



Shifting the Injustice An Unfortunate 'NO' Vote to S.534

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As sexual abuse lawyers, we follow and provide analysis on all state and federal legislative efforts related to child sexual abuse, including S.534: *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017* (the Act). After unanimously passing the Senate in November, S.534 was passed in the House on January 29th with a vote tally: 406-3. It is not unusual to have a bill pass with 'no' votes. We wondered who and why would anyone vote against the proposed legislation designed to protect youth athletes from child sexual abuse.

Representative Justin Amash (Cascade Township, MI) explained his 'no' vote in a Facebook post. It seems that most of Amash's concerns relate to the constitutionality of the federal government doing what the states have neglected – perhaps he is right. Our difficulty arises from Amash's concerns regarding potential injustice:

S 534 creates a thought crime. No one should face the risk of prison time for failing to report unsubstantiated rumors about a potentially innocent person. Under this bill, if someone just suspects abuse—does not witness, confirm, actively conceal, or assist in the abuse in any way—and takes no other action for 24 hours, that person is a criminal. Free societies do not criminalize this kind of inaction, and crimes like this—which can turn lots of ordinary, unknowing people into criminals—take law enforcement resources away from crimes committed by malicious actors that cause direct harm.

[post: <http://woodtv.com/2018/01/30/amash-explains-why-he-voted-against-sex-abuse-bill/>]

What an unfortunate expression. Sadly, Amash's position is shared by too many in positions of government and organizational leadership. As sexual abuse lawyers, we have been immersed in the challenges facing victims, parents, and child-serving organizations, it is clear that many people simply do not understand the issues. Let us offer a corrective lens.

Injustice – and the RIGHT priority

Amash appears to be concerned with a two particular injustices:

- (1) *the risk to an adult who fails to make a report ... he/she becomes a criminal;* and
- (2) *the risk to an innocent adult that is the subject of an abuse report based only on a suspicion.*

There is a third injustice that must be considered:

(3) *the risk to a child being groomed and/or sexually abused.*

Requiring adults to report suspicions could lead to Injustices (1) and (2).

Requiring a higher informational threshold per Amash (when one ‘witnesses’ or ‘confirms’) could – and does – lead to Injustice (3).

The risk of Injustices (1) and (2) are remote. Actually, this can be confirmed with empirical data. In eighteen states and Puerto Rico, for example, it is already state law that all adults who suspect child abuse or neglect are required to report (Delaware, Florida, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming)¹. In other words, S.534 adds no additional reporting burden. In those eighteen states, there is no rampant epidemic of Injustices (1) and (2). In those states (and all others), however, Injustice (3) continues to be a problem.

Choosing the Injustice – Err on the side of the Child

No one wants injustice – of any kind. Clearly, there is a clash of interests: preventing the *potential* risk of Injustices (1) and (2) *to adults*; or, preventing the *actual and confirmed* risk of Injustice (3) *to vulnerable children*.

There is no perfect balance; there will be injustice in some form. It is past time to fixate on the *potential* risk *to adults*. If there is going to be error, it is time to shift the Injustice to err on the side of the child. S.534 is a legislative effort that is providing a shift; it is victim-centric.

Education Addresses Injustices

Interestingly, S.534 actually works to solve the risk of Injustices (1) and (2). The new legislation is not just an expansion of the list of those required to report, it also requires ‘prevention training’. The risk of Injustices (1) and (2) go down when adults understand the ‘grooming process’ – the process utilized by an offender to gain access to a child within the offender’s age and gender of preference, groom that child for sexual interaction, then keep the child silent. Sexual abusers have no visual profile, but can be recognized by their *behavior*.

Prevention training highlighting the abuser’s grooming process gives each trainee ‘eyes to see’ the grooming process and common grooming behaviors *before* a child is victimized. When adults understand the problematic behavioral patterns, they are better equipped to correctly discern when behavior is suspicious – Injustice (1); additionally, when non-abuser adults understand the problematic behavioral patterns, they better understand what behavior should be avoided so as to not be confused with someone grooming a child for abuse (i.e., forms of horseplay, commentary, touch, texts) – Injustice (2).

¹Actually, all states have reporting requirements. Many states, however, still provide lists of mandated vs. permissive reporters, and create limited exceptions for clergy, attorney-client, and other privileges. These states are used as examples of states where all adults are required to report.

Summary

In many ways, child sexual abuse is counter-intuitive. S.534 is a good step forward. It requires the prevention training and mandatory reporting – it provides ‘eyes that see’ and requires the ‘mouth to speak’. We do not want to enter the debate regarding the constitutionality of this legislative measure – just suggest that care be used when suggesting that the focus be the due process owed to adults. The legislation *and urgency* to protect children from sexual abuse is overdue.

Love & Norris, Attorneys at Law. Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, Love and Norris provide consulting services to secular and ministry organizations that provide services to children. Consulting services often include safety effort evaluations, assessments and audits. Representative clients include the United States Olympic Committee, US Center for SafeSport, Awana International, Bright Horizons Daycare, Gladney Center for Adoption, and many schools, camps, non-profits and ministries.

MinistrySafe and Abuse Prevention Systems. In addition to an active law practice, Love and Norris are co-founders and Directors of MinistrySafe and Abuse Prevention Systems, entities dedicated to sexual abuse awareness and prevention. MinistrySafe and Abuse Prevention Systems provide Sexual Abuse Awareness Training (live and online) and assist child-serving organizations in the design and implementation of safety systems that reduce the risk of child sexual abuse. Love and Norris are frequent speakers before ministries, educational entities, adoption and foster care organizations, and youth camps. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administrators (NACBA), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

MinistrySafe and Abuse Prevention Systems are endorsed by Philadelphia Insurance Companies, the American Camp Association and the Christian Camp and Conference Association. MinistrySafe and Abuse Prevention Systems’ Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, New York, Pennsylvania, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe’s Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).