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Step Up to the Plate, States, and Create a Safe Harbor!

A Look at the States That Have Safe Harbor Laws to Protect Child Sex Trafficking Victims from Prosecution for Prostitution and Addressing Arguments Whether Others Should Too

Julie Rich

Before beginning to write this paper, there was a lot of research done on United States sex trafficking provisions and how they relate to children. The question was specifically concerned with if this country's federal and state laws did enough to protect child victims from both sex trafficking and the long-lasting consequences that it could have on their lives. The answer, through reading, is what seems to be what some scholars and lawmakers have determined to be a gaping hole in the protection of child victims. This gap is that most states do not have "Safe Harbor" laws on the books that prevent child victims of sex trafficking from being prosecuted for prostitution and that set up special services for these victims. This paper will look at the states that have Safe Harbor laws on the books, have proposed legislation in the works, then a look at two of the main arguments for and against having Safe Harbor laws, concluding that states should have such laws in place to protect child victims of sex trafficking from prosecution for prostitution and have victim-oriented services instead of punishment or treatment in delinquent centers.

PART I: Definitions and Statistics

There are a number of definitions that must be set out before delving into the subject matter below. The first of these is sex trafficking, which is delineated differently for adult and child victims. Under the Trafficking Victims Protection Act of 2000, adult sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act¹.” The Office to Monitor and Combat Trafficking in Persons says that adult sex trafficking is “when an adult is coerced, forced, or deceived into prostitution – or maintained in prostitution through coercion².” Children, on the other hand are classified under federal law as “severe victims of human trafficking³.” Specifically, this is “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age⁴...” The Trafficking Victims Protection Act states that “Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked⁵...”

One must also define exactly what is meant as a safe harbor Law. Safe harbor laws come in many forms, as will be shown below. According to the Polaris Project, a Washington, D.C.-based advocacy agency, an effective safe harbor has two

¹ Trafficking Victims Protection Act of 2000 (22 USCS § 7102).

² Office to Monitor and Combat Trafficking in Persons, “*What is Trafficking in Persons?*” July 9, 2012.

³ Trafficking Victims Protection Act of 2000 (22 USCS § 7102).

⁴ *Id.*

⁵ Trafficking Victims Protection Act of 2000 (22 USCS § 7101).

elements⁶. (CITE: Polaris Project, July 23, 2010, Human Trafficking Legislative Brief: Sex Trafficking of Minors and “Safe Harbor,” available at [http://www.polarisproject.org/storage/documents/policy_documents/model%20aws/Issue Brief - Safe Harbor 7-23-2010.pdf](http://www.polarisproject.org/storage/documents/policy_documents/model%20aws/Issue_Brief_-_Safe_Harbor_7-23-2010.pdf). [Accessed March 20, 2013.]) The first element, is that the state must “remove the burden of criminal responsibility from the [minor victims]”⁷. Practically, the Polaris Project goes on to list that these state laws should prevent prosecution for arrested minors, find that children in prostitution are victims of “abuse and neglect”⁸ which will lead to the state initiating child protection services instead of a criminal justice response or “juvenile delinquency proceedings”⁹. For the sake of this paper, the analysis will mostly focus on the first factor, with a minor look at the third. The second element is that sex trafficking laws do not require that the trafficker know the child’s age and use force or coercion to prostitute them¹⁰. The third element is that the laws give child sex trafficking victims services that are modified for their particular needs which could include safe houses, if necessary with only victims of the same crime so as to prevent their being “stigmatized”¹¹ by other abused children, education, and

⁶ Polaris Project, July 23, 2010, Human Trafficking Legislative Brief: Sex Trafficking of Minors and “Safe Harbor,” available at http://www.polarisproject.org/storage/documents/policy_documents/model%20aws/Issue_Brief_-_Safe_Harbor_7-23-2010.pdf. [accessed March 20, 2013.]

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

mentorship by qualified and experienced survivors and/or professionals, among others¹².

Sex trafficking in the United States of America is a difficult subject to write about for a number of reasons. It is of course a sensitive topic, as anything having to do with children is but for the matters of this paper, the main difficulty comes from the lack of reliable statistics. There are many organizations and scholars that come out with studies, some yearly, that claim to have numbers on how many children are trafficked each year within the United States. The issue with these numbers isn't with the methods employed by the people who gathered them or in fact, with the scientists and scholars themselves. The wrinkle in taking these numbers as gospel is that they are not collected the same way and their vastly different conclusions make this clear¹³.

For the sake of the topic of this paper, one statistic in particular will be used. That statistic is the number of arrests of juveniles (age 10-17) for prostitution or commercial vice in the year 2010. This number is not without its own problems. In fact, this paper will cite to numbers from three different federal sources, none of which contain the number of prosecutions or convictions resulted from these arrests. The Crime in the United States Report of 2010, provided by the Federal Bureau of Investigation has the number of arrests for juveniles (age 10-17) for the year 2010 at 804¹⁴. The Easy Access to Federal Bureau of Investigations Arrest

¹² *Id.*

¹³ U.S. Dep't of State, Trafficking in Persons Report 2010 ("noting a lack of uniform data collection of the numbers of trafficking victims").

¹⁴ United States Department of Justice, Federal Bureau of Investigation. (September 2011). *Crime in the United States, 2010*. (Accessed March 20, 2013) (Available:

Statistics most recent report has the number of juveniles arrested in 2010 at 1000¹⁵. This latter number includes a certain percentage of estimation in its calculation, however¹⁶. The Coverage Indicator for this data is 78%, which means that data from that 78% is from “actual reports” from that jurisdiction’s population and the rest is based on estimates¹⁷. Finally, the Trafficking in Persons Report states that the number of juveniles arrested for prostitution or commercial vice in the year 2010 is 654¹⁸. It is clear to see from the above numbers the problems in consistency that can come from relying too heavily on the statistics in this area. These three numbers are being used solely for the purpose of showing that arrests of minors for prostitution are happening and that with each arrest and criminal treatment of the juveniles the risk is there for the child under 18 to be prosecuted and convicted for being within sexual servitude.

PART II: States with Safe Harbor Provisions on the Books

Connecticut

In Connecticut, a child under the age of 16 cannot be charged with the crime of prostitution¹⁹. In the prosecution for prostitution, minors who are 16 or 17 years

<http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl38.xls>)

¹⁵ Puzzanchera, C. and Kang, W. (2013). "*Easy Access to FBI Arrest Statistics 1994-2010.*" (Accessed March 20, 2013) (Available: <http://www.ojjdp.gov/ojstatbb/ezaucr/>).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ : U.S. Dep’t of State, Trafficking in Persons Report 2012 - United States of America, (Available at: <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>) (accessed March 20, 2013)

¹⁹ Conn. Gen. Stat. § 53a-82

old shall be presumed as having been coerced into “committing such offense by another person in violation of [Connecticut’s sex trafficking laws]²⁰.” Connecticut only provides complete immunity from prosecution for people up to and including the age of 15 years old²¹. 16 and 17 year olds are still subject to prosecution although a presumption will be employed to aid their defense²².

Illinois

In Illinois, the safe harbor provision is more encompassing than in Connecticut. If a detained person is determined to be a minor, i.e. under the age of 18 years old then they “shall be immune from prosecution for a prostitution offense under this Section²³...” Juveniles are still subject to a “reasonable detention for investigative purposes²⁴” but once their age has been determined as under 18 years old they will be free from prosecution and instead they will enter into the custody of the State, whose Child Protective Services agency will begin an investigation into abuse or neglect on the victim’s behalf²⁵.

Massachusetts

In Massachusetts, before or after a juvenile is arraigned in any “juvenile delinquency or criminal proceeding” for prostitution, a presumption will be

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ 720 ILCS 5/11-14.

²⁴ *Id.*

²⁵ *Id.*

employed that the State’s Child Protective Services agency takes the lead instead²⁶. Specifically, the presumption is that a “care and protection petition...or a child in need of services petition....shall be filed [on behalf of the child]²⁷.” The victim themselves can file for such a petition on their own behalf²⁸. Further, the Massachusetts State Legislature has changed the definition of children in need of services to include sexually exploited children²⁹.

Minnesota

Minnesota’s laws in question do not mention the prosecution of minor sex trafficked victim but are clear that if the victim is under 18, he/she is defined as a “child in need of protection or services³⁰.” In Minnesota, if a “child [is] in need of protection or services” then these protection or services come from the State’s Child Protection Agency, not the criminal justice system³¹. Their statute contains, to a certain extent, double protection for prostituted minors; in subsection (17) a sexually exploited youth is included³² and subsection (11) a minor who has “engaged in prostitution” under the State’s sex trafficking law³³.

Georgia

²⁶ ALM GL ch. 119, § 39L.

²⁷ *Id.*

²⁸ *Id.*

²⁹ ALM GL ch. 119, § 21.

³⁰ Minn. Stat. § 260C.007

³¹ *Id.*

³² *Id.*

³³ *Id.*

In Georgia, the provision in question pertains to all sex trafficking victims, not just minors³⁴. “A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of [the State’s sex trafficking provision]³⁵.” However, this is not immunity from prosecution for prostituted minors but an affirmative defense that must be proven by the victim³⁶. This means, specifically, that the sex trafficked minor must be able to prove that they had engaged in prostitution on the basis of being coerced or deceived³⁷ which could be very difficult to find qualifying documentation for in a court of law; especially for a child.

New Jersey

In New Jersey, there is also an affirmative defense available to minor and adult victims if they can prove that at the time of the prostitution, they were victims of human trafficking under the State’s sex trafficking provision³⁸. Furthermore, it is an affirmative defense that “during the time of the alleged commission of the offense³⁹,” the defendant was a minor⁴⁰.

Ohio

³⁴ O.C.G.A. § 16-3-6

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ N.J. Stat. § 2C:34-1.

³⁹ *Id.*

⁴⁰ *Id.*

In Ohio, the closest thing the State has to a safe harbor provision is far more complicated than that of the other states. There isn't immunity from prosecution for prostitution but the court *may* hold the complaint against the minor "in abeyance" if the minor fulfills certain obligations as set forth in the provision⁴¹. First of all, in order to be qualified for a hearing to have the complaint held in abeyance, there are conditions, and one of these is that the "court has reason to believe⁴²" (which probably involves presentation of proof by the child) child is a sex trafficking victim and the "act charged is related to the child's victimization⁴³." It is at the Court's discretion to hold the hearing, and when it does so, to decide whether the child's complaint should be held in abeyance to be dismissed upon certain actions by the child⁴⁴ (see below). This means the Court can choose not to grant such a hearing if they choose to⁴⁵. Further, the prosecutor of the case has the right to be involved in the hearing and even "object to holding the complaint that is the subject of the hearing in abeyance, and to make recommendations related to diversion actions⁴⁶."

Even if the prostituted minor, gets through the above steps, i.e. is granted a hearing and then their complaint is held in abeyance, the court may order that the child be placed in services, supervision or "conditions of abeyance⁴⁷." They may not violate any of the conditions that the court sets forth⁴⁸. The child has no more than

⁴¹ ORC Ann. 2152.021.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

270 days⁴⁹ (the normal period is 90 days but the court has discretion to extend it twice by another 90 days)⁵⁰ “complete the diversion actions to the court’s satisfaction⁵¹.” If the prostituted minor proceeds with/completes the steps to the “court’s satisfaction⁵²”, then, and only then, will the complaint against the child be dismissed and the containing records expunged⁵³. If the child, according to the court, missteps at any point in the process, “the court shall proceed upon the complaint⁵⁴.”

One must be dubious of the effectiveness of a provision that requires sex trafficking minor victims to fulfill certain conditions, even if they are potentially for their own good, in order to be free from the fear of being prosecuted for that which they did while they were being sexually exploited. It seems especially problematic that the prosecuting attorney has the right to protest at such a hearing and try to convince the court that a prostituted person under the age of 18 should be held as a juvenile delinquent instead of as a crime victim. This provision runs the risk of re-traumatizing the victim by forcing them to do something again that they don’t want to do. It is true that the child has a choice of whether to agree to the hearing or not⁵⁵ but if the choice is between probably being adjudicated as a juvenile delinquent for crimes committed while in sexual servitude or being forced into any number of

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

placements or services; it becomes not a benefit to the child but an attempt to find the lesser of two evils.

Vermont

Vermont's provisions regarding prosecution for prostitution of minors are to a certain extent, also tricky because they are not what they appear to be at first glance. There is language that a minor who is a sex trafficking victim is immune from prosecution for prostitution⁵⁶. However, this immunity only extends to the adult criminal system⁵⁷. The victim may still be charged as a juvenile *or* "referred to the department for children and families⁵⁸." If the minor is treated as a juvenile and charged for prostitution, they may "raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker⁵⁹." This requires the minor bringing proof that their actions were as a result of someone else's exploitation of them; without that they may be convicted for their "crimes" because the court has the choice as to whether or not to "treat the person as the subject in need of care or supervision proceeding⁶⁰" instead of requiring that they do so⁶¹.

Washington

⁵⁶ 13 V.S.A. § 2652

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

In Washington, if a minor is arrested for prostitution, there is a presumption in place that the “alleged offender meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States code, and that the alleged offender is also a victim of commercial sex abuse of a minor⁶².” Since the Washington provision refers to the Trafficking Victims Protection Act of 2000 (as referenced above) which says that victims of a severe form of trafficking are not to be treated as criminals, the State is declaring that the presumption will prevent the minor from being prosecuted for prostitution unless the prosecution can prove otherwise⁶³. It would seem that in order to overcome this presumption, the prosecution would have to bring evidence of the alleged offender not being a minor at the time of the commission of the alleged offense⁶⁴.

Tennessee

The Tennessee provision at bar provides full immunity for prosecution of prostitution if the offender is a minor⁶⁵. This immunity extends to both adult and juvenile proceedings⁶⁶. *Id.*

⁶² Rev. Code Wash. (ARCW) § 13.40.219

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Tenn. Code Ann. § 39-13-513

⁶⁶ *Id.*

New York

New York's provisions for prostituted minors are very complicated. It would seem like Vermont's laws, to provide adequate immunity but a close reading shows this to not be the case. New York includes a person who "appears to be a sexually exploited child⁶⁷" as a person in need of supervision but that does not mean that they are automatically treated that way in the court system⁶⁸. There is a presumption in effect that the respondent is a victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000 and the respondent can move to have his delinquency proceeding substituted by a petition "alleging that the respondent is in need of supervision⁶⁹." However, if this is not the juvenile's first offense, i.e. "had previously been adjudicated as a juvenile delinquent⁷⁰,"—even for offenses for which they had been a victim of exploitation—or does not want to "cooperate with specialized services for sexually exploited youth⁷¹" then the Court may reinstitute the delinquency proceeding⁷². The Court can also continue on with the delinquency proceeding if it finds before the person in need of supervision is instituted, that the respondent is not "in substantial compliance with a lawful order of the court."⁷³

Florida

⁶⁷ NY CLS Family Ct Act § 712.

⁶⁸ *Id.*

⁶⁹ NY CLS Family Ct Act § 311.4

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

Effective January 1, 2013, Florida’s governor signed into law an act called the Florida Safe Harbor Act⁷⁴. However, there is nothing in this act that resembles a Safe Harbor provision⁷⁵. There is no language in the act that directly provides for immunity for prosecution for minor victims of sex trafficking⁷⁶. There is however, implementation of specialized services for prostituted minors⁷⁷.

PART III: States with Safe Harbor Bills (as of April 4, 2013)

Arkansas

Arkansas’s Senate Bill 869 is subtitled “To Provide a Safe Harbor for Victims of Certain Sex Trafficking and Commercial Sex Offenses.” 2013 Bill Text AR S.B. 869 There is nothing in the language of the bill itself that suggests that prosecutors are prevented from charging and convicting minor sex trafficking victims with prostitution⁷⁸. But because it is a bill the legislative findings are, at this point in the legislative process still included, and from these findings one can infer that minors will probably not be prosecuted for prostitution⁷⁹. For example, that “The criminal justice system is not the appropriate place for sexually exploited children⁸⁰...” and “[this is to be accomplished by]...presuming that any child engaged in

⁷⁴ Fla. Stat. § 39.001.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

prostitution...is a victim of sex trafficking and providing these children with the appropriate care and services when possible⁸¹.”

Nebraska

In Nebraska there was a bill that was introduced on January 16, 2013 and placed on general file in April 24; it is still pending⁸². This bill would amend its current prostitution and “offenses relating to morals” provisions⁸³. It will provide that “[i]t is an affirmative defense to prosecution under this section that such person was a victim of human trafficking or forced labor or services pursuant [the State’s sex trafficking laws]⁸⁴.” This will of course, require the minor to bring proof that they are a prostituted minor and thus a victim of sex trafficking.⁸⁵

North Carolina

North Carolina introduced a bill on April 2, 2013 that would provide for immunity from prosecution for minors for prostitution and sex trafficking-related offenses⁸⁶. This bill would divert a person suspected of or charged with prostitution who is under 18 years old to the “temporary protective custody provisions of [the State’s Child Protective Services Agency]⁸⁷.”

Wyoming

⁸¹ *Id.*

⁸² 2013 Bill Text NE L.B. 255

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 2013 Bill Text NC S.B. 683

⁸⁷ *Id.*

Wyoming has a bill which states that any victim of human trafficking has immunity for prosecution for any offenses relating to their victimization⁸⁸. It further states that “[a] victim of human trafficking who is a minor shall be deemed a child in need of supervision in accordance with the Children in Need of Supervision Act or a neglected child in accordance with the Child Protection Act⁸⁹.” The Wyoming legislature website has the last activity on the bill as being signed by the Senate President on February 22, 2013 but there is a Polaris Project Press Release that claims that Wyoming Governor Mead signed the bill into law on February 27, 2013⁹⁰. Without confirmation from the Wyoming legislature website, it is cited to in its bill form and in Part III of the paper.

PART IV: Two Arguments Against Safe Harbor Provisions

Some entities argue that prostituted minors need to be protected from themselves and “their own behavior⁹¹.” This, of course, ignores the reality that many minors are coerced or deceived into prostitution in the first place and cannot or do not escape because they feel they have no place to go or are afraid they will get in

⁸⁸ 2013 Bill Text WY H.B. 133

⁸⁹ *Id.*

⁹⁰ Megan Fowler, Polaris Project Press Release, “*Wyoming Becomes 50th State to Outlaw Human Trafficking*,” February 27, 2013.

⁹¹ Megan Anitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 Yale L. & Pol’y Rev. 1 (2011). *See also*, e.g., State’s Response to Petition for Review at 7, *In re B.W.*, 313 S.W.3d 818 (Tex. 2010) (No. 01-07-00274-cv) (“arguing that prosecution is necessary because exploited children are in need of protection”); Thomas Adcock, Legal, Social Services Community Prepare for Enactment of Safe Harbor Act, N.Y. L.J., Oct. 3, 2008, at 23-24 (quoting John Feinblatt, New York City’s criminal justice coordinator, that he was against New York’s Safe Harbor Act because he thought prosecution was necessary in order to “get a child to stop destructive behavior”).

trouble. While it is true that some minors freely enter a life of prostitution, this argument still puts sexually exploited minors in the position of staying with their abusers or turning themselves into the police, not for help, but to be punished.

Another argument is that it is the only way to ensure that underage prostitutes get the services that they need and that without prosecuting them; the minors will just go back to their pimps and abusers⁹². Locking up a minor and insisting that they go to services is not all that different from what their abusers had been doing them before. It is still taking away their choice on what to do with their lives; this can only lead to further re-traumatization of the victim instead of higher self-esteem and re-integration into society which is ostensibly what these services are supposed to be providing. Prior to Connecticut enacting its Safe Harbor provision, some prosecutors did not think the law was necessary because, after, all “The social services available to someone forced into prostitution but not arrested may be somewhat less than to a kid that stands accused in the juvenile court⁹³.” This argument, however, ignores the fact that the answer to this particular issue isn’t to arrest and charge the minor prostitutes but to fix the system in question.

Nevada

⁹² See Memorandum from the Sex & Law Comm., N.Y.C. Bar Ass’n, to Assemb. William Scarborough and Sen. Dale Volker 6, available at http://www.nycbar.org/pdf/report/Safe_Harbor_Memo.pdf (quoting opponents of the Safe Harbor Act).

⁹³ Christine Nolan, “A Move to Decriminalize Teen Prostitution; Prosecutors, Legislators at Odds Over Whether Law is Needed,” Connecticut Law Tribune (Online), March 8, 2010.

In Nevada, there was a bill introduced regarding state sex trafficking provisions on March 13, 2013⁹⁴. It diverts all cases from the criminal court system to the juvenile court system⁹⁵, giving it “exclusive original jurisdiction⁹⁶” in the following situations... It has such jurisdiction when it is “concerning any child...who is alleged or adjudicated to be in need of supervision because⁹⁷...” “[the child] is a sexually exploited child and is in need of care or services⁹⁸.” This provision states that sexually exploited children are “in need of care or services⁹⁹” and that puts them within the province of the State Child Protection Agency not the criminal justice system¹⁰⁰. Further, any child that is in need of supervision and kept in detention, “must be released not later than 24 hours...after the child’s initial contact with a peace officer or probation officer¹⁰¹.” This release is “to a parent or guardian of the child; any other person who is able to provide adequate care and supervision...or shelter care¹⁰².” This time frame does not include weekends or holidays¹⁰³. There are certain exceptions to as to the children who can be held longer than 24 hours, and sexually exploited children are included in them¹⁰⁴. In the case of minor sex trafficking victims, “the juvenile court may refer the child to

⁹⁴ 2013 Bill Text NV A.B. 241

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

specialized programs and services for sexually exploited children if the juvenile court adjudicates the child to be in need of supervision¹⁰⁵.”

PART V: Two Arguments For Safe Harbor Provisions

There is not enough field training for government workers and law enforcement officers to recognize that a victim can have committed a crime as but still be a victim and in need of services instead of entrance into the criminal justice system¹⁰⁶. In the Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2011 the second recommendation from 2010 was to “Address barriers that lead to confusion regarding victim identification in investigative processes¹⁰⁷”. The Department of Justice responded in 2011 “...continuing its outreach and partnerships with federal, state, and local law enforcement agencies... to strengthen victim identification capacity nationwide and to advance capacity to identify sexually exploited minors as TIP victims¹⁰⁸.” “Despite [advances], when it comes to prostitution throughout the ...country, it is as if there has been no change... As long as someone is labeled a “prostitute” - whether child or adult - we still seem to be saying, through action or inaction, that it is permissible to dehumanize, mistreat, and endanger that

¹⁰⁵ *Id.*

¹⁰⁶ Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2011.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

person¹⁰⁹.” In the current situation, with this training for law enforcement officers, they will arrest minors who need services, not juvenile delinquency proceedings. Further, they are failing to recognize that the crime that they are forced to commit is their exploitation because they are minors and cannot consent to sexual acts. Without the requisite training or the resources to bring that training about, the next best choice for the victims is a law that takes the choice out of the hands of the law enforcers because it forces the treatment of a victim.

To arrest and prosecute prostituted minors goes against the intent of the Trafficking Victims Protection Act of 2000 which directs that anyone under 18 be treated like a victim and be provided with services¹¹⁰. Further, in that Act, immigrant victims under 18 do not have to cooperate to get immigration benefits so holding that someone should be charged unless they testify goes against this as well. *Id.* The Trafficking in Persons Report of 2012 furthers these initiatives and finds that, “When a child... is induced to perform a commercial sex act, proving force, fraud, or coercion is not necessary for the offense to be characterized as human trafficking. There are no exceptions to this rule: no cultural or socioeconomic rationalizations should prevent the rescue of children from sexual servitude¹¹¹.” The Report also says that one of the criteria for Minimum Standards of preventing Human Trafficking in Persons is that the “government...protects victims of severe forms of trafficking in persons...[and] ensures that victims are not inappropriately

¹⁰⁹ Norma Hotaling, Kristie Miller, and Elizabeth Trudeau, *Symposium: Sex for Sale: The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider’s Perspective*, 18 Yale J.L. & Feminism 181 (2006).

¹¹⁰ Trafficking Victims Protection Act of 2000 (22 USCS § 7102).

¹¹¹ U.S. Dep’t of State, Trafficking in Persons Report 2012, Definitions and Methodology

incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked¹¹². State actions to arrest, charge, and convict minor sex trafficking victims of crimes go clearly against federal intent in this area of the law and should be stopped in favor of Safe Harbor laws.

Conclusion

Sex Trafficking of Minors is a serious issue in this country, no matter what statistics one looks at or puts stock in. It involves children, under the age of 18, being forced to participate in sexual acts that they are too young to legally consent to. Despite some arguments that the only way to get victims services is to lock them up and that the teenage prostitutes need to be protected from themselves, prosecuting them is not the answer. What states need to do is follow the lead of the federal government and implement Safe Harbor laws that uniformly presume minor sex trafficking victims as minors, so long as they are younger than 18 years old. Some states, as evidenced above, have already begun to do that but the vast majority of states have nothing in place to stop a prostituted minor from being prosecuted as a juvenile delinquent. This treatment needs to stop and the most effective way to do this is for states to enact Safe Harbor laws to prevent minor sex trafficking victims from being prosecuted.

¹¹² U.S. Dep't of State, Trafficking in Persons Report 2012.