Committee Report

REGULAR CALENDAR

February 14, 2017

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 94-FN,

AN ACT prohibiting certain defenses in prostitution and human trafficking cases. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Larry Gagne

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	**Criminal Justice and Public Safety**
Bill Number:	**HB 94-FN**
Title:	**prohibiting certain defenses in prostitution and human trafficking cases.**
Date:	**February 14, 2017**
Consent Calendar:	**REGULAR**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill prohibits the assertion of certain defenses in a prosecution for prostitution or human trafficking. This will amend RSA 633:7, III to read: a person guilty of a class B felony if the person pays, agrees to pay, or offers to pay to engage in sexual contact, as defined in RSA 632-A:1 or sexual penetration, as defined in RSA 632-A:1, V with a person under the age of 18, or to observe a sexually explicit performance involving a person under the age of 18. the payment or offer or agreement to pay may be made to the person under the age of 18 or a third party. Neither the actor's lack of knowledge of the other person's age nor consent of the other person shall constitute a defense to a charge under this paragraph.

Vote 17-4.

Rep. Larry Gagne
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 94-FN, prohibiting certain defenses in prostitution and human trafficking cases. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Larry Gagne for the **Majority** of Criminal Justice and Public Safety. This bill prohibits the assertion of certain defenses in a prosecution for prostitution or human trafficking. This will amend RSA 633:7, III to read: a person guilty of a class B felony if the person pays, agrees to pay, or offers to pay to engage in sexual contact, as defined in RSA 632-A:1 or sexual penetration, as defined in RSA 632-A:1, V with a person under the age of 18, or to observe a sexually explicit performance involving a person under the age of 18. the payment or offer or agreement to pay may be made to the person under the age of 18 or a third party. Neither the actor's lack of knowledge of the other person's age nor consent of the other person shall constitute a defense to a charge under this paragraph. **Vote 17-4.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: CJ PS

BILL NUMBER: 94-FN

TITLE: DEFENSES IN PROSITUTION

DATE: 2-14-2017 CONSENT CALENDAR: YES ☐ NO ☒

☑ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

This bill prohibits the assertion of certain defenses in a prosecution for prostitution or human trafficking.

This will amend RSA 633:7, III to read: A person is guilty of a class B felony if the person pays, agrees to pay, or offers to pay to engage in sexual contact, as defined in RSA 632-A:1 or sexual penetration, as defined in RSA 632-A:1, V with a person under the age of 18, or to observe a sexually explicit performance involving a person under the age of 18. The payment or offer or agreement to pay may be made to the person under the age of 18 or a third party. Neither the actor's lack of knowledge of the other person's age nor consent of the other person shall constitute a defense to a charge under this paragraph.

COMMITTEE VOTE: 17-4

JLW

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Larry D. Rappe
For the Committee

Rev. 02/01/07 - Yellow

REGULAR CALENDAR

February 14, 2017

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 94-FN,

AN ACT prohibiting certain defenses in prostitution and human trafficking cases. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. John Burt

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	**Criminal Justice and Public Safety**
Bill Number:	**HB 94-FN**
Title:	**prohibiting certain defenses in prostitution and human trafficking cases.**
Date:	**February 14, 2017**
Consent Calendar:	**REGULAR**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The minority understands the wrong policy of convicting people who are deceived by pimps or prostitutes as to the age of the prostitute. The minority does not believe it is right to convict someone of a crime that they had no intention of committing. We believe those who are trying to deceive someone of a prostitutes age are the ones who should be prosecuted more heavily. Unfortunately this bill only punishes unwitting persons.

Rep. John Burt
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 94-FN, prohibiting certain defenses in prostitution and human trafficking cases. **INEXPEDIENT TO LEGISLATE.**

Rep. John Burt for the **Minority** of Criminal Justice and Public Safety. The minority understands the wrong policy of convicting people who are deceived by pimps or prostitutes as to the age of the prostitute. The minority does not believe it is right to convict someone of a crime that they had no intention of committing. We believe those who are trying to deceive someone of a prostitutes age are the ones who should be prosecuted more heavily. Unfortunately this bill only punishes unwitting persons.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 94-FN, prohibiting certain defenses in prostitution and human trafficking cases. **INEXPEDIENT TO LEGISLATE.**

Rep. John Burt for the **Minority** of Criminal Justice and Public Safety. The minority understands the wrong policy of convicting people who are deceived by pimps or prostitutes as to the age of the prostitute. The minority does not believe it is right to convict someone of a crime that they had no intention of committing. We believe those who are trying to deceive someone of a prostitutes age are the ones who should be prosecuted more heavily. Unfortunately this bill only punishes unwitting persons.

Original: House Clerk
Cc: Committee Bill File

MINORITY REPORT

COMMITTEE: Com Justice & Pub Safety

BILL NUMBER: 94

TITLE: punishing ignorant Johns

DATE: _____ **CONSENT CALENDAR:** YES ☐ NO ☑

☐ **OUGHT TO PASS**

☐ **OUGHT TO PASS W/ AMENDMENT**

☒ **INEXPEDIENT TO LEGISLATE**

☐ **INTERIM STUDY** (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

The minority understands the wrong policy of convicting people who are deceived by pimps or prostitutes as to the age of the prostitute. The minority does not believe it is right to convict someone of a crime that they had no intention of committing. We believe those who are trying to deceive someone of a prostitute's age are the ones who should be prosecuted more heavily. Unfortunately this bill only punishes unwitting persons and ~~does the~~

COMMITTEE VOTE: _____

RESPECTFULLY SUBMITTED,

Rep. _____
For the Minority

• Copy to Committee Bill File

Rev. 02/01/07 - Blue

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 94-FN

BILL TITLE: prohibiting certain defenses in prostitution and human trafficking cases.

DATE: February 14, 2017

LOB ROOM: 305-307

MOTIONS: **OUGHT TO PASS**

Moved by Rep. Gagne Seconded by Rep. Pantelakos Vote: 17-4

Respectfully submitted,

Rep Delmar Burridge, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 94-FN

BILL TITLE: prohibiting certain defenses in prostitution and human trafficking cases.

DATE:

LOB ROOM: 204

MOTION: (Please check one box)

☑ OTP ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ (*if offered*)

☐ Interim Study (2nd year)

Moved by Rep. COLLINS Seconded by Rep. PANTELAKOS Vote: 17-4

MOTION: (Please check one box)

☐ OTP ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ (*if offered*)

☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

☐ OTP ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ (*if offered*)

☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

☐ OTP ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ (*if offered*)

☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES _____ NO

Minority Report? _____ Yes _____ No If yes, author, Rep: _____ Motion: _____

Respectfully submitted: _____

Rep. Rep Delmar Burridge, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/6/2017 8:30:26 AM
Roll Call Committee Registers Report

2016 SESSION

CRIM&SFTY

Bill #: 94-FN 14 **Title:** DEFENSES IN PROSTITUTION

PH Date: 2/7/2016 OTP

Exec Session Date: 2/14/2017

Motion: _____ Amendment #: _____

MEMBER	YEAS	NAYS
Welch, David A. Chariman	✓	
Sapareto, Frank V. Vice Chairman		PASS ✓
Fields, Dennis H.	✓	
Fesh, Robert M.	✓	
Gagne, Larry G.	✓	
Burt, John A.		✓
Green, Dennis		✓
Gargasz, Carolyn M.	✓	
Ham, Bonnie D.	✓	
McNally, Jody L.	✓	
Testerman, Dave	✓	
Wallace, Scott	✓	
Chandley, Shannon E.	✓	
Pantelakos, Laura C.	✓	
Berube, Roger R.	✓	
Cushing, Robert Renny	✓	
Rodd, Beth		✓
Burridge, Delmar D.	✓	
Murray, Kate	✓	
O'Leary, Richard	✓	
Opderbecke, Linn	✓	
TOTAL VOTE:	17	4

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 94-FN

BILL TITLE: **prohibiting certain defenses in prostitution and human trafficking cases.**

DATE: **February 7, 2017**

LOB ROOM: **204** **Time Public Hearing Called to Order:** **1:00 p.m.**

Time Adjourned: **<<End Time>>**

Committee Members: Reps. Fields, Burt, Gargasz, Ham, McNally, Testerman, Wallace, Chandley, Pantelakos, Cushing, Murray, O'Leary and Burridge

Bill Sponsors:
Rep. Massimilla **Rep. Katsakiores** **Rep. Theberge**
Rep. Irwin **Rep. Ebel**

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Linda Massimilla, Sponsor - Buyers mistake for age

*Lara Saffo, Grafton County Atty - supports - found fiscal note troubling.

*Jess Eskeland, Coalition against domestic and sexual violence - supports

*Chris Dornan, CCJR - opposed - changed my mind, don't think 12 year old giving the age of 18. we do know the ages of 13 and 17. In my world it happens. 13 year olds give the age of 18.

Kristyn Bernier, Detective - supports

Nicole Ledoux, MPP - supports

Pat conway, Rockingham County Atty - supports

*Cory Smith, NHCSDSV - supports

*Natch Greyes, Littleton Police Prosecutor

Respectfully submitted,

Rep. Delmar Burridge, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 94-FN

BILL TITLE: **prohibiting certain defenses in prostitution and human trafficking cases.**

DATE: **2/7/17 CONTINUED FROM 1/18/17**

ROOM: **305-307** **Time Public Hearing Called to Order:** 1:00 PM

Time Adjourned: _____

(please circle if present)

Committee Members: **Reps. Welch, Sapareto, Fields, ~~Fesh~~, Gagne, Burt, ~~Green~~, ~~Gargasz~~, ~~Ham~~, ~~McNally~~, Testerman, ~~Wallace~~, Chandley, Pantelakos, ~~Berube~~, Cushing, Rodd, ~~Murray~~, O'Leary, ~~Opderbecke~~ and Burridge**

Bill Sponsors:

Rep. Massimilla	**Rep. Katsakiores**	**Rep. Theberge**
Rep. Irwin	**Rep. Ebel**	

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

REP LINDA ABUTTER RECOMMENDATION

1. MASSAMILLA * BYERS BYERS MISTAKE FOR AGE
2. GRAFTON CO ATTORNEY * LARA SAPPO when have lost support
   - found typical mate trouble
3. Jess Eskeland (D.E.S.V.) support
4. cases DURH * CITIZENS FOR SJ REFORM } against – changed my mind ⇒ don't think 12 year old — we do know the ages given the ages of 13 and 17 – in my model it happens 13 year olds — give the age of 18

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # NB 94-FN Date 2/7/17

Committee Criminal Justice

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Meredith Cook			Roman Catholic Bishop of Manchester	✓	
Lara Saffo	385 Dartmouth Hill Rd N. Haverhill NH 03774		Grafton County Attorney	✓	
Linda Massimilla	Littleton, NH		Grafton 1	✓	

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 94-FN

BILL TITLE: **prohibiting certain defenses in prostitution and human trafficking cases.**

DATE: **January 18, 2017**

LOB ROOM: **204** **Time Public Hearing Called to Order:** **11:05 a.m.**

Time Adjourned: **11:06 a.m.**

Committee Members: Reps. Welch, Sapareto, Fields, Fesh, Gagne, Burt, Green, Gargasz, Ham, McNally, Testerman, Wallace, Chandley, Pantelakos, Berube, Cushing, Rodd, Murray, O'Leary, Opderbecke and Burridge

Bill Sponsors:

Rep. Massimilla	**Rep. Katsakiores**	**Rep. Theberge**
Rep. Irwin	**Rep. Ebel**	

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Pantelakos - opened and closed the bill. will be reopened when Prime Sponsor is available.

Respectfully submitted,

Rep. Delmar Burridge, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 94-FN

BILL TITLE: **prohibiting certain defenses in prostitution and human trafficking cases.**

DATE: 1/18/17

ROOM: 204 **Time Public Hearing Called to Order:** 11:05

Time Adjourned: 11:06

(please circle if present)

Committee Members: **Reps. Welch, Sapareto, Fields, Fesh, Gagne, Burt, Green, Gargasz, Ham, McNally, Testerman, Wallace, Chandley, Pantelakos, Berube, Cushing, Rodd, Murray, O'Leary, Opderbecke and Burridge**

Bill Sponsors:

Rep. Massimilla	**Rep. Katsakiores**	**Rep. Theberge**
Rep. Irwin	**Rep. Ebel**	

was personally ill when org introduced

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

PANTELAKOS INTRODUCED THE BILL & CLOSED

SIGN UP SHEET

11:00

To Register Opinion If Not Speaking

Bill # HB 94-FN Date 1/18/17

Committee Criminal Justice

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep Suzanne Harvey			Hillsb 9	✓	
Daryl W Perry			Liberty Lobby, LLC		x
Rep. Debra Altschiller			Strafford 19	✓	
Mary Freitas					
Rep Timothy Horrigan			Strafford 6	✓	
Rep Dan Rapp			H-142		+

Testimony

Opposition to HB 94, which turns an unwitting John into a rapist

By Chris Dornin, co-founder, Citizens for Criminal Justice Reform

We feel deep sympathy for girls who run away from home and become prostitutes at age 16 or 17. The John for one of these teenagers would never know the prostitute is under age. The girl would always say she is at least 18 years old.

It is my understanding that prostitution rapidly ages a person. So does the severe drug abuse almost all of these unfortunate kids suffer. I am very sorry to tell you that a 16 or 17 year old prostitute will soon look 25 years old. That should be the deep concern of lawmakers. A young prostitute is rapidly aging.

Give these young women the care and treatment they badly need. Let them have counseling, group therapy, tutoring, halfway houses and help returning to their families. Spend public dollars where they will do the most good, rehabilitating kids who can still turn around their lives.

Don't waste it sending ignorant Johns to prison at $35,000 per year for three and half to seven years. Last year's bill made it a felony to have sex with a 16 or 17 year old prostitute. That was an unfair punishment. This year's bill would take away the defense that the John is unaware how young the prostitute is.

The bill might make it easier to convict the John. That is the apparent intent of HB 94. It tries to solve the acute social problems of rampant drug addiction and homelessness among high school girls by severely punishing the men and often the classmates who pay to have sex with them.

By all means punish the pimps of these high school girls severely. Doing what they do is heartless. But you should pass an amendment to HB 94 changing the punishment for sex with an underage prostitute back to a misdemeanor. That would give the John up to a year in a county jail, along with the huge associated embarrassment and stigma. Most of these men are not otherwise criminals. Don't send them to prison to get raped. That's what happens to many noncriminals in hard time.

And we respectfully ask you to delete the proposed addition to the law that says "Neither the actor's lack of knowledge of the other person's age nor consent of the other person shall constitute a defense to a charge under this paragraph."

Chris Dornin can be reached at 603-228-9610 or cldornin@aol.com.

In the press release announcing this federal funding, the United States Department of Justice for the District of New Hampshire explained that, since 2013, New Hampshire has seen at least "23 recorded investigations involving forced labor or sex trafficking in New Hampshire, resulting in several prosecutions and convictions. That number – which continues to grow – is fueled in part by the influx of opioids into the state. Victims of the sex trafficking trade are often addicted to opiates or other drugs. They are sometimes forced or coerced into sexual servitude based, in part, on their fear of losing a steady supply of drugs and the prospect of experiencing withdrawal symptoms as a result of that lost drug supply." Id.

The New Hampshire is fortunate to have a task force, known as the New Hampshire Human Trafficking Collaborative Task Force to Combat Human Trafficking. This task force includes dedicated members of law enforcement, service providers, attorneys, state agencies, and other community stakeholders. See http://www.givewaytofreedom.org/initiatives/New-Hampshire-Task-Force.php. The mission of the Collaborative is "to develop and implement a multidisciplinary response to human trafficking in New Hampshire that is coordinated and collaborative, victim-centered, and trauma-informed." Id. Importantly, this task force adopted a set of Guiding Principles:

> •Human trafficking - both sex and labor - happens in New Hampshire.
>
> •Human trafficking impacts all genders, ages, and nationalities and our response, including investigation, prosecution, services, training, and awareness must be inclusive.
>
> •Collaboration is essential for success.
>
> •Effective investigations, prosecutions, and services are victim-centered and trauma-informed.
>
> •Preventing and responding to human trafficking requires a thoughtful and long-term approach, with policies and actions informed by data and experience.
>
> •The Community should be empowered with concrete ways they can be part of the response in their personal and/or professional capacity."

Quoting: http://www.givewaytofreedom.org/initiatives/New-Hampshire-Task-Force.php See also https://www.facebook.com/endtraffickingnh/?hc_ref=SEARCH&fref=nf; https://polarisproject.org/.

Attached to my written material is a press release from May of 2013. This press release announced that a Manchester attorney was sentenced to 40 years on federal child exploitation charges for trafficking a child. In Grafton County, in 2012, a person was successfully prosecuted for transporting a minor across state lines for illegal sex trafficking. This occurred in one of our wonderful towns, a reminder that this insidious crime occurs everywhere.

Anything we can do to support these efforts and victims of human trafficking is vital. A part of this is ensuring the toughest laws we can write to combat human trafficking. Accordingly, I encourage you to support HB 94.

As always, if I can assist in any manner, or answer any questions, please do not hesitate to contact me.

Thank you for your time,

Lara Saffo

OFFICE OF THE GRAFTON COUNTY ATTORNEY

Paul V. Fitzgerald
DEPUTY COUNTY ATTORNEY

OFFICE ADMINISTRATOR
Alison Z. Farina

VICTIM/WITNESS PROGRAM
Carin E. Sillars
Sabra K. Stephens
Stacey D. Cass

INVESTIGATOR
Wayne H. Fortier

Lara J. Saffo
COUNTY ATTORNEY

3785 Dartmouth College Highway, Box 7
North Haverhill, NH 03774
603-787-6968 • Fax 603-787-2026
email: countyattorney@co.grafton.nh.us
Victim/Witness Program • 603-787-2040 • victimwitness@co.grafton.nh.us

ASSISTANT COUNTY ATTORNEYS
John A. Bell
Mariana C. Pastore
Tara J. Heater
Viktoriya A. Kovalenko
Nicholas A. Chong Yen

To: Chairmen Welch and the Honorable Members of the Criminal of Justice and Public Safety Committee:

Re: House Bill 94-FN

Date: January 17, 2017

As the Grafton County Attorney, I wanted to note my my support for HB 94. This bill confirms that a defendant who engages in human trafficking cannot argue that he or she did not know the age of a minor child. It also confirms that minors cannot consent to sex trafficking.[1]

The thought that human trafficking is occurring anywhere is devastating. But it is a reality throughout the United States, including New Hampshire. Last fall, United States Attorney Emily Gray Rice confirmed the receipt of 1.3 million in federal funding to combat human trafficking in New Hampshire. This funding will be used to provide comprehensive and specialized services for human trafficking victims, fund best practices in investigating and prosecuting human trafficking cases, and support "research designed to improve understanding of the nature of human trafficking crimes and develop best practices to prevent and respond to such crimes." See United States Department of Justice Press Release dated November 1, 2016, at https://www.justice.gov/usao-nh/pr/new-hampshire-receive-federal-grant-money-combat-human-trafficking

[1] New Hampshire law notes that minors cannot consent to sexual penetration, and reiterating it in the context of trafficking is appropriate.

Prosecutor's Office

Littleton and Sugar Hill Police Departments
2 Kittridge Lane, Littleton, New Hampshire 03561
603-444-7711 x 303

Written Testimony: House Bill 94-FN (2017)

One of the biggest challenges we face in the world of prosecution is the question of what are the most appropriate charges in the present case. This bill, if passed, will help clarify how the law acts with regard to sexual offenses committed against children, which will make it easier for prosecutors to know what the correct charge when facing a case involving sexual offenses committed against children.

The first and most important change this bill makes is that it corrects a strange disconnect in our statutes. Currently, our statute on Trafficking in Persons makes it a class B felony to pay, agree to pay, or offer to pay to engage in sexual contact with a person under the age of 18. Meanwhile, our statue on Prostitution makes that same set of acts a misdemeanor.

The reason for that difference is that our statute on Prostitution neglects to include subparagraph (f) of paragraph I in the list of subparagraphs in paragraph II. Meanwhile, subparagraphs (a) through (e) are all included. The failure to include subparagraph (f) is the reason why the statute on Prostitution does not line up with the statute on Human Trafficking.

Based upon my reading of both our Prostitution and our Human Trafficking statutes, it looks to me that the failure to include subparagraph (f) in paragraph II was probably just an oversight during drafting. It does not really make sense that, under our statute on Prostitution, a defendant who solicits a child for sex is guilty of a class B felony, but one who pays a child for sex is guilty of only a misdemeanor. It makes more sense that the drafters of the statute simply forgot to include subparagraph (f) in paragraph II, or forgot to include a provision to update that statute upon passage of the bill which became our law on the Trafficking of Persons.

One of the nice aspects of this update – as well as the other change in this bill – is that it clarifies how the law operates in these scenarios, making the choice of charges clearer, and, in some ways, reigning in the discretion of prosecutors to pick which level of punishment they deem appropriate in the cases in front of them. This bill makes it very clear what the punishment for paying, agreeing to pay, or offering to pay to engage in sexual contact with a person under the age of 18, and does not allow the range of wiggle-room that currently exists in the law. I urge you to pass this bill.

Thank you for your time,

_____

-Natch Greyes
Prosecutor
Littleton and Sugar Hill Police Departments

BILL NO:	House Bill 94
TITLE:	Prohibiting certain defenses in prostitution and human trafficking cases.
COMMITTEE:	Criminal Justice and Public Safety
HEARING DATE:	February 7, 2017
POSITION:	SUPPORT

Dear House Criminal Justice and Public Safety Committee:

Shared Hope International is a non-profit organization dedicated to combating the egregious human rights violations incurred by the prevalent sex trafficking of children within the United States. By pursuing comprehensive, victim-centered approaches to combat domestic minor sex trafficking, we have found that children from all types of home environments and socioeconomic statuses are vulnerable to the manipulative approaches used by traffickers who pose as boyfriends, recruiters for modeling agencies, and the like.

Under the Protected Innocence Challenge, Shared Hope has outlined the minimum legal components essential to protect children from sex trafficking, including ensuring adequate penalties for those who drive the sex trafficking industry by creating the demand for child sex trafficking victims. Shared Hope International supports House Bill 94 because it builds on last year's legislative advancement that established the crime of buying sex with a child as a crime of sex trafficking. This bill builds on last year's important changes in two key ways:

(1) House Bill 94 ensures that buyers of sex with children cannot evade serious penalties simply by claiming they did not know the age of the child—this defense creates a substantial barrier for prosecutors to pursue heightened penalties that exist for the protection of children, effectively removing the risk of mistake from the buyer while putting child victims at greater risk.
(2) House Bill 94 ensures that inappropriately low penalties cannot be used to prosecute buyers of sex with children by aligning penalties for offenses that apply to the commercial sexual exploitation of children (CSEC) with the penalties for child sex trafficking.

Together, these amendments prioritize the protection of child sex trafficking victims and further strengthen the deterrent effect of New Hampshire's laws that combat the demand for child sex trafficking victims. Under current law, a buyer who purchases a child for sex in New Hampshire could be charged with a misdemeanor offense under N.H. Rev. Stat. Ann. § 645:2(I)(f) (Prostitution and Related offenses), rather than the felony offense of trafficking under N.H. Rev. Stat. Ann. § 633:7(III-a). The disparity in penalties cannot be underestimated. If charged with a misdemeanor prostitution offense, a buyer who pays to have sex with a child would face a maximum jail term of one year and a fine not exceeding $2,000. Conversely, a buyer charged with a felony prostitution offense or trafficking offense could face a prison term between 3.5-seven years, respectively, and a maximum fine of $2,000.

One way HB 94 addresses this concern is by increasing penalties for buying sex with a child under N.H. Rev. Stat. Ann. § 645:2(II)(f) (Prostitution and related offenses), building on the foundation established in 2016 when buyer conduct was brought within the definition of child sex trafficking, punishable as a Class B felony. Increasing penalties under the prostitution offense aligns with the penalties provided under the trafficking statute, recognizing the seriousness of the offense and ensuring that buyers charged under CSEC laws do not face lower penalties than those prosecuted under the trafficking law.

Testimony of Cory W. Smith
In support of HB-94 FN
February 7, 2017

Good afternoon Chair and Members of the Criminal Justice and Public Safety Committee,

My name is Cory Smith. I am testifying today on behalf of the New Hampshire Coalition Against Domestic and Sexual Violence in support of HB-94. I am a longtime advocate on the international, national, state and local level to end modern-day slavery and human trafficking in the United States and around the world. I have worked almost ten years to end human trafficking and modern day slavery and have lived in Concord, NH with my family since 2009.

As you know New Hampshire was one of the very first states in the nation to pass legislation criminalizing the scourge of human trafficking. As a result, service providers across the state have been able to assist survivors of sex and labor trafficking—specifically, by providing survivors safe haven and helping them rebuild their lives.

In 2014 you took further steps in unanimously passing critical legislation to expand the legal authorities for law enforcement, enhance penalties for trafficking and expand victims' services for service providers and survivor aftercare reasserting New Hampshire's role as a leader in the fight against human trafficking

Today I urge you to support HB 94 that seeks to prohibit certain defenses in human trafficking cases including the perpetrator's lack of knowledge of the victims' age or the consent of the victim shall constitute a defense. This new bill clarified existing law and provides additional protections for the most vulnerable populations of human trafficking – children.

Specifically, this bill makes the following important changes to our existing law:

- It makes prostituting minors a felony;
- It makes it a felony to knowingly force a person to engage in sex acts against their will;
- It eliminates the ability of perpetrators to evade prosecution by claiming they did not know the minor's age or that the minor consented. Minors lack capacity to consent and are unable to fully appreciate their consequences of their actions. That is why it is important that special protections like this exist to protect them from predation and trafficking.

Testimony of Cory W. Smith
In support of HB-94 FN
February 7, 2017

The inability of children to consent to sex was recognized almost 125 years ago in England and affirmed by the U.S. Supreme Court almost 100 years ago. There is no such thing as child prostitution. Children cannot consent to sex. Child prostitution is rape. Victims of child trafficking or prostitution are victims and survivors of child rape.

We know sex trafficking of children exists in New Hampshire. Recently, columnist Nicholas Kristoff exposed the case of a 15-year-old runaway girl being sold for sex in four states on Craigslist. Kristoff located Emily for sale online after searching online for two minutes, sent a link to police and a few hours later she was rescued at a hotel in Salem, NH and her trafficker was arrested.

Enough is enough. Please support this bill so we can eliminate any loophole for perpetrators to claim as a defense they did not know the child's age or that the child consented. This new bill gives prosecutors additional tools to prosecutor human traffickers who have targeted and preyed upon minors. Thank you to the committee for allowing me the opportunity to testify before the committee today. Please support HB 94-FN.

Department of Justice

U.S. Attorney's Office
District of New Hampshire

FOR IMMEDIATE RELEASE
Thursday, May 23, 2013

Manchester Attorney Sentenced To 40 Years On Federal Child Exploitation Charges

CONCORD, N.H. – Lisa Biron, 43, of Manchester, was sentenced today in United States District Court for the District of New Hampshire to 40 years in federal prison on child exploitation charges, announced United States Attorney John P. Kacavas.

Following a three-day jury trial in January, Biron was convicted of transportation of a child for illegal sexual conduct, sexual exploitation of a child, and possession of child pornography

The investigation began in September 2012, when an 18-year-old male reported to the Manchester Police Department that he met Biron via a Craigslist personal ad that she had placed. The young male reported that he smoked marijuana and had sex with Biron, following which she introduced him to a young female as her "18-year-old roommate," who in fact was barely 14-years old. Biron subsequently encouraged the young male to engage in sexual activity with the minor female while Biron video recorded them.

The male also reported that Biron showed him videos of the minor female engaged in sexual activity with another young man. Based on this information, law enforcement initiated an investigation, which included the search of Biron's residence and her computer. The search revealed videos and photographs of the minor female engaged in sexual activity with this other young male. Evidence at trial revealed that Biron had transported the minor female to Niagara Falls, Ontario, Canada in May of 2012, for the purpose of manufacturing the videos of the minor female engaged in sexual activity with this young male. The search of Biron's computer also revealed a video of Biron herself engaged in sexual activity with the minor female.

United States Attorney Kacavas observed that "this case represents yet another example of our resolve to identify, prosecute and seek long federal prison terms for those who, like the Defendant, exploit minors for sexual purposes. As for this Defendant, her sentence effectively removes her from society for the balance of her life and eradicates the threat she poses to minors and adolescents. As for like-minded individuals who prey on our children, or who manufacture, distribute and possess images of child sexual exploitation, let this sentence serve as a warning that you will face swift and certain justice in New Hampshire."

This case was investigated by the Federal Bureau of Investigation, Department of Homeland Security Immigration and Customs Enforcement, Customs and Border Protection, the Hillsborough County Attorney's Office, the Manchester Police Department, the Strafford County House of Corrections and the Ontario Provincial Police. The case was prosecuted by United States Attorney John P. Kacavas and Assistant United States Attorney Helen Fitzgibbon.

LINDA MASSIMILLA

Thank you, Chairman Welch and the Criminal Justice Committee, for allowing this hearing to be recessed until today. I appreciate your indulgence due to my recent illness.

I became interested in the human trafficking issue after attending a conference of the National Foundation of Women Legislators that dealt with trafficking. Until the conference, I thought that trafficking was a problem in large states, like the way the opioid issue was viewed several years ago in NH. I soon learned that trafficking was happening right here in NH, even in my idyllic hometown of Littleton.

The sex trafficking industry is driven by demand. The buyers are as much a part of the crime as the trafficker. They range in age from 17-70yrs, are predominately white, married males with a percentage of these buyers having 6 figure incomes and are willing to pay more money for a minor.

Tolerance has become a serious problem with this issue, as 26% of buyers convicted of purchasing sex with a minor serve no jail time. Buyers are unlikely deterred if state laws are not strong.

HB 1628 enacted last year and implemented this January, criminalized buying sex with a child

UNDER THE HUMAN TRAFFICKING LAW, AND HELPED TO ADDRESS AN IMPORTANT GAP IN NH'S LAW. IT ENSURED THAT THE PROSTITUTION LAW DISTINGUISHED BETWEEN BUYING SEX WITH A CHILD AND BUYING SEX WITH AN ADULT BY PROVIDING A HEIGHTENED PENALTY WHEN THE PERSON SOLICITED WAS A CHILD.

INCREASING PENALTIES TO ALIGN WITH THOSE PROVIDED FOR TRAFFICKERS ACKNOWLEDGED THE EQUAL ROLE BUYERS PLAY IN CREATING A MARKET FOR THE BUYING AND SELLING OF SEX.

BY STRENGTHENING NH'S ANTI-DEMAND LAWS, HB94 PROHIBITS A BUYER OF SEX WITH A CHILD FROM ASSERTING A MISTAKE OF AGE DEFENSE, HELPING TO ENSURE THAT PENALTIES INTENDED TO PROTECT CHILDREN ARE NOT EASILY AVOIDED.

BY ELIMINATING A MISTAKE OF AGE DEFENSE IN NH, IT RECOGNIZES THAT THE HARM CAUSED TO CHILD VICTIMS IS NOT MITIGATED BY THE FACT THAT THE BUYER DID NOT KNOW THE CHILD'S AGE. IT ALSO EQUIPS PROSECUTORS WITH THE TOOLS NECESSARY TO BRING SUCCESSFUL PROSECUTIONS. THIS AMENDMENT TRACKS WITH THE MAJORITY OF STATES (28 TO BE EXACT) THAT PROHIBIT BUYERS OF SEX WITH CHILDREN FROM RAISING THE MISTAKE OF AGE DEFENSE.

CHILDREN CANNOT CONSENT TO SEX. WITHOUT THE ELIMINATION OF THE MISTAKE OF AGE DEFENSE, A CHILD IS VICTIMIZED TWICE, ONCE BY THE BUYER AND ONCE BY

THE LEGAL SYSTEM. PLEASE SUPPORT THIS BILL WITH AN OTP RECOMMENDATION.

THANK YOU FOR LISTENING.

REP. LINDA MASSIMILLA

Bill as Introduced

HB 94-FN - AS INTRODUCED

2017 SESSION

17-0079
04/05

HOUSE BILL ***94-FN***

AN ACT prohibiting certain defenses in prostitution and human trafficking cases.

SPONSORS: Rep. Massimilla, Graf. 1; Rep. Katsakiores, Rock. 6; Rep. Theberge, Coos 3; Rep. Irwin, Sull. 6; Rep. Ebel, Merr. 5

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill prohibits the assertion of certain defenses in a prosecution for prostitution or human trafficking.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

17-0079
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT prohibiting certain defenses in prostitution and human trafficking cases.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Prostitution and Related Offenses. Amend the introductory paragraph of RSA 645:2, II to read as follows:

II. A person is guilty of a class B felony if such person violates the provisions of subparagraphs (b), (c), (d), [~~or~~], (e), ***or (f)*** of paragraph I and the violation:

2 New Paragraph; Prostitution and Related Offenses. Amend RSA 645:2 by inserting after paragraph V the following new paragraph:

VI. In a prosecution under subparagraph II(a), the actor's lack of knowledge of the other person's age shall not constitute a defense.

3 Trafficking in Persons. Amend RSA 633:7, III-a to read as follows:

III-a. A person is guilty of a class B felony if the person pays, agrees to pay, or offers to pay to engage in sexual contact, as defined in RSA 632-A:1 or sexual penetration, as defined in RSA 632-A:1, V with a person under the age of 18, or to observe a sexually explicit performance involving a person under the age of 18. The payment or offer or agreement to pay may be made to the person under the age of 18 or a third party. ***Neither the actor's lack of knowledge of the other person's age nor consent of the other person shall constitute a defense to a charge under this paragraph.***

4 Effective Date. This act shall take effect January 1, 2018.

LBAO
17-0079
11/10/16

HB 94-FN- FISCAL NOTE
AS INTRODUCED

AN ACT prohibiting certain defenses in prostitution and human trafficking cases.

FISCAL IMPACT: **X State** **X County** **☐ Local** **☐ None**

	Estimated Increase / (Decrease)			
STATE:	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	***X General***	***☐ Education***	***☐ Highway***	☐

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill contains a penalty that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Routine Criminal Felony Case	$451	$456
Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	$756/Case	$756/Case
Assigned Counsel – Felony	$60/Hour up to $4,100	$60/Hour up to $4,100
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled		

by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2016 Average Cost of Incarcerating an Individual	$35,832	$35,832
FY 2016 Average Cost of Supervising an Individual on Parole/Probation	$573	$573
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	$85 to $110	$85 to $110

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

The proposed bill would not affect the Department of Safety.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, New Hampshire Association of Counties, Departments of Justice, Corrections and Safety