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Article Title

Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors  
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Abstract

The common policy of treating sexually exploited minors as criminals represents a fundamental failing of the justice system. Prostituted minors should not be treated as delinquents requiring discipline but rather as severely traumatized and abused victims requiring specialized services and counseling. Yet, in most states, prostituted minors are re-traumatized through arrest, prosecution, and detention instead of receiving specialized services. Besides being unjust, this policy is counter-productive. Arresting, prosecuting, and detaining minors hinders law enforcement efforts to go after the real criminals – the pimps and the johns, and misses an important opportunity to rescue minors from a system of commercial sexual exploitation.

Current state policy stands in stark contrast to the TVPA. Passed in 2000, the Trafficking Victims Protection Act (TVPA) revolutionized the federal approach to trafficking victims by effectively ending federal punishment of trafficking victims in the immigration system, in the labor market, and in the commercial sex industry. The TVPA made protection of victims a central part of the new policy and recast many people who were traditionally seen as prostitutes, illegal immigrants, and illegal workers as victims of human trafficking instead. Under the TVPA, force, fraud, or coercion needs to be proven in sex trafficking cases, unless the victim is a minor. The TVPA treats minors engaged in commercial sexual activity as victims of sex trafficking, regardless of the use of force, fraud, or coercion, and gives them access to a wide range of services. For the purposes of federal law, prostituted minors are not prostitutes but victims of sex trafficking. Unfortunately, most minors are handled by the state justice system, and most states have not followed the lead of the TVPA. Instead, prostituted minors – victims of sex trafficking – are still treated as delinquents to be punished.

A few states have begun to tackle this problem by passing Safe Harbor laws. Safe Harbor laws aim to remedy this situation and bring state law into line with the TVPA. Safe Harbor laws recognize prostituted minors as victims instead of delinquents, and are designed to provide prostituted minors with protection and services, instead of prosecution and detention.
Safe Harbor laws should have four central features. First, Safe Harbor laws need to focus on rescuing and protecting prostituted minors. Prostituted minors need to be protected from pimps, and from themselves. They are at serious flight risk and may need to be confined in a protective service or some variant of detention. Without the option of putting victims in secure facilities, they may simply run away and return to exploitation. Second, minors have to be protected from the criminal and juvenile justice system which often treats them as criminals and delinquents. Police should be trained to approach potential cases of prostituted minors as rescues rather than arrests. Juvenile detention can itself be traumatic and harmful, reinforcing the victim’s sense of abandonment and shame, and the victims often return to life on the street upon release. These first two objectives are often at tension with one another, which will be explored later in this article. Third, prostituted minors are victims of sex trafficking and suffer from severe trauma and abuse. As a result, they can be difficult and troublesome victims. There need to be specialized services to handle their unique needs. Regular services like shelters and foster homes are often insufficient. Many of the prostituted minors have been failed by that system time and time again. Fourth, the law needs to deter the prostitution of minors through aggressive prosecution of pimps and johns. Once prostituted minors are recognized as sex trafficking victims, efforts must be made to arrest and prosecute their exploiters. Further, the prosecution of minors hinders victim cooperation, which is almost always necessary to convict pimps and johns.

Safe Harbor laws are a paradigm-shifting approach still in their untested and nascent phases. The first Safe Harbor was passed only in 2008 in New York. New York's law was followed by Washington, Connecticut, Illinois, Tennessee, Vermont, Minnesota, and Massachusetts. The Texas Supreme Court made a similar ruling in June 2010. Section II addresses the general background of the problem and inconsistencies between federal and state approaches. Section III analyzes the theory behind Safe Harbor laws, using county pilot programs as examples. Section IV explains the content of the current Safe Harbor laws and the various models adopted. Section V explores how Safe Harbor laws have been implemented, looking at two New York cases. Section VI offers recommendations for future Safe Harbor laws.