SAFE HARBOR LAWS:
Policy in the Best Interest of Victims of Trafficking

ABA Commission on Homelessness and Poverty

ABA Midyear Meeting 2013
Dallas, TX
BACKDROP: Teenagers involved in Commercial Sexual Exploitation

- 200,000 youth are prosecuted, sentenced, or incarcerated as adults in the US - 2010 (Neelum Arya, 71 LA Law Review 99: 107-108)


- Females accounted for 76% of juvenile prostitution arrested (females account for only 30% of all juvenile arrests) (U.S. Dept. of Justice - J uvenile Arre sts 2008, J uv.J ust.Bull.)

- One study: 240,000-340,000 children at risk of commercial sexual exploitation (2000, Estes, Weiner)
Premises for Safe Harbor Laws

- Prostitution of minors is the commercialized rape of our children;
- Victims have psychological and emotional trauma;
- Treating sexually exploited minors as criminals represents a fundamental failing of the justice system;
- Youth with histories of abuse and neglect are ripe for manipulation and exploitation;
- Many victims have experiences with out-of-home placements (child welfare or juvenile justice);
Premises Cont.

- Pimps - five-step - recruitment, seduction, isolation, coercion, and violence (Nola Brantley, MISSEY);
- Juvenile Justice systems were designed to be restorative and rehabilitative – but trafficked minors are often treated to be disciplined/punished
- Research shows that adolescent brain are not fully developed which affect behavior, decision making, and ability to understand consequences – add to this further delays due to trauma/abuse
Intersection between homelessness and sex trafficking

- Studies of teens and women who trade sex show that violence (physical and emotional) and homelessness is common in their lives. (Martin 2012)
- Runaway youth at risk: 2.2 percent of children under the age of 18 who have a runaway or homeless episode, approximately 39,000 children annually, are sexually assaulted or are victimized by CSEC (NAEH 2011)
- Longer term homelessness for youth amplifies risk of sexual exploitation – a cluster of 12 research studies found that 15-30% of street and shelter using youth were victimized by sex trafficking. (NAEH 2009)
Intersection between history of abuse/violence

- A study of 1,465 street-engaged youth found that 95% of sexually exploited females had been physically abused by a relative, friend, controller, purchaser, or stranger. (Saewyc 2008)

- A study of adults who were homeless and sexually trafficked as adolescents found an average length of 19.9 years of involvement in sex trafficking. (Miller 2011)
SAFE HARBOR LAWS

PUBLIC POLICY RESPONSE TO SEX TRAFFICKING OF MINORS
Policy Features of Safe Harbor Laws

- Focus on rescuing and protecting prostituted minors;
- Focus on protecting minors from the criminal and juvenile justice system (detention is traumatic and harmful);
- Laws must offer specialized services
- Deter prostitution of minors through aggressive prosecution of pimps and johns.
Safe Harbor Laws: 4 Functions

1. Decriminalize prostitution for anyone under a specific age (minors cannot be held criminally liable for exploitation);
2. Divert victim minors from delinquency proceedings toward supportive services;
3. Providing specialized services for minor victims;
4. Reclassifying minors as victims or sexually exploited children
Additional Functions

- Increase penalties
- Establish training requirements for law enforcement
- Requiring investigations into cases of prostituted minors;
- Mandating access to supportive housing or safe shelter
FEDERAL LAW – Trafficking Victims Protection Act

- Passed in 2000 – Trafficking Victims Protection Act
- Shifted federal policy – 3P Strategy – prosecution, protection, and prevention
- Government does not need to prove force, fraud, or coercion for minors under age 18 in commercial sexual exploitation
- Federal law did not prevent state prosecution
8 States of Safe Harbor Laws

- New York
- Washington
- Connecticut
- Illinois
- Tennessee
- Vermont
- Minnesota
- Massachusetts
8 State Law Cites – Safe Harbor Laws

- S.F. 1, 87th Leg., 1st Spec. Sess. (Mn. 2011)
Function 1: Decriminalization

- Safe Harbor laws can prevent arrest and prosecution of minor victims of trafficking

Policy Question:
- Should law hold that minor victims cannot be held criminally liable for prostitution; or
- Create a presumption that can be over-ridden by prosecutorial or judicial decision?
Texas Supreme Court:

**Simple Logic: Decriminalization**

“Because a thirteen-year-old child cannot consent to sex as a matter of law... [the minor] cannot be prosecuted as a prostitute.”

In re B.W., 313 S.W.3d 818, 821 (Tex. 2010)
Function 2: Diversion

- Some jurisdictions may charge the minor with a crime but then divert her/him to a separate proceeding (not a delinquency hearing);
- This allows courts to ‘force’ minors to receive treatment or remain at a facility with special services (state coercive action);
Function 3: Reclassification

Minor victims of trafficking can be reclassified into an existing category – Victim of child abuse or a special category of treatment.
Function 4: Providing Services

- Offer diversion to an array of either public or community-based services:
  - Medical care
  - Counseling
  - Group therapy
  - Mental health diagnosis
  - Life skills training
  - Educational/vocational assessment
  - Protective custody
  - Housing assistance

- Approach: holistic, trauma informed, harm reduction
Current State Law Comparison

- **Connecticut, Tennessee and Texas** have Safe Harbor laws that prohibit prosecution but offer little else in protection or services.

- **Washington, New York, Vermont, and Massachusetts** do not decriminalize – can arrest, charge minors – but create a diversion program subject to discretion of judge (NY), prosecutors (WA) or both (VT, MA).

**SERVICES +**

- **Illinois and Minnesota** have a decriminalization section plus a mandatory diversion to services model.
Current State Laws - Cont.

- New York’s Safe Harbor law creates presumption of victim and diversion to specialized services – but PINS certification can be denied for four reasons:
  - Minor is not a victim of severe forms of trafficking
  - If the minor was adjudicated prior offense of prostitution
  - If minor had previously received PINS certification;
  - If minor expresses unwillingness to cooperate with services.
Illinois and Minnesota: Decrim. and Diversion

- Illinois allows a ‘reasonable detention for investigation purpose’ – prohibits prosecution under 18 and mandates that minors ‘shall be subject to temporary protective custody (can be secure or unsecure facility);

- Minnesota – anyone under 16 immune from prosecution and mandates diversion for first-time offenses
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<th>STATES</th>
<th>Decriminalization</th>
<th>Diversion</th>
<th>Specialized Services</th>
<th>Increased Penalties</th>
<th>Law Enforcement Training</th>
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INTEGRATING SUPPORTIVE HOUSING

The critical role of housing stability in ending sexual exploitation of minors.
Bed Spaces

- Shelter Beds for Human Trafficking Survivors in the U.S. – 1935
  - 717 available for men (20 exclusive)
  - 1020 available for minors (531 exclusive)

- States with no programs offering shelter:
  Arkansas, Colorado, Connecticut, Idaho, Iowa, Maine, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia, and Wyoming,
The role of housing assistance

Recommendation: Safe Harbor Laws should consider the role of housing stabilization in ending victimization to sex trafficking – provide for investments in supportive housing

Supportive Housing is

- Permanent, affordable housing with
- Comprehensive supportive services tailored for participants
- Voluntary
Philosophy of Supportive Housing

- Empowering
- Nonjudgmental Engagement
- Housing First
- Harm Reduction
- Achieve stability and increased positive development and functioning
- Ensure access to health care and mainstream resources.
PSH - positive outcomes with various subpopulations

- Chronic and long-term homeless
- Felons
- Persons with Mental Health Disabilities
- Persons with alcohol or chemical dependency
- Unaccompanied youth and
- Families with children
PSH - Evidence Based Practice

- Evidence of impact overall on resident stability: “the most potent intervention”
- Evidence of greater impact over alternatives
- Evidence of cost benefits
- Evidence on the core principles (fidelity) (SAMHSA)
Resource Development

- Supportive Services Funding – intensive case management services, counseling, health care coordination
- Rental Assistance – affordable housing

Both Parts Are Needed to Operationalize Supportive Housing Programs.
Cost Factors - Policy Points

- Ave. Annual cost of one (1) detention bed is $88,000 (2010, National Juvenile Justice Network)
- Ave. annual cost of one supportive housing unit (with services) is $18,000 (Minnesota)
CONTACT INFORMATION

Richard A. Hooks Wayman, J.D.
Executive Director
Hearth Connection
2446 University Avenue West, Suite 150
Saint Paul, MN 55114
651-645-0676
richard@hearthconnection.org