



(/)

HOME (/)
ABOUT
BLOG (/BLOG)
ONLINE ORIGINALS (/ONLINE-ORIGINALS)
SYMPOSIUM
SUBMISSIONS

No Such Thing as A Child Prostitute: State Lawmakers Need to Enact Safe Harbor Laws to Protect Victims of Child Sex Trafficking

MARCH 11, 2022



Blog Post | 110 KY. L. J. ONLINE | March 07, 2022

No Such Thing as A Child Prostitute: State Lawmakers Need to Enact Safe Harbor Laws to Protect Victims of Child Sex Trafficking

By: Blair Johnson, Staff Editor, Vol. 110

The fastest growing and second largest criminal enterprise in the world is the buying and selling of people — especially children.[1] The average age of entry into the sex trade is 12-14 years old for females, and it is believed to be even younger for boys and transgender youth.[2] Although no state allows for a child under the age of consent to participate in any type of sexual activity, the majority of states still criminalize children as prostitutes.[3] Safe Harbor Laws guarantee that minors are not criminalized for prostitution while also ensuring that victim services are provided to all sexually exploited youth.[4] These services can range from providing food and shelter to offering mental health counseling, substance abuse treatment, and assistance with educational opportunities and finding employment.[5]

According to the United States Code, when a minor is involved in sex trafficking, Section 1591 of Title 18 does not require proof that the defendant used force, threats of force, fraud, or coercion, or any combination of those means, to cause the minor to engage in a commercial sex act.[6] This means that as long as the trafficker is an adult and the victim being trafficked is under the age of eighteen, the intent or 'willingness' of the victim does not matter. Thus, according to federal law, minor victims who are involved in sex trafficking cannot be held responsible for their so-called actions, nor should they be prosecuted as criminals.[7] Unfortunately, this does not mean that minor victims cannot be arrested and prosecuted for prostitution at the state level.[8]

Some state lawmakers have legislated criminal protections and civil remedies for victims of child sex trafficking in the judicial system.[9] Measures have provided immunity to, diversion from, and affirmative defenses against criminal prosecution for actions victims were forced to commit by their traffickers.[10] Some lawmakers have also created mechanisms to vacate or expunge previous criminal convictions and provide for civil standing and restitution procedures that enable survivors to recover financially from their traffickers.[11] A complete Safe Harbor Law prevents minors from being prosecuted for prostitution and directs child sex trafficking victims to non-punitive specialized services.[12]

In 2021, the University of Kentucky conducted a study about the state's current Safe Harbor Laws.[13] The study revealed that Kentucky's Safe Harbor Laws have helped decriminalize sex-trafficked youth in the state.[14] Nevertheless, the study also highlighted a lack of resources and training for child-welfare personnel and judges who work with these youth.[15] Sadly, not all responses to the study were in support of Kentucky's Safe Harbor Laws. The findings

showed that more male judges agreed with statements that criminalized child victims involved in commercial sex while more female judges agreed with less punitive interventions for these victims and harsher penalties for buyers (or Johns) and traffickers.[16] In addition, juvenile and family judges in metropolitan communities were more likely to agree with statements in line with Safe Harbor Laws than judges in smaller, more rural communities.[17]

Opposition to Safe Harbor Laws is a prevalent issue among numerous states across America.[18] Not only are child victims of sex trafficking faced with a special type of vulnerability when it comes to being trafficked, but they are also viewed as criminals by the system that is supposed to be in place to help them seek justice. The opposition, subliminally identified in the University of Kentucky study's findings, is often rooted in sexist, racist, and classist ideologies.[19] Due to their disparate economic situations coupled by the rate at which they are disproportionately arrested, Black and Latino children are far more likely to fall victim to being trafficked for commercial sex and subsequently arrested for child prostitution than white children.[20] Attitudes and stereotypes about minority children make it so that they are more vulnerable to sex trafficking but less likely to be identified or seen as victims. This experience of being less likely to be seen as a victim also exists among young boys and LGBTQ youth.[21]

One of the key considerations that states assess when it comes to legislating Safe Harbor Laws is whether that state will create full legal immunity from prosecution or create a diversion program. While there is disagreement among experts and variation in the studies reported, Polaris believes that the combination of legal immunity and unrestricted victim services provides the most legal protection and goes the furthest to ensure that a victim of child sex trafficking receives the benefits and care they require.[22] When child trafficking victims are convicted of prostitution, they are often transferred from the control of a trafficker to the control of the criminal justice system. The right Safe Harbor Laws protect child victims of sex trafficking from unjust criminalization.

[1] *The Statistics*, Tabitha's House, Inc., <https://tabithashouseint.org/resources/statistics/> (last visited Dec. 6, 2021).

[2] *Human Trafficking Into and Within the United States: A Review of the Literature* 8-9, U.S. Dept. of Health and Human Services (Aug. 29, 2009), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//43241/index.pdf.

[3] *Safe Harbor: Does Your State Arrest Minors for Prostitution?*, Human Trafficking Search (Oct. 18, 2018), <https://humantraffickingsearch.org/safe-harbor-does-your-state-arrest-minors-for-prostitution/>.

[4] *Id.*

[5] *Continuum of Services for Pre-arrest Diversion Programs*, Community Catalyst, <https://www.communitycatalyst.org/resources/publications/document/Continuum-of-Services-FINAL-2.pdf> (last visited Dec. 5, 2021).

[6] *Sex Trafficking of Children or by Force, Fraud, or Coercion*, 18 U.S.C §§ 1591 (2020).

[7] *Id.*

[8] *Human Trafficking State Laws*, Nat'l Conf. of State Legislatures, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> (last visited Oct. 25,

2021).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Fact Sheet: Safe Harbor Laws*, Nat'l Council of Jewish Women (Sep. 2016), https://www.ncjw.org/wp-content/uploads/2017/07/Fact-Sheet_Safe-Harbor_Updated-2016.pdf.

[13] *University of Kentucky, Study Revealed Safe Harbor Laws Increased Protections for Sex-Trafficked Youth, Identified Needs for Agency Support and Judicial Training*, Nat'l Institute of Justice (Mar. 8, 2021).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Human Trafficking State Laws, *supra* note 6.

[19] *Racial Disparities, COVID-19, and Human Trafficking*, Polaris (Jul. 29, 2020) <https://polarisproject.org/blog/2020/07/racial-disparities-covid-19-and-human-trafficking/>.

[20] Bradley Hardy & Trevon Logan, *Race and the lack of intergenerational economic mobility in the United States*, Washington Ctr for Equitable Growth (Feb. 18, 2020), <https://equitablegrowth.org/race-and-the-lack-of-intergenerational-economic-mobility-in-the-united-states/> (<https://equitablegrowth.org/race-and-the-lack-of-intergenerational-economic-mobility-in-the-united-states/>); *The Latino Face of Human Trafficking and Exploitation in the United States*, Polaris (Apr. 27, 2020), <https://polarisproject.org/press-releases/the-latino-face-of-human-trafficking-and-exploitation-in-theunited-states/> (<https://polarisproject.org/press-releases/the-latino-face-of-human-trafficking-and-exploitation-in-theunited-states/>); Pierre Thomas, John Kelly, & Tonya Simpson, *ABC News analysis of police arrests nationwide reveals stark racial disparity*, ABC News Internet Ventures (Jun. 11, 2020), <https://abcnews.go.com/US/abc-news-analysis-police-arrests-nationwidereveals-stark/story?id=71188546>.

[21] *Sex Trafficking and LGBTQ Youth*, Polaris, <https://polarisproject.org/wp-content/uploads/2019/09/LGBTQSex-Trafficking.pdf> (last visited Dec. 10, 2021).

[22] *Human Trafficking Issue Brief: Safe Harbor Fall 2015*, Polaris, <https://polarisproject.org/wpcontent/uploads/2019/09/2015-Safe-Harbor-Issue-Brief.pdf> (last visited Dec. 2, 2021).

[f](https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fwww.kentuckylawjournal.org%2Fblog%2Fno-such-thing-as-a-child-prostitute-state-lawmakers-need-to-enact-safe-harbor/) (<https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fwww.kentuckylawjournal.org%2Fblog%2Fno-such-thing-as-a-child-prostitute-state-lawmakers-need-to-enact-safe-harbor/>)

[t](https://twitter.com/intent/tweet?url=https%3A%2F%2Fwww.kentuckylawjournal.org%2Fblog%2Fno-such-thing-as-a-child-prostitute-state-lawmakers-need-to-enact-safe-harbor/) (<https://twitter.com/intent/tweet?url=https%3A%2F%2Fwww.kentuckylawjournal.org%2Fblog%2Fno-such-thing-as-a-child-prostitute-state-lawmakers-need-to-enact-safe-harbor/>)



PREVIOUS

Protecting Abortion Rights Under the First Amendment

(/blog/protecting-abortion-rights-under-the-first-amendment)

NEXT

Tax Season is Here! If You Own Bitcoin, The IRS Wants To Know.

(/blog/tax-season-is-here-if-you-own-bitcoin-the-irs-wants-to-know)



(859) 257-1678 | kentuckylawjournal112@gmail.com | 620 Limestone Lexington, KY 40508

(<https://kentuckylawjournal.org>)