition of ignoring the broader realities of victims' lives. In this bill, labor trafficking victims are completely left out. It is good to see the possibility of prostitution charges expunged for sex trafficking victims. But it is disappointing to see only prostitution. A prevalent means of coercion of sex trafficking victims is through drugs. Thus both possession and consumption of drugs is a direct result of being a victim of human trafficking. This bill does nothing to address that. Prostitution often happens in dangerous locations, and johns aren't always polite in their dealings with sex trafficking victims. In that situation, victims may feel the need to have a weapon for their own self-defense. Possession of a concealed firearm is a direct result of being a victim of human trafficking. This bill does not address that.

Still, this bill is a step in the right direction. Criminal charges for trafficking victims are barriers that stop them from fully re-entering society and in fact can make them vulnerable to further trafficking by limiting their access to education, housing, services, and jobs, as we heard with Marta. Having the legal system permanently brand trafficking victims with a scarlet letter adds insult to injury. It prevents a victim of trafficking from becoming a survivor of trafficking since a criminal record can make someone subject not only to social stigma but also legal discrimination. More than being an inconvenient stain on their record, a prostitution charge for trafficking victims is a real impediment to integrating into society in ways that most of us take for granted. It is good that this bill addresses that.

If there are objections to this bill on the grounds that it will allow people undeserving of expungement to get it, I would like to point out this bill does not go as far as other, similar legislation around the country. Whereas expungement in other states is automatic if trafficking is documented, this bill has no such provision. Especially for past convictions, victims have to present their cases to a judge who MAY grant the motion. If we can trust the judicial system in determining convictions of prostitution, we should also be able to trust the system to reverse those determinations given new laws and evidence. It is good and necessary that this bill is retroactive, especially since legislation in Colorado around trafficking is brand new, and training for law enforcement and the judicial system isn't much older. Many victims of trafficking have not been recognized as such and may not even recognize it themselves. It is good allow justice to be served in their lives.

This is not safe harbor. This is not automatic, blanket amnesty. This is not a loophole. This is the possibility of a corrective to an evolving legal system that despite its best efforts to ensure justice for all, sometimes inadvertently perpetuates victimization and injustice. Passing this bill as written, that is, allowing one kind of victim of trafficking relief from one kind of charge, is a step in the right direction. It is also just about the very least we can do to help the trafficked. For the sake of the vulnerable and exploited, I hope to see this bill passed and future expansions that protect the full range of victims from the variety of charges that represent the lived reality of trafficking.

I applaud the Colorado General Assembly for having passed HB 14-1273. I applaud the Colorado Senate in introducing this bill and getting it this far in committee. I urge the Assembly to pass this bill and hope the expansions my colleagues and I recommend make their way into law to ensure that victims of trafficking can overcome their pasts and become survivors.