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Commercial Sexual Exploitation of Children in Georgia

**Service delivery and legislative
recommendations for state and local
policy makers**



The Barton Child Law
and Policy Clinic

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Executive Summary

Atlanta has been recognized as a center for child prostitution, and hundreds of children are commercially sexually exploited throughout Georgia every month. Although the Mayor of Atlanta and a number of different state agencies and private child advocacy organizations have taken important steps toward addressing this issue, Georgia's current laws and practices are inconsistent in their treatment of these children.

Georgia has developed a strong set of criminal laws to prosecute those who commercially sexually exploit children, such as pimps, human traffickers, and the "johns" or customers who pay for sex with children. Unfortunately, however, their child victims are also currently subject to prosecution, and the state's current laws and practices do not provide for a way to link these children to services without subjecting them to arrest and detention. Research demonstrates that these children have been victimized at a number of levels and that prosecution only compounds the harms they have experienced. A more victim-centered, service-based approach is needed to better treat those who have been exploited, and to prevent future exploitation.

The federal government has recognized the need for law enforcement efforts to be combined with victims' services. Commercial sexual exploitation of children that affects interstate or foreign commerce or occurs in federal territories is defined as human trafficking under federal law, and victims are entitled to a number of benefits, including freedom from detention, rehabilitative services, and special immigration status. The federal government recognizes that states have an important role to play in ending human trafficking, and has promulgated model state legislation which it encourages states to adopt. Trafficking victims' advocates have proposed valuable additions and amendments to the model legislation to make it more victim-centered and services-focused.

The United States is also a party to a number of international agreements which recognize that people under eighteen years of age who are involved in prostitution are victims of exploitation in need of services and protection, rather than offenders to be prosecuted. These treaties require outreach, efforts to prevent victimization from occurring, and education, mental and physical health and other services for victims.

Other jurisdictions have developed a number of different service delivery models for reaching commercially sexually exploited children. None of these have been around long enough to have a proven track record of success and each has its strengths and its drawbacks. Las Vegas uses a prosecution model which its advocates believe provides tools to help catch and convict those who commercially sexually exploit children. However, the child victims suffer the negative effects of detention in order for authorities to achieve this goal. While

victims' services are provided, they are conditioned on the child's willingness to cooperate, so many children still go without the help they need. Boston uses a child abuse model which seems more successful at identifying victims and linking them to services, but because there is no threat of prosecution, children may opt out of services or refuse to cooperate in the prosecution of their exploiters. San Francisco uses a hybrid model that provides some of the benefits of the two other approaches, but its reliance on arrest and detention still has harmful consequences for child victims.

Both Illinois and New York have taken legislative approaches to the problem, and have recently passed anti-human trafficking legislation. However, both have their drawbacks for use in the fight against the commercial sexual exploitation of children. Illinois' statute contains broad language that would enable virtually all prostituted children to be considered victims of trafficking, but it includes insufficient service provisions to aid those victims. In contrast, New York's statute is narrower and would not cover all child victims of sexual exploitation, but it does a better job providing at least an initial assessment of each victim and referrals to available services. Neither state has destigmatized the commercial sexual exploitation of children by removing it from the definition of prostitution altogether. New York has a pending bill, the Safe Harbor Act, which would allow courts to classify these children as people in need of supervision rather than as delinquents, but the children could still be arrested and initially detained.

Based on our review of the current legal framework and service-delivery and legislative approaches taken in other jurisdictions, the Barton Child Law and Policy Clinic recommends that Georgia take the following steps to better protect and treat children exposed to commercial sexual exploitation:

1. Create a minimum age for the offenses of prostitution and masturbation for hire.
2. Amend Georgia's mandatory child abuse reporting law to increase identification of children who are victims of commercial sexual exploitation.
3. Amend Georgia's anti-human trafficking statute to more closely follow the State Model Law.
4. Create a regional assessment center and safe house.
5. Expand education, prevention and outreach efforts so that at-risk children can avoid being exploited and prostituted children can receive services without having to be arrested.
6. Train professionals from a wide variety of disciplines to recognize signs of commercial sexual exploitation in children in order to identify victims by means other than arrest.
7. Coordinate a multidisciplinary response to children identified as victims of prostitution.
8. Fill in the gaps of Georgia's continuum of care.
9. Build inter-county communication and cooperation.

I. Introduction

Hundreds of children are commercially sexually exploited through prostitution in Georgia each month.¹ The average age of these children is fourteen and a half years old, and most of them started prostitution at age thirteen or fourteen.² Atlanta is a hub for this activity, and has been identified by federal law enforcement officials as one of the fourteen U.S. cities with the highest rates of child prostitution.³ However, the problem is not limited to the Atlanta area; children are being commercially sexually exploited throughout the state.⁴

While some argue that adult prostitution is a “victimless crime,”⁵ the same cannot be said about child prostitution. Research studies show that child prostitutes are victims at a number of levels. First, most have been victimized before ever engaging in prostitution. Common risk factors for child prostitution include: “conflicts at home, parental neglect, physical or sexual abuse, homelessness, poverty, housing instability, educational failure, emotional

¹ E-mail from Kaffie McCullough, Coordinator of Community Collaboratives, Juvenile Justice Fund, in Atlanta, Ga., to Kirsten Widner, Barton Child Law and Policy Clinic (Jan. 9, 2008, 16:42 EST) (on file with the Barton Child Law and Policy Clinic). Research conducted by the A Future Not a Past Campaign shows that approximately 250 girls are engaged in prostitution in Georgia each month. *Id.* This count likely underestimates the total number of child prostitutes, because the research focused on only the three main portals to prostitution: street, internet, and escort services. It does not encompass prostitution in Hispanic, Asian and other ethnic communities where the activity is more underground, and it does not include boys in prostitution. *Id.* Even with this conservative estimate, more Georgia children are harmed by prostitution in a month than are killed in car accidents in an entire year. *Id.* See NAT’L CTR. FOR INJURY PREVENTION AND CONTROL, CENTERS FOR DISEASE CONTROL AND PREVENTION, WISQARS LEADING CAUSES OF DEATH REPORTS (1999-2004), available at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.

² Interview with Dr. Yolanda Graham, Medical Director, and Mary Ann Smolka, Therapist, at Inner Harbor in Douglasville, Ga., Oct. 8, 2007. Angela’s House, a safe house and residential treatment center for commercially sexually exploited girls in Georgia, is run by Inner Harbor, a private, non-profit organization specializing in therapeutic treatment for adolescents. See Inner Harbor website, *Inner Harbor Organization* page, <http://www.innerharbour.org/organization.html> (last visited Jan. 9, 2008).

³ Chris Swecker, Assistant Dir., Crim. Investigative Div. FBI, Statement Before the Comm. on Security and Cooperation in Europe, U.S. Helsinki Comm.: Exploiting Americans on American Soil: Domestic Trafficking Exposed (June 7, 2005) available at <http://www.fbi.gov/congress/congress05/swecker060705.htm>.

⁴ E-mail from McCullough, *supra* note 1.

⁵ The argument that adult prostitution is a “victimless crime” is based on the assumption that adult prostitutes are willing participants. ALEXANDRA PRIEBE & CRISTEN SUHR, HIDDEN IN PLAIN VIEW: THE COMMERCIAL SEXUAL EXPLOITATION OF GIRLS IN ATLANTA 5 (Atlanta Women’s Agenda 2005). See also EDWIN KESTER, JR., CRIMES WITH NO VICTIMS 3-4 (1972) (listing as victimless crimes, among other offenses, public drunkenness, gambling, prostitution, distributing pornography, certain sexual activities and illegal drug possession); George P. Fletcher, *The Theory of Criminal Negligence: A Comparative Analysis*, 119 U. PA. L. REV. 401, 437 (1971) (mentioning vice and narcotics offenses as victimless crimes).

problems, and running away from home.”⁶ Local professionals who treat commercially sexually exploited children in Georgia note that early sexual abuse is the most common risk factor.⁷ Second, abusive practices are employed to lure children into prostitution. Many commercially sexually exploited youth are “psychologically manipulated and physically coerced into [the] ‘occupation’” by pimps,⁸ drug dealers, or gangs.⁹ Finally, once they have been exploited, these children face many ongoing consequences.¹⁰ They are often trapped in a “cycle of violence,” facing repeated beatings and degradation at the hands of pimps and johns.¹¹ In addition, they face a high risk of pregnancy, STDs, and HIV,¹² have a greater chance of developing psychiatric disorders and attempting suicide,¹³ and have an increased likelihood of drug or alcohol addiction.¹⁴

⁶ PRIEBE & SUHR, *supra* note 5 at 14-15 (citing Augustine Brannigan & Erin Gibbs Van Brunschot, *Youthful Prostitution and Child Sexual Trauma*, 20 INT’L J.L. & PSYCHIATRY 337 (1997); EVA J. KLAIN, ABA CENTER ON CHILDREN & THE LAW ET. AL., PROSTITUTION OF CHILDREN AND SEX TOURISM: AN ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES (1999) *available at* http://www.missingkids.com/en_US/publications/NC73.pdf; Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U. S., Canada and Mexico*, http://www.hri.ca/children/CSE/Estes_Weiner_19sept01.pdf (2001)).

⁷ Interview with Graham and Smolka, *supra* note 2.

⁸ PRIEBE & SUHR, *supra* note 5 at 5, 19. Based on interviews with victims of commercial sexual exploitation, the authors describe a two-step process pimps engage in to prepare their victims to be “turned out.” First, the pimp makes the victim trust and depend on him by spending money on her, offering her compliments, and giving her special attention. The pimp makes the girl feel desired. During this stage, drugs and sex are introduced “to make [the] girls more pliable and [to] foster dependency.” Once the pimp establishes dependency, he proceeds to break the girl’s will and separate her completely from her prior life. At this point, the pimp abuses the girl, both physically and verbally, in order to prepare her for her new life in prostitution. *Id.* at 19. For more on the ways in which pimps recruit and control their victims, see KLAIN, *supra* note 6 at 5.

⁹ David Finkelhor & Richard Ormrod, *Prostitution of Juveniles: Patterns from NIBRS*, OFF. JUV. JUST. & DELINQ. PREVENTION, JUVENILE JUSTICE BULLETIN 2 (2004), *available at* <http://www.ncjrs.gov/pdffiles1/ojjdp/203946.pdf>. Finkelhor & Ormrod note that:

The prostitution of juveniles occurs in a variety of contexts. Both international rings and interstate crime operations traffic young girls to distant places with promises of employment and money. Parents advertise and prostitute their children over the Internet. Runaway and homeless youth on city streets are recruited by pimps or engage in “survival sex.” Drug pushers force addicted teenagers to prostitute themselves as a condition for receiving drugs or a place to stay. As part of initiations, gangs may require members to engage in sex for money or other services. But also, acting on their own initiative or in the company of friends, young people may engage in casual or even frequent prostitution for money or for adventure.

Id. (internal citations omitted). See, also, Swecker, *supra* note 3 (noting that “approximately 55 percent of street gangs are involved to some degree in prostitution.”)

¹⁰ PRIEBE & SUHR, *supra* note 5 at 28-30.

¹¹ *Id.* at 28 (citing Estes & Weiner, *supra* note 6).

¹² *Id.* at 29 (citing Valleroy, et. al., *HIV Infection in Disadvantaged Out-of-School Youth: Prevalence for U.S. Job Corps Entrants, 1990 through 1996*, 19 J. ACQUIRED IMMUNE DEFICIENCY SYNDROMES 67 (1998); CENTERS FOR DISEASE CONTROL AND PREVENTION, HIV/AIDS AMONG YOUTH FACT SHEET, (2005)). See also Brian Willis & Barry Levy, *Child prostitution: global health burden, research needs, and Interventions*, 359 LANCET 1417, 1418-19 (2002).

¹³ Willis & Levy, *supra* note 12 at 419; PRIEBE & SUHR, *supra* note 5 at 28-30 (citing a wide array of studies, including: Durant, et. al., *Exposure to Violence and Victimization Depression*,

Legal analysis supports the view that child prostitutes are victims. Georgia's definition of sexual abuse indicates that a child under eighteen years of age who has been employed or used for sexual gratification by an adult more than five years her senior is a victim of child abuse.¹⁵ Further, under Georgia law, children under the age of sixteen lack the legal capacity to consent to sexual intercourse,¹⁶ or to engage in employment that might be "injurious to the health or morals of such a minor,"¹⁷ and thus are not legally capable of consenting to prostitution.¹⁸ Federal¹⁹ and international law²⁰ make clear that prostitutes under the age of eighteen are victims rather than offenders.²¹

Most child prostitution also falls under current legal definitions of human trafficking. Though definitions vary, most encompass children under eighteen years of age who have been induced or coerced into sexual exploitation.²² Thus,

Substance Abuse, and the Use of Violence by Young Adolescents, 137 J. PEDIATRICS 707 (2000); Lipschitz, et. al., *Perceived Abuse and Neglect as Risk Factors for Suicidal Behavior in Adolescent Inpatients*, J. NERVOUS & MENTAL DISEASE 32 (1999); Saywitz, et. al., *Treatment for Sexually Abused Children and Adolescents*, 55 AM. PSYCHOLOGIST 1040 (2000)).

¹⁴ Willis & Levy, *supra* note 12 at 419.

¹⁵ O.C.G.A. § 19-7-5 (b)(3.1) (2007).

¹⁶ O.C.G.A. § 16-6-3 (2007).

¹⁷ O.C.G.A. § 39-2-2 (2007). Additionally, employment in other types of work between the ages of twelve and sixteen requires a certificate from a school official confirming school enrollment and attendance. O.C.G.A. § 39-2-11 (2007). No child under age twelve may be employed at all, except in "agriculture, domestic service in private homes or...employment by a parent or person standing in the place of a parent." O.C.G.A. § 39-2-9 (2007).

¹⁸ O.C.G.A. § 16-6-9 ("A person commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value."). For a fuller discussion of how incapacity to consent to sex or employment make a child's commission of this offense legally impossible, see *infra* notes 30-36 and accompanying text.

¹⁹ Trafficking Victims Protection Act (TVPA), 22 U.S.C. § 7102(8) (2007) (defining "severe forms of trafficking in persons" to include commercial sex acts "in which the person induced to perform such an act has not attained 18 years of age."); 22 U.S.C. § 7101(b)(19) (2007) ("Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked..."). For a fuller discussion of the TVPA, see *infra* notes 92-115 and accompanying text.

²⁰ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, art. 8, *opened for signature* May 25, 2000 G.A. Res. 54/263, Annex II, U.N. Doc. A/RES/54/263 [hereinafter CRC Protocol] (defining State Parties' obligations to "protect the rights and interests of child victims" of prohibited practices, including child prostitution.); see *also*, International Labour Organization Worst Forms of Child Labour Convention, No. 182, June 17, 1999, 38 I.L.M. 1207, *available at* <http://www.ilo.org/ilolex/english/convdisp1.htm>. [hereinafter ILO Convention]. For a discussion of treaty obligations of the U.S. relating to issues of child prostitution, see *infra* notes 145-173 and accompanying text.

²¹ Swecker, *supra* note 3 ("According to U.S. law and international agreements, children can never consent to prostitution; it is always exploitation.").

²² See, e.g., O.C.G.A. § 16-5-46(2007) (defining the human trafficking crime of sexual servitude to include "Any sexually explicit conduct. . . which conduct is induced or obtained from a person under the age of 18 years. "); 22 U.S.C. § 7102(8) (defining "severe forms of trafficking in

these children are also victims of human trafficking. Of course, the problem of human trafficking is one that sweeps far beyond the sexual exploitation. It involves all kinds of forced labor, and affects both children and adults around the world. Although we recognize that trafficking is a critical human rights issue that needs to be addressed in all of its manifestations, because of the purpose and scope of this Paper, our discussion here will focus on trafficking as it relates to the commercial sexual exploitation of children.²³

Unfortunately, while the social science research and general legal framework clearly indicate that child prostitutes are victims, under current Georgia law they can still be treated as offenders, and subjected to arrest, detention, and other forms of punishment.²⁴ Furthermore, even when these children are recognized as victims, they often go without the help they need because Georgia does not have a comprehensive continuum of care capable of addressing their unique service needs.²⁵

Due to the efforts of Atlanta Mayor Shirley Franklin, the work of public agencies, non-governmental organizations and child advocates, and recent coverage by national and local media, community awareness has increased regarding the need to take aggressive steps to end the commercial sexual exploitation of children in Georgia, and to provide appropriate services to children who have been victimized.²⁶ In 2005, the Atlanta Women's Agenda released the groundbreaking report "Hidden in Plain View."²⁷ That report explained the problem of commercial sexual exploitation of young girls in Atlanta, brought the importance of addressing the issue home by providing stories of real victims, and identified Atlanta's strengths and areas of need related to this problem.

persons" to include commercial sex act "in which the person induced to perform such an act has not attained 18 years of age."); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, U.N. GAOR, 55th Sess., Annex 2, Agenda Item 105, at 31, U.N. Doc. A/Res/55/25 (2000) [hereinafter *Trafficking Protocol*] ("The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve [force, threats or other types of coercion]").

²³ For purposes of this paper, "commercial sexual exploitation of children" refers to the prostitution of children. Some victims' advocates use the term "commercial sexual exploitation of children" to refer to both the child prostitution and child pornography. See, e.g., Sage website, *Basic CSE Terms & Definitions*, http://www.sagesf.org/html/info_briefs_terms.htm (last visited Nov. 15, 2007). However, child pornography is beyond the scope of this paper.

²⁴ This is due to the fact that our current prostitution statute does not contain a minimum age and therefore can be violated by a child. O.C.G.A. § 16-6-9 (2007). For a fuller discussion of this problem, see *infra* notes 29-42 and accompanying text.

²⁵ See *infra* notes 77-88 and accompanying text.

²⁶ See, e.g., PRIEBE & SUHR, *supra* note 5; Bob Herbert, Op-Ed., *Young, Cold, and for Sale*, N.Y. TIMES, Oct. 19, 2006, at A27; David Pendered, *Shock in Store for 'John' in Bid to End Child Sex Trade*, ATLANTA J. CONST., Nov. 09, 2006, at B1.

²⁷ PRIEBE & SUHR, *supra* note 5.

“Hidden in Plain View” laid an excellent foundation for work in this area, but it was not intended to provide legal analysis, and it limited its scope to girls being exploited in the Atlanta area. Because this issue is impacted by many different laws at the state, federal and international level, and because many potential solutions may involve legal components, in-depth legal analysis is needed to help guide advocates’ efforts. This Paper builds on the foundation laid by “Hidden in Plain View” by providing that legal analysis, and by expanding the scope of the discussion to include all child victims, including boys, across all of Georgia.

Specifically, Part II of this paper explains current Georgia laws and practices that impact commercially sexually exploited children. Part III explores the larger national and international legal framework surrounding this issue. Part IV then analyzes non-legislative service-delivery approaches taken by other jurisdictions to address the problem, and Part V analyzes innovative legislative approaches taken by other states. Finally, Part VI recommends legislative, policy and service initiatives to protect and support Georgia’s children.

II. Current Georgia Law and Practice

Prostitution has traditionally been regulated by the states, and Georgia is no exception.²⁸ Georgia has a number of criminal laws targeting prostitution and related offenses. How these laws are interpreted and enforced has a direct impact on children who are commercially sexually exploited, both in terms of how they are treated themselves, and in terms of the risks and punishments the law creates for those who exploit them. Additionally, a number of other current Georgia laws and practices impact the victims and perpetrators of commercial sexual exploitation of children, including the state’s child abuse reporting statutes and practices, its anti-human trafficking statute, and its existing services for victims. This section will look at each of these areas of law and practice in turn.

Georgia’s Prostitution Statute

Georgia’s prostitution statute, O.C.G.A. § 16-6-9, states that “a person commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value.”²⁹ The statute does not have a minimum age provision, and thus includes all people, not distinguishing between adults and minors. This is problematic for a number of reasons.

²⁸ 63C AM. JUR. 2D *Prostitution* § 4 (2007) (“Statutes regulating public morals, including the regulation and punishment of prostitution and related offenses, fall within the police power of the state....”).

²⁹ O.C.G.A. § 16-6-9 (2007).

First, the lack of a minimum age is inconsistent with Georgia's own views about the sexual autonomy of minors. Currently, the age of consent for sexual activity in Georgia is sixteen.³⁰ Adults who engage in "consensual"³¹ non-commercial sexual behavior with individuals under the age of consent are subject to criminal prosecution, while the individual who is under the age of consent is not. For example, when a person violates O.C.G.A. § 16-6-3 by committing statutory rape, the statute provides that the victim will not be convicted.³²

In the arena of commercial sexual exploitation, however, the law does not protect individuals under the age of consent; rather their behavior is criminalized. This is logically inconsistent. An American Bar Association (ABA) survey of state legislatures found that the reasons states prescribe an age of consent are: (1) "to protect minors from sexual intercourse;" (2) "to protect minors below a certain age from predatory, exploitative sexual relationships;" (3) to prevent or reduce teen pregnancy; (4) to reduce "the number of young mothers on welfare;" and (5) to promote "responsibility and accountability in sexuality and parenting."³³ All of these purposes are better served by providing child victims of commercial sexual exploitation with the same protection afforded to other children who engage in early sexual behavior and criminalizing the adults who take advantage of them.

Of course, prostitution is different from statutory rape because of the economic element involved. To some degree, what is really criminalized is not the sexual activity, but the commercial transaction. However, Georgia also recognizes that children lack the capacity to enter into many commercial arrangements. For example, in Georgia, contracts are not enforceable against children under eighteen because of their lack of legal capacity to make binding commitments.³⁴ Further, children under the age of sixteen are not allowed to make their own decisions about employment. They cannot hold employment

³⁰ See O.C.G.A. § 16-6-3 (2007). The age of consent was raised from fourteen to sixteen in 1997. 1996 Ga. Laws 1115, § 3. Recently, a bill was proposed to raise it even higher, to eighteen. H.B. 722, 148th Gen. Assem., Reg. Sess. (Ga. 2005).

³¹ The word consensual is problematic because technically the child legally lacks the ability to consent. It is used here to mean that the adult did not use force, threat, or other overt coercion to gain the child's participation in the act.

³² O.C.G.A. § 16-6-3 (a) states that "a person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim." Thus, it is the person having sex with the child, and not the child, who is guilty of the offense. The language of the statute is not clear as to whether it could apply if *both* individuals were under the age of consent, but Georgia judicial decisions on similar statutes indicates that prosecution might be possible in that case. See *In re J.D.*, 534 S.E.2d 112 (Ga. Ct. App. 2000).

³³ OFFICE FOR VICTIMS OF CRIMES, STATE LEGISLATORS' HANDBOOK FOR STATUTORY RAPE ISSUES 6 (2000), available at

<http://www.ojp.usdoj.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf>. This Handbook was prepared for the OVC by the ABA Center on Children and the Law.

³⁴ O.C.G.A. § 13-3-20 (2007).

“dangerous to life and limb or injurious to [their] health or morals” at all,³⁵ and must receive permission in the form of a work certificate from responsible adults to hold other types of employment.³⁶ Thus, children have no more legal capacity to enter into the economic element of prostitution than they do to enter its sexual element.

In addition to children’s lack of legal capacity to commit the offense of prostitution, the state’s lack of a minimum age for the offense is also troubling because of the effects of prosecution on child victims. Children who have been commercially sexually exploited already suffer from feelings of guilt and worthlessness, which can be compounded by the message implicit in prosecution that the child has done something bad.³⁷ Prosecution also generally involves detention, either before or after the judicial proceeding, and detention results in emotional and psychological trauma for the child, increasing the child’s feelings of low self-esteem and complicating the recovery process.³⁸

Finally, the lack of a minimum age in the statute is troubling because it conflicts with international agreements to which the U.S. is a party.³⁹ As will be explained in Part III, those agreements clearly recognize that prostitutes under the age of eighteen are victims in need of services rather than offenders in need of punishment.⁴⁰

While the Georgia prostitution statute’s inclusion of commercially sexually exploited children as offenders is inconsistent with other state and international laws protecting children as well as best practices for treatment, Georgia is not alone in this inconsistency. Today, only Michigan has a statute limiting the criminal liability of an individual under a certain age for commercial sexual activity. The Michigan prostitution statute states that “*a person sixteen years of age or older who accosts, solicits, or invites another person in a public place or in*

³⁵ O.C.G.A. § 39-2-2 (2007).

³⁶ Employment in other types of work between the ages of twelve and sixteen requires a certificate from a school official confirming school enrollment and attendance. O.C.G.A. § 39-2-11 (2007). No child under age twelve may be employed at all, except in “agriculture, domestic service in private homes or...employment by a parent or person standing in the place of a parent.” O.C.G.A. § 39-2-9 (2007).

³⁷ WORLD HEALTH ORGANIZATION, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: THE HEALTH AND PSYCHOSOCIAL DIMENSIONS 18-21 (written for the World Congress against Commercial Sexual Exploitation of Children, June 1996) *available at* http://www.csecworldcongress.org/PDF/en/Stockholm/Background_reading/Theme_papers/Theme%20paper%20Health%201996_EN.pdf. The report notes that there is a lack of “systematic or reasonably controlled studies” on the psychological consequences of commercial sexual exploitation, but draws analogies from the well developed literature on sexual abuse and studies on victims of child pornography. *Id.*

³⁸ Francine T. Sherman, Annie E. Casey Foundation, *Detention Reform and Girls*, 13 PATHWAYS TO JUVENILE DETENTION REFORM 12, 25 (2005), *available at* http://www.aecf.org/publications/data/jdai_pathways_girls.pdf.

³⁹ See *infra* notes 145-173 and accompanying text.

⁴⁰ *Id.*

or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime.”⁴¹ This limits criminal liability to individuals over the age of sixteen, even though the age of consent for sexual activity in Michigan is thirteen.⁴² The remaining forty-nine other states do not currently use age to limit the definition of prostitution.

Georgia’s Other Prostitution-related Statutes

In addition to its primary prostitution statute, Georgia also has other prostitution-related offenses. One of these, the “masturbation for hire” statute, O.C.G.A. § 16-6-16, poses problems similar to those described above. This statute criminalizes physical stimulation that does not include intercourse, but which is similarly exploitative. Like the prostitution statute, this offense does not specify a minimum age.

The state’s other prostitution-related statutes provide tools for prosecuting those who commercially sexually exploit children. These include:

- **Keeping a place of prostitution (O.C.G.A. § 16-6-10):** This statute criminalizes a person who “having or exercising control over the use of any place or conveyance” knowingly “grants or permits the use” of it for prostitution.⁴³ It can be used to prosecute pimps who provide a venue for exploitation, but it is also broad enough to be used against motels or other businesses which allow their rooms to be used for prostitution if they are aware that prostitution is the purpose of the visit.⁴⁴
- **Pimping (O.C.G.A. § 16-6-11):** Pimping is defined broadly under the Georgia statute to include offering to procure a prostitute or arranging a meeting for the purposes of prostitution; directing or transporting someone to prostitution; taking money or other things of value derived from prostitution, not as part of an exchange; and profiting from aiding, abetting, counseling or commanding prostitution.⁴⁵ Thus, this statute covers all of the acts generally associated with “pimps,” and also reaches further to

⁴¹ MICH. COMP. LAWS § 750.448 (2007) (emphasis added). Other prostitution-related Michigan statutes also include the minimum age provision. MICH. COMP. LAWS § 750.449 (2007). (criminalizing “[r]eceiving or admitting person to place or vehicle for purpose of prostitution, lewdness, or assignation.”); MICH. COMP. LAWS § 750.449 (2007) (criminalizing aiding and abetting prostitution).

⁴² See MICH. COMP. LAWS § 750.520b (1) (a) (2007).

⁴³ O.C.G.A. § 16-6-10 (2007).

⁴⁴ See *Fitzgerald v. State*, 72 S.E. 541 (Ga. Ct. App. 1911) (interpreting an earlier version of the statute). The court held the statute to mean that when an innkeeper furnishes lodging to lewd guests, and allows them, with his knowledge or acquiescence, to carry on their unlawful practices in his house, he is guilty of violating the statute, notwithstanding the greater portion of his guests may be decent people, and notwithstanding the greater portion of the business carried on in the house may be of a legitimate nature. *Id.*

⁴⁵ O.C.G.A. § 16-6-11 (2007).

include others such as taxi drivers or hotel concierges who bring or direct people to prostitutes.

- **Pandering (O.C.G.A. § 16-6-12):** “A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.”⁴⁶ This statute covers “johns” as well as anyone who might assist the john in obtaining the prostitute.

Though generally the three offenses outlined above are aggravated misdemeanors, when they involve the prostitution of children under eighteen years of age the offenses are felonies carrying penalties of five to twenty years in prison and fines of up to ten thousand dollars.⁴⁷ Additionally, when an offender is convicted of pandering, the clerk of the court is supposed to publish a legal notice which includes the offender’s mug shot in “the legal organ of the appropriate county.”⁴⁸

Any money used for or gained from pimping children under eighteen is forfeited to the state, and at least fifty percent of funds so obtained are to be used for services for child victims of commercial sexual exploitation.⁴⁹ Additionally, any motor vehicle used in an act resulting in conviction for pimping of a child under eighteen or a third conviction for either pimping or pandering involving a prostitute of any age is also subject to forfeiture.⁵⁰

Note that the increased punishments for those who exploit children apply to those who pimp or pander children under the age of eighteen, even though the age of consent in Georgia is sixteen. This supports the view that it is not just children’s lack of capacity to consent to intercourse which is troubling to people about this issue. Our statutes criminalizing exploiters recognize, as our statute criminalizing prostitution does not yet, that children under eighteen are uniquely vulnerable to this type of exploitation, and require additional protection.

⁴⁶ O.C.G.A. § 16-6-12 (2007).

⁴⁷ O.C.G.A. § 16-6-13(b) (2007).

⁴⁸ O.C.G.A. § 16-6-13(c)(1). However, a search of the internet, the *Atlanta Journal Constitution* and the *Daily Report* did not uncover any instances of this actually being done. In fact, the *Daily Report*’s legal notices page, where most similar notices are posted, does not have a category for pandering convictions. Daily Report website, *Legal Notices* page, http://www.dailyreportonline.com/Public_Notice/Legal_Notices/classList.asp? (last visited Nov. 26, 2007). Ironically, the Atlanta police department posts pictures of women arrested for prostitution, but their website does not show any pictures of panderers. Atlanta Police Department website, *Vice Arrests* page, <http://www.atlantapd.org/index.asp?nav=vicearrests> (last visited Nov. 27, 2007). See also, Jill Young Miller, *City adviser: ‘Johns’ get too little scrutiny*, ATL. J. CONST., May 21, 2007 at B5.

⁴⁹ O.C.G.A. § 16-6-13.3 (2007).

⁵⁰ O.C.G.A. § 16-6-13.2 (2007).

Georgia's Current Law Enforcement Practices

In Atlanta, the Fulton County Juvenile Court has adopted a practice of not prosecuting children for prostitution, and law enforcement officers have received training on the need to treat these children as victims rather than offenders.⁵¹ However, the practice and training have not prevented children from being arrested on prostitution charges. Fulton County Juvenile Court records show that in 2006 prostitution complaints were filed against eleven different girls who were between the ages of fourteen and sixteen.⁵² This number may not reflect the total number of arrests, however. Cheron Crouch, Director of Training and Education for the Juvenile Justice Fund, reports that the offense is “used all the time. . . . All of the high priority cases come in with a charge of Prostitution. . . . The charge is usually dropped to disorderly conduct and that is what is shown in [the court’s data tracking software].”⁵³

Thus, young girls are still being arrested and detained in Atlanta for prostitution. Additionally, when the charge is knocked down, the child is often still prosecuted for the lesser charge. This means that many Atlanta children find themselves in the juvenile justice system as a result of their commercial sexual exploitation, despite agency and court-level initiatives to prevent this. Moreover, children are prostituted across the state, not just in Atlanta, and not all areas follow the same policies or provide the same training as Fulton County. Data from the Georgia Department of Juvenile Justice (DJJ) and six of the state’s independent juvenile courts show legal actions against an additional twenty-one children for prostitution in 2006.⁵⁴

⁵¹ Telephone Interview with Cheron Crouch, Director of Training and Education, Juvenile Justice Fund, in Atlanta, Ga. (Jan. 11, 2008) ; E-mail from Kaffie McCullough, Coordinator of Community Collaboratives, Juvenile Justice Fund, in Atlanta, Ga., to Kirsten Widner, Barton Child Law and Policy Clinic (Nov. 6, 2007, 17:09 EDT) (on file with the Barton Child Law and Policy Clinic).

⁵² E-mail from Edward M. Garnes, Clerk of Court, Fulton County Juvenile Court, in Atlanta, Ga., to Kirsten Widner, Barton Child Law and Policy Clinic (Oct. 30, 2007, 16:29 EDT) (responding to Open Records Act request dated Nov. 1, 2007) (on file with the Barton Child Law and Policy Clinic). In 2005, there were ten such complaints filed. *Id.*

⁵³ E-mail from Cheron Crouch, Director of Training and Education, Juvenile Justice Fund, in Atlanta, Ga., to Kirsten Widner, Barton Child Law and Policy Clinic (Oct. 30, 2007, 19:00 EDT) (on file with the Barton Child Law and Policy Clinic).

⁵⁴ This figure does not include Cherokee County, which has not yet responded to record requests. E-mail from Sonia Johnson, Department of Juvenile Justice, in Atlanta, Ga., to Kirsten Widner, Barton Child Law and Policy Clinic (Nov. 7, 2007, 12:26 EDT) (responding to Open Records Act request dated Nov. 1, 2007) (on file with the Barton Child Law and Policy Clinic); E-mail from Ed Palmer, Juvenile Court Information Technology Coordinator, Clayton County Juvenile Court, to Kirsten Widner, Barton Child Law and Policy Clinic (Oct. 25, 2007, 13:46 EDT) (responding to Open Records Act request dated Oct. 22, 2007) (on file with the Barton Child Law and Policy Clinic); E-mail from Phyllis Douglas, Director of Court Services, DeKalb County Juvenile Court, to Kirsten Widner, Barton Child Law and Policy Clinic (Jan 7, 2008, 13:45 EST) (responding to Open Records Act request dated Oct. 22, 2007) (on file with the Barton Child Law and Policy Clinic); Letter and Court Order from the Honorable Robert Rodatus, Presiding Judge, Gwinnett County Juvenile Court, to Kirsten Widner, Barton Child Law and Policy Clinic (Nov. 2, 2007) (responding to Open Records Act request dated Oct. 22, 2007) (on file with the Barton Child Law and Policy Clinic); Letter and Records from the Honorable A. Gregory Poole, Presiding Judge, Cobb County

Further, many victims of commercial sexual exploitation are not taken into custody for prostitution at all. Instead, they are processed for status offenses⁵⁵ and probation violations, making it difficult for the juvenile justice system to assess the regularity of child prostitution's occurrence and identify the service program needs of this population.⁵⁶

Georgia's Child Abuse Reporting Statute and Current Practices

A better way to identify child victims of commercial sexual exploitation and link them to services would be to use the process already established for the identification of abused children. Georgia Code section 19-7-5 requires a wide variety of professionals who interact with children, including doctors, psychologists, counselors, social workers, teachers, school administrators, child care providers, and law enforcement personnel, to make a report to child protective services if they reasonably believe that a child has been abused.⁵⁷ These professionals, who are commonly referred to as "mandated reporters," base their determination of whom to report as abused on the statute's definition of child abuse.

Georgia's definition of child abuse in O.C.G.A. § 19-7-5 includes two different sub-definitions which could encompass commercially sexually exploited children. The first is its definition of "sexual abuse." Section 19-7-5 defines sexual abuse as "a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in [a variety of sexual activities]."⁵⁸ The sexual act involved in prostitution is child abuse under this broad definition, because the john is certainly a person "employing" or "using" the child in sexual activity, and a pimp would be a person "inducing, enticing, or coercing" the child to engage in the activity.

However, the statute also provides a separate sub-definition for "sexual exploitation" which specifically mentions prostitution. This sub-definition encompasses the sexual exploitation of any person under the age of eighteen,⁵⁹ but defines "sexual exploitation" narrowly as "*conduct by a child's parent or*

Juvenile Court, to Kirsten Widner, Barton Child Law and Policy Clinic (Nov. 8, 2007) (responding to Open Records Act request dated Oct. 22, 2007) (on file with the Barton Child Law and Policy Clinic). DJJ and these courts also provided data for 2005, and that total is higher, at thirty-four.

⁵⁵ A status offense is an act such as truancy or running away which would not be an offense if committed by an adult. For more information on this topic, see BARTON CHILD LAW & POLICY CLINIC, SECURE DETENTION OF STATUS OFFENDERS: A RESEARCH-BASED POLICY RESPONSE TO THE GEORGIA GENERAL ASSEMBLY (2007), *available at* <http://www.childwelfare.net/activities/legislative2008/StatusOffender20071105.html>.

⁵⁶ PRIEBE & SUHR, *supra* note 5 at 28.

⁵⁷ O.C.G.A. § 19-7-5 (2007).

⁵⁸ O.C.G.A. § 19-7-5(b)(3.1) (2007); O.C.G.A. § 19-15-1(11)(2007) (emphasis added).

⁵⁹ *Id.* (defining "child" as "any person under 18 years of age," and defining "child abuse" to include "sexual exploitation of a child"). See also O.C.G.A. § 19-15-1 (2007) (providing identical definitions).

caretaker who allows, permits, encourages, or requires [the] child to engage in Prostitution....”⁶⁰ Thus, if the child is encouraged or forced into prostitution by someone other than a parent or caretaker without the parent or caretaker’s permission, the exploitation is not child abuse under this sub-definition.

The presence of this second limited sub-definition is confusing. It could be interpreted to provide an additional ground to report a child as abused, for example where a mandated reporter knows a child is being encouraged by a parent to engage in prostitution, but does not know whether or not a sexual act has yet occurred. On the other hand, the presence of this sub-definition could be viewed as a carve out from the broader sexual abuse definition, leading mandated reporters to believe that they do not have to report sexual exploitation unless a parent or a caretaker is involved. This carve out interpretation is strengthened when the mandatory reporting statute is read in combination with the criminal statute which allows children to be prosecuted for the offense of prostitution irrespective of their age. When read together, the criminal statute and the specific limitation on the definition of sexual exploitation in the mandatory reporting statute seem to indicate that unless a parent or caretaker is responsible, a child in prostitution is an offender rather than a victim of child abuse. Therefore, the statutory language would need to be corrected or clarified in order to make mandated reporting an effective tool for identifying commercially sexually exploited children.

Even if the statute were to clearly make all commercial sexual exploitation child abuse, however, under current Department of Family and Children Services (DFCS) policies a report would result in limited assistance for such a child unless the exploitation involved a parent or caretaker. Child abuse reports come to the Child Protective Services (CPS) section of DFCS. CPS “screens out” any reports that do not involve improper actions or negligence by a parent or caregiver.⁶¹ This is because the primary purpose of CPS is to investigate abuse within families, and to intervene with the help of law enforcement or the courts when necessary.⁶² Thus, CPS’s investigative resources are focused on reports that could lead to court intervention in a family.

However, when screening out a case, CPS can refer the reporter or the family to appropriate services. Some services which are “geared toward preventing problematic family issues from escalating to the point of requiring

⁶⁰ O.C.G.A. § 19-7-5(b)(4) (2007); O.C.G.A. § 19-15-1(12) (2007)(emphasis added).

⁶¹ Department of Human Resources Policy Manual § 2103.18, *available at* http://www.odis.dhr.state.ga.us/3000_fam/3030_cps/MAN3030.doc (last visited January 8, 2008) (including in a list of types reports to be screened out those involving “issues of a criminal nature (e.g. by a third party not acting a parental or other caretaker role) [where] negligence on the part of the parent for allowing a child to be exposed to the situation is ruled out”). DFCS, and by extension, CPS, is a part of the state Department of Human Resources.

⁶² See, e.g., Department of Human Resources Policy Manual § 2102, *available at* http://www.odis.dhr.state.ga.us/3000_fam/3030_cps/MAN3030.doc (last visited January 8, 2008).

CPS intervention”⁶³ are provided at no cost to the family,⁶⁴ but these services are subject to strict time and cost limits.⁶⁵ Referrals for other types of services can be given, but case management is not provided, and families are responsible for any associated fees.

In sum, under current policies, if CPS received a report of commercial sexual exploitation of a child which did not involve a parent or caretaker, the child and his or her family might receive a referral to a service provider if the CPS worker had information on a provider that would be appropriate, but the family would be on their own with respect to following up to actually get the services and paying any fees that the service provider might charge. Therefore, if mandated reporting is to be a useful tool in identifying commercially sexually exploited children and linking them to services, CPS policies need to change to provide a response that would do more to ensure these children get the services they need.

Georgia’s Anti-human Trafficking Statute

In addition to its prostitution-related statutes and its child abuse reporting statutes, Georgia has recently enacted an anti-human trafficking statute which may also be used to impact the commercial sexual exploitation of children. In April 2006, the Georgia General Assembly passed, and the Governor signed, SB 529, known as the Georgia Security and Immigration Compliance Act.⁶⁶ One of the things this bill did was to add a new section to the crimes and offense section of the Georgia Code, creating two new human trafficking offenses: trafficking a person for labor servitude, and trafficking a person for sexual servitude.⁶⁷

This new trafficking Code section is loosely based on the Model Anti-Trafficking Criminal Statute promulgated by the U.S. Department of Justice.⁶⁸ However, it does not duplicate that Model’s definitions, and, in fact, defines very few of its key terms.⁶⁹ The new section, O.C.G.A. § 16-5-46, does not delineate

⁶³ Department of Human Resources Policy Manual § 2107.1, *available at* http://www.odis.dhr.state.ga.us/3000_fam/3030_cps/Manuals/Chapter7/2107_intro.doc (last visited January 8, 2008).

⁶⁴ See Department of Human Resources Policy Manual § 2107, *available at* http://www.odis.dhr.state.ga.us/3000_fam/3030_cps/Manuals/Chapter7/2107_intro.doc (last visited January 8, 2008).

⁶⁵ See Department of Human Resources Policy Manual § 2107.5, *available at* http://www.odis.dhr.state.ga.us/3000_fam/3030_cps/Manuals/Chapter7/2107_5.doc (last visited January 8, 2008) (“The total fee for Early Intervention/Preventive Services shall not exceed \$500.00 per family. The family is eligible for Early Intervention services for up to 12 months.”).

⁶⁶ S.B. 529, 148th Gen. Assem., Reg. Sess. (Ga. 2006), *available at* http://www.legis.state.ga.us/legis/2005_06/sum/sb529.htm.

⁶⁷ *Id.* at § 3, *codified at* O.C.G.A. § 16-5-46.

⁶⁸ United States Department of Justice, Model Anti-Trafficking Criminal Statute, http://www.usdoj.gov/crt/crim/model_state_law.pdf. See, also, *infra* notes 117-127 and accompanying text.

⁶⁹ O.C.G.A. § 16-5-46(a) (2007) (providing definitions for only four terms: “coercion,” “deception,” “labor servitude” and “sexual servitude”).

sexual servitude of a minor as a separate offense, but rather includes it under the broader offense of trafficking a person for sexual servitude. Sexual servitude is defined as:

- (A) Any sexually explicit conduct. . . for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- (B) Any sexually explicit conduct. . . which is performed or provided by any person, which is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.⁷⁰

This definition is both too broad and too narrow. It is too broad because “induced or obtained” is not defined. A standard dictionary definition of “induced” is: (1) “to move by persuasion or influence; or (2) to call forth or bring about by influence or stimulation.”⁷¹ If such a broad definition is used, Part (B) could be read to encompass all sexual activity involving a minor, because nearly all “consensual” sexual activity is brought about by either persuasion or stimulation. The effect of this reading would be to basically replace the statutory rape statute, making sex with a minor a felony in all instances and raising the age of consent to eighteen.⁷²

The definition is too narrow because if “induced or obtained” is given a narrow reading some young prostitutes would not be considered trafficking victims. Specifically, those under eighteen who prostitute “voluntarily,” working without a pimp and proactively making offers to johns might be excluded. Under the current version of the statute that is not much of a problem, because the current version only criminalizes the trafficker; it does not provide services for victims. Thus, the only practical effect of a narrow reading of the current statute would be that not every john would be guilty of human trafficking.

Johns could still be convicted of pandering, however, so the real effects would be with respect to sentencing and forfeiture. As previously discussed, under Georgia’s pandering statute, a john can be sentenced to five to twenty years in jail and a fine of up to ten thousand dollars.⁷³ If sentenced under the

⁷⁰ *Id.*

⁷¹ Merriam-Webster Online Dictionary, *Induce*, <http://www.m-w.com/dictionary/induce> (last visited Nov. 27, 2007).

⁷² Under Georgia’s current statutory rape statute, the age of consent is sixteen, and while the offense is generally a felony, there are exceptions which make it a misdemeanor if the offenders are both between fourteen and sixteen or the offender is over eighteen but less than four years older than the child. O.C.G.A. § 16-6-3 (2007).

⁷³ O.C.G.A. § 16-6-13(b) (2007).

anti-human trafficking statute, “[a]ny person who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years . . . shall be punished by imprisonment for not less than ten nor more than 20 years.”⁷⁴ Thus, the anti-trafficking statute has a harsher minimum sentence of imprisonment, but the same maximum sentence, and unlike the pandering statute does not include fines. The anti-trafficking statute also does not provide for forfeiture of a motor vehicle used for the offense, which is provided for after a third conviction for pandering.⁷⁵ Therefore, under the current statutory scheme, the under-inclusiveness of the definition of sexual servitude may be acceptable, because a conviction under the pandering statute might be preferable as it allows greater sentencing flexibility and provides for forfeiture.

However, the new anti-trafficking statute is also flawed in that unlike model legislation, which will be discussed in Part III, it does not provide for restitution, any victim services, a civil cause of action for victims, or prevention efforts.⁷⁶ Although it is an additional tool for prosecuting those who exploit children, without these addition provisions, the anti-trafficking statute adds little to Georgia’s statutory ability to protect child victims of sexual exploitation. On the other hand, if these provisions were added, the under-inclusiveness of the statutory definition described above could become problematic, and the statute would need to be amended to ensure all commercially sexually exploited children would be eligible for these benefits.

Services Currently Available in Georgia

“Hidden in Plain View” provided a detailed review of available services in Georgia for child victims of commercial sexual exploitation.⁷⁷ The service landscape has not changed significantly since that time, so this Paper will not attempt to restate that excellent work. However, when considering statutory and policy changes that would make Georgia’s response to commercial sexual exploitation more services-focused, it is useful to consider the services already available in the state, and to evaluate the capacity of these services to handle additional cases.

Georgia has one of the few residential treatment facilities in the United States specifically tailored for the needs of girls who have been commercially sexually exploited. Angela’s House provides a safe, secure place where girls can heal, using a combination of traditional counseling, group therapy, and 12-step programs, and innovative programs like equine therapy, which helps the girls learn boundaries and trust, and exercises with a local acrobatics troupe which help the girls develop healthy feelings about their bodies.⁷⁸

⁷⁴ O.C.G.A. § 16-5-46 (2007).

⁷⁵ O.C.G.A. § 16-6-13.2 (2007).

⁷⁶ See *infra* notes 117-141 and accompanying text.

⁷⁷ PRIEBE & SUHR, *supra* note 5 at 32-34.

⁷⁸ Interview with Graham and Smolka, *supra* note 2.

Though it is an outstanding service provider, Angela's House has a very limited ability to serve Georgia's children's needs. The facility only has six beds, and the average stay for the girls it serves is between three and six months,⁷⁹ so it can only accommodate a few of the hundreds of children who are commercially sexually exploited in Georgia each month.⁸⁰ Additionally, it does not take boys, and it cannot treat girls that are extremely aggressive or suicidal, or those with extremely low IQs.⁸¹ Currently, children who have been identified as victims of commercial sexual exploitation and who cannot be served by Angela's House are either held in secure juvenile detention facilities, returned home with few, if any, specialized services provided to prevent them from returning to prostitution,⁸² or placed in non-secure youth facilities, group homes, or foster care.⁸³

Specialized care for child victims of commercial sexual exploitation is critical for a number of reasons. First, because many of these children have been deeply indoctrinated by their exploiters,⁸⁴ they tend to run back to the streets if they have the opportunity.⁸⁵ Thus, any non-secure residential facility housing them must have around-the-clock monitors at the doors who will discourage children from leaving. Second, because these children have often experienced high levels of trauma on a repeated basis, they can be difficult to reach. This repeated trauma can make them appear tough and abrasive, which could lead an untrained counselor to turn away. As one child advocate in Atlanta put it, "These girls are just different. They are hardened from the streets. Their trauma is huge and much different than the trauma of a child who suffers from depression or an isolated incident of abuse."⁸⁶ Finally, children who have been commercially sexually exploited face stigmatization if placed with children who have not been similarly victimized. According to Dr. Lois Lee, President of Children of the Night, one of the nation's leading treatment programs for this population, when girls who have been in prostitution are mixed with other children in youth residences or other programs, they are often called names, shunned, or otherwise mistreated. As a result, children in non-specialized facilities are often forced to face the choice of remaining silent about their abuse or being stigmatized by their peers.⁸⁷

Thus, while Georgia does currently have some excellent resources for treating commercially sexually exploited children, more specialized services are

⁷⁹ Interview with Graham and Smolka, *supra* note 2.

⁸⁰ See *supra* note 1 and accompanying text.

⁸¹ Interview with Graham and Smolka, *supra* note 2.

⁸² *Id.*

⁸³ *Id.*; PRIEBE & SUHR, *supra* note 5 at 33.

⁸⁴ See, e.g., Klain, *supra* note 6 at 4.

⁸⁵ Telephone Interview with Dr. Lois Lee, President, Children of the Night, Van Nuys, Cal. (Oct 4, 2006).

⁸⁶ Telephone Interview with LaKendra Baker, Coordinator, Center to End Adolescent Sexual Exploitation (CEASE), Atlanta, Ga. (Oct. 19, 2006).

⁸⁷ Interview with Lee, *supra* note 85.

needed. Additionally, there is also a need for more prevention efforts. Although several Atlanta-area organizations, including the Center to End Adolescent Sexual Exploitation (CEASE), have developed educational programs aimed at preventing commercial sexual exploitation, these programs are not currently fully funded.⁸⁸

Summary of Current Georgia Law and Practice

Georgia has developed a strong set of criminal laws to prosecute those who commercially sexually exploit children. Our anti-human trafficking, pimping, pandering and related statutes provide stringent penalties for not just pimps and johns, but also for others who aid them and profit from the exploitation of children. Unfortunately, however, the child victims are also currently subject to prosecution, and the state's current laws and practices do not provide for a way to link these children to services without subjecting them to arrest and detention. In order to better serve and protect these children, Georgia needs to create a less punitive way to identify victims, such as using the mandatory child abuse reporting system, and to expand the availability of services tailored to these children's unique needs.

III. Federal and International Law Impacting Commercial Sexual Exploitation of Children

While states are the primary sources of laws regulating prostitution, they are not the only sources to consider. Under our federal system of government, if there are applicable federal laws or if the United States is party to international agreements on the subject, these will preempt state law when the two conflict.⁸⁹ Therefore, state legislators and other policy makers need to be aware of the federal and international legal framework in order to avoid such conflict.

There are a couple of other good reasons to look at federal and international laws. First, federal laws often involve the allocation of federal funds. Thus, a careful examination of federal laws can uncover potential federal funding sources that can help the state provide necessary services. Second, the national and international communities bring together diverse voices which can provide additional insights into how to address a complex issue like the commercial sexual exploitation of children.

⁸⁸ E-mail from Kaffie McCullough, Coordinator of Community Collaboratives, Juvenile Justice Fund, in Atlanta, Ga., to Kirsten Widner, Barton Child Law and Policy Clinic (Oct. 16, 2007, 15:14 EDT) (on file with the Barton Child Law and Policy Clinic).

⁸⁹ U.S. CONST. art. II, § 2; *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 421 (2003).

Federal Legal Framework

Human trafficking has elements of slavery and interstate commerce which bring it within the purview of the U.S. Congress.⁹⁰ The federal government has included trafficking-related child prostitution in its broader efforts against human trafficking.⁹¹ In October 2000, Congress enacted the Trafficking Victims Protection Act (TVPA),⁹² the first comprehensive federal law designed to prevent human trafficking, protect and assist its victims, and to prosecute its perpetrators.⁹³ Under the TVPA and the subsequent Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA),⁹⁴ a child is a victim of a severe form of trafficking if he or she is induced to perform a commercial sex act as a result of sex trafficking before having obtained the age of eighteen.⁹⁵ Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”⁹⁶

The TVPA and TVPRA consider child prostitutes who fit the above definition as victims of a serious crime. These victims are entitled to a number of protections and services, including freedom from federal detention in “facilities inappropriate to their status as crime victims,”⁹⁷ and eligibility for “necessary medical care and other assistance,”⁹⁸ as well as special immigration status if

⁹⁰ U.S. CONST. amend. XIII, § 2 (granting Congress the power to enforce the prohibition of slavery); U.S. CONST. art. I, § 8, cl. 3 (granting Congress the power to regulate interstate commerce).

⁹¹ 22 U.S.C. § 7102 (2007). This statute defining human trafficking includes:

(8) Severe forms of trafficking in persons

The term “severe forms of trafficking in persons” means--

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) Sex trafficking

The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Id.

⁹² 22 U.S.C. § 7101-7112 (2000).

⁹³ Department of Health and Human Services, Trafficking Victims Protection Act of 2000: Fact Sheet 1, http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf (last visited Nov. 6, 2007).

⁹⁴ Trafficking Victims Protection Reauthorization Act of 2005, Pub.L. No. 109-164, 119 Stat. 3558 (2006); Press Release, White House, President Signs H.R. 972, Trafficking Victims Protection Reauthorization Act (Jan. 10, 2006), *available at* <http://www.whitehouse.gov/news/releases/2006/01/20060110-3.html> (last visited Nov. 6, 2007).

⁹⁵ 22 U.S.C. § 7102 (8) (2007); 42 U.S.C. § 14044e (2007).

⁹⁶ 22 U.S.C. § 7102 (9) (2007); 42 U.S.C. § 14044e (2007).

⁹⁷ 22 U.S.C. § 7105(c)(1)(A) (2007).

⁹⁸ 22 U.S.C. § 7105(c)(1)(B) (2007).

they are not citizens.⁹⁹ The TVPRA also requires federal government agencies to expand services for trafficking victims.¹⁰⁰ One such mandate was for the Department of Health and Human Services (HHS) to “establish and carry out a pilot program to establish residential treatment facilities in the United States for juveniles subjected to trafficking.”¹⁰¹ These facilities are intended to provide services, such as “shelter, psychological counseling, and assistance in developing independent living skills.”¹⁰² The TVPRA required HHS to establish the pilot program within 180 days after January 10, 2006 and to issue a report a year after the program’s establishment.¹⁰³ However, Congress did not appropriate the funds required for these pilots, so they are not currently underway.¹⁰⁴

Congress did create other funding streams for trafficking victims’ services, however. As part of the TVPRA, Congress authorized the appropriation of ten million dollars per year for 2006 and 2007 to create a grants program administered by HHS.¹⁰⁵ Under this program, HHS can make grants to “States, Indian tribes, units of local government, and nonprofit, nongovernmental victims’ service organizations” to create and deliver services for victims of severe forms of trafficking.¹⁰⁶ The statute provides that grant applicants who serve victims of commercial sexual exploitation or who employ survivors of commercial sexual exploitation will be given priority.¹⁰⁷ While this program was funded only through 2007, a new reauthorization bill is pending before Congress which would extend the program and increase the amount available for grants to fifteen million dollars per year until 2011.¹⁰⁸

In addition to providing protection and services to victims, the TVPA and TVPRA take many other important steps.¹⁰⁹ Sex trafficking of children is a federal crime with stiff penalties,¹¹⁰ and attempt is also a crime subject to the

⁹⁹ 8 U.S.C. § 1101(a)(15)(T) (2007).

¹⁰⁰ 22 U.S.C. § 7105(b)(1)(B) (2007).

¹⁰¹ 42 U.S.C. § 14044b (2007).

¹⁰² 42 U.S.C. § 14044b(b)(1) (2007).

¹⁰³ *Id.*

¹⁰⁴ Email from Robin M. Jones, Trafficking in Persons Program, Administration for Children and Families, U.S. Department of Health and Human Services, to Kirsten Widner, Post Graduate Fellow, Barton Child Law and Policy Clinic (Nov. 9, 2007, 17:20 EST) (on file with the Barton Clinic).

¹⁰⁵ 42 U.S.C. § 14044a (2007).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ H.R. 3887: William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007, 110 Cong. (2007). As of January 11, 2008, this bill had passed the House of Representatives by an overwhelming margin (405-2) and was awaiting action in the Senate.

¹⁰⁹ These additional steps help the U.S. to fulfill its obligations under international law. See *infra* notes 145-173 and accompanying text.

¹¹⁰ 18 U.S.C. § 1851 (2007) (providing a penalty of fifteen years to life if the child is under fourteen years of age, and ten years to life if the child is between fourteen and eighteen.) A person commits the crime if he or she knowingly—

same punishment.¹¹¹ The trafficker must make full restitution to the victim of losses suffered,¹¹² and the victim may bring a civil action against the trafficker for damages.¹¹³ Additionally, a trafficker's "interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of [the] violation" as well as any proceeds from the trafficking are subject to forfeiture.¹¹⁴ Finally, the executive branch is charged with implementing a variety of trafficking prevention efforts, including economic development programs such as microlending, and education and public awareness initiatives.¹¹⁵

Model State Legislation

These federal efforts, though laudable, are not sufficient for two reasons. First, the jurisdiction of the federal statute is limited to trafficking that affects interstate or foreign commerce, or which occurs on federal land, such as military bases.¹¹⁶ This means that a local child trafficked only within the state may not fall under the federal statute. Second, state and local law enforcement officers are more likely to encounter both the victims and the offenders, and thus need to be armed with both the training to identify trafficking, and laws under which they can arrest and prosecute the offenders.

Recognizing that the states have an important role to play in combating human trafficking, the U.S. Department of Justice (DOJ) created the Model Anti-Trafficking Criminal Statute.¹¹⁷ The DOJ noted that most states already have statutes criminalizing some or all of the Model's targeted behavior, but concluded that "there is a strong need for uniformity in definitions and concepts across state

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act....

Id.

¹¹¹ 18 U.S.C. § 1894(a)(2007) ("Whoever attempts to violate [the trafficking provisions] shall be punishable in the same manner as a completed violation of that section.")

¹¹² 18 U.S.C. § 1593 (2007).

¹¹³ 18 U.S.C. § 1595(2007). Note, however, that to bring a federal civil action under this code section, the victim must have suffered a violation of federal, not state law, and the action is stayed while criminal charges against the offender are pending. *Id.*

¹¹⁴ 18 U.S.C. § 1594 (2007).

¹¹⁵ 22 U.S.C. § 7104 (2007).

¹¹⁶ 18 U.S.C. § 1851 (2007).

¹¹⁷ United States Department of Justice, Model Anti-Trafficking Criminal Statute, http://www.usdoj.gov/crt/crim/model_state_law.pdf (last visited Nov. 6, 2007)[hereinafter DOJ Model].

lines to minimize confusion as trafficking victims in state prosecutions begin to seek the victim protections available through the federal Departments of Health and Human Services and of Homeland Security.”¹¹⁸ In other words, to qualify for federal victim relief benefits, victims must be able to show that they meet the federal definition of a victim of a severe form of human trafficking, and this can be unnecessarily challenging if state definitions vary significantly from those in the federal law. In 2004, the Senate passed a resolution endorsing the model and encouraging its adoption.¹¹⁹

As its name suggests, the Model Anti-Trafficking Criminal Statute focuses on the prosecution of traffickers. It begins by setting forth a series of definitions. Most notable in relation to the commercial sexual exploitation of children are the definition of “obtain” which means to secure the performance of labor or services, and the definition of “services” which includes “[c]ommercial sexual activity and sexually-explicit performances.”¹²⁰ Next, the Model lays out three felony-level trafficking crimes, the most relevant of which for this Paper is sexual servitude of a minor.¹²¹ A person commits the crime of sexual servitude of a minor if he or she:

...knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in commercial sexual activity, sexually-explicit performance, or the production of pornography (see [relevant state statute] (defining pornography)), or causes or attempts to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography....¹²²

This broad language covers all children in prostitution more clearly than that in the Georgia anti-human trafficking statute.¹²³ When combined with the definitions above, the language in the Model indicates that not just pimps, but also “johns” buying sexual services from children would be guilty of trafficking, because they are securing the sexual services of the child in exchange for value. By extension, then, any child under eighteen who had been commercially sexually exploited, regardless of whether or

¹¹⁸ *Id.* at 7.

¹¹⁹ S. Res. 414, 108th Cong. 2d Sess. (2004) (“The Senate...strongly encourages State legislatures to carefully examine the Department of Justice’s model State anti-trafficking criminal statute, and to seriously consider adopting State laws combating human trafficking....”).

¹²⁰ DOJ Model, *supra* note 117 at 2.

¹²¹ *Id.* at 2-3. The other two crimes are involuntary servitude, and trafficking of persons for forced labor or services. *Id.* These crimes, though important in the overall fight against human trafficking, are beyond the scope of this paper.

¹²² *Id.* at 3.

¹²³ See *supra* notes 66-76 and accompanying text.

not they had a pimp, would be a victim of trafficking, because the act requires the exchange with a “john.”

Under the Model, penalties for the crime of sexual servitude of a minor vary depending on the age of the child and whether “overt force or threat” was used.¹²⁴ There are also sentencing enhancements which allow a court to take the extent of the crime and the length of time over which the victimization of the child occurred into account.¹²⁵ The Model also provides that the offender must make restitution to the trafficking victims.¹²⁶

In its notes on the Model, the DOJ states that, “Federal experience has shown that prosecution without victim protection is unworkable.”¹²⁷ However, though the Model does include a section on “Trafficking Victim Protection,” this section only provides for an assessment of the services available in the state, and does not provide any kind of statutory mandate or framework for providing services to victims.

Advocates for trafficking victims agree with the DOJ that “the federal government alone cannot uncover and prosecute all of the large and small trafficking rings operating within the United States,” and that model legislation is needed to guide states’ efforts, but also find “a number of gaps and inconsistencies” in the DOJ’s Model Anti-Trafficking Criminal Statute.¹²⁸ To address these issues, a group of these advocates, the Freedom Network, drafted an alternate State Model Law.¹²⁹ This State Model Law addresses a variety of issues important to the protection of child victims of commercial sexual exploitation. Specifically:

¹²⁴ DOJ Model, *supra* note 117 at 3. Offenders would be punished by imprisonment of the following lengths in the following circumstances:

- (A) in cases involving a minor between the ages of [age of consent] and 18 years, not involving overt force or threat, for not more than 15 years;
- (B) in cases in which the minor had not attained the age of [age of consent] years, not involving overt force or threat, for not more than 20 years;
- (C) in cases in which the violation involved overt force or threat, for not more than 25 years.

Id. Additionally, if the offense “involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years or life.” *Id.*

¹²⁵ *Id.* at 3-4 (listing as sentencing considerations bodily injury, time in servitude, and number of victims).

¹²⁶ *Id.* at 4.

¹²⁷ DOJ Model, *supra* note 117 at 12.

¹²⁸ GLOBAL RIGHTS & FREEDOM NETWORK, STATE MODEL LAW ON PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING 1 (2005), *available at* <http://www.urbanjustice.org/pdf/publications/FNStateModelLaw.pdf> (last visited Nov. 6, 2007).

¹²⁹ *Id.*

- It defines “minor” as “a person under the age of 18 years.”¹³⁰ This important definition is missing from the DOJ Model.
- It adds accomplice liability.¹³¹
- It adds an additional consideration for sentencing enhancement—if the offender “knew or should have known” that their victim was a “vulnerable victim” defined as “a person who had no real or acceptable alternative but to submit.”¹³²
- It provides for a rule of evidence similar to rape-shield laws, which makes a victim’s other sexual behavior or their sexual predisposition inadmissible in civil or criminal proceedings related to trafficking.¹³³
- It gives victims of trafficking immunity from prosecution for “unlawful acts committed as a direct result of, or incident or related to, being trafficked,” and prevents them from being held “in detention centers, jail or prison.”¹³⁴
- It requires forfeiture by the offender of assets used to commit the crime and proceeds derived from the trafficking.¹³⁵ It goes a step further, however, and provides an order of priority for how the forfeited assets should be used: first to pay the restitution due to victims, second to fund services for trafficking victims, third to fund law enforcement efforts, and finally, anything left over would be used to fund prevention efforts.¹³⁶
- It adds detailed procedures for ensuring victims receive restitution.¹³⁷
- It provides a civil action “for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief,” and treble damages where the offender behaved willfully or maliciously.¹³⁸ Where the act

¹³⁰ *Id.* at 3.

¹³¹ *Id.* at 2, 5. This is consistent with the CRC Protocol’s requirement that “complicity or participation” in child prostitution be criminalized. CRC Protocol, *supra* note 20 at art. 3(2). See discussion *infra* notes 151-152 and accompanying text.

¹³² GLOBAL RIGHTS & FREEDOM NETWORK, *supra* note 128 at 5.

¹³³ *Id.* at 6.

¹³⁴ *Id.*

¹³⁵ *Id.* at 7. This is also consistent with U.S. obligations under the CRC Protocol. CRC Protocol, *supra* note 20 at art. 7.

¹³⁶ GLOBAL RIGHTS & FREEDOM NETWORK, *supra* note 128 at 7.

¹³⁷ *Id.* at 7-9.

¹³⁸ *Id.* at 9.

involved a minor, the statute of limitations would be fifteen years from the date the minor turns eighteen, even if a guardian ad litem is appointed before the victim's eighteenth birthday.¹³⁹

- It adds a provision for training “all relevant local and state agencies, including, but not limited to, healthcare, hospital, law enforcement, labor, agriculture, housing, and social service” in how to identify and protect trafficking victims, paying particular attention to their unique needs.¹⁴⁰
- Perhaps most importantly, the State Model Law recommends that states provide comprehensive services to trafficking victims, including the medical services such as HIV and STD testing, mental health counseling, language assistance where necessary, education and job training, legal services, and shelter programs.¹⁴¹ Because this section was drafted as “recommendations,” the language could not be adopted directly, but rather would need to be tailored to the state’s priorities and structure. These provisions do not specify any kind of reporting or monitoring of the effectiveness of services, but such monitoring would be advisable to include to ensure the needs of victims are truly being met.

These changes and additions to the DOJ Model create a better balance between the desire to aggressively prosecute those who victimize and exploit children, and the critical need to attend to the traumatized children they have left in their wake. However, neither Model really addresses prevention. Keeping children out of harm’s way to begin with is a necessary component of any comprehensive solution to the problem of commercial sexual exploitation of children, and, as will be discussed in the next section, is a key component of our obligations under international law.¹⁴² Further, while the broad language of the definition of sexual servitude of a minor should encompass all commercially exploited children,¹⁴³ some judges and other decision makers might want give it a more limited reading. If that were the case, there could be some child prostitutes who, because they are not pimped by someone else, might be excluded from the protections and services guaranteed to those considered trafficking victims.

¹³⁹ GLOBAL RIGHTS & FREEDOM NETWORK, *supra* note 128 at 10.

¹⁴⁰ *Id.* at 16.

¹⁴¹ *Id.* at 10-14.

¹⁴² See *infra* notes 164-165 an accompanying text.

¹⁴³ See *supra* notes 120-124 and accompanying text.

International Legal Framework

As previously discussed, international law is important to consider, both because treaties and executive agreements represent an exercise of federal authority which preempts state law when the two conflict,¹⁴⁴ and because these agreements represent the best thinking of international experts on the subject of commercial sexual exploitation of children. There are a number of international agreements addressing the commercial sexual exploitation of children, but only three have been ratified by the United States: (1) United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC Protocol);¹⁴⁵ (2) International Labour Organization Worst Forms of Child Labour Convention (ILO Convention);¹⁴⁶ and (3) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol).¹⁴⁷ The following sub-sections briefly describe the key provisions of each, highlighting the obligations the United States has assumed for addressing the commercial sexual exploitation of children.

CRC Protocol

The CRC Protocol defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration.”¹⁴⁸ Although the CRC Protocol does not specifically define “child,” its underlying treaty, the Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹⁴⁹ As a State Party to the CRC Protocol,¹⁵⁰ the United States has committed to:

ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

...

(a) (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

¹⁴⁴ U.S. CONST. art. II, § 2; *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 421 (2003).

¹⁴⁵ CRC Protocol, *supra* note 20. Note that while the U.S. has never ratified the underlying Convention on the Rights of the Child, it did ratify this Protocol on December 23, 2002 with no reservations.

¹⁴⁶ ILO Convention, *supra* note 20.

¹⁴⁷ Trafficking Protocol, *supra* note 22.

¹⁴⁸ CRC Protocol, *supra* note 20 at art. 2(b).

¹⁴⁹ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Although the United States is not a state party to this underlying convention, its definitions are incorporated by reference into the CRC Protocol.

¹⁵⁰ The United States ratified the CRC Protocol on December 23, 2002.

a. Sexual exploitation of the child;

...

(b) Offering, obtaining, procuring or providing a child for child prostitution....¹⁵¹

The CRC Protocol requires criminalization of sexual exploitation and prostitution of children, as well as “complicity or participation” in these acts.¹⁵² These provisions clearly call for criminalization of traffickers and pimps. They can also be interpreted to call for criminalization of the johns, who “obtain” the child, at least temporarily, for the purpose of child prostitution, and who are, at a minimum, complicit in the exploitation of the child. The CRC Protocol requires that penalties for the described offenses must be consistent with their “grave nature.”¹⁵³ To further penalize the perpetrators and aid in permanently ending their operations, states are required to take measures to confiscate assets used in and proceeds gained from these offenses.¹⁵⁴

The state parties are also required to “adopt appropriate measures” to protect the “rights and interests” of victims during the criminal prosecution of offenders.¹⁵⁵ The CRC Protocol further provides that “in the treatment by the criminal justice system of children who are victims of the offences described in the [CRC] Protocol, the best interest of the child shall be a primary consideration.”¹⁵⁶ The broad language of this provision seems to apply not just to children’s involvement in proceedings as witnesses against their exploiters, but also to proceedings stemming from any charges that might be brought against the children as a result of their exploitation.

The focus of the CRC Protocol is not simply on prosecution of exploiters and protection of victims, however. It also requires prevention efforts and victims’ services. Prevention efforts are to be implemented through “laws, administrative measures, social policies and programmes,” with particular attention paid to the children who are most vulnerable to exploitation.¹⁵⁷ State parties to the CRC Protocol also specifically committed to take “all feasible measures” to provide necessary services for children who have been victimized so that they may achieve “their full social reintegration and their full physical and psychological recovery.”¹⁵⁸ Finally, states must provide procedures for child victims to seek “compensation for damages from those legally responsible.”¹⁵⁹

¹⁵¹ CRC Protocol, *supra* note 20 at art. 3(1).

¹⁵² *Id.* at art. 3(2).

¹⁵³ CRC Protocol, *supra* note 20 at art. 3(3).

¹⁵⁴ *Id.* at art. 7. This provision is qualified somewhat by the recognition that parties must do this “subject to the provisions of their national law.” *Id.* In the U.S., federal, state, and local law often provides for forfeiture of assets in relation to crime.

¹⁵⁵ *Id.* at art. 8.

¹⁵⁶ *Id.* at art. 8(3).

¹⁵⁷ CRC Protocol, *supra* note 20 at art. 9(1) & (2).

¹⁵⁸ *Id.* at art. 9(3).

¹⁵⁹ *Id.* at art. 9(4).

In addition to these requirements, the CRC Protocol recognizes the need for a “holistic approach” to child prostitution, and urges state parties to address the contributing factors such as socioeconomic problems and gender discrimination, and to create public awareness of the issue.¹⁶⁰ However, these goals are framed in aspirational language, rather than the mandatory language of the other provisions described above.

ILO Convention

The second applicable international agreement to which the United States is a party is the ILO Convention.¹⁶¹ The ILO Convention defines “child” as “all persons under the age of 18,”¹⁶² and includes in its definition of “the worst forms of child labour:”

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children... and forced or compulsory labour...

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities...

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁶³

While the ILO Convention does mention penal and other sanctions,¹⁶⁴ its focus is on the needs of children. It requires countries to:

take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

¹⁶⁰ *Id.* at preamble.

¹⁶¹ ILO Convention, *supra* note 20. The United States ratified this Convention on February 12, 1999, thereby becoming a state party.

¹⁶² *Id.* at art. 2.

¹⁶³ *Id.* at art. 3.

¹⁶⁴ *Id.* at art. 7.

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(d) identify and reach out to children at special risk; and

(e) take account of the special situation of girls.¹⁶⁵

These requirements overlap somewhat with CRC Protocol, but place greater emphasis on education and outreach.

Trafficking Protocol

The final relevant international agreement to which the United States is a party is the Trafficking Protocol. The Trafficking Protocol defines “trafficking in persons” as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation....

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth [above].¹⁶⁶

Like the ILO Convention, the Trafficking Protocol considers a child to be a person under eighteen years of age.¹⁶⁷ Thus, trafficking in persons encompasses child prostitution to the extent that the child was recruited, transported, harbored, or received into prostitution. However, the Trafficking Protocol does not apply as broadly to all child prostitutes as do the CRC Protocol and the ILO Convention. This is in part because of its more limited language, but also because the Trafficking Protocol's underlying treaty limits its application to transnational trafficking by an “organized criminal group.”¹⁶⁸

¹⁶⁵ ILO Convention, *supra* note 20 at art. 7(2).

¹⁶⁶ Trafficking Protocol, *supra* note 22 at art. 3.

¹⁶⁷ *Id.* at art. 3(d).

¹⁶⁸ *Id.* at art. 1 § 1 (“This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.”).

The Trafficking Protocol requires the criminalization of trafficking in persons¹⁶⁹ and the protection of victims.¹⁷⁰ It recommends services to victims, but does not go as far as the CRC Protocol in requiring them.¹⁷¹ However, it does specifically require states to “protect victims of trafficking in persons, especially women and children, from revictimization,”¹⁷² which arguably means that sufficient services must be provided to keep them from returning to a highly vulnerable position.

The Trafficking Protocol also takes a strong position on prevention, requiring state parties to “establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons,” and to “take or strengthen measures...to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”¹⁷³

Summary of Relevant Federal and International Law

Since the passage of the TVPA in 2000, the federal government has included commercial sexual exploitation of children in its broader efforts against human trafficking. Exploiting children through trafficking is a federal crime, and victims are entitled to a number of benefits, including freedom from detention, rehabilitative services, and special immigration status. Federal anti-trafficking efforts also include the appropriation of funds for grants to state and community organizations working to provide victims services and improve law enforcement efforts to end trafficking. The federal government recognizes that states have an important role to play in ending human trafficking, and has promulgated model state legislation which it encourages states to adopt. Trafficking victims’ advocates have proposed valuable additions and amendments to the model legislation to make it more victim-centered and services-focused.

The international agreements to which the U.S. is a party recognize that people under eighteen years of age who are involved in prostitution are victims of exploitation in need of services and protection. These treaties require outreach and other efforts to prevent victimization from occurring, and education, mental and physical health and other necessary services for victims in cases where it has occurred. Victims must also be provided with some mechanism to seek compensation for the harms that they have suffered, and criminal proceedings involving a child victim must use a “best interests of the child standard.”

¹⁶⁹ *Id.* at art. 5.

¹⁷⁰ Trafficking Protocol, *supra* note 22 at art. 6.

¹⁷¹ Trafficking Protocol, *supra* note 22 at art. 6 (“Each State Party shall *consider* implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons....” (emphasis added)).

¹⁷² *Id.* at art. 9(1)(b).

¹⁷³ *Id.* at art. 9(1)(a) & 9(4).

Under international law, those who exploit children through prostitution, which certainly includes pimps and human traffickers, and arguably also includes “johns,” are criminals who should face significant penalties reflective of the gravity of their offenses. They should be forced to forfeit anything used in the exploitation, such as cars, guns, or even buildings, as well as any profits from these crimes.

IV. Service Delivery Approaches from Other Jurisdictions

The Georgia, federal, and international laws described above are all currently applicable to commercially sexually exploited children in Georgia. This Part moves away from such direct applicability, and instead seeks to learn from other jurisdictions that are using different approaches. In examining these other approaches, this Part explores a number of concerns raised by some child welfare professionals about treating commercially sexually exploited children as victims rather than offenders. These include the concern that if law enforcement is no longer able to arrest and detain children who are involved in prostitution, then these children will not come to the attention of authorities and will not receive needed services, and the worry that if commercially sexually exploited children are not placed in secure detention they will end up back on the street. This Part addresses these concerns by reviewing how children access services in the other major cities of Las Vegas, Boston, and San Francisco, and outlining the types of services that they receive. Note that all of these cities have tailored their solutions within the framework of their existing state law, rather than taking legislative action.

The Prosecution Model: Las Vegas, Nevada

Las Vegas has one of the highest rates of teen prostitution in the U.S., and police arrest and detain hundreds of children on prostitution charges each year.¹⁷⁴ In Las Vegas, arrest and detention are the primary means for linking prostituted girls to services and getting their pimps off the streets. Although

¹⁷⁴ According to Las Vegas police Detective Sgt. Gil Shannon, head of the teen prostitution unit, police arrested 207 prostitutes under the age of 18 in 2004. See *interview in* Lisa Kim Bach, *Juvenile Prostitution: Trafficking in children on increase*, LAS VEGAS REVIEW-JOURNAL, Mar. 19, 2006, available at http://www.reviewjournal.com/lvrj_home/2006/Mar-19-Sun-2006/news/6434154.html; See also, Jen Lawson, *Children of the Night*, LAS VEGAS SUN, Dec. 5, 2003 (Metro police arrested approximately 140 juvenile prostitutes in 2003 and 125 in 2002.)

prostitution is a misdemeanor in Nevada¹⁷⁵ and youths picked up for misdemeanors are not usually held in detention,¹⁷⁶ juvenile justice officials believe that the practice of detaining child prostitutes is necessary to protect the girls from the dangers of the streets and to obtain information that will lead to the arrest of their pimps.¹⁷⁷

In a 2005 interview with the Las Vegas Sun, the chief juvenile prosecutor described the “prosecution model” for dealing with child prostitution: “Our concern is, are [juvenile offenders] a danger to themselves or a danger to the community?” In the case of teen prostitutes, the prosecutor explained, “they’re clearly a danger to themselves. Physical assault, beatings, sexual abuse, venereal diseases, pregnancy, psychological damage – the risks are tremendous.” Detention not only protects the girls, but “allows the cops to come talk to them so we can pursue prosecution of the adult offender.”¹⁷⁸

Prosecution as the Gateway to Services

In Las Vegas, children involved in prostitution are picked up by police and charged with prostitution or status offenses. A special unit of vice officers who work for the STOP (“Stop Turning Out Child Prostitutes”) program interview every child who is suspected of being involved in prostitution within a half-hour of the time the child is booked into detention to assess whether the child is a victim of commercial sexual exploitation.¹⁷⁹ The STOP detectives’ mission is “to help the girls get out of prostitution for good and build cases against their pimps.”¹⁸⁰

According to Detective Sgt. Gil Shannon, head of the STOP unit, the vice officers have long had an agreement with the detention center to automatically detain juveniles arrested for prostitution on a “vice hold.”¹⁸¹ Normally, juveniles arrested on misdemeanors are released or held only after a determination of

¹⁷⁵ NEV. REV. STAT. § 201.345 (2007). Note that some prostitution is legal in Nevada, but only if it takes place within a licensed house of prostitution. *Id.*

¹⁷⁶ Molly Ball, *Authorities clash over handling of teens arrested for prostitution*, LAS VEGAS SUN, Apr. 5, 2005. In fact, according to the *Sun* article, the Las Vegas juvenile justice department has been actively working to detain fewer youths as part of a 2004 Juvenile Detention Alternatives Initiative. Girls involved in prostitution have not been included in this initiative.

¹⁷⁷ Ball, *supra* note 176.

¹⁷⁸ *Id.* (quoting then Chief Deputy District Attorney Teresa Lowry, Juvenile Division, Clark County District Attorney’s Office, Las Vegas, Nev.).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Ball, *supra* note 176. Use of the “vice hold” is controversial. Public defenders argue that it is an intentional violation of the girls’ rights, and argue that there are legal means for detaining witnesses who are reluctant to testify but have important information, such as applying to a court for a material witness warrant. *Id.* However, according to Cherie Townsend, Director of the Department of Juvenile Justice Services, material witness warrants are rarely obtained. In an October 2006 telephone interview, she reported that the procedure was used only once in the past nine months. Telephone Interview with Cherie Townsend, Director of the Department of Juvenile Justice Services, in Clark County, Nev. (Oct. 10, 2006).

exceptional circumstances, but teens involved in prostitution are kept in custody for at least eight days and interviewed each day by the STOP officers.¹⁸²

Detention of these girls, however, often lasts much longer than eight days. According to a 2005 analysis of booking statistics by the Las Vegas Sun, the average length of a single stay for the girls brought in on prostitution charges was approximately three weeks.¹⁸³ Pam Towers, a senior management analyst for the Las Vegas Juvenile Justice Department, says that the “teen prostitution population lingers in detention approximately seven to twenty-one days longer than the general population.”¹⁸⁴

Detective Shannon maintains that long detentions are necessary to help the girls get off the streets. “In my experience,” he told the Las Vegas Sun in 2005, “when you release a child too soon or don’t detain them at all, they go right back to a life of prostitution.” Often, girls involved in prostitution deny that they have been exploited and are deeply attached to their pimps.¹⁸⁵ Detention “allows detectives to break the physical or psychological bond put on the child by the pimp,” he explained. The detectives use the time to gain the girls’ trust, convince the girls to get help, and investigate the case against their pimps.¹⁸⁶

According to Cherie Townsend, Director of Las Vegas’ Juvenile Justice Services, if a child is willing to leave the streets and cooperate in the prosecution of her pimp, the charge of prostitution is usually dropped and she is released from detention to one of two specialized programs for victims of commercial sexual exploitation: WestCare Nevada in Las Vegas or Children of the Night in California.¹⁸⁷ WestCare Nevada operates a specialized residential treatment program for runaway and homeless youth with separate facilities for boys and

¹⁸² Interview with Townsend, *supra* note 181. Also generating controversy is STOP’s practice of interviewing the girls without reading them their rights. The police department claims that a “Chinese Wall” exists between the STOP officers and other officers who might pursue criminal charges against the girls, but defense attorneys continue to protest. Ball, *supra* note 176.

¹⁸³ Ball, *supra* note 176 (finding an average length of stay of 20.3 days). According to one juvenile probation supervisor interviewed in the article, one reason the average is so high is that it includes lengthy detentions for girls arrested on probation violations. *Id.* In addition, 30% to 50% of juveniles arrested for prostitution in Las Vegas are from outside the county’s jurisdiction, who may be detained longer than local youth. Telephone Interview with Larry Carter, Assistant Director, Juvenile Justice Services Department, in Las Vegas, Nev. (Nov. 20, 2006).

¹⁸⁴ E-mail from Pam Towers, Senior Management Analyst, Department of Juvenile Justice Services, in Clark County, Nev., to Darlene Lynch, Barton Child Law and Policy Clinic (Oct. 4, 2006, 20:19 EDT) (on file with the Barton Child Law and Policy Clinic).

¹⁸⁵ Interview with Dr. Yolanda Graham, Director of Angela’s House, in Atlanta, GA (Oct. 9, 2006).

¹⁸⁶ Ball, *supra* note 176. Some defense attorneys argue that the STOP officers merely “sweet-talk” the girls to get at their pimps and discard them afterward. *Id.*

¹⁸⁷ Interview with Townsend, *supra* note 182. Another juvenile justice official reports that, while STOP officers are often successful working with the girls, in those cases where girls refuse to cooperate, the charge of prostitution is not dropped, and the girls are released under some sort of supervision without referral to a specialized treatment facility. The most recalcitrant girls may be moved from juvenile hall to detention in one of Las Vegas’ youth training centers. Interview with Carter, *supra* note 183.

girls, and works in collaboration with the Las Vegas juvenile justice and police departments.¹⁸⁸ 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.¹⁸⁹

Lois Lee, founder and president of COTN, endorses the Las Vegas prosecution model and works closely with Las Vegas police and juvenile probation. However, while she believes detention is an appropriate way to get children off the streets and improve prosecution of pimps, she notes that the model only works if the police are specially trained, honest and compassionate—as she believes is the case in Las Vegas—and the charge of prostitution is eventually dropped, and the child linked to services. In her words, COTN is the “carrot” and law enforcement is the “stick” that leads to the arrest of “vile pimps that force the children to prostitution for food and a place to sleep.”¹⁹⁰

COTN provides services that help children testify in cases against their pimps, as well as services that help them recover from commercial sexual exploitation. For example, staff file police reports; buy the children court clothes; accompany the children to court even when that involves out-of-state travel, and try to “normalize” the trial experience, by taking the child to lunch, a movie or the mall before returning home.¹⁹¹

COTN’s treatment services are extensive. The COTN residence is a comfortable, homelike environment with twenty-four beds. Upon arrival, children receive fresh clothing and hygiene kits and are assigned to a bedroom with bath. They meet with a caseworker to develop an individual life plan. The caseworker coordinates medical care, psychological care, academic assessments and other social services that the child needs.¹⁹² The children follow a highly structured program that includes attending an on-site school, where they study individually-tailored curricula that help them reach appropriate grade levels in all subjects before they leave COTN. They attend independent living classes, 12-step substance abuse meetings, and AIDS education classes, as well as craft and poetry workshops, yoga classes and varied sporting and recreational activities.¹⁹³

¹⁸⁸ WestCare website, Nevada locations page, <http://www.westcare.com/slnevada.jsp> (last visited Nov. 5, 2007).

¹⁸⁹ Interview with Lee, *supra* note 85; *see also*, Children of the Night website, <http://www.childrenofthenight.org> (last visited Nov. 5, 2007).

¹⁹⁰ Interview with Lee, *supra* note 85.

¹⁹¹ *Id.*

¹⁹² Children of the Night website, <http://www.childrenofthenight.org> (last visited Nov. 5, 2007).

¹⁹³ *Id.*

Because COTN is a purely voluntary, private program, a child may stay at the home for as long as she needs. Many opt to stay for a year for optimum treatment. Once they turn eighteen, the youth can receive assistance in leasing apartments, getting into college or trade school, or securing jobs. All those who leave COTN are considered “alumni” and can re-contact the group for services, such as free books and school supplies while they are in college, job recommendations, or crisis intervention.¹⁹⁴ According to Lois Lee, COTN’s program is extremely successful. She claims that 80 percent of the children who have gone through the program have not returned to prostitution, although this number is hard to verify.¹⁹⁵

Benefits and Drawbacks of the Prosecution Model

Proponents of the prosecution model argue that, while it is not ideal to prosecute young girls who have been victimized by pimps, the ability to prosecute the girls is an essential tool in the fight against child prostitution. First, they believe arrest and detention is necessary to force prostituted children off the streets and link them to services. Second, they believe that the threat of prosecution, coupled with arrest and detention, is the only way to get most girls to cooperate in investigations of the pimps.¹⁹⁶

Nevertheless, the drawbacks of the prosecution model are significant. Detention sends the message that the girls are criminals deserving of punishment, rather than victims of sexual exploitation in need of help. Further, the increase in the use of detention for girls over the past decade has magnified longstanding problems within detention systems.¹⁹⁷ According to a 2005 study from the Annie E. Casey Foundation on detention reform and girls:

Many girls’ units are overcrowded and conditions of confinement for many girls in detention are poor. Over the past decade, complaints about conditions for girls in detention were raised in Georgia, Connecticut, Maryland, Pennsylvania, Louisiana, South Dakota, and California, among other states. As the rate of detention for girls has increased, already poor environmental conditions and inequities in programming, physical exercise, mental health treatment, and education have become worse.¹⁹⁸

¹⁹⁴ *Id.*

¹⁹⁵ Lawson, *supra* note 174.

¹⁹⁶ Interview with Carter, *supra* note 183. Interview with Lee, *supra* note 85.

¹⁹⁷ Francine T. Sherman, Annie E. Casey Foundation, *Detention Reform and Girls*, 13 PATHWAYS TO JUVENILE DETENTION REFORM 10 (2005), available at http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf (noting a 50 percent increase in the number of female delinquency cases entering detention from 1990 to 1999, compared with a 4 percent increase for boys, and the girls’ upward trend continued through 2001).

¹⁹⁸ *Id.* at 12.

Detention facilities are not only ill-equipped to provide the comprehensive services that commercially sexually exploited children need, but research shows that incarceration often makes the children's difficulties worse: "If girls enter detention particularly vulnerable due to their chaotic home lives, histories of trauma and high rates of mental illness, conditions in detention often exacerbate their difficulties."¹⁹⁹ Moreover, prostituted children often re-live early trauma when they are isolated and restrained in detention; they are at higher risk of abuse by staff and other offenders; and the sense of powerlessness that keeps them in the grip of their pimp is heightened rather than reduced.²⁰⁰

Indeed, the underlying assumptions of the prosecution model—that detention is helpful in keeping girls safe, providing services, and prosecuting pimps—are unproven. Some question whether juvenile courts are best able to provide needed services, noting that some service providers will not accept a child with pending charges and that arrest may "create an adversarial rather than rehabilitative relationship with the court system."²⁰¹ While advocates of the prosecution model argue that detention increases the likelihood that girls will leave the streets and accept long-term treatment,²⁰² independent, objective verification of this claim is needed. Additional research is also needed to determine whether girls are truly more likely to cooperate in the prosecution of their pimps when they are criminally charged than when they are not.

Finally, by focusing on prostituted children who are arrested and detained, the prosecution model may allow children outside the juvenile justice system to fall through the cracks. At-risk children, as well as children who are already involved in prostitution but have escaped arrest,²⁰³ may not receive the services they need. Youth-serving agencies that have contact with these children may be reluctant to identify them out of fear of subjecting the children to prosecution.²⁰⁴ Thus, even though the prosecution model allows authorities to force children off the streets who would not leave otherwise, a lack of inter-agency collaboration might actually result in fewer, rather than more, children being served.

The Child Abuse Model: Boston, Massachusetts

In Boston, Massachusetts, children involved in prostitution are now being treated as victims of child abuse, rather than as perpetrators of a crime.

¹⁹⁹ *Id.* at 25.

²⁰⁰ *Id.*

²⁰¹ KLAIN, *supra* note 6 at 10-11.

²⁰² Detective Sgt. Shannon claims that 80 to 90 percent of the girls who go through the STOP program are not picked up again as juveniles. Ball, *supra* note 176.

²⁰³ It is becoming easier for children to escape arrest, as customers are able to make appointments over the internet and the illegal activity moves indoors. Telephone Interview with Leora Joseph, Assistant District Attorney, in Suffolk County, MA. (Nov. 6, 2006).

²⁰⁴ *Id.*

Although prostitution by a child is still a crime in Massachusetts,²⁰⁵ Suffolk County District Attorney Daniel F. Conley has gone on record that his office will not prosecute children for that crime.²⁰⁶

We are . . . taking a new approach at looking at teenage prostitutes. I'm proud to say that the district attorney's office is a lead partner in a new initiative that seeks to understand why teenagers fall into lives of prostitution, and how we can best help them escape that life. One major focus of this effort is to view teenage prostitutes as victims rather than defendants . . . [W]e now – when a case of a teenage prostitute is referred to us, either through DYS or the police department or some other source – have a better idea of what needs to be done to ensure that the child is getting the services she needs. Rather than prosecute her, we and our partners make sure she has safe and suitable housing, that she is enrolled in some sort of educational program, that any mental or physical health issues she may have are being addressed. Our goal, as it is with any other victim, is to protect her and put her on a safe and healthy track.²⁰⁷

Instead of pursuing prosecutions of children involved in prostitution, the District Attorney's Office is now working with more than 30 community-based and government agencies, including the state's child protective agency, juvenile justice services, law enforcement, health care providers and interested non-profit groups to create a model for dealing with prostituted children that is based on the model used for child abuse victims.²⁰⁸

Institutional Changes to Prepare the Way for a Victim-Centered Approach

In early 2000, the District Attorney's Office began to take steps toward providing better services to all victims of abuse, including child victims of prostitution, and better prosecution of their abusers. In 2001, it created the Teen Prostitution Prevention Project (TPPP) to foster collaboration among the key players involved in serving prostituted children in Suffolk County and "achieve prevention, intervention and prosecution of [adult] offenders."²⁰⁹

²⁰⁵ MASS. GEN. LAWS ch. 272, § 53A (2007).

²⁰⁶ Assistant District Attorney Leora Joseph, who manages teen prostitution cases, is careful to say that the D.A.'s office has a "preference" not to prosecute, but retains the ability to do so. Interview with Joseph, *supra* note 203.

²⁰⁷ Daniel F. Conley, District Attorney, Suffolk County, Mass., Remarks at the 15th National Conference on Child Abuse and Neglect (Apr. 25, 2005) (emphasis added), *available at* <http://www.mass.gov/dasuffolk/docs/Speech042105.html>.

²⁰⁸ Interview with Joseph, *supra* note 203.

²⁰⁹ Kerry Seitz, Girls' Coalition of Greater Boston, *The Teen Prostitution Prevention Project: A Multidisciplinary Approach in Understanding and Supporting Prostituted Girls*, 12 GIRL MATTERS 8 (2005), *available at* [http://www.girlscoalition.org/uploads/issues/gc.SUMMER.05.final.lores\(1\).pdf](http://www.girlscoalition.org/uploads/issues/gc.SUMMER.05.final.lores(1).pdf).

In 2003, it consolidated its child abuse, domestic violence and sexual assault units into a single Family Protection and Sexual Assault Unit and later assigned cases of child prostitution to this unit.²¹⁰ Now, when prosecutors receive a child prostitution case, they treat the child as a victim/witness, rather than as a defendant. Prosecutors work as part of a multidisciplinary team to provide services to the child and — if she is willing — to build a case against her pimp. Because they work from a child abuse model, they do not use threats of criminal charges to pressure the child to cooperate in the prosecution of her pimp or withhold services until she does.²¹¹

In 2005, the District Attorney's Office opened the Family Justice Center to serve as a central location where victims of domestic violence, sexual abuse and child abuse can meet with police and prosecutors, as well as receive shelter, medical care, counseling, legal assistance, a hot meal and other basic services.²¹² The Center houses TPPP and serves children involved in prostitution.²¹³ The hope is that, if a prostituted child is treated compassionately and spared having to repeat her story to the many different parties involved in her case, she will not "get worn down [or] give up," while her "offender escapes accountability."²¹⁴ The Family Justice Center provides a markedly different environment than the police precincts and juvenile detention facilities, where many child victims of commercial sexual exploitation, such as those in Las Vegas, are questioned and held.

The Filing of a Child Abuse Report is the Gateway to Services

The dilemma presented by the child abuse victim model is: How do authorities identify and serve children who are involved in prostitution, if the children are not arrested and detained? The answer lies in the filing of mandatory child abuse reports. In Suffolk County, the filing of a "51A" report is the gateway to services for children victimized by commercial sexual exploitation.

Like Georgia²¹⁵ and most other states, Massachusetts requires that human service professionals, such as police officers, psychologists, educators and doctors, report suspected child abuse.²¹⁶ Until recently, however, these mandatory reporters were not filing 51A reports when they suspected that a child was being prostituted, says Kerry Seitz, director of TPPP.²¹⁷ One of TPPP's

²¹⁰ Conley, *supra* note 207.

²¹¹ Interview with Joseph, *supra* note 203.

²¹² Daniel F. Conley, District Attorney, Suffolk County, Mass. Family Justice Center Announcement (Nov. 13, 2003), *available at* <http://www.mass.gov/dasuffolk/docs/speech111303.html>.

²¹³ Telephone Interview with Kerry Seitz, Director, Teen Prostitution Prevention Project, in Suffolk County, Mass. (Nov. 13, 2006).

²¹⁴ Conley, *supra* note 207.

²¹⁵ O.C.G.A. § 19-7-5 (2007). *See, also, supra* notes 57-65 and accompanying text.

²¹⁶ MASS. GEN. LAWS. ch. 119, § 51A.

²¹⁷ Seitz, *supra* note 209.

ongoing initiatives has been to educate mandated reporters that prostitution creates “physical or emotional injury...which causes harm or substantial risk of harm to the child’s health or welfare...” and thus is child abuse.²¹⁸ Seitz claims that this educational effort has resulted in a significant increase in filings of prostitution-related child abuse reports, though specific statistics were not available.²¹⁹

Thus, the 51A report in Boston has replaced prosecution as the means for identifying children involved in prostitution and linking them to services. Police now file 51A reports, rather than arrest reports, when they encounter a teen involved in prostitution.

The Child Abuse Report Triggers a Multidisciplinary Team Response

The filing of a 51A report in a child prostitution case triggers a Multidisciplinary Team (MDT) response, just as it does in cases of child abuse or domestic violence. Once the TPPP receives a 51A report, it assembles an MDT, including a police officer, prosecutor, victim witness advocate, child welfare case worker and sometimes a probation officer, outreach worker or other service provider familiar with the child. The MDT convenes by teleconference within forty-eight hours of the report to address the child’s immediate needs, such as safe housing; evaluate the level of support from her family and community; and identify adult offenders.²²⁰

TPPP then arranges for the child to be interviewed at the Family Justice Center by a forensic investigator who is specially-trained to handle child abuse victims. The members of the MDT observe the interview behind a one-way mirror and develop a coordinated response to her case. They make referrals to appropriate community-based services and, if the child wishes, take steps toward prosecuting her abusers. The MDT reconvenes regularly thereafter.²²¹

The Multidisciplinary Team Connects the Child Victim to Services

Currently, there are no specialized government-run service programs in Boston for children who are victims of commercial sexual exploitation. The MDT refers victims to an assortment of community-based groups that work with at-risk youth, including the one group that specializes in services for prostituted girls, Roxbury Youth Works (RYW). RYW’s “A Way Back” program provides case management, arranges for safe housing, and, through its daytime drop-in center, provides sexual education classes, computer and job training, self-esteem-

²¹⁸ MASS. GEN. LAWS. ch. 119, § 51A. This statutory definition of child abuse more clearly encompasses all children in prostitution than does Georgia’s more specific definition.

²¹⁹ Interview with Seitz, *supra* note 213.

²²⁰ Interview with Seitz, *supra* note 213.

²²¹ *Id.*

building workshops, art courses, a variety of recreational activities, such as movie nights, as well as referrals to other service programs.²²²

Boston officials have plans to improve the services available to these children by developing “a continuum of care”²²³ designed to meet their specific needs. The continuum will have four parts: 1) an education program that relies on a prostitution prevention course already being offered in public schools;²²⁴ 2) a community drop-in center that provides outreach and basic services and is staffed by prostitution survivors; 3) a staff-secured safe house that offers a homelike, highly-structured environment and specialized treatment programs; and 4) a specialized stabilization or after-care program that reintegrates the children into their communities and families, where appropriate, and helps them live a healthy, normal life outside of prostitution.²²⁵

The Benefits and Drawbacks of the Child Abuse Model

While it is too early to gauge the success of the child abuse model in Boston—particularly because the city’s “continuum of care” is not yet fully in place—one benefit that is already apparent is better identification of children involved in prostitution. By agreeing to treat prostituted children as victims rather than defendants, the District Attorney’s Office appears to have strengthened its relationship with child welfare agencies. In 2007, ADA Leora Joseph of the Office’s child abuse division reported that this new collaboration has led to a dramatic increase in the number of child abuse cases involving prostituted teens: “Until a year and a half ago, DSS would rarely send us these cases because they were worried we would prosecute these girls. Now that we’re all working together, they send us so many, I’m beyond buried.”²²⁶

Early figures bear this out: In 2001, fewer than a dozen juveniles in Massachusetts were documented by DSS as being exploited by prostitution.²²⁷

²²² Olinka Briceno, *A Way Back: An Intervention Program for At-Risk Girls in The Teen Prostitution Prevention Project: A Multidisciplinary Approach in Understanding and Supporting Prostituted Girls*, 12 GIRL MATTERS 6-7 (2005), available at [http://www.girlscoalition.org/uploads/issues/gc.SUMMER.05.final.lores\(1\).pdf](http://www.girlscoalition.org/uploads/issues/gc.SUMMER.05.final.lores(1).pdf).

²²³ Interview with Seitz, *supra* note 213.

²²⁴ The Home for Little Wanderers developed this program in conjunction with a Boston outreach group comprised of prostitute survivors. The course is taught by a licensed social worker and a prostitute survivor. Debra Grollman, *My Life, My Choice: The Home’s Approach to Preventing Team Prostitution: An Intervention Program for At-Risk Girls in The Teen Prostitution Prevention Project: A Multidisciplinary Approach in Understanding and Supporting Prostituted Girls*, 12 GIRL MATTERS 10 (2005), available at [http://www.girlscoalition.org/uploads/issues/gc.SUMMER.05.final.lores\(1\).pdf](http://www.girlscoalition.org/uploads/issues/gc.SUMMER.05.final.lores(1).pdf).

²²⁵ Interview with Seitz, *supra* note 213.

²²⁶ Quoted in Bella English, *Leaving “The Life”*, BOSTON GLOBE, June 21, 2006, available at http://www.boston.com/news/globe/living/articles/2006/06/21/leaving_the_life/ (last visited Nov. 13, 2007).

²²⁷ Seitz, *supra* note 209.

In 2006, after a year and a half under the new system, approximately 100 child victims of prostitution have been identified.²²⁸

One drawback, or challenge, of the child abuse model is that it can only serve children who want help.²²⁹ As A.D.A. Joseph explained, “Now I know about the girls, but I can’t help them.”²³⁰ Because some girls are in denial about their exploitation, it is not uncommon for them to refuse help and run back to the streets.²³¹ While Las Vegas’ response to this problem is to detain the girls for long enough that detectives can get through to them, Boston does not consider arrest and detention an option under the child abuse model. For the child abuse model to work, therefore, it requires: (1) strong education and outreach efforts, and (2) a staff-secured safe house and treatment facility.²³² Because children involved in prostitution are not brought to services through arrest, they must be brought to services through education and outreach. The process of removing the pimp’s psychological hold on the child must take place on the streets, rather than in a holding cell. According to Ms. Seitz, the use of prostitution survivors or “peers” in this effort is critical.²³³

Also required is a safe residence that serves as an alternative to detention and a haven where children who are ready to leave prostitution—or, at least, are open to leaving—can escape their pimp, and begin to heal. In keeping with the child abuse model, Boston’s residential treatment facility will not be locked, but located far from the city with electronically monitored entrances and exits and round-the-clock staff who can discourage the children from leaving when the urge to run strikes.²³⁴

Another concern with the child abuse model is that it may hinder the prosecution of pimps. Some argue that the threat of being prosecuted for prostitution is the only thing that will motivate many children to testify against their pimps.²³⁵ A.D.A. Joseph expressed frustration that, under the new model, she was providing more social services for the child victims without seeing any improvement in her prosecutions of the pimps.²³⁶ However, because the Boston model is so new, it may be too soon to know whether treating child prostitutes as

²²⁸ English, *supra* note 226.

²²⁹ Interview with Joseph, *supra* note 203.

²³⁰ *Id.*

²³¹ Interview with Seitz, *supra* note 213. Seitz reports that, since the child abuse model has been in effect, some girls have run or refused to cooperate with the MDT process. When a girl is on the run, the MDT still convenes in the hope that it will be ready when she returns. When a girl is reluctant to participate, the MDT will reach out to her in her location and encourage her to call when she is ready to leave the streets.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Interview with Lee, *supra* note 85.

²³⁶ Interview with Joseph, *supra* note 203.

victims rather than as offenders really results in fewer successful prosecutions of pimps.

In sum, the advantage of the child abuse model over the prosecution model is that it does not subject child victims of commercial sexual exploitation to the proven, detrimental effects of detention. The model also appears, at least based on early results, to improve identification of exploited children. The difficulty of the model is that it does not forcibly remove children from the streets or coerce children to cooperate against their pimps through the threat of criminal charges. It must rely, instead, on a more painstaking process of outreach, education and persuasion. Time will tell whether this process is more or less effective than the traditional practice of arrest, detention and prosecution.

The Hybrid Model: San Francisco, California

By some counts, San Francisco is home to 3,000 child victims of commercial sexual exploitation, and more than 100 of these children are arrested in the city each year on charges of prostitution.²³⁷ Like Las Vegas, San Francisco uses arrest and detention as a way to remove prostituted children from the dangers of the street, link them to services, and build a case against their abusers. San Francisco differs, however, in that authorities have contracted with specialized community-based organizations to assess and counsel children who have been involved in prostitution while they are still in custody and upon their release.²³⁸ One such organization is Standing Against Global Exploitation (SAGE), a non-profit group founded by a prostitution survivor, staffed by prostitution survivors, and dedicated to serving victims of commercial sexual exploitation.²³⁹ Because San Francisco relies on arrest and detention to bring children into the system, but couples that practice with a wide range of victim-centered services, it is referred to here as a hybrid model.

All Children Charged with Prostitution Are Detained

In the past, San Francisco children who were arrested on prostitution charges were only detained if they had committed other crimes or violated their

²³⁷ Heather Knight, *A Home for Ex-Child Prostitutes*, S.F. CHRON., Oct. 4, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/10/04/BAGVPF26H31.DTL&hw=Home+for+Ex+Child+Prostitutes&sn=004&sc=623>.

²³⁸ Telephone Interview with Nancy Yolan, Director of Probation Services, in San Francisco, Cal. (Nov. 9, 2006). The Las Vegas Department of Juvenile Justice Services is currently working to develop gender-specific programs for girls in custody and has been successful in securing beds at the WestCare Nevada residential facility for prostituted girls discharged from detention. See, E-mail from Pam Towers, *supra* note 184. However, Las Vegas still relies on vice officers to interview, assess and counsel girls in custody and only links them to specialized community-based services upon their release. Interview with Carter, *supra* note 183.

²³⁹ SAGE, General Information and Mission and Programs, received via e-mail from Kristie Miller, Replication Director, SAGE (Nov. 3, 2006, 13:37 EDT) (on file with the Barton Child Law and Policy Clinic).

probation.²⁴⁰ In 2003, when a young victim of prostitution was murdered on the street after being released by police, authorities instituted a new protocol. Today, all children arrested on prostitution are detained “for their own safety.”²⁴¹

According to Norma Hotaling, director of SAGE, authorities use a procedure of “informal probation” by which they drop the charges against the child in exchange for the child’s agreement to be held for up to 90 days and enter into probation.²⁴² As part of her probation, the child must participate in gender-specific services while in custody and after release that, according to the probation department, are “designed both to hold girls accountable for their actions but also to help them heal.”²⁴³

Prostituted Children Receive Specialized Services While in Custody

SAGE began serving girls in juvenile detention in San Francisco in 1998, well before the new automatic-detention protocol went into effect.²⁴⁴ As part of SAGE’s involvement in the detention center, a SAGE counselor who is a former prostitute teaches a “Sexual Exploitation 101” course to all girls in the facility. She assesses the girls for signs of commercial sexual exploitation, and counsels those girls who have been victimized in individual and group sessions. SAGE also provides case management, helps girls access victims’ compensation funds, and tries to secure the girls’ early release to safe locations and programs.²⁴⁵ In contrast to the Las Vegas detention model, this more victim-centered or “survivor-focused”²⁴⁶ model in San Francisco relies on peer counselors who are former prostitutes, rather than vice officers, to assess and counsel the girls while they are detained.²⁴⁷

²⁴⁰ Bernice Yeung, *Throwaway Girls*, CAL. LAW., Nov. 2003 at 24, 58, available at http://berniceyeung.com/stories/clm_throwaway.pdf.

²⁴¹ Interview with Yolán, *supra* note 238.

²⁴² Telephone Interview with Norma Hotaling, Director, Standing Against Global Exploitation, in San Francisco, Cal. (Nov. 14, 2006).

²⁴³ SAN FRANCISCO JUVENILE PROBATION DEPARTMENT, FRESH DIRECTIONS VOL. II 239-41 (2005), available at http://www.sfgov.org/site/juvprobation_page.asp?id=34991.

²⁴⁴ SAGE, *supra* note 239.

²⁴⁵ *Id.*; Interview with Hotaling, *supra* note 242.

²⁴⁶ SAGE, *supra* note 239.

²⁴⁷ The San Francisco juvenile probation office has also contracted with community-based groups other than SAGE to provide gender-specific services. Interview with Yolán, *supra* note 238. In July 2002, the probation department entered into a partnership with the United Way – the Girls Justice Initiative – to provide programs that meet the specific needs of girls in the juvenile justice system and fund a variety of “Girls Services” programs. See, SAN FRANCISCO JUVENILE PROBATION DEPARTMENT, *supra* note 243.

Exploited Children Continue to Receive Specialized Services upon Release

Children who are victims of commercial sexual exploitation continue to work with SAGE upon their release. In addition to its in-custody program, SAGE offers a number of other programs for prostituted youth, including:

- **Life Skills for Girls and Young Women:** The Life Skills Program is an intensive case management program for prostituted girls who are on probation following detention, as well as for girls who come in voluntarily. Each girl works with a case manager to develop an individualized service plan with measurable objectives.²⁴⁸ The girls work with peer counselors in individual and group sessions, addressing such issues as sexual exploitation, relationships, neighborhood safety,²⁴⁹ substance abuse, anger management, vocational preparation, and communication. GED and computer training is available. As part of a restorative justice program, each girl works on a project that “gives back” to the community. The girls attend recreational and cultural outings and are introduced to alternative healing arts, such as acupuncture, relaxation techniques and art therapy.²⁵⁰ Most girls participate in the program for between six and fourteen months.²⁵¹
- **Secure House for Girls:** In 2005, SAGE opened a six-bed safe house to provide prostituted girls, ages 12 through 17, with a “safe, nurturing environment that specializes in trauma recovery.”²⁵² SAGE accepts referrals from juvenile probation, as well as from the child protective services’ shelter, family courts, defense attorneys and others. Girls must be “interested in escaping prostitution.”²⁵³ The home is located in San Francisco, not in a remote location. It is not a locked facility, but rather is kept secure through electronic monitoring and 24-hour staff.²⁵⁴ While in the SAGE House, girls attend individual and group counseling sessions, receive treatment for mental health and substance abuse problems, learn basic social skills, and attend school.²⁵⁵ San Francisco authorities are not using SAGE House as an alternative to detention for girls arrested on prostitution charges. Girls on the streets may be referred to SAGE

²⁴⁸ SAGE website, Youth Programs page, http://www.sagesf.org/html/about_services_youth.htm (last visited Nov. 15, 2007).

²⁴⁹ Ms. Hotaling explained that a peer counselor will often accompany a girl back to her neighborhood, assess the risks of commercial sexual exploitation and other dangers there, and develop a personal safety plan. Interview with Hotaling, *supra* note 242.

²⁵⁰ *Id.*, see also SAGE, *supra* note 239.

²⁵¹ SAGE website, Youth Programs page, http://www.sagesf.org/html/about_services_youth.htm (last visited Nov. 15, 2007).

²⁵² SAGE, *supra* note 239.

²⁵³ SAGE, *supra* note 239.

²⁵⁴ Interview with Hotaling, *supra* note 242.

²⁵⁵ *Id.*

House before they are picked up by the police, but once a girl is arrested, the current protocol requires that she must be detained.²⁵⁶

- **Boy's Program:** SAGE operates one of the few programs in the country specifically targeted at male victims of commercial sexual exploitation. This program for boys fills a critical need, and serves between twenty and thirty young men per week. However, it is less extensive than the girls' program in that it does not provide in-detention services or a safe house.²⁵⁷
- **Additional Services:** SAGE also offers medical screening, vocational rehabilitation, a transgender program, and an arts collective and creative writing program.²⁵⁸
- **Future Services:** SAGE also has plans to fill in the gaps of its continuum of care by adding a twenty-four-hour hotline, twenty-four-hour outreach services,²⁵⁹ and an evening reporting center.²⁶⁰

Thus, while San Francisco still relies on prosecution and detention to remove prostituted girls from the streets, it modifies the model by actively involving specialized counselors inside and outside of the detention facility and providing a targeted continuum of care.

Exploiters Help Fund the Work

A unique aspect of the San Francisco approach is its first time offenders' program for those arrested for solicitation, the "John School." This "educational program for first offenders. . . takes a real-world, confrontation-style look at the legal, health, and other risks and effects of prostitution."²⁶¹ This approach has two benefits. First, supporters claim it is very successful in getting men to change their behavior—Hotaling claims a recidivism rate as low as two percent.²⁶² Second, the fees the Johns must pay to participate in the program are used to fund SAGE's services for victims.²⁶³

²⁵⁶ Interview with Yolan, *supra* note 238.

²⁵⁷ SAGE website, *Men's Programs*, http://www.sagesf.org/html/about_services_men.htm (last visited Nov. 14, 2007).

²⁵⁸ SAGE website, *Services* page, http://www.sagesf.org/html/about_services_main.htm (last visited Nov. 15, 2007).

²⁵⁹ Interview with Hotaling, *supra* note 242.

²⁶⁰ *Id.*

²⁶¹ SAGE website, *First Offender Prostitution Program* page, http://www.sagesf.org/html/about_services_fopp.htm (last visited Nov. 15, 2007).

²⁶² Debra Saunders, *Perverts Beware*, S.F. CHRON. Jan. 28, 2003, *available at* <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2003/01/28/ED77314.DTL&hw=John+School&sn=031&sc=244>.

²⁶³ SAGE website, *First Offender Prostitution Program* page, http://www.sagesf.org/html/about_services_fopp.htm (last visited Nov. 15, 2007).

The Benefits and Drawbacks of the Hybrid Model

San Francisco's hybrid model has many of the same drawbacks as the detention model used in Las Vegas. As mentioned earlier, detention of children who have been used by adults in the sex trade punishes the victim. According to Ms. Hotaling, it "forms the consciousness for the [children], when they are most vulnerable, that they are bad. And you see that, after their arrest, they are acting just like little criminals."²⁶⁴ And, again, studies show that detention is particularly harmful to girls: it not only fails to meet their gender-specific needs, but often exacerbates their pre-existing problems.²⁶⁵ The San Francisco model mitigates this problem by inserting a strong therapeutic element into the detention facility. Peer counselors employed by SAGE are able to develop relationships with the girls and begin to provide them with services while they are still in custody. After the girls are released, SAGE counselors are able to maintain contact and continue to work with the girls toward their recovery. The addition of these wraparound services may make San Francisco's "hybrid" model better-suited to meeting the needs of child victims of prostitution than Las Vegas' prosecution model.

The San Francisco model, however, still struggles with the problem of identifying child victims of prostitution who are not brought to attention through arrest. SAGE is attempting to address this problem by accepting referrals to its Life Skills program and Secure House from sources outside of the juvenile justice department; by making plans to increase its outreach efforts through a twenty-four-hour hotline, twenty-four-hour outreach program, and an evening reporting center; and by developing a closer relationship with state and city child welfare agencies.²⁶⁶

Summary of Other Jurisdictions' Service Delivery Models

Each of the services delivery models reviewed has its strengths and its drawbacks. The prosecution model used in Las Vegas may provide for the best leverage for the prosecution of those who commercially sexually exploit children, but the child victims suffer the negative effects of detention in order for authorities to achieve this goal. While services are provided, they are conditioned on the child's willingness to cooperate, rather than provided based on need alone. Further, those who are aware that children are being exploited may be reluctant to report it for fear of subjecting the children to prosecution.

²⁶⁴ Interview with Hotaling, *supra* note 242.

²⁶⁵ See *supra* notes 197-200 and accompanying text.

²⁶⁶ *Id.* One of the early rewards of the Boston child abuse model has been increased participation of the state's child welfare department in identifying commercially sexually exploited children and referring them to the Teen Prostitution Prevention Project for specialized help and services. See *supra* notes 226-228 and accompanying text.

In contrast, the child abuse model used in Boston may be the most successful at identifying victims and linking them to services, but it lacks a “stick” to encourage cooperation with law enforcement efforts against pimps or to force children into service programs. Finally, the hybrid model used in San Francisco provides some of the benefits of the two other approaches, but its reliance on arrest and detention still has harmful consequences for child victims of commercial sexual exploitation.

V. Legislative Approaches Taken by Other States

The Las Vegas, Boston and San Francisco approaches described above are the result of policies made at the agency, rather than the state, level. An agency-level policy approach has the advantage of flexibility. Since it is not codified as law it can be adjusted gradually over time as the agency's understanding of need develops. However, this flexibility is a double-edged sword, because it also means that an effective approach can be easily abandoned if agency leadership changes its views on the issue. Additionally, an agency-level approach is limited to the jurisdiction of the participating agencies, and as such does not have the same reach as statewide legislation, and can result in differing treatment of commercially sexually exploited children based on where they are.

Recognizing the limitations of agency-level solutions, some states have taken legislative action. This section will analyze legislative efforts to address the commercial sexual exploitation of children made in two other states with high rates of child prostitution: Illinois and New York.

Combating Commercial Sexual Exploitation through Anti-Human Trafficking Legislation: The Illinois Approach

Like Atlanta, Chicago, Illinois is one of the fourteen U.S. cities with the highest incidences of child prostitution.²⁶⁷ Illinois has chosen to deal with the problem under the larger umbrella of its anti-human trafficking efforts.

Illinois Anti-Human Trafficking Statute

In 2005, Illinois adopted anti-human trafficking legislation based on the DOJ's Model Anti-Trafficking Criminal Statute.²⁶⁸ Like the DOJ Model, the

²⁶⁷ Swecker, *supra* note 3.

²⁶⁸ H.B. 1469, 94th Gen. Assemb. (Ill. 2005) (codified as 720 ILL. COMP. STAT. 5/10A-5-20 (2007)); *supra* notes 117-127 and accompanying text. For background on Illinois' anti-human trafficking

statute broadly defines the terms used in criminalizing the “involuntary servitude of a minor,” so that anyone involved in the prostitution of the child, including a john, is likely to be guilty of a human trafficking offense.²⁶⁹ Also like the DOJ Model, the severity of sentencing varies depending on the age of the child and the degree of coercion involved, with sentencing enhancements based on the number of victims of the perpetrator, the length of time they were held in servitude, and whether there was bodily harm.²⁷⁰ Under the statute, a pimp or john who, without coercion, participates in or attempts to participate in the prostitution of a minor who is between seventeen and eighteen years of age would get a minimum sentence of four years, and a maximum sentence of fifteen years. If the child was under seventeen and/or coercion was used, the sentence would be a minimum of six and a maximum of thirty years, not including any sentencing enhancements.²⁷¹

In addition to providing strong sentences, the Illinois statute also requires for the perpetrator to pay restitution to the victim,²⁷² and to forfeit to the state “any profits or proceeds and any interest or property he or she has acquired or maintained” in the course of the commission of a human trafficking crime.²⁷³ This is consistent with the requirements of the CRC Protocol,²⁷⁴ and to some degree follows the Freedom Network’s State Model Law’s recommendation as well.²⁷⁵ However, the Illinois statute and the State Model Law part company on how the forfeited assets should be used. The State Model Law requires that forfeited assets first be used to pay the restitution owed to the victim, before any state agency can access them.²⁷⁶ The Illinois statute requires that they be split equally, with half given to the state agency that conducted the investigation resulting in the forfeiture, and the other half going to a state fund for services to trafficking victims.²⁷⁷ While this provision could provide an important funding stream for law enforcement and services, it could also render the restitution clause an empty promise, as the perpetrator may have no other assets that the victim is able to reach.

In addition to allocating half of forfeited assets to pay for victims’ services, the Illinois anti-human trafficking statute contains a short provision stating that

statute, see John Tanagho, Comment, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with its Federal and State Counterparts*, 38 LOY. U. CHI. L.J. 895, 898 (2007).

²⁶⁹ 720 ILL. COMP. STAT. 5/10A-5-10 (2007); see *supra* notes 120-126 and accompanying text.

²⁷⁰ 720 ILL. COMP. STAT. 5/10A-10 (2007); see *supra* notes 124-126 and accompanying text.

²⁷¹ 720 ILL. COMP. STAT. 5/10A-10(b) (2007) (classifying the offenses as class one and class X felonies respectively); 730 ILL. COMP. STAT. 5/5-8-1 (2007) (establishing the minimum and maximum sentences for various types of felonies).

²⁷² 720 ILL. COMP. STAT. 5/10A-10(e) (2007).

²⁷³ 720 ILL. COMP. STAT. 5/10A-15(a) (2007).

²⁷⁴ CRC Protocol, *supra* note 20 at art. 7.

²⁷⁵ See *supra* notes 135-136 and accompanying text.

²⁷⁶ *Id.*

²⁷⁷ 720 ILL. COMP. STAT. 5/10A-15(e) (2007).

“[s]ubject to the availability of funds, the Department of Human Services may provide or fund emergency services and assistance to individuals who are victims” of human trafficking.²⁷⁸ While this provision is an admirable first step toward ensuring the availability of appropriate victims’ services, it is too tentative and limited in scope to have much impact. The language is permissive rather than mandatory, and contingent on the availability of funding. Further, it focuses only on emergency services, rather than a continuum of care that would help victims achieve “full social reintegration and their full physical and psychological recovery.”²⁷⁹

Though comprehensive victims’ services are not funded through the statute, there is some movement toward establishing them through community-based organizations. In September 2006, the DOJ’s office of Justice Programs announced a one million dollar grant to the Salvation Army to develop, in partnership with other community organizations, programs to provide supportive and protective services to commercially sexually exploited children in five cities, including Chicago.²⁸⁰

A Civil Action for Victims of Commercial Sexual Exploitation

Like federal²⁸¹ and international²⁸² lawmakers, the Illinois legislature recognized the need for a civil cause of action to supplement its anti-human trafficking legislation. Enacted in July 2006, the Predator Accountability Act²⁸³ is intended to “allow persons who have been or who are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.”²⁸⁴ This Act allows both adult and child victims of commercial sexual exploitation to sue anyone who “recruits, profits from, or maintains the victim in any sex trade act,” as well as anyone who has intentionally abused them or caused the bodily injury as part of the sex trade, or anyone who advertised to recruit them for the sex trade.²⁸⁵ The lawsuit can seek any type of relief that would make the victim “whole,” including injunctions, compensatory damages, punitive damages, and attorney’s fees.²⁸⁶ The perpetrator may not use the victim’s own illegal conduct or any compensation received by the victim at the time as a defense.²⁸⁷ The statute of

²⁷⁸ 720 ILL. COMP. STAT. 5/10A-10(f) (2007).

²⁷⁹ CRC Protocol, *supra* note 20 at art. 9(3).

²⁸⁰ Office of Juvenile Justice and Delinquency Prevention, *New Initiative Seeks to Reduce Commercial Sexual Exploitation of Children*, News at a Glance, January/February 2007, available at http://www.ncjrs.gov/html/ojjdp/news_at_glance/217167/sf_3.html (last visited Nov. 19, 2007).

²⁸¹ 18 U.S.C. § 1595 (2007).

²⁸² CRC Protocol, *supra* note 20 at art. 9(4).

²⁸³ H.B. 1299, 94th Gen. Assem. (Ill. 2006); *codified at* 735 ILL. COMP. STAT. 5/13-225; 740 ILL. COMP. STAT. 128/1-99 (2007).

²⁸⁴ 740 ILL. COMP. STAT. 128/5 (2007).

²⁸⁵ 740 ILL. COMP. STAT. 128/15 (2007).

²⁸⁶ 740 ILL. COMP. STAT. 128/20 (2007).

²⁸⁷ 740 ILL. COMP. STAT. 128/25 (2007).

limitations is ten years, and it does not begin to run until the victim turns eighteen.²⁸⁸

Strengths and Drawbacks of Illinois' Approach

Illinois has adopted a strong criminal statute that allows the prosecution of the johns and pimps who commercially sexually exploit children. Its strong sentencing provisions appropriately reflect these crimes' "grave nature,"²⁸⁹ and its provisions coincide with federal law, which will permit international victims to easily take advantage of federal immigration protections.²⁹⁰

Illinois' anti-human trafficking law clearly recognizes that prostituted children under the age of eighteen are victims rather than offenders. However, under Illinois' prostitution statute there is no minimum age for commission of the offense, so these child victims can still be arrested and charged as juvenile delinquents.²⁹¹ Moreover, the trafficking statute does not affirmatively require services to be provided to victims, and does not fund efforts to develop services. Thus, though their exploiters may be subject to more punishment, the immediate needs of child victims of commercial sexual exploitation are not met under Illinois' anti-trafficking approach.

Illinois does attempt to address victims' economic problems by providing for restitution and civil actions against their exploiters. However, because assets earned or used in the exploitation are forfeited to the state, it may be difficult for the victim to collect any judgments they receive. Thus, while Illinois' efforts are admirable and may be very effective from a law enforcement standpoint, they still leave child victims of commercial sexual exploitation vulnerable and underserved.

Anti-Human Trafficking Plus: New York's Two-Part Approach

An April 2007 study on the prevalence of commercially sexual exploited children in New York estimated that in New York City and seven upstate counties

²⁸⁸ 735 ILL. COMP. STAT. 5/13-225 (2007).

²⁸⁹ CRC Protocol, *supra* note 20 at art. 3(3).

²⁹⁰ See discussion *supra* notes 97-100 and accompanying text.

²⁹¹ 720 ILL. COMP. STAT. 5/11-14 (2007). The statute defines the offense as follows:

Any person who performs, offers or agrees to perform any act of sexual penetration as defined in Section 12-12 of this Code for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution.

Id. See also 705 ILL. COMP. STAT. 405/5-105 (2007) (defining "delinquent minor" as "any minor who prior to his or her 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law, county or municipal ordinance.").

there are over 2,200 child victims per year.²⁹² New York has taken a two-part legislative approach to this problem. First, the state has enacted a new anti-human trafficking statute which provides a stronger foundation for punishing those who exploit children, and provides for the development of services for those children who meet the definition of trafficking victims.²⁹³ Second, the state legislature is considering a bill specifically targeted at the unique situation of child prostitutes: The Safe Harbor for Exploited Youth Act (Safe Harbor Act).²⁹⁴

New Anti-Human Trafficking Statute

In June of 2007, the New York State Legislature adopted Senate Bill 5902.²⁹⁵ This robust anti-human trafficking bill which took effect in November 2007 makes a large number of changes to New York law. The changes most relevant to the commercial sexual exploitation of children are:

- **Definition expanded:** Promotion of sex tourism was added to the crime of promoting prostitution.²⁹⁶
- **New crime:** The crime of sex trafficking was added. A person commits the offense by “intentionally advanc[ing] or profit[ing] from prostitution” by a variety of methods, including providing drugs to the exploited person, lying, withholding documents, requiring it as means to repay a debt, or threatening them in a variety of ways. This provision makes no distinction in degree with regard to the age of the victim.²⁹⁷ Sex trafficking is a class B felony, and as such can result in a sentence of up to twenty-five years in prison.²⁹⁸
- **Registration required:** Anyone convicted of sex trafficking or attempting sex trafficking must register as a sex offender.²⁹⁹ A john who is convicted of patronizing a prostitute under seventeen years of age must also register as a sex offender.³⁰⁰
- **Victim assessment required:** When law enforcement or the district attorney’s office encounters someone who “reasonably appears” to be a

²⁹² FRANCES GRAGG, IAN PETTA, HEIDEE BERNSTEIN, KARLA EISEN & LIZ QUINN, NEW YORK PREVALENCE STUDY OF COMMERCIAL SEXUALLY EXPLOITED CHILDREN ii (2007) *available at* <http://www.ocfs.state.ny.us/main/reports/CSEC-2007.pdf>.

²⁹³ A.B. 8679, 228th Leg., Reg. Sess. (N.Y. 2007), chaptered on June 6, 2007.

²⁹⁴ A.B. 6597, 227th Leg., Reg. Sess. (N.Y. 2005); S.B. 4423, 227th Leg., Reg. Sess. (N.Y. 2005); A.B. 5258, 228th Leg., Reg. Sess. (N.Y. 2007); S.B. 3175, 228th Leg., Reg. Sess. (N.Y. 2007).

²⁹⁵ S.B. 5902, 230th Leg., Reg. Sess. (N.Y. 2007), chaptered on June 6, 2007.

²⁹⁶ *Id.* at § 1.

²⁹⁷ *Id.* at § 2 *codified at* N.Y. PENAL LAW § 230.34.

²⁹⁸ *Id.*; N.Y. PENAL LAW § 70.00 (McKinney 2007).

²⁹⁹ A.B. 8679 at § 9, 228th Leg., Reg. Sess. (N.Y. 2007) *codified at* N.Y. CORRECT. LAW § 168-a (McKinney 2007).

³⁰⁰ *Id.* at § 10, *codified at* N.Y. CORRECT. LAW § 168-d (McKinney 2007).

victim of human trafficking, they are required to notify the appropriate human services offices as soon as possible. Human services are required to assess the individual to determine whether they meet the criteria for federal, state or local victim's benefits and services.³⁰¹ If the possible victim is under eighteen, the local department of social services must also be notified.³⁰²

- **Development of services:** The bill also provides that human services may provide services for victims and may contract with non-government organizations to provide services "insofar as funds are available for that purpose."³⁰³ The bill does not allocate any funds to be used in this way.
- **Interagency task force created:** The bill created an interagency task force on human trafficking which is required to: (1) collect data on human trafficking in the state; (2) identify service resources for victims; (3) develop recommendations for the prevention of trafficking and for assistance to victims; (4) establish protocol for communication and collaboration between state and federal agencies; (5) evaluate and recommend improvements to public awareness strategies; (6) evaluate law enforcement training programs and make recommendations for improvements; and (7) measure the effectiveness of the state's anti-human trafficking efforts.³⁰⁴
- **Victim compensation:** Victims of sex trafficking are now eligible for compensation from the Crime Victims Compensation Board.³⁰⁵

This act lays a strong foundation for addressing the commercial sexual exploitation of children. It provides for strong enforcement against pimps, and the assessment of victims. It creates a framework for evaluating and recommending services, prevention, and interagency collaboration, and it provides an avenue for victims to seek compensation for the wrongs that they have suffered. However, because the statute does not provide for the forfeiture of trafficking assets by the offender, it may not be as effective as the Illinois statute in shutting down the types of criminal organizations involved in these offenses.

It also does not provide complete relief to child victims of commercial sexual exploitation. First, not all children who are prostituted will meet the definition of a victim of sex trafficking. Unlike the Illinois anti-human trafficking law and the DOJ Model law, the New York act requires some form of coercion. Though coercion is defined broadly, children who are working independently,

³⁰¹ *Id.* at § 11, *codified at* N.Y. SOC. SERV. LAW § 483-cc (McKinney 2007).

³⁰² *Id.*

³⁰³ *Id.*, *codified at* N.Y. SOC. SERV. LAW § 483-bb (McKinney 2007).

³⁰⁴ *Id.* at § 11, *codified at* N.Y. SOC. SERV. LAW § 483-ee (McKinney 2007).

³⁰⁵ *Id.* at § 1, *codified at* N.Y. EXEC. § 621 (McKinney 2007).

rather than for pimps, are unlikely to fit within this definition. Further, because the New York prostitution statute does not include a minimum age to commit the offense, children can still be prosecuted under it.³⁰⁶ Thus, a child could be considered both a victim and an offender, or just an offender under the current statutory scheme. Finally, the service piece of the legislation is not as strong as it could be. Though it provides for assessment, and the identification of services, it does not provide for the creation and funding of services where they do not yet exist, which may leave some exploited children's needs unserved. Fortunately, the anti-human trafficking bill is not New York's only legislative solution to this problem.

Safe Harbor Act

In the spring of 2005, the New York Legislative Assembly and Senate, under the leadership of Assemblyman William Scarborough and Senator Dale Volker introduced the Safe Harbor Act to address the specialized legal and treatment needs of sexually exploited children.³⁰⁷ It was introduced concurrently in both the New York State Assembly and Senate.³⁰⁸ It failed to pass during the 2005-2006 legislative session, and was reintroduced by Assemblyman Scarborough and Senator Volker in early 2007. However, the Assembly and Senate versions of the bill contain a small but significant difference from one another, so while both have passed their respective chambers, the bill has not yet become law.³⁰⁹

The difference between the Senate and Assembly versions lies in a key provision which limits prosecution of children under the age of eighteen for prostitution.³¹⁰ The Assembly version of the Safe Harbor Act provides that if a juvenile delinquency petition charging prostitution is brought before a court, the court *shall*, either on its own motion or a motion by the youth, treat the child as a person "in need of supervision" rather than as a delinquent, so long as no felony charges were involved in the original petition.³¹¹ Under the Senate version of the bill, the mandatory "shall" is replaced with a permissive "may," leaving the decision whether to treat the child as in need of supervision rather than as delinquent in the judge's discretion.³¹² In both versions of the bill, the statute

³⁰⁶ N.Y. PENAL § 230.00 (McKinney 2007) ("A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.").

³⁰⁷ A.B. 6597, 227th Leg., Reg. Sess. (N.Y. 2005); S.B. 4423, 227th Leg., Reg. Sess. (N.Y. 2005); A.B. 5258, 228th Leg., Reg. Sess. (N.Y. 2007); S.B. 3175, 228th Leg., Reg. Sess. (N.Y. 2007).

³⁰⁸ A.B. 6597, 227th Leg., Reg. Sess. (N.Y. 2005); S.B. 4423, 227th Leg., Reg. Sess. (N.Y. 2005).

³⁰⁹ A.B. 5258, 228th Leg., Reg. Sess. (N.Y. 2007); S.B. 3175, 228th Leg., Reg. Sess. (N.Y. 2007); New York Legislative Information, Bill Status, *available at* <http://public.leginfo.state.ny.us> (last visited Nov. 15, 2007). New York, like Georgia, has a two-year legislative session, so when the Legislature reconvenes in January 2008 the two versions can be reconciled without having to be reintroduced.

³¹⁰ *Id.*

³¹¹ A.B. 5258 § 2, 228th Leg., Reg. Sess. (N.Y. 2007) (emphasis added).

³¹² S.B. 3175 § 2, 228th Leg., Reg. Sess. (N.Y. 2007).

defining persons in need of supervision would be amended to include children who have violated New York's prostitution statutes.³¹³

A child "in need of supervision" under New York law is similar to an unruly child under Georgia law.³¹⁴ The benefits of treating a commercially sexual exploited child as in need of supervision are that (1) the child cannot be placed in a secure detention facility,³¹⁵ and thus can avoid the harmful psychological effects of being locked up;³¹⁶ and (2) the child will be directed to services aimed at addressing his or her problems and allowing him or her to remain in the family home, rather than going into out of home care.³¹⁷ However, the court still has the ability to place the child on probation or order him or her into foster care or treatment.³¹⁸

By treating the child victim of commercial sexual exploitation as a child in need of supervision, New York would be able to resolve some of the problems with the prosecution model, such as the negative effects of extended secure detention,³¹⁹ while retaining some of its benefits, such as having something to hold over the child's head, in this case probation, to encourage cooperation in prosecution of his or her pimp.³²⁰ However, the Safe Harbor Act may not provide the best method of reclassifying these victims. The provision that differs between the two versions of the bills seems to indicate that children can still be arrested by police for prostitution, and held in secure detention before the court sees the petition. Thus, while they may avoid secure detention after the hearing, they may not be able to avoid it all together. Further, while it is less punitive than delinquency, the statutory definition of "in need of supervision" still implies that the child has done something wrong, and seems contrary to a real recognition of the child as a victim of exploitation.³²¹

With the exception of the clause about changing the classification of child prostitutes in the juvenile courts, the two versions of the Safe Harbor Act are the same. The Act attempts to ensure that child victims of commercial sexual exploitation are correctly identified and receive the necessary services by providing that law enforcement officials who are "likely to encounter sexually exploited youth" should receive training on "how to identify and obtain

³¹³ *Id.* at § 3-4; A.B. 5258 § 3-4, 228th Leg., Reg. Sess. (N.Y. 2007).

³¹⁴ N.Y. FAM. CT. ACT § 712 (McKinney 2007); O.C.G.A. § 15-11-2 (2007).

³¹⁵ N.Y. FAM. CT. ACT § 720 (McKinney 2007) ("The detention of a child in a secure detention facility shall not be directed under any of the provisions of this article [dealing with persons in need of supervision].").

³¹⁶ See *supra* notes 197-200 and accompanying text.

³¹⁷ N.Y. FAM. CT. ACT §§ 735, 754 (McKinney 2007).

³¹⁸ N.Y. FAM. CT. ACT § 754.

³¹⁹ See *supra* notes 197-200 and accompanying text.

³²⁰ See *supra* note 196 and accompanying text.

³²¹ A child in need of supervision is one who is "is an habitual truant or is incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of his or her parents, guardian or lawful custodian" and is under the age of eighteen. N.Y. FAM. CT. ACT § 732.

appropriate services for” these children. The training is to be provided by a non-profit agency with experience in working with sexually exploited children. However, the language of this section is permissive rather than mandatory, and it is subject to the availability of funding.³²²

Another key goal of the Safe Harbor Act is to ensure that child victims of sexual exploitation receive appropriate services for their specialized needs in a safe facility. While the bill does not define appropriate services, it recognizes that “sexually exploited youth have separate and distinct needs according to gender.”³²³ The language regarding most services in the Safe Harbor Act is mandatory. The state office of children and family services is required to “operate at least one safe house in a geographically appropriate area of the state which shall provide safe and secure long term housing and specialized services for sexually exploited children.”³²⁴ Additionally, local social services agencies are required, as a component of their yearly services plan, to “address the child welfare services needs of sexually exploited children.”³²⁵ Local agencies are also to provide preventative services, however this provision is limited “to the extent that funds are available.”³²⁶

Child advocates have praised the Safe Harbor Act for its recognition of the specialized service needs of commercially sexually exploited children. However, critics allege that the services portion of the Safe Harbor Act amounts to an “unfunded mandate on counties which do not have the programs or funding to implement the measure.”³²⁷ This criticism seems accurate—the Safe Harbor Act does not include any appropriations language to support the requirements it would put on social service agencies. If New York is serious about its efforts to providing services to child victims of commercial sexual exploitation, it must put funding mechanisms in place to achieve the goals of the Safe Harbor Act. Otherwise, these laudable requirements will end up like the residential treatment pilot programs in the federal TVPRA: wonderful ideas that cannot come to fruition.³²⁸

³²² A.B. 5258 at § 1(6), 228th Leg., Reg. Sess. (N.Y. 2007); S.B. 3175 at § 1(6), 228th Leg., Reg. Sess. (N.Y. 2007). The bill reads:

The local social services commissioner *may, to the extent that funds are available*,...train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children.

Id. (emphasis added).

³²³ *Id.* at § 2(4).

³²⁴ *Id.* at § 2(5).

³²⁵ *Id.* at § 2(1).

³²⁶ A.B. 5258 at § 2(1), 228th Leg., Reg. Sess. (N.Y. 2007); S.B. 3175 at § 2(1), 228th Leg., Reg. Sess. (N.Y. 2007).

³²⁷ Letter from Ken Crannell, Legislative Director, New York State Association of Counties, LEGISLATIVE GAZETTE, June 1, 2007, *available at* <http://www.legislativegazette.com/letters.php?letid=228>.

³²⁸ See *supra* notes 101-104 and accompanying text.

Summary of Other Jurisdictions' Legislative Approaches

Both Illinois and New York have recently passed powerful anti-human trafficking legislation, and both have their drawbacks for use in the fight against the commercial sexual exploitation of children. Illinois' statute contains broad language that would enable virtually all prostituted children to be considered victims of trafficking, but it includes insufficient service provisions to aid those victims. In contrast, New York's statute is narrower and would not cover all child victims of sexual exploitation, but it does a better job providing at least an initial assessment of each victim and referrals to available services.

In terms of victim compensation, Illinois provides two mechanisms, restitution and a civil action, for victims to recover damages and losses from their exploiters, but the statute's provision directing all forfeited assets to the state could make recovery difficult. New York allows victims to place claims with its crime victim compensation fund, but this fund has a less direct connection to the victimizers, possibly providing less emotional satisfaction to the victims and less deterrence to offenders.

Finally, neither state has destigmatized the commercial sexual exploitation of children by removing it from the definition of prostitution altogether. New York's Safe Harbor Act takes a step in the right direction by allowing courts to classify these children as people in need of supervision rather than as delinquents, but they can still be arrested and suffer the ill-effects of secure detention before that change in status is made.

VI. Recommendations

After reviewing the current state, national and international frameworks surrounding the commercial sexual exploitation of children, as well as approaches taken by other jurisdictions facing this problem, it is obvious that this is not a simple issue and there is no clear and easy solution. Keeping these complexities in mind, here are a range of recommendations to help Georgia protect and care for this vulnerable population:

Legislative Recommendations

1. Create a minimum age for the offenses of prostitution and masturbation for hire. Georgia should recognize, as the federal government and international community have, that prostituted children are victims of adult exploiters rather than offenders. By setting a minimum age of eighteen for the commission of the offense of prostitution, Georgia can avoid re-traumatizing these children through arrest and detention.

2. Amend Georgia's mandatory child abuse reporting law to increase identification of children who are victims of commercial sexual exploitation. The use of mandatory child abuse reports to identify children involved in prostitution has shown early signs of success in Boston and may be a valuable tool in Georgia as well. Currently, O.C.G.A. § 19-7-5 requires certain human services professionals to file child abuse reports when they suspect physical abuse or neglect, sexual abuse or sexual exploitation, but limits sexual exploitation to "conduct by a child's parent or caretaker who allows, permits, encourages or requires that child to engage in . . . prostitution."³²⁹ By broadening the definition to include all commercial sexual exploitation, Georgia can use currently existing mandatory reporting mechanisms to increase the identification of prostituted children, a role that will become particularly important when child victims are no longer identified through arrest and detention. However, for this change to be truly effective, it will also need to be accompanied by a modification to DFCS protocols so that reported children are directed to appropriate resources, rather than being screened out. A multidisciplinary team response model, like that used in Boston, is one effective response alternative that DFCS could implement.³³⁰

3. Amend Georgia's anti-human trafficking statute to more closely follow the State Model Law. By conforming Georgia's recently enacted anti-trafficking statute to more closely conform to the State Model Law, Georgia can more effectively prosecute all those who exploit children, including the johns, and create a framework for providing services and compensation to all their victims. Specifically, Georgia should adopt the State Model Law's definitions of "obtain" and "services," its forfeiture, restitution, and civil action provisions, and a tailored version of its service provisions. As the complaints regarding New York's Safe Harbor Act illustrate, special attention should be paid to how to fund victims services.

Other Recommendations

While the above recommendations require legislative action to put them into effect, the following additional recommendations could be implemented at the community, agency, or legislative level. Full advantage should be taken of federal grant opportunities in implementing these recommendations.

4. Create a regional assessment center and safe house. Children need a safe place to escape prostitution and undergo a thorough assessment of their needs before being referred to a longer-term placement. Currently in Atlanta, the juvenile detention center is serving these functions. However, using detention as a means to assess and link prostituted children to services is

³²⁹ O.C.G.A. § 19-7-5(b)(4)(2007).

³³⁰ See *supra* notes 220-225 and accompanying text.

problematic. Moreover, not all the children who are in need of assessment and treatment are detained. Prostituted children under DFCS supervision often run away before DFCS can conduct an assessment. Alternatively, DFCS and other agencies sometimes make referrals to Angela's House without full assessment which can result in inappropriate placements.

Secure regional assessment centers should be used instead of detention facilities to keep prostituted children safe, assess their needs and refer them to proper services. A regional assessment center would serve as a temporary safe house for children who wish to leave the streets, as well as a central location where trained professionals could fully assess each child's personal, family and community situation. According to Dr. Yolanda Graham, Medical Director of Angela's House, it may take weeks to overcome a child's denial about her exploitation and conduct an accurate assessment. She proposes that children stay in the center for up to thirty days and start receiving counseling and services while their assessment is underway.³³¹ At the end of their stay, the children would be referred to an appropriate longer-term placement, such as Angela's House.³³²

5. Expand education, prevention and outreach efforts so that at-risk children can avoid being exploited and prostituted children can receive services without having to be arrested. First, programs that help children develop healthy boundaries and self-esteem, and understand and avoid commercial sexual exploitation, such as the middle school programs previously offered by GOAL and CEASE in Atlanta, or the similar program in place in Boston, should be funded and expanded. Education and prevention programs should also be offered in juvenile detention and in DFCS youth facilities, which house many children at-risk or already involved in prostitution.

Second, there is a need for specialized outreach to victims of commercial sexual exploitation in Georgia. The program might include a drop-in center, 24-hour hotline, and a street outreach effort. Ideally, prostitution survivors would be a part of the program, as they are in San Francisco. Education, prevention and outreach are key components in any plan to better identify and serve victims of commercial sexual exploitation, and are even more important in jurisdictions that choose not to prosecute these children. Simply put, if children are not reached through the juvenile justice system, they must be reached in other ways.

6. Train professionals from a wide variety of disciplines to recognize signs of commercial sexual exploitation in children in order to identify victims by means other than arrest. Better identification and treatment of prostituted children requires the involvement of a wide spectrum of public-service

³³¹ Interview with Graham, *supra* note 185.

³³² In 2007, the state legislature allocated \$140,000 toward the creation of a regional assessment center for the Atlanta Metro area. An additional \$560,000 is needed to complete this effort.

professionals. This is especially true in cities where these children are not subject to arrest and prosecution. Through a federal grant, CEASE is already providing a training program that would teach law enforcement officers, educators, health care workers, social workers and other social service professionals to identify children victimized by prostitution, and this program should be expanded and implemented statewide.³³³

7. Coordinate a multidisciplinary response to children identified as victims of prostitution. Georgia should adopt a multidisciplinary approach to addressing the needs of commercially sexually exploited children. Each case of child prostitution, like cases of child abuse generally, requires the involvement of many different government and non-government actors, including police, prosecutors, child welfare workers, health care providers, victim assistance representatives, and child advocates. A coordinated, multidisciplinary approach prevents the child from having to relive her abuse each time she must repeat her story to a different party and eases her path through the criminal justice and child welfare systems into treatment. It also fosters communication among agencies that could otherwise sometimes be working at cross-purposes.

Georgia has already taken steps toward a multidisciplinary response by creating the new Child Abuse Case Tracking Information System (CACTIS). CACTIS allows child protection workers, criminal investigators, healthcare providers and the courts to share information about each exploited child and helps them keep track of their individual responsibilities in her case.³³⁴

In addition to CACTIS, the Fulton County Child Advocacy Center (CAC) or a similar kind of facility should be used in cases of child prostitution. The CAC or equivalent should employ a specialized case manager, similar to the Teen Prostitution Prevent Project coordinator employed at the Family Justice Center in Boston. The case manager would coordinate the efforts of a multidisciplinary team or task force assigned to each case. Children who have been identified as at risk or involved in prostitution would be brought to the CAC, rather than a police precinct or detention facility, for forensic interviews and meetings about their cases. In cases where a child runs away, the MDT could continue to monitor the case and try to reach out to the child to encourage her to come back.

8. Fill in the gaps of Georgia's continuum of care. While Atlanta is fortunate to be one of the few cities in the nation to have a residential treatment facility dedicated exclusively to prostituted girls, Angela's House cannot meet all of the

³³³ JUVENILE JUSTICE FUND, 2004 ANNUAL REPORT 6, *available at* <http://www.juvenilejusticefund.org/documents/annualReport2004.pdf> (last visited Nov. 19, 2007).

³³⁴ Press Release, Fulton County District Attorney's Office, State-of-the-art Case Tracking Software Promises to "Seal the Cracks" in Fulton's Child-Protection System, <http://www.atlantada.org/latestnews/pressreleases/091405.htm> (last visited Nov. 19, 2007).

needs of this population by itself, and a specialized continuum of care is necessary. That continuum should include, at a minimum:

a. Expanded residential treatment facilities. Currently, Angela's House only has six beds, and it cannot treat girls who have severe mental health disorders, are aggressive or violent, or are at particularly high risk of running away.³³⁵ The girls Angela's House cannot take are currently held at a locked facility with other seriously troubled youth. While they receive some specialized therapy in individual sessions and have opportunities to interact with similarly situated girls at Angela's House, they spend most of their time in mixed groups, where they are unable to deal openly with their sexual exploitation and are vulnerable to being stigmatized if they do. Dr. Graham recommends opening a more secure, dedicated treatment program for these girls. Ideally, the program would be on the same grounds as Angela's House or a similar facility, so that girls could transition smoothly from one program to the other as their health improved.³³⁶

Moreover, there are no residential treatment facilities in the Southeast for male victims of commercial sexual exploitation. Because efforts so far have been focused on the needs of girls, no current information exists on the extent of the need for a specialized treatment facility for boys in Georgia. This need should be studied, followed by the development of services and facilities if appropriate.

b. Specialized non-residential services for children involved in prostitution. Currently, there is an absence of specialized non-residential services for children victimized by prostitution. In order to fill this gap in the continuum of care, Georgia state agencies or community organizations should develop "outpatient" services for girls who are discharged from the residential program at Angela's House, as well as for children who need counseling and support but do not need to be placed in a residential facility to begin with.³³⁷

Specialized non-residential services are also necessary for at-risk children and children who do not require residential treatment but need some support and counseling. These services might be provided through a network of community-based programs, coordinated by a case manager, similar to the current after-care program at Angela's House. Or, they might be provided in a comprehensive program directed by a specialized non-profit group, like SAGE's Life Skills or Roxbury Youthworks' A Way Back programs.³³⁸ Services would include case

³³⁵ Interview with Graham, *supra* note 185.

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ In New York City, the non-profit group, GEMS (Girls Education and Mentoring Services), provides specialized non-residential services to girls involved in prostitution, including peer counseling, crisis counseling, family therapy, therapeutic, recreational and education groups, and referrals to other organizations for legal help, job training, GED courses and health care. GEMS

management, education and counseling, referrals to substance abuse and other relevant programs, as well as opportunities for fun and recreation.

9. Build inter-county communication and cooperation. A common complaint of individuals who work with children involved in prostitution is that they are not able to provide services to those children who are trafficked between counties.³³⁹ Georgia county officials should consider ways to work cooperatively to assist prostituted children who move from county to county, such as initiating a statewide education campaign on the use of child abuse reports in cases of child prostitution, collaborating with county officials to create a common intake instrument that could be used across the state, and enhancing the CACTIS tracking system so that appropriate authorities in all counties could access the information.³⁴⁰

Conclusion

Atlanta, and, by extension, Georgia have become known as a hub for the commercial sexual exploitation of children. The Mayor of Atlanta has expressed her desire that we use that recognition to take a leadership position in stopping this terrible crime and caring for our children. Though this is a daunting task, it is possible through focused effort.

As a first step, Georgia should solidify its commitment to identifying children who are victimized by prostitution and linking them to needed services without subjecting them to prosecution, arrest and detention. We should strengthen our anti-human trafficking laws to provide protection and care to the widest possible population of trafficking victims. And finally, we should fund effective prevention programs that will keep future at-risk children from ever falling victim to commercial sexual exploitation at all.

(Girls Education and Mentoring Services) website, *Our Services* page, <http://www.gems-girls.org/services.html> (last visited Nov. 19, 2007).

³³⁹ Interview with Joseph, *supra* note 203; Interview with Yolán, *supra* note 238; Interview with Baker, *supra* note 86.

³⁴⁰ Interview with Baker, *supra* note 86.

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