



Sen. Iris Y. Martinez

Filed: 2/9/2006

09400HB1299sam002

LRB094 09423 LCT 55262 a

1 AMENDMENT TO HOUSE BILL 1299

2 AMENDMENT NO. _____. Amend House Bill 1299 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Predator Accountability Act.

6 Section 5. Findings. The General Assembly finds:

7 (1) The United Nations Convention of December 2, 1949
8 proclaims that prostitution and trafficking are
9 "incompatible with the dignity and worth of the human
10 person and endanger the welfare of the individual, the
11 family and the community". Sex trade activities and sex
12 trafficking are supported by inequality and oppression
13 based on gender, race, socioeconomic status, sexual
14 orientation, and age. The sex trade and sex trafficking
15 disproportionately affect women and children, particularly
16 women of color. Men are also trafficked and exploited in
17 the sex trade.

18 (2) Regardless of the specific pathway the women took
19 to prostitution, their initial experiences could not have
20 occurred in the absence of an environment that was
21 "supportive" of their prostitution activities, as well as
22 partners who were willing to pay for sex. Research and
23 evidence suggests that the sex trade is inherently
24 coercive, abusive, and exploitative.

1 (3) Individuals, organizations, and entities often
2 recruit and maintain persons, largely women and girls, into
3 the sex trade through predatory behaviors including
4 coercion, violence, abuse, and exploitation. Individuals,
5 organizations, and entities often use such predatory
6 tactics to maximize profit from persons' sex trade
7 activity.

8 (4) These practices often cause severe trauma and
9 long-term physical, emotional, and psychological damage.
10 Often, individuals enter sex trade related activities
11 prior to age 18, are homeless or runaways, victims of
12 childhood sexual, physical, and emotional abuse, and have
13 mental health or substance abuse issues. Many adult persons
14 in the sex trade are victimized by many forms of violence
15 and abuse while in the sex trade. This violence is often
16 perpetrated to maintain their participation in the sex
17 trade.

18 (5) Many persons, organizations, and entities that
19 subject individuals to or maintain them in the sex trade
20 are not held accountable by the criminal justice system. In
21 some parts of the State, less than 1% of all prostitution
22 related arrests are for pimps or panderers.

23 (6) This Act allows persons who have been or are
24 subjected to the sex trade to seek civil damages and
25 remedies from individuals and entities that recruited,
26 harmed, profited from, or maintained them in the sex trade.

27 Section 10. Definitions. As used in this Act:

28 "Sex trade" means any act in violation of: any of the
29 following Sections of the Criminal Code of 1961: 11-15
30 (soliciting for a prostitute); 11-15.1 (soliciting for a
31 juvenile prostitute); 11-16 (pandering); 11-17 (keeping a
32 place of prostitution); 11-17.1 (keeping a place of juvenile
33 prostitution); 11-19 (pimping); 11-19.1 (juvenile pimping and

1 aggravated juvenile pimping); 11-19.2 (exploitation of a
2 child); 11-20 (obscenity); or 11-20.1 (child pornography); or
3 Article 10A of the Criminal Code of 1961 (trafficking of
4 persons and involuntary servitude).

5 "Sex trade" activity may involve adults and youth of all
6 genders and sexual orientations.

7 "Victim of the sex trade" means a person from whom sexual
8 acts are obtained or expected in exchange for anything of
9 value, such as a prostitute, a juvenile prostitute, or a person
10 whose image or likeness is used in any sex trade activity.

11 Section 15. Cause of action.

12 (a) Violations of this Act are actionable in civil court.

13 (b) A victim of the sex trade has a cause of action against
14 a person or entity who:

15 (1) engages in sex trade; or

16 (2) advertises or publishes advertisements for
17 purposes of recruitment into sex trade activity.

18 (c) A separate action may be brought under this Act against
19 any individual who has engaged in retaliation against: (1) any
20 victim of the sex trade in a proceeding under this Act; (2) any
21 member of the family of a victim of the sex trade; (3) any
22 person who in good faith has opposed anything that he or she
23 reasonably believed to be a violation of this Act; or (4) any
24 person who has filed a complaint, testified, assisted, or
25 participated in a proceeding pursuant to this Act.

26 Section 20. Relief.

27 (a) A prevailing victim of the sex trade shall be entitled
28 to all relief that would make him or her whole. This includes,
29 but is not limited to:

30 (1) declaratory relief;

31 (2) injunctive relief;

32 (3) recovery of costs and attorney fees including, but

1 not limited to, costs for expert testimony and witness
2 fees;

3 (4) compensatory damages including, but not limited
4 to:

5 (A) economic loss, including damage, destruction,
6 or loss of use of personal property, and loss of past
7 or future earning capacity; and

8 (B) damages for death, personal injury, disease,
9 and mental and emotional harm, including medical,
10 rehabilitation, burial expenses, pain and suffering,
11 and physical impairment;

12 (5) punitive damages; and

13 (6) additional restitution, which shall be calculated
14 based upon the gross proceeds received, if any, by the
15 defendant as a result of his or her criminal offense, but
16 shall not represent wage payment for sexual services.

17 Section 25. Non-defenses.

18 (a) It is not a defense to an action brought under this Act
19 that:

20 (1) the victim of the sex trade and the defendant had a
21 marital or consenting sexual relationship;

22 (2) the defendant is related to the victim of the sex
23 trade by blood or marriage, or has lived with the defendant
24 in any formal or informal household arrangement;

25 (3) the victim of the sex trade was paid or otherwise
26 compensated for sex trade activity;

27 (4) the victim of the sex trade engaged in sex trade
28 activity prior to any involvement with the defendant;

29 (5) the victim of the sex trade made no attempt to
30 escape, flee, or otherwise terminate contact with the
31 defendant;

32 (6) the victim of the sex trade consented to engage in
33 acts of the sex trade;

1 (7) it was a single incident of activity; or

2 (8) there was no physical contact involved.

3 (b) Any illegality of the sex trade activity on the part of
4 the victim of the sex trade shall not be an affirmative defense
5 to any action brought under this Act.

6 Section 30. Evidence. In the course of litigation under
7 this Act, any transaction about which a victim of the sex trade
8 testifies or produces evidence does not subject him or her to
9 criminal prosecution or any penalty or forfeiture. Any
10 testimony or evidence, documentary or otherwise, or
11 information directly or indirectly derived from that testimony
12 or evidence that is given or produced by a victim of the sex
13 trade or a witness for a victim of the sex trade may not be used
14 against that person in any other investigation or proceeding
15 other than a criminal investigation or proceeding for perjury
16 committed while giving the testimony or producing the evidence.

17 Section 35. Statute of limitations.

18 (a) An action for damages must be commenced within 10 years
19 of the time the victim of the sex trade knew and fully
20 understood that:

21 (1) she or he had been injured; and

22 (2) the injury was caused by conduct of the defendant
23 described in this Act.

24 (b) The court shall toll the limitations period upon a
25 showing that the victim of the sex trade was or is unable, due
26 to sex trade-related injury, to commence the action within the
27 limitations period. The injury may be psychological and need
28 not be traceable to any action by the defendant. A victim of
29 the sex trade may not be compelled to personally appear to
30 attest to these facts. Affidavits from the victim of the sex
31 trade and his or her doctor stating the required facts are
32 sufficient to constitute a showing as required by this

1 subsection.

2 (c) The court shall toll the limitations period upon a
3 showing that despite reasonable efforts, the victim of the sex
4 trade was unable to ascertain the identity, true name, or
5 location of the defendant during the limitations period. In
6 determining whether the victim of the sex trade's efforts were
7 reasonable, the court shall consider the totality of the victim
8 of the sex trade's circumstances during the limitations period,
9 including the victim of the sex trade's emotional condition,
10 financial resources, freedom of movement and communication,
11 and reasonable fear of the defendant for self or others.

12 (d) The court shall toll the limitations period upon a
13 showing that the defendant in any way inhibited the victim of
14 the sex trade's understanding of the right to pursue the cause
15 of action or the victim of the sex trade's ability to pursue
16 the cause of action. Behavior constituting inhibition
17 includes, but is not limited to:

18 (1) minimizing by words or deeds the harm inflicted
19 upon the victim of the sex trade;

20 (2) isolating the victim of the sex trade from access
21 to legal representation;

22 (3) threatening the victim of the sex trade with
23 retaliation for pursuing the claim; or

24 (4) misrepresenting the injury as the fault of the
25 victim of the sex trade rather than the fault of the
26 abuser.

27 (e) There is no limitation of time on actions for
28 declaratory or injunctive relief under this Act.

29 (f) If the person entitled to bring the action was a minor
30 at the time the cause of action accrued, upon turning 18, the
31 action must be commenced within the time period described in
32 subsection (a) of this Section.

33 Section 40. Remedies preserved. This Act does not affect

1 the right of any person to bring an action or use any remedy
2 available under other law, including common law, to recover
3 damages arising out of the use of the victim of the sex trade
4 in the sex trade nor does this Act limit or restrict the
5 liability of any person under other law. This Act does not
6 reflect a determination of a policy regarding the applicability
7 of strict liability to activities relating to the sex trade.

8 Section 45. Double recovery prohibited. Any person who
9 recovers damages under this Act may not recover the same costs
10 or damages under any other Act. A person who recovers damages
11 under any other Act may not recover for the same costs or
12 damages under this Act.

13 Section 50. No avoidance of liability. No person may avoid
14 liability under this Act by means of any conveyance of any
15 right, title, or interest in real property, or by any
16 indemnification, hold harmless agreement, or similar agreement
17 that purports to show consent of the victim of the sex trade.

18 Section 55. Severability. If any provision of this Act or
19 its application to any person or circumstance is held invalid,
20 the invalidity of that provision or its application does not
21 affect other provisions or application of this Act that can be
22 given effect without the invalid provision or application.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."