

## Testimony of the Human Trafficking Prevention Project

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**BILL NO:** Senate Bill 27  
**TITLE:** Criminal Procedure – Restorative Justice Program  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** February 2, 2023  
**POSITION:** **OPPOSE UNLESS AMENDED**

Senate Bill 27 would establish a Restorative Justice Program within the Victim Services Unit of the Governor's Office of Crime Prevention, Youth, and Victim Services. While we support restorative justice measures as an alternative to the criminal legal system for survivors of human trafficking and other forms of gender-based violence, the Human Trafficking Prevention Project at the University of Baltimore School of Law opposes this bill *unless* amended to substitute a working group provision, because a firm foundation for the creation of a restorative justice program in Maryland has yet to be established.

With the passage of the Trafficking Victims' Protection Act in the year 2000, criminal laws designed to penalize traffickers were enacted, as were provisions designed to provide access to supportive services for survivors. However, what justice "looks like" in human trafficking cases has largely been viewed through the lens of the criminal legal system, despite the fact that for survivors, justice often "looks" quite different. The Urban Institute sought to shed light on this issue by interviewing survivors, legal/social service providers, justice stakeholders, and other relevant policy actors. The resulting study, "Bending Towards Justice: Perceptions of Justice Among Human Trafficking Survivors," revealed that survivors of human trafficking overwhelmingly lack faith in the U.S. criminal legal system, primarily due to the impact of criminalization and the coercive tactics commonly used by prosecutors to convict their traffickers.<sup>1</sup> Survivors also overwhelmingly favored alternative forms of justice to that which is offered by the criminal legal system, including restorative justice practices.<sup>2</sup>

This response is similar to that which has been expressed by survivors of intimate partner violence, which is that healing and accountability must be central to the anti-violence movement's response to this crime, rather than the carceral response which has dominated both the movement's practice and policy since its inception.<sup>3</sup> This perspective becomes all the more crucial given that so many survivors of gender-based violence enter the criminal legal system as criminal *defendants* rather than as victims,<sup>4</sup> and would themselves benefit from access to restorative justice.

However, additional information still needs to be gathered before moving forward with any legislation designed to institute a restorative justice process within the state, as proposed by SB 27. Amending the

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<sup>1</sup> Jeanette Husseman, et. al., *Bending Towards Justice: Perceptions of Justice Among Human Trafficking Survivors* (2018), <https://www.ojp.gov/pdffiles1/nij/grants/251631.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> See Leigh Goodmark, *Law Enforcement Experience Report: Domestic Violence Survivors' Survey Regarding Interaction with Law Enforcement* 11 (2022) (noting that 71% of domestic violence survivor respondents reported that they would prefer using numerous other resources as opposed to reporting to law enforcement, with one respondent stating that they wanted assistance from "literally anyone not involved with the criminal justice system."); See also "Hillary Packer, *Restorative Justice and Intimate Partner Violence: A Summary of Findings from Two Reports* (Jan. 2021), [https://www.innovatingjustice.org/sites/default/files/media/documents/2021-01/Monograph\\_RJ\\_Summaries\\_01292021.pdf](https://www.innovatingjustice.org/sites/default/files/media/documents/2021-01/Monograph_RJ_Summaries_01292021.pdf).

<sup>4</sup> See generally Leigh Goodmark, *Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism* (2023); Erin Marsh, Brittany Anthony, Jessica Emerson, and Kate Mogulescu, *State Report Cards: Grading Criminal Record Relief Laws or Survivors of Human Trafficking* 4-6 (2019), <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf>.

bill to substitute a working group for the content of the bill as currently drafted would provide a forum to carefully and deliberately consider the implementation of a restorative justice program in Maryland. In particular, information on best practices about the following is needed: safeguards preventing offenders from manipulating the system to learn of a survivor's whereabouts; the potential impacts on a victim in an offender-initiated process vs. a victim-initiated process; how information disclosed during the restorative justice process may or may not be used against either a victim *or* a defendant in related legal proceedings; proper qualifications for facilitators including requiring training, retraining, and/or professional licensure; whether certain power and control-based crimes like human trafficking and interpersonal violence should have additional limits or protections applied to them; whether serial offenders should be limited or prohibited from accessing the program; and, how to best ensure that survivors have appropriate supports throughout the process, including access to crime victims' rights counsel.

Additionally, it is crucial that any working group that is developed be comprised of interdisciplinary subject matter experts representing the wide range of victims' rights and needs throughout the state, which has, in large part, been absent from the legislative process thus far. Additionally, it is vital to the success of the working group that the input of survivors of harm vary as widely as the dynamics between perpetrator and victim can, depending on the nature of the crime.

While the HTPP and many of our coalition partners are committed to exploring options for restorative justice, time and care must be taken to address the common challenges and barriers to the implementation of such a program within the state, the results of which can then be presented to the General Assembly in the form of a formal report *prior to* the implementation of any restorative justice program in the state. Victims of crime, including survivors of human trafficking and interpersonal violence, both want and deserve a variety of options to address the impact of their victimization, but the success of such a response is dependent on us doing this right the first time. For these reasons, the Human Trafficking Prevention Project at the University of Baltimore School of Law opposes Senate Bill 27 *unless amended as indicated*.

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