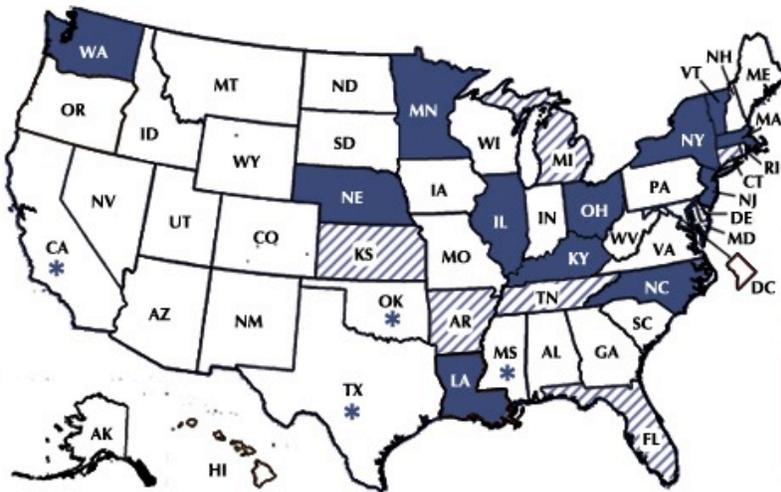
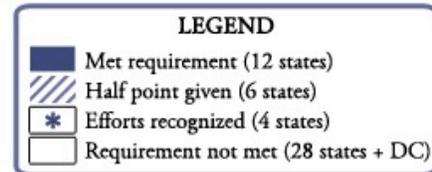




Safe Harbor – Protecting Sexually Exploited Minors



CATEGORY 6: Safe Harbor: Protecting Sexually Exploited Minors



I. INTRODUCTION

Children that have been induced or forced to engage in commercial sex are the victims of abuse, but because prostitution generally is illegal these victims are at risk of being prosecuted. When their activities are discovered they often face incarceration or detention, and are left without access to child services or victim assistance programs. Lawmakers can alleviate the harm caused to child victims who are criminalized by adopting “safe harbor” laws for minors who have been exploited through prostitution. Such legal protections should: (i) define trafficked and commercially sexually exploited children as victims of abuse and neglect, triggering a child protective response; and (ii) grant immunity from prosecution for prostitution-related offenses for any person under 18 and establish the use of safe houses as an alternative means to house these children, rather than juvenile detention; or (iii) divert arrested children from juvenile delinquency proceedings to child protection proceedings where they will have access to specialized services.

II. “SAFE HARBOR” PROVISIONS UNDER FEDERAL LAW

The federal Trafficking Victims Protection Act (TVPA)—the principal federal statute addressing human trafficking-related issues—treats those coerced into participating in commercial sex activities as victims, even if they have engaged in criminal activity. Notably, the TVPA affords these victims access to social and protective services, including medical care and safe housing.

The federal government more generally has recognized sexually exploited children—those that have third-party pimps or controllers, as well as those who do not—as victims of a crime. Chris Swecker, Assistant Director in the Criminal Investigation Division of the FBI, described the federal law enforcement position on children exploited through prostitution as follows:

“Children can never consent to prostitution. It is always exploitation.”

It is critical that state laws are in parity with federal laws and the federal government’s view that children who are engaged in prostitution are victims of exploitation.

III. “SAFE HARBOR” PROVISIONS UNDER STATE LAW

Only 18 states—Arkansas, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Washington—have enacted statutes providing some measure of safe harbor protection to minor victims of human trafficking and commercial sexual exploitation. These statutes vary in scope as described in detail below.

A. Age-Based Immunization from Prosecution

Most state safe harbor laws define what a “minor” is by specifying a maximum age under which a victim will be treated differently. Such provisions reflect the presumption that minors who have participated in criminal activity have been exploited and sexually abused.

Illinois, Nebraska, and Tennessee have enacted the most protective statutes in this regard. All state statutes provide prosecutorial immunity to anyone under the age of 18 who has engaged in prostitution-related offenses. In Illinois, an officer must refer any such case to the Illinois Department of Children and Family Services as soon as he realizes that a person charged with prostitution is a minor. In Tennessee, the officer must provide the minor with the telephone number for the National Human Trafficking Resource Center hotline and then release the victim into the custody of his or her parent or legal guardian.

Connecticut prohibits the prosecution of minors under the age of 15 engaged in prostitution-related offenses, a less protective approach than that described above. With respect to 16- and 17-year-olds, Connecticut has adopted a rebuttable presumption that such minors were coerced into prostitution—and thus lack the *mens rea* necessary to support a finding of criminal culpability.

Other states treat age as an important factor in evaluating prostitution-related activity or creating certain presumptions, but do not provide complete immunity to minors. For example, in Minnesota and New York children under the age of 16 who are engaged in or have engaged in commercial sex acts are eligible to participate in conditional diversion programs (discussed in section II.B) rather than automatic immunity. In Kansas, when a law enforcement officer reasonably believes a person under 18 is a victim of human trafficking or otherwise being exploited sexually, he must take him or her into protective custody and deliver the child to a staff secure facility—the minor will not be placed in a juvenile detention facility in such cases. Louisiana presumes that a child under the age of 18 who has engage in commercial sex acts is a victim in need of appropriate care and services. Arkansas’ law simply recognizes that the

criminal justice system is inappropriate for sexually exploited children—defined as persons under the age of 18—and states that they should be diverted toward welfare, crisis and housing services whenever possible. Michigan’s law reflects the bare minimum—rather than create a safe harbor law, it simply states that a person who solicits prostitution must be 16 years of age or older to be guilty of a crime.

While Texas has not enacted a statute providing a safe harbor to exploited children that have engaged in prostitution, one has been established by case law. The Texas Supreme Court has held that a child under the age of 14 may not be charged with prostitution because, under statutory rape laws, children may not legally consent to sex. This ruling represents a victory for child trafficking victim advocates. That said, children aged 14 and older remain completely vulnerable in Texas to prosecution for prostitution-related offenses.

B. Conditional Diversion

The ideal safe harbor law would completely protect any minor who is engaged in prostitution; however, most state statutes that provide some measure of protection to minors seek to divert them from prosecution if certain conditions are satisfied. For example, in Ohio, diversion is available if the minor first completes “diversion actions” (*e.g.*, treatment) established by a court. In such a case, the court will dismiss and expunge the underlying criminal charge. In Massachusetts, a child who engages in prostitution-related acts is recognized under the law as a “sexually exploited child” eligible to participate in certain diversion programs and entitled to access to an advocate. Once the minor completes certain court-ordered programs, the criminal charges will be dismissed. In Kansas, the court may direct a child to be held in protective custody upon verified application that the child has been subjected to human trafficking or commercial sexual exploitation.

In other states, diversion programs may be unavailable to a minor that is a prior offender. New York’s statute *allows* diversion in such cases—at the discretion of the sitting judge—but does not *require* such diversion. Similarly, Washington permits the prosecutor to determine whether diversion is appropriate in a given case. In Louisiana, a child may be diverted to specialized services upon petition if the commercial sex act charge is his or her first offense. If it’s not a first offense, however, whether or not to continue with a delinquency proceeding will be within the discretion of the district attorney. Vermont’s statute provides even greater discretion to the state, establishing that it *may* divert *any* minor defendant into a Child In Need of Supervision program, despite the fact that children are granted immunity from prosecution under the state’s criminal statutes.

C. Funding

Several states with safe harbor laws do not provide for funding for services for child trafficking victims. Arkansas, Florida, Illinois, Kansas, Kentucky, Louisiana, and Washington, however, do include such provisions, which could serve as models for other states. Illinois and Washington create steep fees for impounding the cars of “Johns” who have been arrested for solicitation. In Illinois, the John will be charged \$1,000 to reclaim his car, \$500 of which will be deposited into the Violent Crime Victims Assistance Fund and used to provide services to victims. In Washington, the safe harbor statute creates a \$2,500 fine for impounding vehicles (a recent jump

from \$500) to provide funds for a prostitution prevention and intervention account. All those convicted of trafficking children for sexual purposes in Louisiana will be required to pay \$2,000 in addition to any other fines or penalties. Florida takes a broader approach, fining all Johns \$5,000 for violating prostitution laws, whether their cars were impounded or not. Approximately \$4,500 of that fee will be deposited in the Operations and Maintenance Trust Fund of the Department of Children and Family Services for the sole purpose of funding safe houses and services. Arkansas provides that any person who pays for sexual activity or engages in sexual solicitation must—in addition to his or her sentence—pay \$250 that will be deposited into the Safe Harbor Fund for Sexually Exploited Children.

IV. CONCLUSION

The reality is that most of the country has failed to recognize that children who are engaged in acts of prostitution and related activities are *victims*, and not *criminals*. As a result, many minors are left at the mercy of the criminal justice system, without access to critical social services. Polaris Project stands ready to assist policymakers to develop and implement fulsome “safe harbor” laws to ensure that children receive the protection and assistance that they need and deserve.

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