

Overview of State Legislative Policy to Address the Commercial Sexual Exploitation of Children – State “Safe Harbor” Laws | Polaris Project

INTRODUCTION AND OVERVIEW

The signing into law of the New York State Safe Harbour for Exploited Children Act in September 2008 was a watershed moment in the fight against the commercial sexual exploitation of children (CSEC) in the United States. The law is the result of years of advocacy work in New York and around the country advancing the simple proposition that children in prostitution are not criminals or delinquents but victims of a brutal form of child sexual abuse who need special services. A related law was signed in California, also in September 2008, creating a similar pilot program for Alameda County in the San Francisco Bay Area. Passage of the New York and California laws has helped spark the serious consideration of similar laws in others states, which are commonly referred to within the anti-trafficking movement as “Safe Harbor” laws.

OBJECTIVES OF SAFE HARBOR LAWS

The basic objectives of the Safe Harbor laws are two-pronged:

- **Remove minor victims of commercial sexual exploitation from the jurisdiction of the criminal justice and juvenile delinquency systems.**

This step can be achieved through modifying the criminal prostitution statutes to decriminalize children in prostitution while ensuring that other legal mechanisms are in place for the state to take temporary protective custody of these children. The goal is to remove the victim from the control of the pimp and help to break any unhealthy emotional attachment that has formed. A legislative alternative to technical decriminalization of these children may involve diversion of arrested children from juvenile delinquency proceedings to child protection proceedings.

- **Protect these children and provide them with specialized services, in recognition of their status as victims of crime and of the unique trauma that child victims of sex trafficking endure.**

Child victims of sex trafficking have very specialized needs that may include: safe houses, longer-term residential options, mental health care, access to GED or other remedial education programs, and life skills learning. Experienced practitioners have learned that mainstream programs of the child abuse and neglect system routinely fail these children. The most successful programs have shown that three ingredients are especially useful in the protection and recovery of these child victims: (1) placement separately from other children who have not experienced the same form of abuse and who may stigmatize these

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victims because of their past involvement with commercial sex; (2) mentorship by survivors of the same crime or, when that is not possible, by other caring professionals who are familiar with the special trauma associated with commercial sexual abuse; and (3) protocols that ensure immediate placement of these victims in appropriate, pre-identified locations, without undue questioning from untrained law enforcement officers or other officials.

State legislators and other policymakers should consider two other aspects of the law in order to address comprehensively the sex trafficking of children:

- **Amend state statutes prohibiting sex trafficking of children or pimping and pandering of children, to ensure that stiff penalties apply and that force or coercion is not a required element of the crime.**

Similarly to statutory rape laws, our criminal law should recognize the basic fact that children do not have the legal, psychological or emotional capacity to consent to engage in commercial sex acts. Therefore, we should severely penalize child predators without requiring evidence that they used force or coercion to induce the child victim to engage in commercial sex acts.

While all states prohibit acts of pimping and pandering, the penalties attached when the victim is a child are often inappropriately low. The majority of states also now have a relatively new crime on the books – human trafficking – but around two-thirds of those laws require an element of force or coercion with respect to sex trafficking of minors. The pimping and pandering laws and the human trafficking laws should be harmonized to ensure that commercial sexual exploitation of children is always punished appropriately without any requirement to prove force, coercion or fraud.

Purchasers of commercial sex acts with children should also be viewed as child sexual predators and their acts punished as severely as other forms of child sexual abuse.

- **Prevent commercial sexual exploitation of children through training of law enforcement officers and other state officials and educating the general public about its dangers.**

Training and public awareness programs are crucial to changing perceptions about this problem and preventing it from occurring. Law enforcement officers, judges, social workers, school officials and the broader community need to learn about the problem of commercial sexual exploitation of children, in order to identify victims, recognize children at risk and prevent sex trafficking.

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NOTE ON TERMINOLOGY

This document generally uses the terms “commercial sexual exploitation of children” and “sex trafficking of a minor” interchangeably. The commercial sexual exploitation of children refers generally to exploitation committed by any person, whether the pimp, the purchaser of sex acts or some other knowing beneficiary of a child’s commercial sex acts. Under federal law and some state laws, sex trafficking of a minor is defined as the recruiting, enticing, harboring, transporting, providing or obtaining of a minor knowing that the minor will be caused to engage in a commercial sex act.ⁱ Sex trafficking is often viewed as an act committed only by a pimp or her/his associates – not by the purchaser of the commercial sex act (colloquially known as a “john”). However, the language of the federal sex trafficking law appears to allow for the possibility of prosecuting the purchaser of sex acts as well.

ⁱ 18 U.S.C. 1591