

Commercial Sexual Exploitation of Children and the Emergence of Safe Harbor Legislation: Implications for Policy and Practice

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Abstract Commercial sexual exploitation of children is an enduring social problem that has recently become the focus of numerous legislative initiatives. In particular, recent federal- and state-level legislation have sought to reclassify youth involved in commercial sexual exploitation as victims rather than as offenders. So-called Safe Harbor laws have been developed and centered on decriminalization of “juvenile prostitution.” In addition to or instead of decriminalization, Safe Harbor policies also include diversion, law enforcement training, and increased penalties for adults seeking sexual contact with minors. The purpose of this paper is to review the underlying rationale of Safe Harbor laws, examine specific policy responses currently enacted by the states, and consider the effects of policy variations. Directions for future research and policy are addressed.

Keywords Commercial sexual exploitation of children · Safe harbor · Juvenile prostitution

Introduction

Commercial sexual exploitation of children (CSEC) has become a prominent social issue, garnering attention from a wide range of stakeholders, including President Barak Obama who highlighted concerns about CSEC during his

address to the 2012 Clinton Global Initiative [1]. Yet, much about the scope of CSEC and the related policy responses remains unclear [2•]. Indeed, at a symposium convened in May 2013, dozens of expert stakeholders identified numerous research gaps and priorities within the fields of law enforcement, mental health, first responders, technology, and domestic and international research [3]. Of relevance to this review, these experts consistently identified the need to revise or rescind policies that treat sexually exploited youth as offenders; rather, policies must identify youth subjected to commercial sexual exploitation as victims and should strive to ensure access to high-quality services for those youth. Likewise, the Institute of Medicine and the National Research Council recently called for a national paradigm shift in identifying and treating sexually exploited youth [4•] and specified the redirection of exploited youth away from justice systems and into treatment. Additionally, federal legislation centered on CSEC was recently introduced. For example, the Stop Exploitation Through Trafficking Act of 2013 would require states to implement policies known as *Safe Harbor* laws aimed at preventing the prosecution of sexually exploited youth [5]. The Justice for Victims of Trafficking Act of 2014 would, among other activities related to addressing CSEC, provide grants for the implementation of Safe Harbor laws by states [6].

The purpose of this review is to examine CSEC, with a particular focus on national and state-level legislative efforts to address this crime. First, a note about terminology: throughout the paper, the term “juvenile prostitution”—the connotation of which implies consent for behaviors to which youth cannot legally consent—will not be used, except when necessary to describe policies that punish youth for behavior to which they cannot legally consent. Rather, CSEC will be used, as it implies behaviors directed toward youth. Likewise, victims of CSEC will be referred to as commercially sexually exploited youth. These youths’ subsequent interactions with

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the juvenile and adult criminal justice systems are referred to as “recontact,” rather than “recidivism” or “reoffending.” This language comports with the call from the Committee on Commercial Sexual Exploitation and Sex Trafficking of Minors in the USA and others to understand juvenile prostitution as an act of sexual violence against the youth and not as a form of delinquency.

Overview of CSEC

An Evolving Conceptualization of Sexually Exploited Children

As we describe more fully below, the earliest efforts to address prostitution often ignored or penalized juveniles for prostitution. Consequently, commercially sexually exploited children in the USA were often arrested and prosecuted as offenders [7]. In this view, these youth were seen as complicit in the act of prostitution and thus deserving of criminal justice intervention. However, federal and state legislative reform efforts beginning in the late 1970s sought to cast these youth as children in need of help [8]. Thus, while the conceptualization of youth involved in prostitution as victims of commercial sexual exploitation appears to be a recently popular approach in US criminal justice, efforts to reframe juvenile prostitution as child sexual abuse or sexual exploitation have their roots in much earlier reform efforts. According to Bang, Baker, Carpinteri, and Van Hasselt, CSEC is best framed as a form of commercialized child abuse, involving the “sexual commodification of children’s bodies for the purposes of monetary or material gain” [9]. Further, although some youth may not view themselves as victims [4], those prohibited from the legal capacity to consent to sexual activities should be classified as victims.

As a form of victimization, CSEC can occur for a variety of reasons and in a variety of ways. For example, youth may be lured by need (e.g., for shelter, food, money, or support), force, coercion, or fraud into prostitution [10–12], pornography [13, 14], or into other types of commercialized sexual performance, such as stripping [10]. The dynamics of CSEC offending can vary as well. CSEC can involve single or multiple victims [9]. Also, CSEC involves perpetrators working alone or within larger markets. Mitchell, Finklehor, and Wolak examined law enforcement records of 132 cases of CSEC and developed a three-category typology explaining how youth enter into prostitution [15]. First, they found that the largest proportion of cases (57 %) involved *third-party exploiters*, which includes smaller, less organized operations involving pimps (i.e., individuals who control and direct prostitution) and larger, more organized commercial organizations (e.g., massage parlors). The second category (31 %) involved *solo cases*, where youth acted alone or when police were not able

to identify a pimp. Third, 12 % of cases existed in the context of *child sexual abuse (CSA) with payment*. Here, sex with youth is traded for money and may be facilitated by both family members and nonfamily members, but more closely resembles CSA than traditional CSEC.

Scope of CSEC

Research examining CSEC is hampered by several factors, including limited funding [16] and the sensitive nature of the topic—CSEC involves, by nature, a vulnerable population in an illicit market [17, 18]. Consequently, scholars have struggled to accurately measure the scope of CSEC. Indeed, the available estimates are widely disparate, ranging from 1400 to over 2 million youth involved in CSEC in the USA [19, 20], leading scholars to question the scientific merits of these estimates [15, 21].

Although existing prevalence studies have failed to yield consistent estimates of commercially sexually exploited youth, official records do indicate how many youth make contact with justice systems for prostitution-related offenses. In 2005, approximately 1450 youths were arrested or detained for prostitution-related offenses in the USA [15]. A more recent estimate from the Uniform Crime Reports (UCR) system suggests that the number has fallen by more than half, to 616 youths arrested on prostitution-related charges in 2012 [22]. Given the underreported nature of youth involvement in prostitution, official data serve as conservative estimates of CSEC, but suggest that the scope of those impacted by sexual exploitation is not trivial. Further, this substantial reduction in youth arrested for prostitution-related offenses may illustrate the intended policy effects of past and recent legislative efforts to redefine these youth as victims versus offenders.

Policy Responses to CSEC

Early Prostitution Laws

Despite the seemingly novel current focus on sex trafficking in the American zeitgeist, federal efforts to combat sex trafficking have a long and varied history in the USA. The emergence of federal prostitution laws between the end of the nineteenth century and the beginning of the twentieth century occurred during an era of increased public attention on behaviors conceptualized—both informally by general consensus and formally by statute—as sexually immoral [23, 24]. During this time, activists worked to restructure age of consent laws and develop strategies to combat the exploitation of children.

The Alien Prostitution Act of 1875 made it illegal to bring foreign women or girls into the country for the purposes of prostitution or other immoral practices [23]. Several decades later, the Mann Act of 1910—also called the White Slave Traffic Act—was the first piece of federal legislation aimed

at protecting women and young girls from domestic trafficking [25, 26]. Some legal scholars have argued that the development of the Mann Act was founded in race-based fears of sexual exploitation of white women and girls, to the exclusion of women and girls of color [26]. Though the original design of the Mann Act was centered on the prosecution of traffickers, in the years that followed the law's passage, both prostitutes and their customers were prosecuted under this Act [24]. Kittling argued that the enforcement of the Mann Act was also a racialized process [26]. While white women and children were conceptualized as victims, women of color were charged and prosecuted as prostitutes.

Concern over sexual exploitation of children fueled federal and state legislative efforts in the 1970s and 1980s, as well. At the federal level, four key policies targeted both juvenile prostitution and runaway or homeless youth, a population at risk for sexual exploitation: the Protection of Children Against Sexual Exploitation Act of 1977, which broadened the scope of the Mann Act by prohibiting the trafficking of boys; the Child Abuse Prevention and Treatment Act of 1977, which was the first federal effort to address the abuse and neglect of children, and its later amendments, which expanded the definition of child abuse and neglect to include sexual exploitation of children; the Runaway and Homeless Youth Act of 1974, which provided funding for the development of shelters for runaway youth; and the Missing Children Act of 1982, which created a clearinghouse of information collected on missing or runaway youth [8]. At the state level, juvenile prostitution was targeted both directly, through laws prohibiting child sexual exploitation and indirectly, through laws prohibiting sexual activity with minors [8]. However, neither federal nor state efforts to combat exploitation had a primary focus on decriminalization of juvenile prostitution, even in cases where juvenile "prostitutes" were considered victims. Many statutes avoided language specifically including or excluding juveniles from sanctions. For youth in need of social services, juvenile or adult criminal justice remained the entry point. It is the inclusion of the language of decriminalization in contemporary policy that distinguishes Safe Harbor laws from juvenile prostitution laws of the past.

Safe Harbor Laws

The reframing of juvenile prostitution as CSEC was first articulated in the 1996 Declaration and Agenda for the First World Congress Against the Commercial Sexual Exploitation of Children [27], which argued that involving children in the sex trade industry should be viewed as a form of sexual violence against the child. Four years later, the US Congress enacted the Victims of Trafficking and Violence Protection Act of 2000 [28], the nation's first comprehensive piece of legislation aimed at addressing domestic human trafficking. In addition to increasing fines and longer sentences

for individuals engaged in commercial sexual exploitation, this legislation also called for the decriminalization of prostitution for persons under the age of 18. In 2003, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act [29] was passed, which further enhanced penalties for offenders engaged in child sexual exploitation, including mandatory minimum sentences and the introduction of penalties for individuals who travel internationally to have sex with youth [30]. In 2008, New York was the first state to develop a Safe Harbor law [31]; since then, 17 additional states have enacted some level of Safe Harbor-style policy protection for youth involved in prostitution, with marked variation in states' approach to implementation.

Philosophy of Safe Harbor Laws

Close review of states' various Safe Harbor laws indicates that although the implementation specifics of Safe Harbor legislation vary by state, the underlying values are consistent: (1) youth involved in prostitution are victims not offenders, (2) sexually exploited children have needs that exceed the capabilities of the criminal and juvenile justice systems, and (3) the negative consequences of a criminal justice response to sexually exploited children are considerable. Each of these values is discussed below.

Youth Involved in Prostitution are Victims Conceptualizations of youth involvement in prostitution vary in important ways. Some social agents (e.g., some police) historically view this behavior as a form of delinquency that youth engage in of their own volition, while others (e.g., some social workers) see prostituted youths as victims of exploitative adults [32]. The underlying philosophy of Safe Harbor legislation, however, is that all youth involved in prostitution are victims; they are emotionally and socially vulnerable youth who are brought into the commercial sex industry without the ability to truly or legally consent to the sexual behaviors. Thus, even youth who say they consented to the behaviors or who appear to have benefitted in the form of monetary or non-monetary exchanges are still viewed as having been victimized under Safe Harbor legislation.

The limited available data support this view of CSEC. Specifically, many youth involved in prostitution and commercialized sex appear to be characterized by extensive histories of adverse events and/or pre-existing mental health or behavioral problems [9]. Relative to non-exploited children, sexually exploited girls and boys are likely to have a history of physical and sexual abuse and emotional trauma [11, 33], and drug and alcohol abuse [34, 35]. Sexually exploited youth also are more likely to have experienced parental neglect [36], poverty [17, 37], and family dysfunction [17]. These social,

health, and family deficits contribute to youth risk for CSEC as well as among other negative outcomes.

Sexually Exploited Children Have Needs That Exceed the Capabilities of the Criminal and Juvenile Justice Systems The potential consequences of CSEC are considerable. Again, while data are limited, the existing research suggests that children who have been sexually exploited are at increased risk of contracting sexually transmitted diseases and of developing problems related to substance abuse [38], depression, and suicide [39]. Further, compared to women who first engaged in prostitution as adults, sexually exploited girls are more likely to report experiencing sexual violence [38]. Currently, the criminal and juvenile justice systems do not have adequate resources to identify, assess, and address the host of negative mental and physical health and behavioral problems associated with sexual exploitation [4] specifically, or the concomitant mental health needs of youth, more broadly [40].

Negative Consequences of a Juvenile or Criminal Justice Response to Sexually Exploited Children are Considerable In addition to the CSEC-related negative social and health consequences described above, exploited youth who are treated as offenders or delinquents may also experience negative consequences from their contact with the justice system. Research has demonstrated that compared to youth with no previous contact with the juvenile justice system, youth who have had contact are less likely to complete high school [41] and have difficulty finding employment in adulthood [42]. Hjalmarsson reported stronger effects for incarceration than arrest—among youth who have been arrested, those who are incarcerated as a result are less likely to graduate high school [41]. Youth who have been arrested are also more likely than non-justice involved youth to have continued contacts with the justice system. A recent study found that rearrests for youth with a history of arrests were largely driven by surveillance effects—police officers and school actors were more likely to watch youth with a previous contact with the justice system than youth with no such history [43]. Further, youth who experienced incarceration often have considerable deficits in psychological development, relative to non-incarcerated peers [44, 45]. There is no reason to believe that sexually exploited youth would be any less likely to suffer from these types of unintended, iatrogenic effects and indeed, given high risk for underlying socio-emotional deficits, such might be at enhanced risk for experiencing negative outcomes from juvenile or adult criminal justice contacts. Further, prior research has found that sexually exploited women and children often accrue multiple charges and cycle in and out of incarceration over their lifecourse [46]. It may be likely that negative consequences of sexual exploitation and contact with the criminal justice system are compounded by repeated events. However, scholars have not yet unpacked the mechanisms through

which sexual exploitation and repeated contact with the criminal justice system influence mental health and social outcomes for involved youth.

Features of Safe Harbor Legislation

States vary in their implementation of Safe Harbor laws, but may include one or more key components: decriminalization of prostitution for youth, diversion from the criminal and juvenile justice systems, access to social services, enhanced penalties for exploitative adults, and additional law enforcement training.

Decriminalization of Juvenile Prostitution Decriminalization refers to policy changes to refrain from arresting and prosecuting youth for prostitution offenses. However, states may differ with respect to the implementation of these policies. For example, Illinois, Kentucky, Louisiana, Michigan, and Tennessee decriminalized prostitution for all minors—that is, all youth under the age of 18 are not prosecuted for prostitution offenses. Connecticut's policy applies only to under the age of 16, the state's age of consent. In comparison, the decriminalization policy in Texas only applies to youth under 14 years of age [47], though the age of consent is 17 [48]. To date, there has been no systematic evaluation of decriminalization, its impact on exploited youth, or any collateral consequences associated with the policy.

Diversion Diversion, where youth are referred to service programs (e.g., flight risk assessment, mental health services, home placement, etc.) instead of or in conjunction with adjudication, varies between states with Safe Harbor laws. Some states, like Illinois, Kansas, Louisiana, and Minnesota, use both decriminalization and diversion, at the discretion of the courts, for CSC-involved youth [47]. Here, youths are diverted to service programs in lieu of formal adjudication. In other states, like Massachusetts, New York, Vermont, and Washington, juvenile prostitution is not decriminalized, but state law allows for the use of diversion [47]. That is, judges and prosecutors may offer a referral to services during the course of delinquency proceedings. It is unknown whether diversion policies have effectively achieved their goal. Further, there are no scientific assessments of unintended consequences, positive or negative, associated with diversion policies.

Access to Social Services Given the potential for serious short- and long-term consequences following CSEC, access to effective counseling, rehabilitation, and other services is considered a vital, though not mandatory, component of Safe Harbor legislation. Yet, few studies have evaluated the types and effectiveness of services offered to commercially sexually exploited youth. One small pilot study did determine that

trauma-focused cognitive behavioral therapy (TF-CBT) [49] reduced the mental health symptoms (e.g., symptoms of trauma and shame) of CSEC-involved girls [50]. TF-CBT is a well-validated intervention that effectively addresses the mental health needs of child sexual abuse victims [51, 52]. However, the study that specifically evaluated its effects with CSEC-involved youth was carried out in Cambodia and there is a dearth of research on the application of evidence-based interventions such as TF-CBT with domestic CSEC victims [3]. Not surprisingly, in the absence of a strong evidence base, the type and quality of services to which sexually exploited youth might be exposed vary by jurisdiction. For example, Illinois, Massachusetts, Vermont, and Washington divert youth to existing treatment services used for victims of physical or sexual abuse [46]. Washington State requires that each of its 39 counties maintain secure shelters for sexually exploited youth [10]. New York, on the other hand, utilizes needs assessment to tailor services to fit the youth's individual needs [46]. In contrast, some states, such as Connecticut and Tennessee, appear to offer no or limited direct services to these youth [46]. For example, once police in Tennessee make contact with the youth, the youth is returned to his or her parent or legal guardian and given a contact number for services. Minnesota's original Safe Harbor legislation did not contain specific requirements for treatment or other services for trafficked youth; however, the "No Wrong Door" update to that legislation did identify the types of services to be provided for sexually exploited youth [53]. To date, no studies have systematically examined the quality of services offered to sexually exploited youth in the USA.

Enhanced Penalties States have also included provisions for enhanced punishments for individuals convicted of luring youth into prostitution or for soliciting sex with a minor through several mechanisms. Connecticut, for example, prosecutes the pimping of a minor between the ages of 16 and 18 as sex trafficking, which allows for longer sentences and more substantial fines for offenders than found in previous adult-focused prostitution statutes [46]. Washington lengthened sentencing guideline parameters for individuals convicted of soliciting sex with a youth in prostitution (e.g., possible sentence range increased from 1 to 68 months to 21 to 144 months); other states, including Vermont and Massachusetts, prosecute solicitation of a prostituted minor under the existing human trafficking legislation, with punishments resembling those found in federal sentencing guidelines [46]. Whether enhanced punishments under Safe Harbor legislation have reduced CSEC is currently unknown.

Law Enforcement Training Some states have also developed training materials around CSEC for law enforcement officers, but this too varies in availability and administration. Some states, such as Washington, have funding provisions to

develop and implement training for law enforcement officers who come into contact with commercially sexually exploited youth [46]. Other states, like Illinois and New York, require the development of training for law enforcement officers, but offer no direct funding for these endeavors. However, other states with Safe Harbor laws (e.g., Connecticut, Massachusetts, Minnesota, Tennessee, Texas, Vermont) do not directly require the development of CSEC training materials for law enforcement. To the authors' knowledge, there has been no organized effort to systematically evaluate law enforcement training provisions under Safe Harbor.

Future Directions in Safe Harbor Laws

As noted, 18 states have enacted various components of Safe Harbor laws. To encourage more complete adoption and implementation of Safe Harbor policies, there is a federal effort to standardize states' responses to CSEC. The Stop Exploitation through Trafficking Act of 2013, currently referred to the Committee on the Judiciary, would require all states to enact Safe Harbor legislation within 3 years following enactment of the Act [5]. States that fail to comply would risk losing a percentage of their Byrne Justice Assistance Grant funds. If the Act passes as currently written, states would be required to develop and implement procedures that ensure youth involved in prostitution would be treated as victims, discourage prosecution of sexually exploited youth, and encourage diversion to services. The federal bill provides ample room for states to craft individualized policies but appears to make little effort to link policies to intended results, including individual-level results such as reduced juvenile justice contact and improved mental health and behavior outcomes and systems-level results such as increased detection and punishment of offenders. An evaluation of existing Safe Harbor policy effects, funded by the Office of Juvenile Justice and Delinquency Prevention is ongoing by the authors. Ultimately, results of that evaluation are intended to support the formation of new or revised policies. As is the case with existing Safe Harbor policies, results are likely to vary widely; in the absence of the expectation and funding for rigorous evaluation, it will not be possible to distinguish between policies that achieve the aim of improving the outcomes of exploited youth versus those that make things worse.

Conclusions

CSEC is a significant social issue with important consequences not only for affected youth, but also for political, justice, and mental health systems. The purpose of this paper was to examine CSEC and emerging policies aimed at providing services, not punishment, to commercially sexually exploited youth. From this review, three emergent

considerations regarding the conceptualization and response to CSEC were identified.

First, there appears to be a continuation of earlier efforts to reframe the narrative around youth involvement in prostitution. Some states have made advances in reconceptualizing juvenile prostitutes as victims of sexual abuse versus as offenders or delinquents. This reclassification has been a feature of policy discussions since 1996 (and earlier efforts that fell short of decriminalizing juvenile prostitution), but recent legislative efforts surrounding human trafficking broadly, and CSEC more specifically, has reinvigorated national efforts to reframe youth as in need of services, not punishment. The declining rates of youth prosecuted for juvenile prostitution suggest that the USA has experienced a fundamental shift in how youth involved in prostitution are perceived. Yet, it remains to be seen whether Safe Harbor and other similar policies will have their intended effects. In particular, it seems possible that states that do not completely decriminalize juvenile prostitution but that, instead, retain sexually exploited youth within juvenile justice settings—even for the express purpose of providing mental health and other services—might inadvertently increase the likelihood of subsequent justice involvement.

Second, the reclassification of sexually exploited youth as victims has impacted state-level policy (and potentially, national policy) in a variety of ways. Through decriminalization of youth involved in prostitution, diversion from criminal or juvenile justice system intervention, access to social and mental health services, enhanced punishments for offenders, and increased training and aid to law enforcement officers, states with Safe Harbor laws approach these youth as victims in need of aid. The purpose of these approaches is to remove the stigma of “offending” from involvement in prostitution and provide services to victims to prevent continued sexual exploitation.

Third, despite the political and social interest in CSEC and a focus on innovative and progressive responses to victims of CSEC, much remains unknown about both sexually exploited youth and the effectiveness of Safe Harbor laws. For example, researchers have not yet examined the effects of repeated contact with the criminal justice system on sexually exploited youth. Additionally, no studies to date have systematically evaluated Safe Harbor policies in states, although as noted above the authors were recently funded to engage in one such study. Consequently, important questions remain. For example, do (some) Safe Harbor laws reduce youth recontact with the criminal or juvenile justice systems? Do these laws increase youth contact and benefit from social and mental health services? Are they associated with reduced risk of youth revictimization? Answers to these and other questions could

and should help drive the development of more effective Safe Harbor policies.

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Compliance with Ethics Guidelines

Conflict of Interest Ryan T. Shields and Elizabeth J. Letourneau declare that they have no conflict of interest.

Human and Animal Rights and Informed Consent This article does not contain any studies with human or animal subjects performed by any of the authors.

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