

# **There Is No Such Thing as a Child Prostitute: Why Decriminalization Is Only the First Step in California**

## *Abstract*

*Prostituted minors are victims of the deceitful schemes of pimps, traffickers, and Johns. While there is widespread agreement that these minors are victims, states have taken different approaches to addressing this heinous crime. Generally, states either prosecute prostituted minors or adopt Safe Harbor laws that grant prostituted minors immunity from prosecution. California joined the majority of states when it passed Senate Bill 1322. Effective January 1, 2017, this bill amended California's Penal Code to grant children under eighteen years of age immunity from prosecution for prostitution.*

*This Comment argues that Senate Bill 1322 properly amended California law by aligning with federal standards and recognizing that prostituted minors are victims, not criminals. However, decriminalization alone falls short of its goal of better serving and protecting minor victims of prostitution. In the absence of a mechanism to keep victims off the streets and away from perpetrators—a function previously served by prosecution and juvenile justice programs—victims will not receive the protection and rehabilitation that they need. Consequently, this Comment urges California lawmakers to consider a comprehensive approach, and it proposes that victims be directed to secure safe houses with the option of entering long-term residential treatment centers. Further, perpetrators should face stricter penalties and be required to attend intervention programs that educate them about the devastating effect of their crimes.*

*This Comment concludes that California should amend its Child Welfare laws to direct victims to appropriate placements, impose harsher penalties on perpetrators, and implement programs that address recidivism.*

TABLE OF CONTENTS

I. INTRODUCTION .....191

II. SEXUAL TRAFFICKING OF MINORS: ANALYSIS OF FEDERAL AND CALIFORNIA LAWS ..... 194

    A. *Federal Law* .....194

        1. Federal Law’s Punishment of Johns, Pimps, and Traffickers.....195

        2. Federal Law’s Treatment of Minor Victims of Prostitution.....195

    B. *California Law* .....199

        1. California’s Punishment of Johns, Pimps, and Traffickers.....199

        2. California’s Treatment of Minor Victims of Prostitution Prior to Senate Bill 1322.....201

    C. *Comparison of Federal and California Law* .....203

III. SENATE BILL 1322: CALIFORNIA’S SAFE HARBOR PROVISION FOR MINOR VICTIMS OF PROSTITUTION ..... 205

    A. *History and Passage of Senate Bill 1322*.....205

    B. *Opposition to, and Arguments Against, Safe Harbor Laws* .....207

    C. *Support for Senate Bill 1322*.....209

IV. DECRIMINALIZATION ALONE IS NOT ENOUGH.....214

    A. *Keeping Victims Safe and Off the Streets* .....214

        1. California’s Current Child Welfare System Is Insufficient .....216

        2. California’s Need for Secure Safe Houses and Long-Term Residential Centers .....221

    B. *Targeting Perpetrators* .....230

        1. Matching California’s Penalties with Federal Law ...231

        2. John School: Mandatory Intervention as a Condition of Sentencing.....233

V. CONCLUSION .....235

## I. INTRODUCTION

She likes swimming, Spongebob, Mexican food, writing poetry, getting her nails painted (light pink is her favorite color), and Harry Potter books (plus she thinks Daniel Radcliffe is “fine”). This Christmas, she really wants an iPod but would settle for some sweat suits, preferably pink. Sometimes she’s petulant—pouting and sullen—but mostly she’s open and eager to be loved. When she smiles, huge dimples crease her chubby face and are still capable, as she moves into awkward adolescence, of melting hearts. She’s much like any other eleven-year-old girl in America, except for one critical difference. Over the last year of her life, she’s been trafficked up and down the East Coast by a twenty-nine-year-old pimp and sold nightly on Craigslist to adult men who ignore her dimples and her baby fat and purchase her for sex.<sup>1</sup>

When most people hear “sex trafficking of children,” they usually imagine a crime being committed in a distant country.<sup>2</sup> This was the prevailing thought until about twelve years ago, when the federal government statutorily recognized that sex trafficking of children happens domestically.<sup>3</sup> In fact, it is estimated that between 100,000 and 500,000 children are sexually exploited in the United States each year.<sup>4</sup>

Prostitution of minors is unquestionably included in the definition of sex trafficking.<sup>5</sup> These victims typically fall into a life of prostitution between

---

1. RACHEL LLOYD, *GIRLS LIKE US 1* (2012).

2. See Jesse Hyde, *Dallas’ Letot Center Helps to Stop the Sex Trade*, DALL. OBSERVER (Nov. 13, 2008, 4:00 AM), <http://www.dallasobserver.com/news/dallas-letot-center-helps-to-stop-the-sex-trade-6406092> (“When people hear about sex trafficking they think it’s international. They don’t realize it’s also domestic. . . . It could be the girl across the street. It could be going on down the road. It’s right under our noses.”); see also Emma Lord, *Stop Punishing the Victim: Why California Should Reform Its Current Prostitution Laws and Adopt the Swedish Approach to Combat Sex-Trafficking*, 44 SW. L. REV. 599, 600 (2015) (“[W]hile sex trafficking is normally associated with less affluent or lawful parts of the world, at least 50,000 women and children are trafficked in the United States each year for the purposes of commercial sexual exploitation, where they are treated as modern day slaves.”).

3. See *infra* note 35 and accompanying text.

4. SARAH WASCH ET AL., AN ANALYSIS OF SAFE HARBOR LAWS FOR MINOR VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION: IMPLICATIONS FOR PENNSYLVANIA AND OTHER STATES 1 (2016), <https://fieldcenteratpenn.org/wp-content/uploads/2013/05/SafeHarborWhitePaper.pdf>.

5. See *infra* note 24 and accompanying text; Nancy Kubasek & Kaela Herrera, *Combating Domestic Sex Trafficking: Time for a New Approach*, 24 TEX. J. WOMEN, GENDER & L. 167, 173 (2015)

ages eleven and fourteen<sup>6</sup>—a life that is “a living hell . . . [where] johns abuse them, the pimps victimize them, the drug dealers victimize them, and the normal people look down on them.”<sup>7</sup> Although minors engaged in prostitution are victims, some states continue to arrest and prosecute them, thus labeling them criminals.<sup>8</sup> In contrast, many states have implemented “Safe Harbor” laws, which generally “reclassify[] prostituted children as victims instead of delinquents.”<sup>9</sup> This reclassification occurs by decriminalizing prostitution for the minor, while still criminalizing the buyer of sex, the victim’s pimp, and the victim’s trafficker.<sup>10</sup>

Recently, California’s governor signed Senate Bill 1322, which went into effect on January 1, 2017, and decriminalized prostitution for minors under

(“[P]rostitution of minors . . . has been explicitly defined by the TVPA as a ‘severe form of sex trafficking.’”) (quoting 22 U.S.C. § 7102(9)(a) (2013)); *cf.* Lord, *supra* note 2, at 602 (“Sex trafficking is one of the grossest violations in existence of both the law and nearly every standard of ethics.”).

6. See Tamar R. Birkhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1061 (2011) (“[T]he data suggests that the average age of entry into prostitution falls between eleven and fourteen, with some children as young as nine.”); *cf.* Max Waltman, *Assessing Evidence, Arguments, and Inequality in Bedford v. Canada*, 37 HARV. J.L. & GENDER 459, 470, n.40 (“For instance, 47% of 751 prostituted persons in nine countries reported entering prostitution under age eighteen . . . and among a sample of 200 adult and juvenile, current and former prostituted women in San Francisco, 62% reported starting before age sixteen, and a number reported starting under 9, 10, 11, and 12. . . . Among forty-five prostitution survivors in Alberta, Canada, 64.4% reported starting prostitution before age sixteen, and 57.8% reported being prostituted regularly before age sixteen.”) (citations and internal quotations marks omitted).

7. Sara Jean Green, *Tougher Police Tactics Sting Sex Buyers*, SEATTLE TIMES (October 15, 2014, 12:01 AM, updated Mar. 19, 2015, 2:57 PM), <http://www.seattletimes.com/seattle-news/tougher-police-tactics-stinging-sex-buyers/> (“They’re the true victims of what people call a victimless crime.”).

8. See WASCH ET AL., *supra* note 4 (“Although nationally many youth are prosecuted for prostitution and related crimes, there are compelling reasons to address these youth as victims given their age, capacity to consent, and the documented use of force, fraud and coercion in these cases.”); *cf.* Michelle Madden Dempsey, *Decriminalizing Victims of Sex Trafficking*, 52 AM. CRIM. L. REV. 207, 209 (2015) (“[P]olice and prosecutors spend far more time and money targeting those who sell sex, often under conditions amounting to sex trafficking, rather than targeting those who profit from or drive demand for the commercial sex markets where trafficking takes place.”).

9. Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL’Y BRIEF 67, 89 (2012); *see also* 2013 *Analysis of State Human Trafficking Law*, POLARIS PROJECT (Aug. 2013), <https://polarisproject.org/sites/default/files/2013-State-Ratings-Analysis.pdf> (“[Eighteen] states . . . have enacted statutes providing some measure of safe harbor protection to minor victims of human trafficking and commercial sexual exploitation.”).

10. See Geist, *supra* note 9, at 87–88 (“Safe Harbor Laws do not result in complete decriminalization. Decriminalization does not extend to the pimp or john. Safe Harbor Laws protect the prostituted minor from punishment, not the pimps and johns.”).

eighteen years of age.<sup>11</sup> This enactment was mostly met with exclamations of victory from advocates and policymakers.<sup>12</sup>

This Comment argues that, while decriminalization properly recognizes that minors involved in prostitution are victims, not criminals, California lawmakers have failed to realize that decriminalization alone—without proper laws protecting victims and targeting perpetrators—is an incomplete response and may have unintended negative consequences.<sup>13</sup>

Part II of this Comment provides a concise analysis and comparison of federal and California laws regarding sexual trafficking of minors, specifically focusing on punishment of perpetrators and treatment of minor victims of prostitution.<sup>14</sup> Part III discusses Senate Bill 1322 and Safe Harbor laws in general, noting the main arguments for and against decriminalizing the prostitution of minors.<sup>15</sup> Part IV argues that, given the insufficiency of California's child welfare system, lack of secure safe houses, and long-term residential centers, decriminalization alone is not enough.<sup>16</sup> Part IV proposes matching California and federal penalties and implementing an intervention program for perpetrators in order to target offenders.<sup>17</sup> Part V concludes.<sup>18</sup>

---

11. See *infra* Section III.A; *SB-1322 Commercial Sex Acts: Minors*, CAL. LEGIS. INFO., [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1322](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1322) (amending the California Penal Code and making the California prostitution law inapplicable to anyone under age eighteen).

12. See, e.g., Yasmin Vafa, *California Agrees: There's No Such Thing as a Child Prostitute*, RIGHTS4GIRLS, <http://rights4girls.org/wp-content/uploads/r4g/2015/03/California-Agrees.pdf> [hereinafter *California Agrees*]; see also Birkhead, *supra* note 6, at 1085–86 (“Advocates for decriminalization have urged legislators to rethink publicly labeling and locking up prostituted children as delinquents or criminals . . . .”); Alicia Bayer, *No, California Did Not Pass a Law Legalizing Child Prostitution [Debunked]*, INQUISITR, (Dec. 30, 2016) <http://www.inquisitr.com/3839085/no-california-did-not-pass-a-law-legalizing-child-prostitution-debunked/> (“Kim Biddle, the executive director of Saving Innocence, a group that counsels sexually exploited youth, calls the change in the law ‘a really big deal.’ Biddle cited one North Hollywood case where a 13-year-old girl was caught with a 47-year-old man. The child was handcuffed and charged with prostitution, while the adult perpetrator got a citation, she said. ‘Now, we’re able to view these children correctly under the law,’ Biddle said, ‘as victims.’”).

13. See *infra* Part IV.

14. See *infra* Part II.

15. See *infra* Part III.

16. See *infra* Section IV.A.

17. See *infra* Section IV.B.

18. See *infra* Part V.

## II. SEXUAL TRAFFICKING OF MINORS: ANALYSIS OF FEDERAL AND CALIFORNIA LAWS

### A. Federal Law

The federal government has shown its commitment to anti-trafficking efforts through various initiatives and legislation.<sup>19</sup> The Federal Trafficking Victims Protection Act of 2000 (TVPA) is the guiding federal statute regarding anti-trafficking.<sup>20</sup> The TVPA focuses on two crucial aspects of anti-trafficking efforts: the “just and effective punishment of traffickers”<sup>21</sup> and the “protect[ion] of their victims.”<sup>22</sup> Under federal law, sex trafficking is defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”<sup>23</sup> While adult prostitution is not presumptively considered sex trafficking, federal law presumes that sex trafficking of a person *under eighteen years of age*—in which the person is induced to perform a commercial sex act—is a “severe form of trafficking in persons.”<sup>24</sup>

Additionally, several of the Obama administration’s initiatives demonstrated a commitment to anti-trafficking.<sup>25</sup> These initiatives included: issuing Executive Order 13627, which aimed to “strengthen protections against trafficking in persons”;<sup>26</sup> declaring January 2015 “National Slavery and Human

19. *See infra* Section II.A.

20. *See* 22 U.S.C. § 7101 (2012); *see also* Kubasek & Herrera, *supra* note 5, at 174 (“In the year 2000, The Trafficking Victims Protection Act was enacted by Congress; this federal law was the first piece of U.S. legislation to aim at the prevention of human trafficking, aiding victims, and prosecuting traffickers.”).

21. § 7101.

22. *Id.*; *see also* Kubasek & Herrera, *supra* note 5, at 171 (“[A]dvocates of the Trafficking Victims Protection Act (TVPA) and anti-trafficking efforts recognize prostitution as a form of sex trafficking—especially in the case of minors . . .”).

23. 22 U.S.C. § 7102(10); *see also* § 7102(4) (defining a “commercial sex act” as “any sex act on account of which anything of value is given to or received by any person”).

24. § 7102(9); *see also* Dempsey, *supra* note 8, at 210 (“One point of widespread agreement is that the prostitution of children under the age of eighteen constitutes sex trafficking.”); WASCH ET AL., *supra* note 4, at 2 (“[T]he term ‘child sex trafficking’ has supplanted ‘child prostitution’ as the prevailing thought, shifting responsibility to the perpetrator’s actions rather than focusing on those of the victim.”).

25. *See* Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1281, 1305–06 (2015).

26. Strengthening Protections Against Trafficking in Persons in Federal Contracts, 77 Fed. Reg. 60029 (Sept. 25, 2012).

Trafficking Prevention Month”;<sup>27</sup> introducing a “Strategic Action Plan for Victims Services” that focuses on improved services for trafficking victims; and enacting the Trafficking Victims Protection Reauthorization Act of 2013.<sup>28</sup>

### 1. Federal Law’s Punishment of Johns, Pimps, and Traffickers

Federal law imposes substantial punishment on the people who drive sex trafficking of minors.<sup>29</sup> If an individual “recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits” a commercial sex act with a minor under fourteen years of age, and if the individual benefits “financially or by receiving anything of value,” then that individual may be punished with fifteen years to life in prison.<sup>30</sup> If the minor is between fourteen and seventeen years of age, then the individual may be punished with ten years to life in prison.<sup>31</sup> Notably, individuals who have previously been convicted under federal law for sex trafficking of children will face mandatory life imprisonment upon a repeated sex offense against a minor.<sup>32</sup>

### 2. Federal Law’s Treatment of Minor Victims of Prostitution

The federal government recognizes that individuals who have fallen into the cycle of sex trafficking—particularly minors who engage in prostitution—are victims.<sup>33</sup> Further, the TVPA “affords these victims access to social and

27. Butler, *supra* note 25, at 1305.

28. *The Obama Administration’s Record on Human Trafficking Issues*, WHITE HOUSE (Apr. 9, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/04/09/obama-administration-s-record-human-trafficking-issues>.

29. See Tessa L. Dysart, *The Protected Innocence Initiative: Building Protective State Law Regimes for America’s Sex-Trafficked Children*, 44 COLUM. HUM. RTS. L. REV. 619, 629 (2013) (explaining that federal laws “recognize the importance of stiff sentences for offenders and those who benefit from trafficking and the need for restorative services for victims”).

30. 18 U.S.C. § 1591(a)–(b)(1) (2012).

31. *Id.* § 1591(b)(2).

32. *Id.* § 3559(e). This mandatory life imprisonment also applies to other federal sex offenses, such as aggravated sexual abuse. *Id.*

33. See 22 U.S.C. § 7102(b)(15) (2012). *But cf.* Brynn N.H. Jacobson, *Addressing the Tension Between the Dual Identities of the American Prostitute: Criminal and Victim; How Problem-Solving Courts Can Help*, 37 SEATTLE U. L. REV. 1023, 1026 (2014) (“When it comes to America’s prostituted children, ‘nobody reports them, nobody is looking for them, and nobody cares about them [because] they’re the forgotten children.’”) (alteration in original).

protective services, including medical care and safe housing.”<sup>34</sup>

In the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA), Congress recognized that while the main focus in the previous five years had been international human trafficking, human trafficking occurs domestically as well.<sup>35</sup> Although few studies had quantified domestic trafficking and commercial sexual exploitation of children, Congress found that “runaway and homeless children” were at a much higher risk of exploitation and that “as many as 300,000 children in the United States are at risk of commercial sexual exploitation, including trafficking, at any given time.”<sup>36</sup> Through the TVPRA, the federal government recognized that minors involved in sex trafficking are “victims of crime and sexually exploited children”<sup>37</sup> who need residential treatment facilities.<sup>38</sup> The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) made further advances by reauthorizing funding for juvenile residential treatment facilities and amending the TVPA to require that federal agency personnel “be trained in identifying and

34. 2013 *Analysis of State Human Trafficking Law*, *supra* note 9.

35. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109–164, 119 Stat. 3559 (2005) (“Trafficking in persons also occurs within the borders of a country, including the United States.”); see also Kubasek & Herrera, *supra* note 5, at 188 (“[T]he myth that sex trafficking victims are typically from foreign countries is alive and well, despite the fact that U.S. citizens have been sex trafficking victims since the founding of this country.”).

36. Trafficking Victims Protection Reauthorization Act of 2005. See generally Jacobson, *supra* note 33, at 1026 (“There are common trends among prostituted women and girls: abusive family background, entry before age of majority, and violence after entry. Many victims come from unstable homes in which their parents often abandon them, or the victims run away due to sexual or physical abuse. Those who enter under the age of eighteen come from poverty and often run away from home. The average age at which girls are first exploited through prostitution is twelve to fourteen years old, but that age is dropping all the time. Most of the young women in prostitution lack a father figure. Most of these women and girls also experienced abuse in their childhoods: physical, sexual, and emotional, with severe and negative lasting effects from the acts of sexual abuse. In one study, as many as 70% of the women responded that sexual abuse influenced their entry into prostitution.”).

37. Dysart, *supra* note 29, at 620 (quoting 151 CONG. REC. E270 (daily ed. Feb. 17, 2005) (statement of Rep. Smith)).

38. Trafficking Victims Protection Reauthorization Act of 2005 § 203. This section of the TVPRA created a pilot program “to establish residential treatment facilities in the United States for juveniles subjected to trafficking.” *Id.* Such facilities that can provide “[s]afe shelter, counseling, education, and job training play a critical role in breaking the bonds that often tie domestic minor sex trafficking victims to their traffickers.” Dysart, *supra* note 29, at 638; see also Kubasek & Herrera, *supra* note 5, at 176 (“In 2005 the Act was reauthorized to include pilot programs that shelter minors, grant assistance to state and local law enforcement, address the prevention of sex tourism, provide the ability to treat victims abroad, and strengthen regulation of government contracts with organizations or individuals abroad.”).

protecting ‘juvenile victims.’”<sup>39</sup>

Eight years later, the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the TVPRA 2008 by adding a safe harbor provision for trafficked minors.<sup>40</sup> This safe harbor provision treats a minor that has been “arrested for engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation as a victim”; prohibits charging or prosecuting minor victims for prostitution; requires that victims be referred to rehabilitation programs; and clarifies that, to receive these protections, minors need not show that there was “fraud, force, or coercion.”<sup>41</sup> This safe harbor provision grew out of the TVPRA 2008’s efforts to “facilitate the promulgation of a model State statute that . . . furthers a comprehensive approach to investigation and prosecution through modernization of State and local prostitution . . . statutes.”<sup>42</sup> Thus, since 2013, the model state statute has called for states to implement a safe harbor provision, thereby granting minors immunity from criminal prostitution.<sup>43</sup>

In addition, the VAWA emphasizes rehabilitating victims through efforts to enhance state and local programs that combat domestic minor sex trafficking.<sup>44</sup> The VAWA amended the TVPRA to include “sex trafficking block grants,” in which an eligible entity<sup>45</sup> can apply for a one-year grant, sixty-

39. Dysart, *supra* note 29, at 627; *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 110 Pub. L. No. 457, § 302(4); 212 (b), 122 Stat. 5044 (2008).

40. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113–4, § 1243, 127 Stat. 154 (2013).

41. *Id.*; *see also* Lord, *supra* note 2, at 603 (“The commercially sexually exploited are not always seen by society as victims, perhaps because ‘they’re seen as asking for it.’ Oftentimes, these victims are seen as choosing to connect with a pimp, or are choosing this profession. This misconception is rooted in the fact that many individuals in society view sex trafficking as only being a problem when ‘the victim is dragged off in chains; we don’t appreciate Stockholm syndrome or understand that often the handcuffs are psychological.’ Many fail to see that ‘trafficking victims frequently spend their entire lives in slavery.’”).

42. Trafficking Victims Protection Reauthorization Act of 2008 § 225(b).

43. *See* Violence Against Women Reauthorization Act of 2013 § 1243.

44. *See id.* § 1241.

45. *See id.* § 1241(3) (defining an eligible entity as one that: “(A) has significant criminal activity involving sex trafficking of minors; (B) has demonstrated cooperation between Federal, State, [and local] law enforcement agencies, prosecutors, and social service providers . . . (C) has developed a workable, multi-disciplinary plan to combat sex trafficking of minors, including—“(i) building or establishing a residential care facility . . . (ii) . . . rehabilitative care to minor victims of sex trafficking; “(iii) . . . specialized training for law enforcement officers and social service providers . . . with a focus on sex trafficking of minors; “(iv) prevention, deterrence, and prosecution of offenses involving sex trafficking of minors; “(v) cooperation or referral agreements with organizations providing outreach . . . to runaway and homeless youth; and “(vi) law enforcement protocols or procedures to screen

seven percent of which is used “to provide residential care and services . . . to minor victims of sex trafficking through qualified nongovernmental organizations.”<sup>46</sup>

Going a step further, the House of Representatives introduced the Stop Exploitation Through Trafficking Act of 2014 (the Act) as an attempt to require states to statutorily classify minors who have engaged in prostitution as victims, not criminals.<sup>47</sup> In pertinent part, the Act would have required, within three years of its enactment, each state to: (1) “treat[] a minor who has engaged in, or has attempted to engage in, a commercial sex act as a victim of a severe form of trafficking in person”; (2) “discourage the charging or prosecution of [such] an individual” for prostitution; and (3) “encourage the diversion of [such] an individual . . . to child protection services.”<sup>48</sup> Although the Act neither fully banned the prosecution of minors engaged in prostitution nor required diverting them to child welfare services, its language demonstrates that members of the federal legislature are mindful of a victim-focused approach to the prostitution of minors by Johns<sup>49</sup> and pimps.<sup>50</sup> The Act was introduced in November 2013, but it was never signed into law.<sup>51</sup> A new version of the Bill is currently pending.<sup>52</sup>

---

all individuals arrested for prostitution . . . for victimization by sex trafficking; and ‘(D) provides assurance that a minor victim of sex trafficking shall not be required to collaborate with law enforcement to have access to residential care or services provided with a grant under this section”).

46. *Id.* § 1241(b)(2).

47. *See* Stop Exploitation Through Trafficking Act of 2013, 113 H.R. 3610, 113th Congress (2014).

48. *Id.* § 2(2).

49. *See infra* text accompanying note 54.

50. *See infra* text accompanying note 55; Jacobson, *supra* note 33, at 1027 (“Typically, a pimp ensnares young females by using a process that destroys the child’s sense of personal identity by gradually breaking her down. Pimps prey on at-risk women and girls in order to more easily manipulate and control them: the runaways, homeless, and victims of sexual abuse are prime targets for exploiters.”).

51. *H.R. 3610 (113th): Stop Exploitation Through Trafficking Act of 2014*, GOVTRACK., <https://www.govtrack.us/congress/bills/113/hr3610> (last visited Oct. 12, 2017).

52. *H.R. 159 (114th): Stop Exploitation Through Trafficking Act of 2015*, GOVTRACK., <https://www.govtrack.us/congress/bills/114/hr159> (last visited Oct. 12, 2017).

*B. California Law*

## 1. California's Punishment of Johns, Pimps, and Traffickers

A continuous cycle of supply-and-demand fuels the sex trafficking market.<sup>53</sup> A “John” is “a man who pays money to a prostitute for sex.”<sup>54</sup> A “pimp” is “[a]ny person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person’s prostitution . . . or who solicits or receives compensation for soliciting for the person.”<sup>55</sup> Johns drive demand,<sup>56</sup> while traffickers<sup>57</sup> and pimps supply that demand.<sup>58</sup>

Currently, anyone “who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor” will be found “guilty of disorderly conduct, a misdemeanor.”<sup>59</sup> This provision applies to Johns who solicit, agree to engage in,

53. See Dysart, *supra* note 29, at 636 (“[S]ex trafficking is demand-driven and . . . the product for sale is most commonly local (domestic) children.”); Simon Hedlin, *Can Prostitution Law Reform Curb Sex Trafficking? Theory and Evidence on Scale, Substitution, and Replacement Effects*, 50 U. MICH. J.L. REFORM 329, 332 (2017) (“Simply put, prostitution can be seen as a market: the demand side comprises individuals who purchase sex, while the supply side includes both voluntary prostitutes and sex-trafficking victims.”).

54. John, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/john> (last visited Oct. 5, 2017).

55. CAL. PENAL CODE § 266h(b) (West 2016); see also Jacobson, *supra* note 33, at 1027 (“Pimps have a unique ability to manipulate and engage young women, unparalleled by any other force in the young girl’s life. In describing the pimp, one officer comments that ‘[h]e has no letters out after his name [for a college degree], but he has a firm grasp on child psychology . . . .’ Pimps are experts in human nature, manipulation, and seduction; a deadly combination for a young girl seeking love. One convicted pimp stated that ‘with young girls, you promise them heaven, and they’ll follow you to hell.’”) (alteration in original) (footnotes omitted).

56. See Hedlin, *supra* note 53, at 359 (discussing how proponents of the Nordic model, where buying sex is criminalized and selling sex is decriminalized, support this model because “law enforcement resources could be focused on arresting sex buyers instead of sellers, which might drive down the demand for purchased sex to a greater extent than an overall ban”).

57. See *infra* notes 67–80 and accompanying text; Lord, *supra* note 2, at 600 (“Traffickers are no fools. They target vulnerable individuals: the impoverished, the unemployed, the poorly educated, addicts, runaways, and the disabled.”).

58. See Dysart, *supra* note 29, at 637 (“[D]emand fuels the market.”); Lord, *supra* note 2, at 600–01 (“[T]he purchase of sex encourages the pimps to stay in this marketplace and to continue the ‘commodification’ of women.”).

59. PENAL § 647(b)(3).

and engage in acts of prostitution with a minor.<sup>60</sup> Further, if the person who solicits, agrees to engage in, or engages in an act of prostitution with a minor knew or should have known that the individual was a minor at the time, then the person can be punished with between two days and one year imprisonment, a fine no greater than \$10,000, or both.<sup>61</sup> Therefore, under California law, buyers of sex with minors—Johns—face a maximum punishment of imprisonment for one year and a fine of \$10,000.<sup>62</sup>

If an individual meets the statutory definition of a pimp<sup>63</sup> and engages in this behavior with a minor, then he is guilty of pimping a minor, which is a felony.<sup>64</sup> A pimp's punishment depends on the age of the victim. If the minor was sixteen years old or older at the time of the offense, then the offense is punishable by imprisonment for three, four, or six years.<sup>65</sup> If the minor was under sixteen years old at the time of the offense, then the offense is punishable by imprisonment for three, six, or eight years.<sup>66</sup>

An individual commits sexual trafficking of a child if the individual "causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of"<sup>67</sup> pimping,<sup>68</sup> pandering,<sup>69</sup> procurement of a child,<sup>70</sup> abduction of a minor for prostitution,<sup>71</sup> sale or distribution of obscene matter depicting a person under the age of eighteen engaging in sexual conduct,<sup>72</sup> production, distribution, or

---

60. See *supra* text accompanying note 54; *People v. Nettles*, H041143, 2016 Cal. App. Unpub. LEXIS 5607, at \*13 (Cal. Ct. App. July 29, 2016) ("A 'trick' or a 'john' is someone who pays for sexual services.").

61. PENAL § 647(b), (m)(1).

62. See *supra* text accompanying notes 59–61.

63. See PENAL § 266h(b).

64. *Id.*

65. *Id.*

66. *Id.*; see also *People v. Khong*, C076416, 2016 Cal. App. Unpub. LEXIS 4184, at \*2 (Cal. Ct. App. June 8, 2016) ("[W]e: (1) impose upper term sentences of eight years on [counts one and two, pimping a minor under 16 years of age].").

67. PENAL § 236.1(c); see also *id.* § 11165.1(d)(1).

68. *Id.* § 266h; see also *supra* text accompanying note 55.

69. PENAL § 266i.

70. *Id.* § 266j.

71. *Id.* § 267.

72. *Id.* § 311.1.

exhibition of obscene matter;<sup>73</sup> sexual exploitation of a child;<sup>74</sup> employment of a minor in the sale or distribution of obscene matter or production of pornography;<sup>75</sup> advertising or promoting matter represented to be obscene;<sup>76</sup> obscene live conduct;<sup>77</sup> or extortion.<sup>78</sup> A person who is found guilty of sexual trafficking of a child<sup>79</sup> is punishable by five, eight, or twelve years imprisonment and a fine not to exceed \$500,000; and if the offense “involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person,” then the person is punishable by fifteen years to life imprisonment and a fine not to exceed \$500,000.<sup>80</sup>

## 2. California’s Treatment of Minor Victims of Prostitution Prior to Senate Bill 1322

Before California Governor Jerry Brown signed Senate Bill 1322 into law,<sup>81</sup> the California Penal Code fell short of properly classifying minors who engage in prostitution as victims.<sup>82</sup> In 2013, for example, California arrested 205 sex trafficking victims, the most in the country.<sup>83</sup> Under the relevant legal

73. *Id.* § 311.2.

74. *Id.* § 311.3. A person is guilty under this provision “if he or she knowingly develops, duplicates, prints, or exchanges” any depiction of a person “under the age of 18 years engaged in an act of sexual conduct.” *Id.*

75. *Id.* § 311.4.

76. *Id.* § 311.5.

77. *Id.* § 311.6.

78. *Id.* § 518. “Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” *Id.*

79. *Id.* §§ 11165.1(d), 236.1(c).

80. *Id.* § 236.1(c); *see also* *People v. Nettles*, H041143, 2016 Cal. App. Unpub. LEXIS 5607, at \*15 (Cal. Ct. App. July 29, 2016) (“The trial court sentenced defendant to an eight-year prison term for human trafficking” under § 236.1(c)).

81. *See Vafa*, *supra* note 12.

82. PENAL § 647(a)–(b), § 653.22; *see also In re M.V.*, 225 Cal. App. 4th 1495, 1526 (Cal. Ct. App. 2014) (noting that the minor who had been arrested for prostitution “may well be correct that changing public policy will ultimately lead to the complete decriminalization of all prostitution activity engaged in by minors[, but] [u]ntil the Legislature acts to clarify its intent with respect to these vulnerable youth, however, [the court was] compelled to conclude under existing statutes and precedent that [the minor] was legally able to form the requisite intent to engage in an act of prostitution. . . . [and] the evidence was sufficient to support the charge to which she admitted in the juvenile court, loitering in a public place with the intent to commit prostitution in violation of section 653.22 of the Penal Code”).

83. *See Erika Eichelberger*, *Why Are Police Still Arresting Children for ‘Prostitution’?*, SPLINTER

provisions, minors were stigmatized as criminals<sup>84</sup> and punished for “solicit[ing] or engag[ing] in any act of prostitution” or “loit[ering] in any public place with the intent to commit prostitution.”<sup>85</sup> The failings of California law prior to Senate Bill 1322 did not go unnoticed.<sup>86</sup> Arresting these victims—who are typically ethnic or cultural minorities<sup>87</sup>—re-traumatized and re-victimized them.<sup>88</sup> Following arrest, minors experienced a lack of sympathy from judges, hostility from law enforcement, and humiliation.<sup>89</sup> Many advocacy groups vigorously fought to permanently change the law’s language so as to reflect that sexually exploited minors are always victims.<sup>90</sup> These advocacy groups focused on the unique needs of prostitution victims,<sup>91</sup> the false

---

(Jun. 22, 2016, 3:44 PM), <https://splinternews.com/why-are-police-still-arresting-children-for-prostitution-1793857701>; *see also* Jacobson, *supra* note 33, at 1030 (“[B]ecause police officers [were] arresting victims and putting them in jail, there [was] a lack of trust between law enforcement and women in prostitution.”).

84. *See* Butler, *supra* note 25, at 1309 (“[P]rostituted minors feel stigmatized as criminals when they are held in lock-up awaiting adjudication.”); *see also* Hedlin *supra* note 53, at 359 (discussing how the Nordic model, where only the act of selling sex is decriminalized, “might function as a signal that what is normatively undesirable is not selling sex but purchasing it; such signaling could, at least in theory, shift the stigma from sellers to buyers and lead to even greater reductions in the demand for commercial sex”).

85. *SB-1322 Commercial Sex Acts: Minors*, *supra* note 11.

86. *See* Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 110 (2008) (“If we view prostituted children as offenders rather than victims, then we must presume that they had agency when committing their crime and can learn from their mistakes to avoid repetition. Otherwise, our system of justice unfairly punishes the victim.”).

87. *See supra* note 35–36 and accompanying text.

88. *See* Eichelberger, *supra* note 83.

89. Butler, *supra* note 25, at 1309.

90. *See Stop Using the Term “Child Prostitute”*, CHANGE.ORG, <https://www.change.org/p/associated-press-stop-using-the-term-child-prostitute-2> (last visited Oct. 7, 2017); *see also There is No Such Thing as a Child Prostitute*, RIGHTS4GIRLS, <http://rights4girls.org/> (last visited Oct. 7, 2017); *Debate: Under CA Bill, Minors Would Be Shielded from Prostitution Charges*, AIR TALK (Aug. 22, 2016), <http://www.scpr.org/programs/airtalk/2016/08/22/51470/debate-under-ca-bill-minors-would-be-shielded-from/> (“It is not necessary to arrest and incarcerate young children who are the victims of abuse in order to protect a[nd] serve them. All of the research says that children heal better when they are treated as victims, not as criminals.”).

91. *See* Eichelberger, *supra* note 83 (“Instead of jail, trafficking victims need housing, trauma services, and health care, says Shea Rhodes, the director of the Villanova Law Institute to Address Commercial Sexual Exploitation.”).

divide drawn between “paying to rape a child and raping a child,”<sup>92</sup> and eradicating the term “child prostitute.”<sup>93</sup>

### C. *Comparison of Federal and California Law*

The efforts of the Legislative and Executive branches demonstrate that the federal government has been more active than the states in classifying and treating sexually exploited minors as victims and not criminals.<sup>94</sup> In contrast, state laws have been slower in developing and finding the most effective way to address the alarming growth of domestic sex trafficking, whether statutorily or through law enforcement.<sup>95</sup> This is concerning because the federal government handles only a small number of these cases.<sup>96</sup> The vast majority of victims come into contact with state and local officials, who are “the ‘front line personnel,’ the ones most apt to identify and prosecute domestic sex traffickers.”<sup>97</sup> Additionally, despite its development of effective and comprehensive laws addressing this issue, the federal government simply does not have the capability or resources to prosecute all domestic sex trafficking cases.<sup>98</sup>

92. See Note: *Recipient Names Follow the Text of the Letter*, RIGHTS4GIRLS (June 22, 2016), <http://rights4girls.org/wp-content/uploads/r4g/2015/02/Letter-to-Media-June-22nd.pdf>.

93. See Robert K. Ross, *Putting an End to the Misnomer “Child Prostitute”*, CAL. ENDOWMENT (May 17, 2016), <http://www.calendow.org/narrative-change-putting-an-end-to-the-misnomer-child-prostitute/>.

94. See *2013 Analysis of State Human Trafficking Law*, *supra* note 9 (“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.”); see also Kubasek & Herrera, *supra* note 5, at 175 (“[M]ost importantly, the passage of the TVPA signified the first time the federal government recognized by way of legislation that trafficking is a national and global form of modern slavery.”).

95. See *2013 Analysis of State Human Trafficking Law*, *supra* note 9. In 2013, “[o]nly 18 states—Arkansas, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Washington—ha[d] enacted statutes providing some measure of safe harbor protection to minor victims of human trafficking and commercial sexual exploitation.” *Id.* However, “[a]s of late 2015, 34 states have passed Safe Harbor legislation.” WASCH ET AL., *supra* note 4, at 4.

96. See Nicholas R. Larche, *Victimized by the State: How Legislative Inaction Has Led to the Revictimization and Stigmatization of Victims of Sex Trafficking*, 38 SETON HALL LEGIS. J. 281, 292 (2014) (“Of the 98.1 percent of incidents led by a law enforcement agency, 91.6 percent of investigations were handled at the state or local level; only 6.9 percent were led by federal agencies.”).

97. *Id.*; see also Kubasek & Herrera, *supra* note 5, at 171 (“[O]ur country’s treatment of sex trafficking still largely relies on individual states’ prostitution legislation.”).

98. See Dysart, *supra* note 29, at 635; cf. Jacobson, *supra* note 33, at 1031 (“In practice, services

Sadly, child victims of prostitution continue to be misclassified and improperly cared for in sixteen state courts.<sup>99</sup> State juvenile justice systems that rely primarily on punishment skew victims' mindsets about themselves, hinder healing and rehabilitation, and fail to "protect[] these minors from future exploitation."<sup>100</sup> While many state laws are premised on the assumption that minors cannot consent to sex,<sup>101</sup> this assumption is plainly missing from laws that criminalize the same minors who cannot consent to sex as prostitutes.<sup>102</sup> In direct opposition to federal law, state laws that withhold immunity from minor victims of prostitution hold the victims liable "for the very action that makes them a victim—the prostitution."<sup>103</sup>

The FBI's Uniform Crime Report states that: in 2015, 442 children under the age of eighteen were arrested for prostitution;<sup>104</sup> in 2014, 580 children

authorized through the federal government continue to aid primarily the non-citizen victim population.").

99. See WASCH ET AL., *supra* note 4, at 4; cf. Butler, *supra* note 25, at 1307 ("State juvenile justice laws almost always have treated minors who engage in commercial sex as criminals instead of victims."); Jacobson, *supra* note 33, at 1031 ("Unfortunately, government services available for trafficked U.S. citizen children are not as well-coordinated.").

100. Butler, *supra* note 25, at 1310; see also Jacobson, *supra* note 33, at 1028 ("Once ensnared by a clever pimp, fear and shame keep many girls in 'the life,' and pimps make threats against a girl's family if she considers going to the police.").

101. See Adelson, *supra* note 86, at 107 ("The minimum age of consent to a sexual relationship with an adult varies greatly by state. In some regions, the age of consent is as young as twelve years old and as high as eighteen in others."); see also Butler, *supra* note 25, at 1307 ("Today, all fifty states have some form of age-of-consent laws that presume that minors below that age cannot consent to sex.").

102. See Adelson, *supra* note 86, at 108 ("It is logically inconsistent that minors of a certain age are incapable of consenting to sex, but that they simultaneously can be punished for prostitution."); see also Jacobson, *supra* note 33, at 1033 ("The legal contradiction most concerning to advocates of decriminalization for the youth is the age of consent for sexual activity and the arrest and prosecution of young girls in prostitution. A fourteen-year-old who is molested or raped by an older man would be treated as a victim because she cannot consent by law, while a girl of the same age who is exploited through prostitution is arrested."); Bob Herbert, *The Wrong Target*, N.Y. TIMES (Feb. 19, 2008), <http://www.nytimes.com/2008/02/19/opinion/19herbert.html> ("If no money is involved, the youngster is considered a victim. But if the man pays for the sex—even if the money is going to the pimp, which is so often the case—the child is considered a prostitute and thus subject in many venues to arrest and incarceration.").

103. See Tessa L. Dysart, *Child, Victim, or Prostitute? Justice through Immunity for Prostituted Children*, 21 DUKE J. GENDER L. & POL'Y 255, 267 (2014); see also Hedlin, *supra* note 53, at 372 ("[O]n average, European Union countries that punish only buyers of sex . . . have the fewest identified sex-trafficking victims per million people. . . . Countries that punish only those who sell sex . . . have, on average, the highest prevalence of sex trafficking.").

104. *2015 Crime in the United States*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-38>.

under the age of eighteen were arrested for prostitution;<sup>105</sup> and in 2013, 655 children under the age of eighteen were arrested for prostitution.<sup>106</sup> While this gradual three-year reduction may indicate positive changes regarding arrests of minor victims of prostitution, the criminalization of supposed “child prostitutes” has not been permanently changed in both language and law across the states.<sup>107</sup> As of June 2016, despite the passage of Safe Harbor laws in thirty-four states,<sup>108</sup> only ten states granted minor victims full immunity from criminalization for prostitution.<sup>109</sup> Yet minors in these ten states are still sometimes arrested when police have not been adequately trained regarding the appropriate treatment of these victims.<sup>110</sup>

### III. SENATE BILL 1322: CALIFORNIA’S SAFE HARBOR PROVISION FOR MINOR VICTIMS OF PROSTITUTION

#### A. *History and Passage of Senate Bill 1322*

Senate Bill 1322 (SB 1322) was a crucial step in the fight against sex trafficking of minors.<sup>111</sup> SB 1322 made the provisions of California law that criminalized soliciting or engaging in prostitution inapplicable “to a child under 18 years of age who is alleged to have engaged in conduct to receive

105. *2014 Crime in the United States*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-38>.

106. *2013 Crime in the United States*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-38>.

107. See WASCH ET AL., *supra* note 4, at 14; see also *California Agrees*, *supra* note 12 (discussing the “No Such Thing as a Child Prostitute” campaign, which aimed to “eliminate the very notion of ‘child prostitute’ in both language and law”); *The No Such Thing Campaign*, THE MCCAIN INST., <https://www.mccaininstitute.org/the-nosuchthing-campaign/> (last visited Oct. 7, 2017).

108. See WASCH ET AL., *supra* note 4, at 14.

109. See Eichelberger *supra* note 83; see also Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1088 (2015) (“This version of decriminalization can help defendants not only avoid incarceration but also obtain much-needed treatment or social services, with support and monitoring from judges, social workers, therapists, and medical personnel.”).

110. See Eichelberger, *supra* note 83. Malika Saada Saar, the director of Human Rights for Girls, stated that “[i]here’s an entrenched perspective on the part of law enforcement, prosecutors, and legislators . . . that these are bad girls making bad decisions as opposed to victims of a heinous crime.” See *id.*

111. See *id.*; see also Mike McPhate, *California Today: A Shift in the Child Sex Trafficking Trade*, N.Y. TIMES (Oct. 3, 2016), <http://www.nytimes.com/2016/10/03/us/california-today-child-sex-trafficking.html> (“[T]he measures represent a shift in prosecutions away from children and young women and toward the pimps and criminal enterprises running the industry.”).

money or other consideration that would, if committed by an adult, violate this subdivision.”<sup>112</sup> Likewise, SB 1322 made the crime of loitering with intent to commit prostitution inapplicable “to a child under 18 years of age who is alleged to have engaged in conduct that would, if committed by an adult, violate this subdivision.”<sup>113</sup> Prior to the passage of SB 1322, there was tension between federal and state law because “the minor [was] a victim under federal . . . law, and yet the minor could still be prosecuted for engaging in prostitution.”<sup>114</sup> This historic change in California law more closely reflects federal law and U.S. Department of Justice policies.<sup>115</sup> Additionally, SB 1322 could influence states that continue to arrest and prosecute minor victims of prostitution to follow its lead and grant victims full immunity.<sup>116</sup>

Although there is some controversy and opposition to laws that grant full immunity to minor victims of prostitution,<sup>117</sup> it is important to note that when Safe Harbor laws<sup>118</sup> are passed, “prostitution is *only* decriminalized as to the prostitution minors.”<sup>119</sup> All other actors—whether the buyers, pimps, traffick-

112. CAL. PENAL CODE § 647(b)(5) (West 2017); *see also California Agrees, supra* note 12 (“Today’s enactment of SB 1322 is our biggest No Such Thing campaign victory to date. Over the past year we have worked with survivors and advocates in California to leverage the power of our campaign to influence lawmakers that it was time to make a change—it was time to stop arresting and charging children with prostitution.”).

113. PENAL § 653.22(a)(2).

114. Dysart, *supra* note 29, at 632; *see also* Jacobson, *supra* note 33, at 1031 (“Advocates of decriminalization [were] particularly concerned that the current system of criminalization brands victims as criminals rather than treating them as victims.”).

115. *See Putting an End to the Misnomer “Child Prostitute,” supra* note 93.

116. *See California Agrees, supra* note 12 (“California often leads the way for the rest of the nation in creating significant cultural change. Our hope is that other states will now follow suit to provide necessary protections to our most vulnerable girls.”); *see also* Kubasek & Herrera, *supra* note 5, at 190 (“Those states that have proven to be hard at work in addressing domestic sex trafficking through anti-trafficking legislation and social services should serve as models and springboards for other states to implement important changes.”).

117. *See infra* Section III.B; *see also* Jacobson, *supra* note 33, at 1037 (“Keeping the laws in place that criminalize prostitution gives law enforcement and the judiciary the tools necessary to combat prostitution and sex-trafficking, and find help for victims. It gives the police access to victims through the right to investigate suspected prostitution offenses. Prosecutors can utilize prosecutorial discretion in handling cases brought to them by law enforcement and can choose not to prosecute every case. Some advocates believe the women need to be challenged, not coddled, and while they do not ever like to see someone in jail, [s]ometimes that is what you need, to be locked up repeatedly before you decide that you don’t want to do this anymore.”).

118. *See infra* note 121 and accompanying text.

119. Birkhead, *supra* note 6, at 1059 (emphasis added). Critics of California’s Safe Harbor law

ers, or minors who play the role of a John or pimp—are still prosecuted, possibly even more aggressively than they were before.<sup>120</sup>

### B. *Opposition to, and Arguments Against, Safe Harbor Laws*

Generally, Safe Harbor laws have “a child-protective response to juvenile prostitution, granting full immunity to child victims for prostitution-related offenses and providing for specialized services to assist, rather than punish, these victims.”<sup>121</sup> While granting minors full immunity recognizes that they are victims and not criminals, some judges, prosecutors, advocates, and legal scholars question whether decriminalization unintentionally creates safety risks for minor victims of prostitution, removes the discretion of juvenile court judges, hinders the prosecution of perpetrators, and may result in an unforeseen increase in minors engaged in prostitution.<sup>122</sup>

---

incorrectly argue that SB 1322 legalized child prostitution. See Travis Allen, *California Democrats Legalize Child Prostitution*, WASH. EXAMINER (Dec. 29, 2016, 1:58 PM), <http://www.washingtonexaminer.com/california-democrats-legalize-child-prostitution/article/2610540>. However, these critics fail to recognize that SB 1322 was carefully written to decriminalize prostitution *only* for the minor victims, while still holding perpetrators accountable under the full force of the law. See Christopher Cadelago, *No, California Democrats Didn't 'Legalize' Child Prostitution*, SACRAMENTO BEE (Jan. 2, 2017, 4:29 PM), <http://www.sacbee.com/news/politics-government/capitol-alert/article124201384.html>; see generally Hedlin, *supra* note 53, at 343 (“[A]n analysis of European countries found legalized prostitution positively correlated to increases in human trafficking. This conclusion is consistent with that of another global study, which found that, on average, countries where prostitution is legal have a higher prevalence of human trafficking than countries where prostitution is illegal.”).

120. See Hedlin, *supra* note 53, at 343, 346 n.77; Jacobson, *supra* note 33, at 1040 (“In a system of partial decriminalization, laws do not penalize those who sell sex, thus distinguishing it from total decriminalization because the government can still punish buyers and other third-party exploiters.”).

121. Dempsey, *supra* note 8, at 211; Kubasek & Herrera, *supra* note 5, at 181 (“[T]here are also various ‘Safe Harbor Laws’ at the state level which address sex trafficking of minors. The objectives of the Safe Harbor Laws are two-pronged: (1) Remove minor victims of commercial sexual exploitation from the jurisdiction of the criminal justice and juvenile delinquency systems, and; (2) 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.”); see also Dysart, *supra* note 103, at 285 (“Under the immunity scenario, prostitution is only decriminalized as to the prostituted minors.”).

122. See Dysart, *supra* note 29, at 672 (“Making minors immune from prosecution for prostitution has been controversial, with opponents arguing, among other things, that such a move removes a judge’s discretion to decide how best to deal with a minor victim and prevents law enforcement from arresting the victim as a means of getting the child placed into a diversion program or other juvenile justice programs.”); Jacobson, *supra* note 33, at 1032–33 (“Those in law enforcement . . . argue that the girls—while not suspects or criminals—do not realize they are a danger to themselves. ‘We are putting them in a situation where they are being protected from the pimp and from whatever abuse made them run from home. A girl needs to be in a safe place until we can find a realistic alternative

A common argument among critics of Safe Harbor laws—specifically prosecutors and law enforcement—is that, due to emotional difficulties and lack of incentive,<sup>123</sup> minors will not be able to testify against their pimps unless they are pressured or threatened with conviction or imprisonment.<sup>124</sup> According to this argument, failing to detain the minors will create a lack of cooperation and hinder prosecution of the perpetrators.<sup>125</sup>

Additionally, critics argue that granting victims immunity removes them from a juvenile judicial system capable of “advocate[ing] for their treatment and rehabilitation.”<sup>126</sup> Embedded within this argument is the belief that, because “strategies of persuasion and common sense have failed with these youth,” minors who have been exploited by prostitution should be kept in the secure custody of a juvenile detention facility that can “ensure that they receive needed services.”<sup>127</sup> Opponents of Safe Harbor laws argue that arresting, detaining, and prosecuting children is necessary to bring them to the attention of law enforcement, connect them with services, and keep them off

---

for her and her future.’ Officers argue that ‘[w]hen she’s locked up she makes good decisions, but when outside, she’s easily malleable.’”) (alteration in original) (footnotes omitted).

123. See Birkhead, *supra* note 6, at 1083 (“Some prosecutors claim that without the threat of a criminal conviction or imprisonment, young prostitutes will fail to appear at court hearings, resulting in the dismissal of charges against pimps. Law enforcement often echoes these concerns.”); see also Melody Gutierrez, *Bill Would End Criminalizing Children for Prostitution*, S.F. GATE (Aug. 7, 2016, 8:00 PM), <http://www.sfgate.com/politics/article/Bill-would-end-prosecuting-child-prostitutes-as-9128190.php> (“Law enforcement groups such as the California District Attorneys Association say decriminalizing juvenile prostitution is in neither the public’s nor victims’ interest and could make it more difficult to prosecute pimps because the minors would have no incentive to testify.”); Dysart, *supra* note 103, at 256 (“Those opposed to immunity argue that prosecutors must retain the ability to charge a prostituted child to ensure the child’s cooperation in the prosecution of her traffickers . . .”).

124. See Birkhead, *supra* note 6, at 1084 (“[T]here is a strong possibility that testifying in court against the person upon whom you were dependent (and likely believed you had loved and had loved you in return) will be traumatic . . .”).

125. See WASCH ET AL., *supra* note 4, at 9 (“One of the concerns in decriminalizing prostitution and related crimes for minor victims is that, when victims are not detained, they will not cooperate with prosecution of traffickers and/or purchasers of illegal commercial sex.”); see also Jacobson, *supra* note 33, at 1035 (“Ultimately, cases against third-party exploiters rise or fall based upon the testimony of the woman or girl who was subject to the exploitation. Maintaining police jurisdiction allows officers to glean information about the pimps for prosecution and encourage the victim to testify, without which it is unlikely that any pimps would ever be successfully identified and prosecuted.”).

126. Dysart, *supra* note 103, at 256; see also Jacobson, *supra* note 33, at 1035 (“Sometimes, arresting a minor for prostitution and putting her into the system separates her from her pimp long enough for her to realize she needs help.”).

127. Dysart, *supra* note 103, at 281; see also Jacobson, *supra* note 33, at 1036 (“[P]olice jurisdiction is the best vehicle for identifying and getting services to youth involved in prostitution, and its effectiveness would be in jeopardy if decriminalization for minors were to take effect.”).

the streets.<sup>128</sup> According to these critics, the secure custody of minors in a juvenile detention facility is “for their own protection.”<sup>129</sup> Lastly, many who are opposed to Safe Harbor laws fear that the laws could “lead[] to increases in the prostitution of children” because pimps and traffickers will more readily exploit minors for prostitution without the threat of the minor’s arrest and prosecution.<sup>130</sup>

Although these concerns raise potential issues with California’s new law granting immunity to minors engaged in prostitution, many supporters of Safe Harbor laws offer compelling responses.<sup>131</sup>

### C. *Support for Senate Bill 1322*

Supporters of Safe Harbor laws vigorously argue that, because juvenile “detention facilities generally lack the resources to provide minor sex trafficking victims with trauma-informed specialized services,”<sup>132</sup> prosecuting minors for prostitution and classifying them as delinquents can re-victimize them,<sup>133</sup> create troubling discrepancies between state and federal law, and prevent rehabilitation. Additionally, criminalizing these minors harms the United States’ international credibility because other countries have questioned the continued prosecution of minor victims of prostitution.<sup>134</sup> It is particularly

128. DARLENE LYNCH & KIRSTEN WIDNER, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN GEORGIA: SERVICE DELIVERY AND LEGISLATIVE RECOMMENDATIONS FOR STATE AND LOCAL POLICY MAKERS 35 (2008) [hereinafter BARTON REPORT]; *see also* Birkhead, *supra* note 6, at 1085 (noting that one argument against decriminalizing child prostitution as to the minor victim is “the need to arrest, detain, and prosecute prostituted children in order to keep them off the streets and ensure their cooperation with social services”).

129. Dysart, *supra* note 29, at 281.

130. *Id.*; *see also* Jacobson, *supra* note 33, at 1036 (“In addition to reinforcing society’s views about choice, decriminalization of prostitution for minors also sends a message to the pimps that it is less risky to pimp minors, providing them with a better opportunity to recruit; they can simply coach the girls to say they are under eighteen and the police will not pursue the issue further.”).

131. *See infra* Section III.C.

132. *See* NON-CRIMINALIZATION OF JUVENILE SEX TRAFFICKING VICTIMS 2 (2016), <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf> [hereinafter NON-CRIMINALIZATION]; Dysart, *supra* note 103, at 256.

133. *See* Dysart, *supra* note 29, at 672 (noting that minors should not be “further victimized through arrest, prosecution, and detention in juvenile delinquency facilities or jails”).

134. *See* Dempsey, *supra* note 8, at 216 (“[I]n a recent review of U.S. compliance with treaty obligations under the International Covenant on Civil and Political Rights (I.C.C.P.R.), the U.N. Human Rights Committee expressed concern over the United States’ continued criminalization of victims of sex trafficking on prostitution-related charges.”).

perplexing to advocates of the full immunity model when the United States “holds itself out as the ‘global sheriff’ on trafficking, demanding that other countries refrain from criminalizing victims in their own criminal justice systems.”<sup>135</sup> While “the United States calls upon other countries to ‘ensure[] that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked,’” individual states continue this practice by criminalizing domestic minor victims of prostitution.<sup>136</sup>

Those in favor of full immunity opine that decriminalization is a mandatory part of the overall recognition that sexually trafficked minors are victims.<sup>137</sup> Supporters of Safe Harbor laws “have urged legislators to rethink publicly labeling and locking up prostituted children as delinquents or criminals in the name of ensuring their safety and security,” noting that arrest creates an adversarial relationship with the court system and detention increases the victims’ trauma and feelings of weakness.<sup>138</sup> These advocates believe that prosecuting minors is unjust, counterproductive, and prevents targeting the real criminals—pimps, Johns, and traffickers—while missing an opportunity to pull the victims out of the cycle of commercial sexual exploitation.<sup>139</sup>

Advocates of the full immunity model respond to the argument that threatening prosecution is necessary for minors to testify against perpetrators by noting that such tactics stand contrary to the purposes of anti-trafficking statutes if its proponents truly believe that sexually exploited minors are victims.<sup>140</sup> Further, threatening the minor with prosecution conflicts with federal

135. *Id.* at 217.

136. *Id.* at 218 (alteration in original); *see also supra* notes 108–10 and accompanying text.

137. *See Dysart, supra* note 29, at 673 (“Recognition of the trafficked person as a victim requires the application of the principle of noncriminalization.”); *see also Dempsey, supra* note 8, at 221 (“Since criminalization expresses moral condemnation, the criminal law should only target those who are morally blameworthy for their conduct.”); Hedlin, *supra* note 53, at 351 (“[M]aking legal only the act of *selling* sex leads to a replacement effect that reduces sex trafficking . . . but no scale effect associated with increased trafficking.”).

138. Birkhead, *supra* note 6, at 1085–86.

139. *See Dysart, supra* note 103, at 271–72; *see generally* MALIKA SAADA SAAR, HUMAN RIGHTS PROJECT FOR GIRLS ET AL., THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS’ STORY (2015), [http://rights4girls.org/wp-content/uploads/r4g/2015/03/2015\\_COP\\_sexual-abuse\\_report\\_final.pdf](http://rights4girls.org/wp-content/uploads/r4g/2015/03/2015_COP_sexual-abuse_report_final.pdf) (discussing the sexual abuse and trauma of girls in the juvenile justice system).

140. Dysart, *supra* note 103, at 280; *see also* Birkhead, *supra* note 6, at 1084 (“[T]he aggressive use of ‘no-drop’ or ‘pro-prosecution’ protocols, in which prosecutors have limited discretion to dismiss charges based on a complainant’s wishes and which have resulted in victims being threatened with criminal contempt and perjury charges to ensure their testimony, has been called into question in

anti-trafficking laws, under which a victim's eligibility for services or residential treatment should not be conditioned upon collaboration with law enforcement.<sup>141</sup> In addition, advocates of the full immunity model remark that pimps and traffickers have conditioned these victims to distrust law enforcement; consequently, "it is easier for law enforcement personnel to build a relationship of trust with children when they are not at risk of prosecution."<sup>142</sup> Although it is plausible that victims "will run away, not appear in court, or otherwise fail to cooperate with the arrest and prosecution of pimps," this same unavailing argument could be made in other cases—such as domestic violence cases—where the abuser has an "intimate, familial, or coercive relationship with the abused."<sup>143</sup> Lastly, the threat of prosecution is unlikely to compel victims to testify,<sup>144</sup> especially when they have deep psychological ties to their pimps.<sup>145</sup>

As to the argument that removal from the juvenile justice system removes these minors from a safe and secure environment, advocates in favor of Safe Harbor laws argue that this assertion is shortsighted.<sup>146</sup> Placement in a resi-

---

recent years with the recognition that these policies can cause victims harm.”).

141. See Dysart, *supra* note 103, at 280 (“Congress clearly stated that state and local grant recipients must not make minors’ eligibility for services contingent on collaboration with law enforcement; Congress likely would equally frown on holding the threat of criminal conviction over a prostituted minor’s head to secure cooperation.”).

142. *Id.*

143. Birkhead, *supra* note 6, at 1084.

144. See WASCH ET AL., *supra* note 4, at 7.

145. See *infra* notes 187–89 and accompanying text; see also *People v. Nettles*, H041143, 2016 Cal. App. Unpub. LEXIS 5607, at \*13–14 (Ct. App. July 29, 2016) (“Pimps are often called ‘dad’ or ‘daddy’ by the prostitutes working for them, but sometimes prostitutes consider their pimps to be their boyfriends. A prostitute may be referred to as a ‘ho’ or a ‘bitch.’ . . . Pimps often target runaways for prostitution because they are easily manipulated. Pimps commonly go to places like public transportation sites to find women. Pimps will often offer women alcohol or drugs and then manipulate them into becoming prostitutes. Pimps sometimes seek to get a woman pregnant in order to create a ‘sense of connection’ so that they can assert more control. It is common for a pimp to have a rule against prostitutes having sex with other black men, because the pimp fears that other black men are pimps and that the pimp will lose his income from his prostitutes. It is also common for a pimp to require his prostitutes to keep their heads down, as a sign of submission.”).

146. See Dysart, *supra* note 103, at 281–82 (“While it is undisputed that prostituted minors need access to social services, their need does not justify holding them criminally liable. First, while keeping a prostituted child locked up in either detention or jail may allow for access to services, it may also leave the child with a label that will follow her throughout her life and serve as an obstacle to full rehabilitation. Second, detaining a prostituted child to ensure access to services is counter both to the

dential treatment center, safe house, or protective shelter is much more effective than charging minors in order to physically retain them, because “inappropriate placements, such as . . . detention facilities” simply lack the resources to care for these minors.<sup>147</sup> Detaining minors in juvenile detention facilities implies that they deserve punishment for their own exploitation.<sup>148</sup> Detention in juvenile centers raises many other concerns as well.<sup>149</sup> For example, these centers have poor conditions and do not provide the specialized and comprehensive services that victims of prostitution need.<sup>150</sup> Rather, juvenile detention centers generally fail to fulfill their purpose of rehabilitation, tending to be punitive instead.<sup>151</sup> The statistics regarding youth who leave juvenile detention centers are grim,<sup>152</sup> and “recidivism in the juvenile justice system is alarmingly high.”<sup>153</sup> While placing victims in juvenile detention centers ensures (at least for a short time) that they physically do not end up back on the street, charging and detaining them does not guarantee their rehabilitation; in fact, incarcerating victims of commercial sexual exploitation is typically more harmful than helpful.<sup>154</sup> Because minor victims of domestic

---

victim-centered approach in the TVPA and state trafficking laws and to typical law enforcement treatment of crime victims. The same arguments for detaining prostituted children could apply to victims of domestic violence or child sexual abuse. In those situations, however, law enforcement tries to ensure that victims are protected and receive services either through specialized shelters and other social services.”).

147. SHARED HOPE INTERNATIONAL, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY 7 (2011), [https://sharedhope.org/wp-content/uploads/2012/09/SHI\\_ProtectedInnocence\\_Methodology\\_FINAL.pdf](https://sharedhope.org/wp-content/uploads/2012/09/SHI_ProtectedInnocence_Methodology_FINAL.pdf).

148. See BARTON REPORT, *supra* note 128, at 39.

149. See *infra* notes 150–54 and accompanying text.

150. See BARTON REPORT, *supra* note 128, at 39–40; see also WASCH ET AL., *supra* note 4, at 12 (“Most children are not given psychological treatment, appropriate education, and other supportive services. Juvenile justice facilities systematically fail to provide appropriate treatment and rehabilitation to children who need services in preparation for reintegration. If facilities do offer any type of support services, they are typically generic rather than specialized, and do not address the underlying needs causing a particular behavior, for example commercial sexual activity.”).

151. See WASCH ET AL., *supra* note 4, at 12; see also Jeremy Thompson & Channele Artiles, *Dismantling the Sexual Abuse-to-Prison Pipeline: Texas’s Approach*, 41 T. MARSHALL L. REV. 239, 265 (2016) (“Once young girls enter the juvenile detention system, the punitive nature of the measures taken to address behavioral issues tend to ignore, and rather, exacerbate sexual abuse victims’ existing trauma.”).

152. See WASCH ET AL., *supra* note 4, at 12 (“Youth leaving juvenile detention centers have dismally high rates of negative life outcomes, including reoffending, substance abuse, mental health issues, unemployment, lack of education, and homelessness after reintegration into society.”).

153. *Id.*

154. See *id.*; see also Jacobson, *supra* note 33, at 1034 (“Law enforcement has the ability to physically go out, locate victims, and arrest and remove them from their current situation . . . [and] allows

sex trafficking are unique in terms of their trauma and need for specialized care, their placements should reflect these considerations.<sup>155</sup> Therefore, development of specialized shelters is crucial.<sup>156</sup>

The Texas Supreme Court has responded to the argument that granting minors immunity will incentivize pimps to place more minors on the streets.<sup>157</sup> The court noted that the argument that pimps would be “encourage[d] to seek out young children because they would be immune from criminal liability” was illogical because sexually exploiting a child is already a crime for the pimp, and “[i]t is unclear how the prosecution of a child for prostitution would serve as any further deterrent.”<sup>158</sup> Moreover, speculation that decriminalizing prostitution for minors will increase their exploitation is analogous to the dubious claim “that failing to hold children criminally liable for their role in statutory rape makes them more likely to engage in it and more vulnerable to exploitation.”<sup>159</sup> Thus, this argument holds little weight, especially given that it has not been empirically tested.<sup>160</sup>

Therefore, SB 1322 represents an important step toward creating a comprehensive approach to commercial sex trafficking of minors in the prostitution industry.<sup>161</sup> While opponents to Safe Harbor laws have reasonable concerns, Safe Harbor laws characterize minors as victims instead of criminals,<sup>162</sup> align with federal law,<sup>163</sup> and recognize the inability of traditional juvenile

for critical separation from third-party exploiters, which can allow for victims to gain access to services.”).

155. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113–4, § 1241 (b)(2)(B)(v), 127 Stat. 154 (2013). Federal law places strong emphasis on the need for mental health. See *id.*; see also Dysart, *supra* note 103, at 267–68.

156. See Dysart, *supra* note 103, at 282 (“A better approach to addressing prostituted minors’ need for services would be to continue to develop specialized shelters equipped to handle their needs.”).

157. See *In re B.W.*, 313 S.W.3d 818, 824 (Tex. 2010).

158. *Id.*

159. Birkhead, *supra* note 6, at 1087. While “[l]egislatures have determined that . . . these risks may indeed be possible, their likelihood does not justify holding children culpable for such acts.” *Id.*

160. See *id.* (explaining that there is no empirical research testing the assertion “that decriminalizing the role of the child in prostitution will encourage its proliferation—because adults will have yet another motive to target minors for sexual exploitation”).

161. See WASCH ET AL., *supra* note 4, at 12 (“There is growing consensus among experts about the fundamental characteristics of Safe Harbor laws. The preference for immunity from prosecution for prostitution and related crimes is shared by many legal scholars and policy advocates.”).

162. See Vafa, *supra* note 12.

163. See *supra* Section II.A.2.

detention to address the unique trauma involved in this type of sexual exploitation.<sup>164</sup>

#### IV. DECRIMINALIZATION ALONE IS NOT ENOUGH

##### A. *Keeping Victims Safe and Off the Streets*

Decriminalization recalibrates the legal response to commercial sexual exploitation of minors by focusing on prosecuting pimps, Johns, and traffickers, rather than their victims.<sup>165</sup> It is generally accepted that granting victims immunity is the appropriate response, and that “Safe Harbor laws are an important *step* in recognizing the needs of traumatized child victims of sex trafficking instead of continuing to arrest, prosecute, and detain them as criminals.”<sup>166</sup> However, “decriminalization alone is not the solution.”<sup>167</sup>

Before the full immunity model was implemented, there was clear protocol for detaining victims.<sup>168</sup> Now, an arrest does not provide an avenue to a secure facility; rather, victims who are pulled out of prostitution still face an immediate threat of violence<sup>169</sup> and have limited options that ensure their

164. See Geist, *supra* note 9, at 105 (“A ‘victim-centered philosophy’ with counseling, emergency housing, and crisis intervention, rather than detention, provide the best chance to protect and restore children, instead of stigmatizing them through criminal penalties.”).

165. See Dempsey, *supra* note 8, at 208 (“[I]n cases where someone *is* indeed victimized, the criminal law should generally seek to punish the victimizer, not the victim.”).

166. WASCH ET AL., *supra* note 4, at 2 (emphasis added); see also Hedlin, *supra* note 53, at 334–35 (“[Another] legislative approach to prostitution—one that has also been claimed to reduce sex trafficking—is to criminalize only the purchasing of sex. This model (the Demand Model) exclusively targets the demand side of the commercial-sex market. First introduced in Sweden in 1999, similar laws are now on the books in a number of countries, including Norway, Canada, Iceland, Northern Ireland, and France. One reason the Demand Model has grown in popularity is that, to some, it appears compelling in theory: a focus on the demand side of the sex trade has the potential to shrink the market for prostitution and thereby reduce the profitability of sex trafficking, which means that traffickers should supply fewer victims to the market.”).

167. Geist, *supra* note 9, at 123.

168. See CAL. PENAL CODE § 647(b)(5) (amended 2017).

169. See MIA SPANGENBERG, PROSTITUTED YOUTH IN NEW YORK CITY: AN OVERVIEW 10 (2001), <https://d1qkyo3pi1c9bx.cloudfront.net/00028B1B-B0DB-4FCD-A991-219527535DAB/7922f23e-a266-44f4-aae4-0f525f3dbe7d.pdf> (“[F]or all prostituted youth, the most immediate danger is not disease, drugs, or the police, but violence.”); see also Jacobson, *supra* note 33, at 1028 (“Prostitution is a life of violence and exploitation. Many women and girls experience violence at the hands of a ‘customer,’ and roughly 66% reported that a pimp had battered them. The promises of love and a better life turn into threats, violence, and continued isolation from former sources of support. Pimps resort to slapping, punching, and forced sex, with the amount of violence increasing over time. Pimps

safety.<sup>170</sup> California currently operates under an “immunity without referral” model, in which victims are “provide[d] immunity from prostitution-related charges to direct juvenile sex trafficking victims away from a punitive response but . . . not statutorily direct[ed] into an alternative system or *specialized* response for access to services.”<sup>171</sup> Lawmakers have failed to look beyond decriminalization, and this failure can have dire consequences in terms of rehabilitation and treatment for victims.<sup>172</sup> If juvenile detention centers are no longer an option and if California lawmakers truly seek to save minor victims of prostitution from further exploitation, then once law enforcement discovers a minor victim, there must be “a child protection response, including specialized shelter and services.”<sup>173</sup> If California does not amend its laws to provide the necessary services, SB 1322 will have failed to comprehensively fulfill its purpose of recognizing and treating minors trapped in prostitution as victims.<sup>174</sup>

---

use fists and objects such as wire hangers, broomsticks, baseball bats, telephone cords, hammers, screwdrivers, and brass knuckles. Many women also report not being allowed to keep any of the money they earn. Pimps do not need a reason to physically abuse the women they prostitute; the abuse is a method of establishing and maintaining dominance and control.”).

170. *See infra* Section IV.A.1.

171. WASCH ET AL., *supra* note 4, at 3 (emphasis added); *see also* Jacobson, *supra* note 33, at 1029 (“In addition to needing housing, victims are in need of mental health assistance, medical assistance, job training, and drug rehabilitation. Victims of prostitution need public benefits to provide them with basic mechanisms to reorder their lives. There is a need for early intervention, training for social service providers in order to be more effective with the sexually exploited youth population, safe and secure housing with specialized support services, reintegration, aftercare, and intensive case management.”).

172. *See* WASCH ET AL., *supra* note 4, at 4 (“It can set the program up for failure if youth are referred to systems that are not ready to receive them for treatment. It is more sustainable to develop high quality programs in the beginning than to build the programs as you go, which can be chaotic.”); *see also* Jacobson, *supra* note 33, at 1035 (“While a detention center or prison may not be the ideal environment for prostituted persons, organizations specializing in serving child victims of prostitution collectively have fewer than fifty beds across the country, and other facilities are inadequate for meeting the needs of victims or keeping them secure from pimps.”).

173. SHARED HOPE INTERNATIONAL, *supra* note 147, at 7; *see also* NON-CRIMINALIZATION OF JUVENILE SEX TRAFFICKING VICTIMS, *supra* note 132, at 5 (“Without access to services, victims remain at risk of re-exploitation, and the nation is still struggling to identify the best avenues to services for this victim population. For this reason, non-criminalization may be a starting point for some states . . .”).

174. *See supra* Section III.A; *see also* Geist, *supra* note 9, at 123 (“Decriminalization should take place if three conditions are met. First, there are secure protective services available for victims of sexual exploitation. Second, there has to be sufficient beds and facilities available. Third, law enforcement and social workers must have the ability to divert and hold minors in secure protective services, even without the minor’s consent.”).

### 1. California's Current Child Welfare System Is Insufficient

Because SB 1322 decriminalized prostitution for minors, there are currently three options for discovered victims in California: (1) being placed in the child welfare system, (2) being put on LPS hold, or (3) being left on the streets.<sup>175</sup> The SB 1322 amendment provides that a commercially sexually exploited child may now:

be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.<sup>176</sup>

Under California's child welfare laws, if a minor was sexually trafficked or received food, shelter, or compensation for sexual acts, then the minor may be deemed a dependent of the court and a "commercially sexually exploited child[]." <sup>177</sup> If a peace officer reasonably believes that the minor is subject to the jurisdiction of the juvenile court and that the minor "has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety," then the peace officer may take the commercially exploited child into temporary custody.<sup>178</sup> Thereafter, officials will contact Child Welfare Services,<sup>179</sup> which can then "appropriate[] services to children in out-of-home care."<sup>180</sup> If the minor cannot be returned to their family or placed with a relative caregiver, the state

175. *See infra* notes 176–82 and accompanying text.

176. CAL. PENAL CODE § 647(b)(5) (West 2016). *But see* Thompson & Artiles, *supra* note 151, at 262 ("[S]everal state agencies and nongovernmental organizations in Texas offer services that specifically target the treatment needs of minor sexual abuse victims. The agencies responsible for providing services to child sex trafficking victims recognize that a comprehensive approach which extends past rescuing of the child is critical.")

177. CAL. WELF. & INST. CODE § 300(b)(2) (West 2016); *see also* PENAL §§ 236, 647(b)(5).

178. WELF. & INST. § 305.

179. *See Debate: Under CA Bill, Minors Would Be Shielded from Prostitution Charges, supra* note 90 ("If law enforcement has the suspicion that the child is being trafficked — the same suspicion that would lead them to arrest the child—they can, as an alternative to arresting the child, detain them under Welfare and Institutions Code Section 305, and they call the child welfare systems.")

180. *Child Welfare Services/Case Management System (CWS/CMS)*, CAL. DEP'T OF SOC. SERVS., <http://www.cdss.ca.gov/inforesources/Child-Welfare-Services-Case-Management-System> (last visited Oct. 7, 2017).

will place the minor in a foster home or refer the minor to a group home.<sup>181</sup> In rare cases, minors will be detained and placed on LPS Hold if they “meet the legal criteria of being a danger to self or others or gravely disabled due to a mental disorder.”<sup>182</sup>

The Texas Supreme Court has highlighted the capability of state child welfare systems to replace placement of victims in the juvenile justice system, noting that child welfare systems provide a well-established path to receiving social services.<sup>183</sup> Texas’s Family Code mirrors California’s Welfare and Institutions Code in this respect by allowing “a law enforcement officer [to] take possession of a child without a court order if a person of ordinary prudence and caution would believe there is an immediate danger to the physical health or safety of the child, or that the child has been the victim of sexual abuse.”<sup>184</sup> However, while the child welfare system is an improvement over the juvenile justice system,<sup>185</sup> it is unsuitable for rehabilitating and treating these victims, due to their mental state, their need for specialized care, and the child welfare system’s unfortunate tendency to funnel youth into sexual exploitation and

181. *See Group Homes*, CAL. DEP’T OF SOC. SERVS., <http://www.cdss.ca.gov/inforesources/Foster-Care/Group-Homes> (last visited Oct. 7, 2017); Diane F. Reed & Kate Karpilow, CAL. CTR. FOR RESEARCH ON WOMEN & FAMILIES, UNDERSTANDING THE CHILD WELFARE SYSTEM IN CALIFORNIA 27, [http://www.fiscalexperts.com/pdf\\_files/CWS\\_Primer.pdf](http://www.fiscalexperts.com/pdf_files/CWS_Primer.pdf) (last visited Oct. 7, 2017).

182. *What is LPS Hold?*, THE SUPERIOR CT. OF CAL.: COUNTY OF L.A., <http://www.lacourt.org/division/mentalhealth/MH0018.aspx> (last visited Oct. 7, 2017); *see also* Andrea Reynoso, *Is California Committed? Why California Should Take Action to Address the Shortcomings of its Assisted Outpatient Commitment Statute*, 88 S. CAL. L. REV. 1021, 1022 (2015) (“The LPS codified ‘danger to others or [self]’ or ‘gravely disabled’ as the standards for involuntary civil commitment.”) (alteration in original).

183. *See In re B.W.*, 313 S.W.3d 818, 825 (Tex. 2010) (“The dissent suggests that our decision bars the State from providing treatment, confinement, probation, counseling or any other rehabilitation, implying that the juvenile justice system is the only portal to such services for children like B.W. That is simply not true.”); *see also* WASCH ET AL., *supra* note 4, at 13 (“The Texas Supreme Court pointed out that the juvenile justice system is not the only option for prostituted children to receive needed social services.”); Thompson & Artiles, *supra* note 151, at 259–60 (“The Texas Supreme Court’s landmark decision . . . marks an important victory in the advocacy of sexual abuse victims. *In the Matter of B.W.* marked the first time the Texas Supreme Court distinguished between the capacity to commit the criminal act of prostitution and the minor’s lack of mental capacity to commit the act. Although the young girl, who was 13 at the time of the incident, admitted to prostitution, the court recognized that it was the years of victimization she suffered that caused her to commit the offense, not her capacity for criminal conduct [and] drew a parallel between the age of consent as the Texas Penal Code states and a child’s eligibility to be adjudicated for prostitution. Ultimately, the Court held that because a 13-year-old juvenile cannot consent to sex as a matter of law, she also could not be prosecuted for a sex-based offense, such as prostitution.”).

184. 313 S.W.3d at 825.

185. *See supra* notes 147–54 and accompanying text.

trafficking.<sup>186</sup>

Victims of prostitution have been lied to and manipulated into preferring life with pimps and believing that nothing competes with the lifestyle that pimps provide.<sup>187</sup> The age of the victims makes them particularly susceptible to the falsehood that their traffickers are boyfriends or father figures, and many prostitution victims develop intense connections with their traffickers that are difficult to break.<sup>188</sup> These deeply traumatizing and damaging relationships create psychological and emotional issues that can take months to treat.<sup>189</sup> These facts indicate that minor victims of prostitution have experienced harm that leaves them “in great[] need of rehabilitative care [and] counseling.”<sup>190</sup>

Moreover, these facts demonstrate that the child welfare system is a poor placement option because foster families are not trained to address mental

186. See Gutierrez, *supra* note 123 (“Everyone on both sides of the bill is in agreement that these kids are victims, not criminals. Where we differ is in how much faith we have in the dependency side of the juvenile system to effectively handle this population. . . . If they can’t keep a victim in a facility long enough for a provider to reach that child with services, then we undermine the efforts of a number of great community-based organizations that are having tremendous success in servicing victims of human trafficking. . . . [Although,] it’s possible the state will have the resources and infrastructure in five to 10 years, so that decriminalization wouldn’t have a negative impact . . . we aren’t there yet . . . .”); SHARED HOPE INTERNATIONAL, *supra* note 147, at 7 (“Service providers struggle with case management when these victims are ordered to inappropriate placements, such as ill-equipped foster care [and] group homes . . . .”). Federal law supports this contention; it states that trafficking victims shall “not be detained in facilities inappropriate to their status as crime victims.” 22 U.S.C. § 7105(c)(1)(A) (2012).

187. *The Problem*, CHILD. OF THE NIGHT, <https://www.childrenofthenight.org/how-we-do/> (last visited Sept. 23, 2017); see also Jacobson, *supra* note 33, at 1035 (“Pimps are master manipulators who seek out vulnerable young women, often come from broken homes, and convince them that he—the pimp—is the only person who will love, care, and provide for them.”).

188. See WASCH ET AL., *supra* note 4, at 7 (“Many of the youth victims . . . display[] symptoms of Stockholm syndrome, a psychological response when a captive or victim begins to identify or sympathize with their captor or abuser.”).

189. See *id.* at 8 (“The National Center for Missing and Exploited Children reports that commercially exploited children are targeted, tricked, and traumatized by their traffickers or pimps. They are psychologically manipulated to believe they are loved and cared for, often while experiencing physical control. Youth may develop a ‘trauma bond,’ or a relationship that results from coercive control in which the perpetrator instills in the victim fear as well as gratitude for being allowed to live. This relationship may also cause a strong emotional attachment between a manipulative abuser or exploiter and victim that may take many months of treatment to reframe.”); see also *People v. Tillis*, D054245, 2011 Cal. App. Unpub. LEXIS 8185, at \*7 (Ct. App. Oct. 27, 2011) (“Pimps call their prostitutes ‘bitches,’ and ‘lace them up,’ or buy them clothes for prostituting.”).

190. Birkhead, *supra* note 6, at 1109.

abuse, and the foster system lacks specialized services.<sup>191</sup> Because minor victims of prostitution have experienced unique trauma, they must receive specialized care.<sup>192</sup> When these particular victims are mixed with other minors in the welfare system, “they are often called names, shunned, or otherwise mistreated.”<sup>193</sup> Group home staffs are generally uninterested in providing specific care and resources to these victims,<sup>194</sup> who tend to come from abusive backgrounds.<sup>195</sup>

Sadly, the child welfare system itself is a pipeline for sexual trafficking and “has become a supply chain to traffickers.”<sup>196</sup> In 2012, fifty-six of the seventy-two commercially sexually exploited girls in a special court program located in Los Angeles County came from the child welfare system.<sup>197</sup> In 2013, between fifty and ninety percent of youth victims of sex trafficking were involved with child welfare services.<sup>198</sup> Additionally, the child welfare system itself recognizes that youth who are involved with the system and placed

191. See CHILD WELFARE INFORMATION GATEWAY, CHILD WELFARE AND HUMAN TRAFFICKING 11 (2015), <https://www.quantumunitsed.com/get-material.php?id=660> (“Their background may make them a poor fit for traditional foster care, and many foster families may feel unprepared to parent a child who has been trafficked.”).

192. See BARTON REPORT, *supra* note 128, at 21 (“Specialized care for child victims of commercial sexual exploitation is critical for a number of reasons.”); see also Geist, *supra* note 9, at 122 (“Safe Harbor laws need to provide specialized services designed to address prostituted minors’ unique trauma as child victims of commercial sexual exploitation.”).

193. BARTON REPORT, *supra* note 128, at 21.

194. See ALBERTA CHILDREN’S SERVICES, PROTECTION OF CHILDREN INVOLVED IN PROSTITUTION: PROTECTIVE SAFE HOUSE REVIEW 29 (2004), <http://www.humanservices.alberta.ca/documents/protective-safe-house-report.pdf> (“PSH clients are often not welcome at group homes, and are not a good match for such facilities. They were concerned that children in group homes did not receive services, information or resources with respect to prostitution, and that group home staff may not know or don’t want to know about their involvement in prostitution.”).

195. See *id.* at 10 (“The most commonly studied characteristics thought to be associated with entry into prostitution include a history of childhood abuse (especially sexual abuse) . . . and dysfunctional family backgrounds.”).

196. Malika Saada Saar, *Stopping the Foster Care to Child Trafficking Pipeline*, HUFFINGTON POST: THE BLOG (Oct. 29, 2013, 5:59PM), [http://www.huffingtonpost.com/malika-saada-saar/stoppin-g-the-foster-care-\\_b\\_4170483.html](http://www.huffingtonpost.com/malika-saada-saar/stoppin-g-the-foster-care-_b_4170483.html); see also CHILD WELFARE INFORMATION GATEWAY, *supra* note 191, at 3 (“Research has documented a high percentage of trafficked children and youth who spent time in foster care before being exploited.”).

197. Saar, *supra* note 196. Additionally, “[i]n 2013, 60 percent of the child sex trafficking victims recovered as part of a FBI nationwide raid from over 70 cities were children from foster care or group homes.” *Id.*; see also ALBERTA CHILDREN’S SERVICES, *supra* note 194, at iv (“Protective safe house clients are usually female, have child welfare status, have been a victim of abuse prior to their involvement in prostitution, and are somewhat or heavily involved in drug and alcohol abuse.”).

198. See CHILD WELFARE INFORMATION GATEWAY, *supra* note 191, at 3.

into group homes or foster care “are all at high risk of being trafficked.”<sup>199</sup> In fact, group home environments can even strengthen the desire to run away and re-enter prostitution, preventing the rehabilitation and counseling that these victims need.<sup>200</sup> Group home and foster care environments make victims “especially vulnerable to further recruitment” back into prostitution.<sup>201</sup>

Therefore, although SB 1322 amends the California Penal Code and provides that commercially exploited children may be adjudged dependent, placed in temporary custody, and entered into the child welfare system, this does little or nothing to rehabilitate and treat these victims.<sup>202</sup> Consequently, California must develop a statutorily directed and specialized response that thoroughly cares for and addresses the needs of these victims.<sup>203</sup> California should amend its current child welfare laws<sup>204</sup> to provide minor victims of prostitution with an appropriate placement, which does not include discordant foster and group homes.<sup>205</sup>

199. *Id.* at 1; *see also* Saar, *supra* note 196 (noting that, in her congressional testimony, Withelma “T” Ortiz Walker Pettigrew, a survivor of child sex trafficking born into foster care, stated, “[m]any children, like myself, come from various traumas previously to entering into foster care, and many times, are further exposed to trauma throughout their experience in the foster care system . . . caregivers will make statements like [‘]as long as you’re not dead, I’ll continue to get my paycheck.’ This ‘nothing but a paycheck’ theory objectifies the youth and the youth begin to normalize the perception that their presence is to be used for financial gain. . . . Therefore, when youth are approached by traffickers/pimps/exploiters, they don’t see much difference between their purpose of bringing finances into their foster home and bringing money to traffickers/pimps/exploiters”).

200. *See* CHAPIN HALL CENTER FOR CHILDREN AT THE UNIVERSITY OF CHICAGO, YOUTH WHO RUN AWAY FROM SUBSTITUTE CARE A-1 (2005) [http://www.chapinhall.org/sites/default/files/old\\_reports/174.pdf](http://www.chapinhall.org/sites/default/files/old_reports/174.pdf) (“Group care dynamics mattered: some youth were led into prostitution while in care and encouraged to run . . .”).

201. Kristina Davis, *How Girls Are Lured into Prostitution*, SAN DIEGO UNION-TRIB. (Oct. 31, 2015, 4:47 PM), <http://www.sandiegouniontribune.com/sdut-sex-trafficking-usd-study-prosecutions-2015oct31-htmlstory.html>.

202. *See supra* notes 185–201 and accompanying text; WASCH ET AL., *supra* note 4, at 12 (noting that generic services “do not address the underlying needs causing a particular behavior, [such as] commercial sexual activity”).

203. *See supra* text accompanying note 171; *see also* WASCH ET AL., *supra* note 4, at 13 (recommending that states enact “a mandatory protective response for juvenile sex trafficking victims that provides an avenue to specialized services outside detention”).

204. WASCH ET AL., *supra* note 4, at 11–12 (“Laws currently exist or that can be amended to allow child survivors of commercial sexual exploitation to receive medical, physical, social, and therapeutic services through child welfare agencies.”).

205. *See supra* notes 191–201 and accompanying text; *see also In re J.S.*, F057900, 2010 Cal. App. Unpub. LEXIS 23, at \*18 (Cal. Ct. App. Jan. 5, 2010) (“Simply because a foster home states it will accept a dependent child and her infant does not mean that the foster home is a suitable placement . . .”).

## 2. California's Need for Secure Safe Houses and Long-Term Residential Centers

If California's child welfare system is insufficient, then California must supply specialized placements for minor victims of prostitution.<sup>206</sup> If California fails to do so, then the purpose of SB 1322 will be lost.<sup>207</sup> Unfortunately, there are scarcely any programs in the United States that offer suitable safe houses or residential treatment.<sup>208</sup> However, it is imperative that California establish a secure, short-term safe house<sup>209</sup> and a long-term residential program.<sup>210</sup>

There is debate among judges, prosecutors, and advocates about the ideal security, duration, size, and location of placements for victims.<sup>211</sup> In particular, while some lawmakers and policy advocates believe a secure, locked safe house is the safest placement option,<sup>212</sup> others believe that detaining a victim against her will could hinder her recovery and re-victimize her.<sup>213</sup> Yet those who advocate for voluntary treatment fail to consider the genuine threat of

206. See *supra* note 192 and accompanying text; Natapoff, *supra* note 109, at 1089 (“[U]ncounseled [victims] are unlikely to understand the wide range of potential consequences that attach to a conviction for a putatively decriminalized offense for which they cannot be immediately jailed.”).

207. See generally Vafa, *supra* note 12.

208. See Birkhead, *supra* note 6, at 1110 (“According to specialists in the area of child sexual exploitation, however, there are very few programs in the United States that currently offer residential treatment or safe houses for prostituted children.”). Children of the Night, located in Van Nuys, California, “is the only full-service program in North America designed specifically for American children who have been forced to prostitute right here in the United States.” *The Problem*, *supra* note 187.

209. See *infra* notes 211–27 and accompanying text.

210. See Birkhead, *supra* note 6, at 1109–10 (“Intensive residential treatment is critical for this population, and long-term models, such as transitional living programs followed by supervised independent living programs, are ideal.”).

211. See SHARED HOPE INTERNATIONAL, *supra* note 147, at 7 (“Debate exists over the level of security in and duration of these placements, as well as the size and location of such shelters; however, agreement exists as to the need for a variety of approaches from long-term shelters to home-based care to specialty foster homes, etc.”).

212. See Geist, *supra* note 9, at 88. Some believe that victims should be detained “in semi-secure or secure facilities because they are at flight risk and could escape shelters and return to abuse on the streets.” *Id.*

213. See WASCH ET AL., *supra* note 4, at 5 (“A mandatory placement places the child in the role of a criminal and thus they are controlled and victimized again by the system charged with protecting them.”). *But see* Kubasek & Herrera, *supra* note 5, at 186 (“[V]ictims being prosecuted as prostitutes will often fail to ask for help on their own, or they will fail to self-identify as victims.”).

violence if victims forego a safe house<sup>214</sup> and the depth of victims' psychological and emotional ties to their pimps and traffickers.<sup>215</sup>

While it would be ideal for minor victims of prostitution to voluntarily enter residential rehabilitation programs immediately after being taken out of prostitution, it is extremely unlikely.<sup>216</sup> These victims have been "psychologically manipulated and physically coerced into [the] occupation by pimps, drug dealers, or gangs."<sup>217</sup> This manipulation and coercion reaches a point where victims no longer see themselves as victims, focusing instead on returning to their relationships with their pimps.<sup>218</sup> Pimps are strategic<sup>219</sup> and will "target the girls who are so desperate for love that they are willing to endure an almost unimaginable amount of abuse for even a semblance of it."<sup>220</sup> Law enforcement officers, who typically have the first contact with victims, report that victims feel compelled to return to their pimps and traffickers, due either to the false belief that they are in love, or due to a fear of retribution.<sup>221</sup>

214. ALBERTA CHILDREN'S SERVICES, *supra* note 194, at iv ("Children involved in prostitution are commonly assaulted . . .").

215. See Jazmine Ulloa, *California Lawmakers Advance Bill to Decriminalize Prostitution for Minors*, L.A. TIMES (Sep. 1, 2016, 4:05 PM), <http://www.latimes.com/politics/essential/la-pol-sac-essential-politics-updates-california-lawmakers-reject-bold-step-1471556676-htmstory.html> ("[V]ulnerable children who often don't see themselves as victims, run away from unsecured shelters and remain tied to their traffickers through complicated psychological and emotional bonds.").

216. See WASCH ET AL., *supra* note 4, at 8 ("Minor victims of sex trafficking have often been conditioned by their traffickers to fear punishment from law enforcement, decreasing the likelihood that the youth will seek help on their own.").

217. BARTON REPORT, *supra* note 128, at 7 (alteration in original).

218. See Geist, *supra* note 9, at 90.

219. See Hyde, *supra* note 2 ("[T]hese are often runaways targeted, recruited[,] and groomed by a sophisticated pyramid organization that is run by a pimp or trafficker who has connections across the country."); see also *People v. Leonard*, 75 Cal. Rptr. 3d 300, 324–25 (Ct. App. 2014) ("Some pimps are 'finesse pimps,' who use promises of money, jewelry, travel, and love as tools of control. Other pimps are 'gorilla pimps,' who rely on violence and threats.").

220. Geist, *supra* note 9, at 90. In the words of a Pimp himself: "Most hoes have low self-esteem for a reason. A pimp looks for that weakness, and if it isn't on the surface, he brings that . . . out of them. It doesn't matter to a pimp what hoes' weaknesses are, so long as they have them. Then he uses those weaknesses to his advantage." PIMPIN' KEN, PIMPOLOGY: THE 48 LAWS OF THE GAME 22 (Simon Spotlight Entertainment, 2007).

221. CHILD WELFARE INFORMATION GATEWAY, *supra* note 191, at 8; see also *People v. Watler*, B246663, 2013 Cal. App. Unpub. LEXIS 7641, at \*4 (Cal. Ct. App. Oct. 23, 2013) ("[A] 'choose up' fee was money a pimp charged a prostitute to become part [of] his family. Officer Robinson explained that if a prostitute refused to choose up it would be an expression of disrespect for the pimp.").

These aspects of the relationship between victims and their pimps or traffickers help explain why children tend to run back to the people who have exploited them.<sup>222</sup> When given an opportunity to run back to the streets, most of these victims—who “have been deeply indoctrinated by their exploiters”—will run.<sup>223</sup> Additionally, one of the most commonly studied characteristics of youth who enter prostitution is prior experience running away from their homes or out-of-home care.<sup>224</sup> If victims find their way back to the streets, they are in great danger of harm and violence: “Once entrenched, children involved in prostitution become increasingly involved with more harmful and addictive chemical substances. . . . [They] are commonly assaulted and their sexual activities place them at high risk for developing serious and life-threatening medical conditions.”<sup>225</sup>

For these reasons, California should establish a statutorily mandated and secure safe house to protect victims from their pimps and traffickers, and also to protect victims from themselves while in a fragile and emotional mental state.<sup>226</sup> The province of Alberta, Canada provides a comprehensive model that California should follow.<sup>227</sup>

Much like California since the implementation of SB 1322, minor victims of prostitution are not prosecuted in Alberta.<sup>228</sup> That is because Alberta enacted The Protection of Children Involved in Prostitution Act (PChIP Act),

222. See SHARED HOPE INTERNATIONAL, *supra* note 147, at 3 (“Due to the unique trauma bonding that occurs between victims and their traffickers, these children often run from juvenile facilities right back to the people who exploited them.”); Lord, *supra* note 2, at 600 (“Traffickers and pimps frequently use physical and psychological tactics to create submission and a sense of hopelessness.”).

223. BARTON REPORT, *supra* note 128, at 21.

224. See ALBERTA CHILDREN’S SERVICES, *supra* note 194, at 22. Other common risk factors include: “conflicts at home, parental neglect, physical or sexual abuse, homelessness, poverty, housing instability, educational failure, [and] emotional problems.” BARTON REPORT, *supra* note 128, at 6–7.

225. ALBERTA CHILDREN’S SERVICES, *supra* note 194, at 4; see also *People v. Tillis*, D054245, 2011 Cal. App. Unpub. LEXIS 8185, at \*7 (Ct. App. Oct. 27, 2011) (“‘Out of pocket’ means that a prostitute disrespected a pimp or walked away from the pimp, for which she could be struck or beaten.”).

226. Geist, *supra* note 9, at 122.

227. See *infra* text accompanying notes 229–57; RAMI S. BADAWAY, SHIFTING THE PARADIGM FROM PROSECUTION TO PROTECTION OF CHILD VICTIMS OF PROSTITUTION 5 (2008), [http://www.nda.a.org/pdf/Update\\_V22N8.pdf](http://www.nda.a.org/pdf/Update_V22N8.pdf) (“The Province of Alberta offers one of the more complete responses to addressing the problem of juvenile victims of prostitution. Victims are not charged with prostitution or lesser offenses and will not suffer the burden of a criminal record as they attempt to leave the streets.”).

228. See BADAWAY, *supra* note 227, at 4 (“Alberta’s comprehensive law provides shelter and services to juvenile victims of prostitution without saddling these children with a criminal record.”).

which recognizes that minors “exploited by prostitution are victims of child sexual abuse and are, therefore, in need of protection.”<sup>229</sup> Accordingly, minor victims of prostitution are not criminally charged, but, if certain conditions are met, they are designated as children in need of protection.<sup>230</sup> Under the PChIP Act, a court or “justice of the peace” can grant an order allowing a law enforcement officer or caseworker to apprehend a minor if there are “reasonable and probable grounds”<sup>231</sup> that the following conditions are met: first, “[t]he child is in need of protection because the child is engaging in, or attempting to engage in prostitution,” and second, “[t]he child is unable or unwilling to access community support programs or these programs cannot adequately protect the child.”<sup>232</sup>

If a minor engaged in prostitution is apprehended as a child in need of protection, she can then be confined in a protective safe house for up to five days to ensure her safety and assess her condition.<sup>233</sup> “[W]ithin three days of the initial apprehension,” a representative must appear before the court “to show why confinement is necessary, and the child must be informed of the time and place of the hearing, the reasons for the hearing, the child’s right to contact a lawyer and to attend the hearing.”<sup>234</sup> Following this initial five-day period, “child welfare authorities” may apply to a judge “for a maximum of

229. ALBERTA CHILDREN’S SERVICES, *supra* note 194, at 13; *see generally* MAUREEN L. SEGUIN, THE PROTECTION OF CHILDREN INVOLVED IN PROSTITUTION ACT: CASE STUDY AND FIELD ANALYSIS (2008), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.510.4214&rep=rep1&type=pdf>.

230. *See* BADAWAY, *supra* note 227, at 4.

231. *Id.*; *see also* *Protection of Children Involved in Prostitution: Protective Safe House Review*, ALTA. GOV’T, <https://open.alberta.ca/publications/3054566#summary> (“Under the PChIP Act, police or a director of child welfare may apprehend and confine children involved in or at risk of involvement in prostitution in a Protective Safe House for their protection and safety.”).

232. ALBERTA CHILDREN’S SERVICES, *supra* note 194, at 96; *see also* Angela L. Bergman, *For Their Own Good? Exploring Legislative Responses to the Commercial Sexual Exploitation of Children and the Illinois Safe Children Act*, 65 VAND. L. REV. 1361, 1375 (2012) (“These laws reflect the coercive nature of juvenile prostitution, the difficulty that most juveniles experience in leaving their pimps, and the protective role of the state.”).

233. *See* BADAWAY, *supra* note 227, at 4. These safe houses are “staffed twenty-four hours-a-day to allow for the admission of a child in need of protection at any time.” *Id.* *See also* SEGUIN, *supra* note 229, at 1 (“Youth are detained in a protective safe house, where they are provided with food, shelter, and educational programs.”).

234. Linda McKay-Panos, *Using the Coercive Power of the State to Deal with Child Prostitution and Drug Abuse*, U. CALGARY (Feb. 12, 2009), <http://ablwg.ca/2009/02/12/using-the-coercive-power-of-the-state-to-deal-with-child-prostitution-and-drug-abuse>.

two additional confinement periods of up to [twenty-one] days each,<sup>235</sup> for the purpose of providing the minor with programs that will help her exit prostitution.<sup>236</sup> The protective safe houses in Alberta are secure and confined, either by a locked facility or by a staffing system that maintains the child's security and safety.<sup>237</sup> Although some criticize locked safe houses,<sup>238</sup> a secure facility is essential in these cases because it keeps others out<sup>239</sup> and ensures that victims cannot return to their pimps or traffickers.<sup>240</sup> Alberta's law treats prostitution of minors "more like substance abuse and less like criminal behavior . . . recogniz[ing] that these children are often so manipulated by their abusers that they cannot escape these activities without serious intervention."<sup>241</sup> Despite the similar aspect of confinement, the safe houses in Alberta are distinct from juvenile justice facilities.<sup>242</sup> For example, they provide a

235. ALBERTA CHILDREN'S SERVICES, *supra* note 194, at 1; *see also* SEGUIN, *supra* note 229, at 83 ("Furthermore, the amendments allowed child welfare authorities to apply for a maximum of two confinement periods of 21 days each (Protection of Children Involved in Prostitution Amendment Act, 2000).").

236. ALBERTA CHILDREN'S SERVICES, *supra* note 194, at 2; *see also* McKay-Panos, *supra* note 234, at 10 ("After the initial five day confinement, the Director can apply for a maximum of two additional confinement periods of up to 21 days each if he or she believes the child would benefit from further assessment and counseling.").

237. ALBERTA CHILDREN'S SERVICES, *supra* note 194, at 2. Additionally, a protective safe house has restricted access and seclusion; is structured to ensure that children, families and staff in the facility are not placed at risk; supports and promotes family or caregiver contact, access to the child, and active involvement in assessment and planning; has 24-hour staff on constant supervision; and, has flexible hours of operation reflecting the nocturnal lifestyle of children involved in prostitution.

*Id.*

238. *See, e.g.*, WASCH ET AL., *supra* note 4, at 5 ("Both researchers and advocates assert that, regardless of whether the child is under the jurisdiction of the criminal justice or child welfare system, detainment against their will *may* delay a victim's recovery.") (emphasis added); *see also supra* note 213 and accompanying text.

239. *See* Tracy Nagai, *Shattering the Silence: Confining Exploited Youth*, GLOBAL NEWS (Sept. 16, 2015, 5:48 PM), <http://globalnews.ca/news/2224743/shattering-the-silence-confining-exploited-youth/> ("The purpose of the confinement is primarily to keep other people out."); *see also* SEGUIN, *supra* note 229, at 61 ("Supporters of the PChIP Act contend that the law protects children from prostitution by punishing those who exploit them.").

240. BADAWAY, *supra* note 227, at 4; *see also supra* notes 217–23 and accompanying text.

241. Bergman, *supra* note 232; *see also* Nagai, *supra* note 239 (noting that, during their initial health care examination, minors who have just been pulled out of prostitution typically stay in contact with their pimps or traffickers via text message).

242. *See* BADAWAY, *supra* note 227, at 4 ("The safe house is specifically not 'a police holding cell, police cell, or young offender facility.'"); *see also infra* notes 246–57 and accompanying text.

supportive environment in which victims can receive specialized services,<sup>243</sup> and they are “staffed by child care counselors who have experience working with children exploited through prostitution.”<sup>244</sup> Thus, Alberta’s safe houses differ from the punitive environment of juvenile detention centers.<sup>245</sup>

The initial five-day period in secure safe houses serves several important purposes.<sup>246</sup> Upon placing victims in safe houses, immediate concerns include: extreme fatigue, hunger, malnutrition, drug detoxification, medical treatment, and personal grooming.<sup>247</sup> Under the PChIP Act, the five-day period addresses these concerns by assessing the victim’s physical and mental well-being, use of substances, risk of self-harm, the involvement of the victim’s family, the victim’s intimate relationships with other adults, and whether the victim should receive intervention services.<sup>248</sup> Initially, the assessment period under the PChIP Act was seventy-two hours.<sup>249</sup> However, the majority of stakeholders and staff in Alberta consider the increase to five days to be a positive change because seventy-two hours provided enough time for detoxification only, while the five-day period helps to “break the cycle of abuse and . . . stabilise the child.”<sup>250</sup> This initial five-day period has been successful in providing stabilization, addressing emergency needs, and conducting assessments.<sup>251</sup>

Following the initial five-day assessment, victims have the option to (1) be returned to their guardians and sign a voluntary agreement to receive non-residential services, (2) be released on their own with a service plan, or (3) be

243. See BADAWAY, *supra* note 227, at 5 (“Because these facilities provide more safety than facilities that are merely staff secure, there is a better chance of victims accepting the services that are offered.”).

244. *Id.* at 4.

245. See Jacobson, *supra* note 33, at 1033 (“[D]ecriminalization advocates believe the juvenile justice system is simply the wrong venue to provide services to young girls. Those who push decriminalization of prostitution for minors contend that arresting these victims further traumatizes them and want to completely remove the possibility of arrest. They argue that what the children need are services directed toward restoring their dignity and rehabilitating them out of a life of selling sex and want this accomplished outside the juvenile justice system.”); see also *supra* note 151 and accompanying text.

246. See ALBERTA CHILDREN’S SERVICES, *supra* note 194, at 27.

247. See *id.* “Drug abuse also impacts client responsiveness and attitude to staff and services, especially in the client’s initial one to five day period.” *Id.* at iv.

248. See BADAWAY, *supra* note 227, at 4.

249. ALBERTA CHILDREN’S SERVICES, *supra* note 194, at 1.

250. *Id.* at v, 1, 21, 33.

251. See *id.* at vi, 4.

confined in the safe house for an additional twenty-one days by court order.<sup>252</sup> The court will order the twenty-one day extension if the court believes that further confinement is in the victim's best interest because the victim is either unable or unwilling to stop engaging or attempting to engage in prostitution, thus presenting a risk to the victim's life or safety.<sup>253</sup> If the court is still concerned after the first twenty-one day period, then the court may order one additional twenty-one day confinement period.<sup>254</sup> These longer periods in the safe house provide victims with programs regarding "drug abuse, sexual health education, [one-on-one] counseling, and life skills education."<sup>255</sup> The programs provide victims with helpful resources, teach them basic skills for living a productive life outside of prostitution, and encourage them through efforts to increase their self-esteem.<sup>256</sup> The "structure, rules, security, and care" of the safe houses give victims an experience that is different from their experiences living on the streets, thereby allowing them to "gauge how far they [have] deviated from 'the real world.'"<sup>257</sup>

California should replicate Alberta's PChIP Act and create similar safe houses.<sup>258</sup> Alberta's safe houses have been found to effectively improve victims' health and wellness while simultaneously providing a safe and secure space in which to reflect and collect helpful information.<sup>259</sup> Safe house confinement periods succeed in providing victims with protection and safety.<sup>260</sup> Notably, eighty percent of victims who stayed at a safe house for between twenty-seven and forty-seven days showed a reasonable degree of stability in the ninety days following their release from the safe house, whereas clients

---

252. See BADAWAY, *supra* note 227, at 4; see also SEGUIN, *supra* note 229, at 64 ("The first option listed is to return the child to their guardian or to a responsible adult. . . . The second option is to release the child, if the following two conditions are filled: the child is 16 years or older, and the child is 'capable of providing for the child's own needs and safety' (PChIP Act, Section 3.1.b(iii)). . . . The third option is to confine the child in a protective safehouse.").

253. See BADAWAY, *supra* note 227, at 4.

254. *Id.*

255. ALBERTA CHILDREN'S SERVICES, *supra* note 194, at iv, 28.

256. See *id.* at 28. The programs during the twenty-one day periods are case-specific. *Id.* at vi, 4.

257. *Id.* at 28.

258. See McKay-Panos, *supra* note 234, at 10 ("A number of studies have indicated that these [prostituted] youth need 'safe places to frequent and/or live, consistent support from caring individuals, tailored life skills, education and employment programs and financial support . . . .").

259. See ALBERTA CHILDREN'S SERVICES, *supra* note 194, at v, 32.

260. See Bergman, *supra* note 232, at 1375 (explaining that a secure safe house "allows for a period of separation from abusers that can break these bonds [with pimps and traffickers], and provides services that might otherwise be refused").

that stayed between six and twenty-six days were much less likely to demonstrate such stability.<sup>261</sup> A review of Alberta's safe houses revealed greater impact and more permanent changes when victims stayed for a longer period of time.<sup>262</sup> A primary reason for this finding is the prevalence of drug abuse and addiction among minor victims of prostitution—an issue that “require[s] extensive long-term assistance.”<sup>263</sup>

Consequently, the success of longer stays in a rehabilitative environment suggests that California should also establish a long-term residential center.<sup>264</sup> While a secure safe house is crucial in the time period shortly after victims are found—for reasons including the threat of violence, victims' emotional ties to pimps and traffickers, and victims' tendency to run away—a residential center that victims can voluntarily enter is crucial for comprehensive victim aftercare.<sup>265</sup> In addition, federal anti-trafficking laws support establishing<sup>266</sup> and funding residential treatment centers.<sup>267</sup> If a minor victim of prostitution does not meet the standard for a twenty-one day extension in a secure safe house, or if the victim wants to voluntarily enter therapeutic residential treatment, then the victim should still have an option of where to receive support and treatment.<sup>268</sup> The Letot Residential Treatment Center in Dallas, Texas provides a reputable model.<sup>269</sup>

The Letot Residential Treatment Center (the Center) is sanctioned by Dal-

261. See ALBERTA CHILDREN'S SERVICES, *supra* note 194, at vi, 37.

262. See *id.* at 46–47.

263. *Id.* at 33.

264. See, e.g., BARTON REPORT, *supra* note 128, at 38. (“Children of the Night (COTN), based in Van Nuys, California, is the oldest and one of the most influential treatment programs in the nation for children between the ages of eleven and seventeen who are involved in prostitution. COTN is a purely private, non-profit program. It receives referrals from governmental and non-governmental agencies across the country and only accepts those children whom it believes are willing to leave prostitution and participate in long-term, comprehensive treatment.”).

265. See SHARED HOPE INTERNATIONAL, *supra* note 147, at 7 (“Laws are needed to establish and financially support residential programs to treat domestic minor sex trafficking victims in three stages: intervention, restoration, and transitional living.”).

266. See *supra* note 38 and accompanying text.

267. See *supra* text accompanying notes 45–46.

268. See *supra* notes 252–57 and accompanying text.

269. See *Letot Residential Treatment Center*, DALL. COUNTY JUV. DEP'T, [http://www.dallascounty.org/departments/juvenile/letot\\_rtc.php](http://www.dallascounty.org/departments/juvenile/letot_rtc.php) (last visited Oct. 8, 2017); see also Thompson & Artiles, *supra* note 151, at 264–65 (“Texas is also home to one of the largest gender-specific therapeutic programs available to minor female sex abuse victims, The Letot Girls' Residential Treatment Center.”).

las County's Juvenile Justice Department and aims, through a variety of services, to help exploited girls and "prevent [victims] from entering the juvenile justice system."<sup>270</sup> The Center serves girls between the ages of thirteen and seventeen, holds up to ninety-six beds,<sup>271</sup> and has a "highly structured program" with a Charter School and recreational opportunities.<sup>272</sup> To order juvenile victims to the Center, Dallas County still must criminally charge them<sup>273</sup>—although victims are typically charged with "lesser offenses such as loitering, truancy, or violating curfew"<sup>274</sup>—but the structure and programs of the Center itself nonetheless demonstrate "a shining example of positive reform efforts through the collaboration of community-based alternatives and the juvenile system."<sup>275</sup> Girls can stay at the Center for up to twelve months,<sup>276</sup> where they have access to a trained professional staff and a wide variety of trauma-informed services.<sup>277</sup> Programs at the Center include "[i]ndividual, group, and family counseling and experiential groups" that teach the girls how to make healthy decisions, build positive relationships, and manage emotions.<sup>278</sup> These aftercare services focus on girls' relational needs and, if appropriate, allow families to engage in the therapeutic program.<sup>279</sup> Additionally, the Center effectively addresses issues that are unique to minor female

---

270. BADAWAY, *supra* note 227, at 2; *see also Letot Residential Treatment Center, supra* note 269 ("The Letot Residential Treatment Center strives to empower neglected and exploited girls to be productive, caring and responsible citizens by providing them a safe environment for long-term residential care by offering gender specific programming to girls who are identified as high-risk runaways or domestic trafficked minors.").

271. *Letot Girls' Center*, LETOT CTR., <http://www.letotgirlscenter.org/transforming.htm> (last visited Oct. 8, 2017).

272. *See* Thompson & Artiles, *supra* note 151, at 265 ("Issues unique to female sex abuse victims—extreme abuse, prostitution, and abandonment—are addressed through an intensive program.").

273. *See Letot Girls' Center, supra* note 271. This Comment agrees with California's recent legislation decriminalizing prostitution as to minors under eighteen years of age. *See supra* Section III.C.

274. *See* BADAWAY, *supra* note 227, at 2; *see also* Cheryl Nelson Butler, *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Minors?*, 45 AKRON L. REV. 843, 884–85 ("Juveniles have been admitted to Letot after having been detained, prosecuted for misdemeanors, or given a CINS designation.").

275. Thompson & Artiles, *supra* note 151, at 265.

276. *Letot Girls' Center, supra* note 271.

277. *See* Hyde, *supra* note 2.

278. *See id.*; *see also Letot Residential Treatment Center, supra* note 269 ("While living in a healthy and supportive environment, the young ladies will build self-esteem and personal skills, using a wide array of therapeutic and social services, to successfully reintroduce them to the Dallas County community.").

279. *See* Thompson & Artiles, *supra* note 151, at 265.

victims of prostitution, such as “extreme abuse . . . and abandonment,” through its intensive program.”<sup>280</sup>

Therefore, considering the insufficiency of California’s child welfare system<sup>281</sup> and the need for a secure safe house and long-term residential center,<sup>282</sup> California’s child welfare laws should be amended.<sup>283</sup> Once a commercially exploited child is adjudged dependent,<sup>284</sup> the law should divert minor victims of prostitution to a secure safe house<sup>285</sup> rather than place the minors in unsuitable out-of-home care.<sup>286</sup> Further, California should establish a long-term residential center for situations in which victims have reached the maximum amount of time allowed in the secure safe house,<sup>287</sup> or do not meet the standard for additional confinement and independently choose to seek therapeutic residential treatment.<sup>288</sup> By supplementing SB 1322 in this way, California would provide a more complete approach to combatting the prostitution of minors.<sup>289</sup>

### B. Targeting Perpetrators

In addition to these changes, California must also address the perpetrators involved in the “supply-and-demand” cycle of the sex trafficking market—Johns, pimps, and traffickers.<sup>290</sup> First, California should match federal law in

280. *Id.*

281. *See supra* Section IV.A.1.

282. *See supra* Section IV.A.2.

283. *See* Garrett Therolf, *L.A. County Plans Courts to Help Child Prostitutes*, L.A. TIMES (Feb. 26, 2015 8:08 PM), <http://www.latimes.com/local/california/la-me-foster-care-prostitution-20150227-story.html> (“More than 60% of Los Angeles County’s children arrested on suspicion of prostitution had previously come to the attention of the Department of Children and Family Services, and the foster care system’s group homes have become one of most [sic] frequent gateways to sexual exploitation because predators know these young people have few if any family members looking after them.”).

284. *See* CAL. WELF. & INST. CODE § 300(b)(2) (West 2016).

285. *See supra* notes 258–63 and accompanying text.

286. *See supra* notes 185–201 and accompanying text.

287. *See supra* text accompanying note 255.

288. *See supra* text accompanying notes 252–54.

289. *See supra* text accompanying note 166.

290. *See supra* notes 53–58 and accompanying text; *see also* *What is the Nordic Model?*, EQUALITY NOW, [http://www.equalitynow.org/sites/default/files/Nordic%20Model%20Fact%20Sheet\\_0.pdf](http://www.equalitynow.org/sites/default/files/Nordic%20Model%20Fact%20Sheet_0.pdf) (last visited Oct. 8, 2017) (discussing the punishment of Johns and noting that “addressing the demand for commercial sex is a key component of any plan to prevent sex trafficking and sexual exploitation”); Hedlin, *supra* note 53, at 333 (“In practice, though, most prostitution-related arrests in the United States are made against sellers—not buyers—of sex.”).

its punishment of Johns, pimps, and traffickers for their roles in commercial sexual exploitation of minors.<sup>291</sup> Second, to reduce recidivism<sup>292</sup> and provide more funds for secure safe houses and long-term residential centers, Johns should be required to pay for their own intervention and counseling services.<sup>293</sup>

### 1. Matching California's Penalties with Federal Law

Matching California and federal law in the punishment of Johns, pimps, and traffickers is crucial to addressing the supply and demand cycle of domestic minor sex trafficking.<sup>294</sup> One potential consequence of failing to do so is perpetrators migrating to states, like California, with less harsh penalties for these crimes.<sup>295</sup> Under federal law, an individual who "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits" a minor under fourteen, causing them to engage in a commercial sex act and benefits "financially or by receiving anything of value," may be punished

291. See Dysart, *supra* note 103, at 273–74 ("State and local government involvement is important because the federal government has limited resources and is unable to prosecute all trafficking cases."); see also Jacobson, *supra* note 33, at 1027 ("A pimp will first act as a 'boyfriend,' promising love and a better life while playing on a young girl's vulnerability. At first, when a pimp introduces a young girl into prostitution, she fails to recognize that she is even a victim and becomes trapped. Teenage girls who find themselves in prostitution are particularly at risk because of a 'unique and potentially dangerous blend of adolescent impetuosity and stubbornness.' The girls are '[t]oo young to recognize they are being manipulated and too old to see themselves as helpless children, they come to endure, if not accept, their own exploitation because, rightly or wrongly, they do not see a better alternative.' Teenagers often cling to the promise of emotional and economic security that the pimp can provide. As with any abusive relationship, the relationship involves control, dependence, and brainwashing.").

292. See *infra* Section IV.B.2.

293. See *supra* text accompanying notes 44–46. As previously noted, federal law provides some funding. See *id.* However, a variety of sources for funding is important because "[w]ithout implementation, safe harbor laws are meaningless, which means there has to be sufficient and effective . . . funding." Geist, *supra* note 9, at 91.

294. See SHARED HOPE INTERNATIONAL, *supra* note 147, at 5 ("[S]tiff penalties are just and are critical to deter demand."); Lord, *supra* note 2, at 601 ("Pimps and traffickers are businesspeople. If the customers and revenue streams are removed, pimps will find themselves with few incentives to continue trafficking and will begin to exit the market. This is basic economics. Thus, the best way to decrease sex-trafficking is to treat it like any unwanted business and attack the demand.").

295. See Dysart, *supra* note 29, at 661 ("Sufficiently high penalties for domestic minor sex trafficking at the state level are important for adequately punishing the crime and ensuring that traffickers do not migrate to more lenient states."); see also SHARED HOPE INTERNATIONAL, *supra* note 147, at 5 ("Consistency in sentencing between states will prevent the crime from migrating to more lenient states.").

by fifteen years to life in prison.<sup>296</sup> The same act with a minor between fourteen and seventeen years of age is punishable by ten years to life in prison.<sup>297</sup> The individual faces mandatory life imprisonment upon a repeated sex offense against a minor if the individual has previously been convicted under federal law for sex trafficking of children.<sup>298</sup> However, while federal laws punish perpetrators for ten or fifteen years to life imprisonment, in California, Johns face a maximum of one year imprisonment and a fine of \$10,000;<sup>299</sup> pimps face three, four, six, or eight years imprisonment;<sup>300</sup> and traffickers face five, eight, twelve or fifteen years imprisonment and a fine not to exceed \$500,000.<sup>301</sup>

These low penalties for perpetrators in California must be raised because “effective state domestic minor sex trafficking and commercial sexual exploitation of a child statutes should specifically criminalize demand and set penalties for buying sex with a minor that are *at least* as high as federal penalties for domestic minor sex trafficking.”<sup>302</sup> In particular, Johns face minimal punishment under California law, despite the fact that they commit serious crimes and deserve proportionate punishments.<sup>303</sup> Therefore, California’s sentencing ranges for Johns, pimps, and traffickers should be raised to meet federal stand-

296. 18 U.S.C. § 1591(a)–(b)(1) (2012).

297. *Id.* § 1591(b)(2).

298. *Id.* § 3559(e).

299. *See* CAL. PENAL CODE § 647(b), (m)(1) (West 2016).

300. *See id.* § 266h(b)(1)–(2). Pimps of minors can be punished with three, four, or six years imprisonment if the victim was sixteen years or older, or three, six, or eight years imprisonment if the victim was under sixteen years old. *See id.*

301. *See id.* §§ 11165.1(d), 236.1(c). Traffickers face fifteen years imprisonment “when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.” *Id.* § 236.1(c).

302. Dysart, *supra* note 29, at 650 (emphasis added); *see also* Thompson & Artiles, *supra* note 151, at 259 (“[H]arsher penalties for offenses involving minor children provide[] the foundation for subsequent legal reform.”); Lord, *supra* note 2, at 601 (“Sex trafficking is a lucrative business. ‘The prostitution industry is booming and expanding in a world where many countries subscribe to the ideology of a free market economy, a market in which women and girls are just one among an infinite number of highly saleable items.’ Pimps and traffickers seek to gain a profit through trafficking people and forcing the individuals to sell sex. The business model of sex-trafficking is composed of a ‘triangle of activity.’ A distributor (the pimp) sells the prostitute’s sex (the exploited) to fulfill the demands of a customer (the john). While much has been done to help promote victim’s rights and criminalize the distributor’s behavior, little has been done to attack the ‘demand side of the triangle of activity.’”).

303. *See* SHARED HOPE INTERNATIONAL, *supra* note 147, at 3.

ards, with the hope that harsher penalties will deter perpetrators from committing such crimes.<sup>304</sup>

## 2. John School: Mandatory Intervention as a Condition of Sentencing

Programs across the country that focus on educating and changing the mindset of Johns have experienced success.<sup>305</sup> California should follow these initiatives as part of its effort to comprehensively address the prostitution of minors.<sup>306</sup> San Francisco and Seattle provide excellent examples of programs that could make a state-wide impact in California.<sup>307</sup>

The First Offender Prostitution Program (FOPP) in San Francisco was founded in 1995 with the intent of rehabilitating and educating Johns, rather than criminally prosecuting them.<sup>308</sup> Johns that qualify may choose either to be prosecuted or to pay a fee and attend “John school.”<sup>309</sup> Johns who choose to pay a fee have their first offense dismissed.<sup>310</sup> The fees collected from “John school” class enrollment are allocated to support three initiatives: (1)

304. See Geist, *supra* note 9, at 91 (“Safe Harbor laws can also be about deterrence by increasing penalties on pimps and johns.”); see generally Dysart, *supra* note 103, at 271–72 (asserting that pimps and johns are “the real criminals”). In Sweden, only the purchase, not the sale, of sexual services is criminalized. See Ane Mathieson et. al., *Prostitution Policy: Legalization, Decriminalization and the Nordic Model*, 14 SEATTLE J. SOC. JUST. 367, 396 (2015) (“Sweden was the first country to asymmetrically decriminalize individuals exploited in prostitution (primarily women and children), while criminalizing buying, pimping, and brothel keeping.”). Sweden has “set its target on combating prostitution by targeting demand and deterring prospective ‘Johns,’ or purchasers.” Larche, *supra* note 96, at 308.

305. See MICHAEL SHIVELY ET AL., FINAL REPORT ON THE EVALUATION OF THE FIRST OFFENDER PROSTITUTION PROGRAM vi (2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf> (“The collective evidence strongly supports the conclusion that the FOPP significantly reduces recidivism.”); see also Sara Jean Green, *Buyer Beware: Early Success for Initiative Targeting Johns Instead of Prostitutes*, SEATTLE TIMES (May 16, 2015, 3:04 PM), <http://www.seattletimes.com/seattle-news/crime/buyer-beware-early-success-for-initiative-targeting-johns-instead-of-prostitutes/> (“A new, 10-week intervention program is also seeing early success in helping men examine their attitudes about sexuality and their motivations for paying prostituted women and girls for sex . . .”).

306. See Birkhead, *supra* note 6, at 1112 (“A variation on the diversion theme focuses on the demand side of the prostitution equation.”).

307. See *infra* notes 308–26 and accompanying text.

308. See Birkhead, *supra* note 6, at 1112.

309. See SHIVELY ET AL., *supra* note 305, at i.

310. Birkhead, *supra* note 6, at 1112.

police operations that arrest Johns, (2) the John school itself, and (3) supportive programs for women and girls involved in commercial sex.<sup>311</sup> In its first thirteen years of operation, 5,799 men attended San Francisco's John school.<sup>312</sup>

The FOPP has revealed that men who buy sex with prostitutes come from a variety of racial, cultural, educational, and socioeconomic backgrounds; have either little or no understanding of sexually transmitted diseases; and typically have five to ten sexual partners per year.<sup>313</sup> The FOPP seeks to educate these men about the negative effects and consequences of prostitution.<sup>314</sup> The program has been successful in significantly reducing recidivism<sup>315</sup>—in its first four years of operation, only 18 of 2,200 men who took the program were rearrested for buying sex with a prostitute.<sup>316</sup> Importantly, this model is “replicable, adaptable, and sustainable.”<sup>317</sup> Forty-nine locations have considered starting a “John school,” and twenty-five other programs have used FOPP as a model, the majority of which continue to operate today.<sup>318</sup>

Additionally, Seattle's “Buyer Beware” initiative has also seen success.<sup>319</sup> In this program, men who have been convicted of patronizing an adult prostitute must attend a ten-week intervention course.<sup>320</sup> In 2012, a prostitution survivor and a pro-feminist activist collaborated to established the program “as a response to the acute lack of services available to prostituted adults.”<sup>321</sup> Through this initiative, advocates aimed to spread awareness that prostituted women are victims, while focusing on prosecution of buyers rather than sellers.<sup>322</sup> The course costs \$900 and includes weekly group counseling and

311. See SHIVELY ET AL., *supra* note 305, at i.

312. *Id.*

313. See Birkhead, *supra* note 6, at 1112.

314. SHIVELY ET AL., *supra* note 305, at iv.

315. *Id.* at v–vi.

316. Birkhead, *supra* note 6, at 1112–13.

317. SHIVELY ET AL., *supra* note 305, at x.

318. *See id.*

319. See Green, *supra* note 305.

320. Mathieson, *supra* note 304, at 415; *see also* Green, *supra* note 7.

321. Mathieson, *supra* note 304, at 420; *see also* Anjilee Dodge & Myani Gilbert, *His Feminist Façade: The Neoliberal Co-option of the Feminist Movement*, 14 SEATTLE J. SOC. JUST. 333, 364 (2015) (“[T]he Buyer Beware Program . . . shifts focus onto the men who purchase sex, and seeks to shift the behavioral and cultural practices of men who feel entitled to buy sex.”).

322. Mathieson, *supra* note 304, at 419–20. “The implications of law enforcement’s shift in focus from those prostituted to those demanding sexual access is that more criminal charges are brought against those buying sexual access and or pimping adult women and children.” *Id.* at 415.

two in-depth interviews.<sup>323</sup> Unlike the FOPP in San Francisco, which replaces prosecution, the Buyer Beware program is included in sentencing.<sup>324</sup> The goals of this program are to “(1) reframe prostitution from a ‘victimless crime’ to a system of male violence against women, children, and sometimes other men; (2) deconstruct male sexual identity and encourage the development of an alternative sexuality based on mutuality and consent (not subordination); and (3) promote male accountability and allyship consciousness.”<sup>325</sup> The ten-week program has been successful in helping Johns examine their mindsets about sexuality and motives for buying sex with prostitutes.<sup>326</sup>

The above examples demonstrate that intervention and educational services for Johns can decrease the “demand” side of commercial sexual exploitation of minors.<sup>327</sup> California should follow Seattle’s lead and implement an intervention program as a sentencing condition for Johns who buy sex with minors, because such a program could reduce recidivism and change buyers’ attitudes toward the commercial sexual exploitation of minors.<sup>328</sup>

## V. CONCLUSION

Minors who have fallen into a life of prostitution are not criminals.<sup>329</sup> Many of these victims have been cycled through the child welfare system, and thus lack a family that cares for their well-being.<sup>330</sup> Once entrenched, victims

323. Green, *supra* note 7.

324. See Mathieson, *supra* note 304, at 421 (“Judges in several King County jurisdictions have mandated attendance to SSE as a sentencing condition for men convicted of prostitution-related charges, and Seattle will soon implement this as a sentencing condition.”).

325. Mathieson, *supra* note 304, at 420–21.

326. See Green, *supra* note 305.

327. See *supra* text accompanying notes 315–16, 326.

328. See *supra* text accompanying notes 315–16, 326.

329. See Jacobson, *supra* note 33, at 1031 (“Advocates of decriminalization are particularly concerned that the current system of criminalization brands victims as criminals rather than treating them as victims.”); see also Dempsey, *supra* note 8, at 211 (“[W]here ‘safe harbor’ laws have not been enacted, child victims of sex trafficking continue to be treated as criminals, often arrested by police.”).

330. See Lloyd, *supra* note 1, at 56–57 (“During the eighties, sociologists and clinicians identified the many ways in which gang culture replicated the family unit for children who found their support system in the street. In the world of domestically trafficked girls, the same is true. The desire for a family is so strong and so overpowering for most children that it doesn’t take much to create that illusion. Pimps play upon this desire by creating a pseudo-family structure of girls who are your ‘wives-in-law’ headed up by a man you call Daddy. The lessons that girls have been taught, implicitly and explicitly, about family and relationship dynamics are all fuel for the exploiters’ fire. The greater their need for attention and love, the easier it is to recruit them.”).

become attached to their pimps or traffickers, because “[b]onding to their . . . abuser is simply a survival mechanism born out of great psychological fear and oppression . . . clearly[,] children are more vulnerable and more easily convinced that their abuser has the power to carry out all and any threats.”<sup>331</sup> These psychological ties remain strong even after law enforcement removes victims from prostitution.<sup>332</sup>

With the passage of SB 1322, California took a step in the right direction and aligned with the federal government to recognize that minors engaged in prostitution are victims.<sup>333</sup> Despite some criticism of Safe Harbor laws,<sup>334</sup> the majority of states, lawmakers, and advocates support decriminalization for minors engaged in prostitution.<sup>335</sup>

However, decriminalization alone is not the final step.<sup>336</sup> Due to the insufficiency of California’s child welfare system, victims are still left without a means to access comprehensive and appropriate services.<sup>337</sup> Therefore, California should amend its child welfare laws so that, once victims are taken out of prostitution and away from perpetrators, they are directed to secure safe houses and long-term residential centers.<sup>338</sup> California should also take preventative measures to restrict prostitution of minors by aligning with federal law, which imposes harsher penalties on perpetrators.<sup>339</sup> Lastly, California should replicate established intervention programs for Johns in order to reduce recidivism and transform the mentalities of men who feel justified in purchasing children for sex.<sup>340</sup>

While the issue of domestic minor sex trafficking is challenging, unity among California’s lawmakers to actively fight this tragic injustice will help finally eradicate it.<sup>341</sup> Safe Harbor laws mark the start of this movement by

331. Lloyd, *supra* note 1, at 156.

332. See *supra* notes 187–90 and accompanying text.

333. See *supra* Sections II.A.2, III.A; see also Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523, 524 (2000) (“[D]ecriminalization of sexual services is a necessary first step toward creating more effective remedies against abuse, protecting vulnerable women and building a more humane society.”).

334. See *supra* Section III.B.

335. See *supra* Section III.C.

336. See *supra* Part IV.

337. See *supra* Section IV.A.1.

338. See *supra* Section IV.A.

339. See *supra* Section IV.B.1.

340. See *supra* Section IV.B.2.

341. See *There Is No Such Thing as a Child Prostitute*, RIGHTS4GIRLS, <http://rights4girls.org/cam>

proclaiming that there is no such thing as a child prostitute.<sup>342</sup>

Edrina Nazaradeh\*

---

paign/ (last visited Oct. 8, 2017).

342. *Id.*; see also Vafa, *supra* note 12.

\* J.D. Candidate, Pepperdine University School of Law; B.A. in Political Science, University of California, San Diego. I want to thank my parents for inspiring me to pursue a career in the law and constantly supporting me in that pursuit. I would also like to thank the members of Pepperdine Law Review for diligently publishing this Comment.