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Rights for Child Victims of Prostitution: A Significant Step in the Right Direction under the Florida Safe Harbor Act

By Banesa Arencibia*

I. INTRODUCTION

Carissa Phelps was only twelve years old when she got involved in prostitution after running away from a dysfunctional home. She describes meeting a man named Icey:

He . . . told me their sad story about how they needed money to get a car out of impound and that his current girlfriend could not make the money because she was pregnant and that I could really help them a lot, he said, if I could go out onto the street. So he tried to make me feel like I was contributing something . . . it was supposed to just be one night, and it turned into [ten] horrible days.1

Despite her struggles, Carissa managed to escape that terrible situation and today she has a juris doctor degree.2 She is a shining example of what troubled youth can accomplish in spite of facing major adversities early in life.3 Nevertheless, a runaway and misguided child, like Carissa, who engages in prostitution, would in today’s legal system be arrested, prosecuted, and treated like a criminal in most states. A study released in 2004 showed that law enforcement authorities arrested seventy-four percent of minors who were found to be involved in prostitution between 1997 and 2000.4 In 2008, the number of children arrested reached approximately 1500 under the age of eighteen.5 This treatment robs prostituted children of the opportunity to become successful adults by tainting their lives with a criminal record, which can exacerbate existing psychological trauma.6 Prostituted children are victims, not criminals who deserve punishment.

Florida broke away from this practice of punishment through the passage of a statute protecting child victims of prostitution. The Florida Safe Harbor Act advances the rights of prostituted children.7 It is a stronger effort than similar laws passed in other states because it

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* J.D., 2014, Florida International University College of Law. I would like to thank the following: Professor Megan Fairlie, for helping me find the right path; Professor Christyno L. Hayes, for her advice and guidance; my parents, for their love and support; my husband, for keeping me sane through this process; and all members of the FIU Law Review, for your help along the way. This piece is dedicated to those who have devoted their lives to defending the rights of those who need it most, children. In it, I intend not to criticize their efforts but to highlight their triumphs and suggest ways to improve upon them. From a humble but ardent thinker, who too hopes that it will create in you the fervor needed to advocate for the plight of children.


2 Id.

3 Id.


6 See Sarah Esther Lageson, Mike Vuolo & Christopher Uggen, Legal Ambiguity in Managerial Assessments of Criminal Records, 4 LAW & SOC. INQUIRY 39, 73 (2014) (discussing the psychological effects that result from having a criminal record).

7 FLA. STAT. ANN. § 39.001 (West 2015).
creates a separation between the dependency and delinquency systems—regardless of the child’s age—and provides specific guidelines for carrying out its objectives.

The Florida statute is problematic, however, in that it allocates initial decision-making powers to law enforcement. Further, the Florida statute raises constitutional concerns by allowing the involuntary confinement of children while finding them not guilty of any crime that would justify such confinement. These issues could be resolved by amending the statute to provide clearer guidelines for police officers and by changing the current child-abuse model to one that better resembles a hybrid version, which includes the criminalization of the minors’ acts. Despite its shortcomings, the statute is likely to be successful in combating the mistreatment of prostituted children because it provides a detailed methodology for dealing with sexually-exploited children and training for personnel involved in the process. Improvements to the statute are likely to come in the near future, as demonstrated by the recent amendments to the statute, because child prostitution has become a popular topic in the policy-making arena.

Historically, courts and legislatures have prosecuted child victims of prostitution as delinquents instead of treating them as victims of horrifying crimes. Recognizing this treatment as an issue, child rights advocates began efforts to change this construct starting with New York in 2008. Their efforts culminated in what are now known as “safe harbor” laws. When used in the context of children’s rights, “safe harbor” refers to laws that treat prostituted children as victims as opposed to criminals, by providing them with treatment instead of punishment.

There are three state approaches to child prostitution: (1) the child-abuse model; (2) the prosecution model; and (3) the hybrid model. The child-abuse model, exemplified in Boston, recognizes that child prostitution is often equivalent to child exploitation and that these children are victims who need treatment and care as opposed to punishment. The prosecution model, illustrated in Las Vegas, also recognizes that these children are victims, but it posits that the best

8 Dependency system refers to the family court/civil proceedings that concern the well-being and custody of a child.
9 Delinquency system refers to criminal proceedings.
11 See id. § 39.001(5)(b)(2). Consent is used in this Article to refer to the notion that a person freely agrees to engage in a particular action and it is not forced or in any way coerced into it.
16 See, e.g., In re B.D.S.D., 289 S.W.3d 889, 899 (Tex. App. 2009) (finding that a child has engaged in delinquent conduct by committing the offense of prostitution).
19 See Foxhall, supra note 18.
21 See Birchhead, supra note 5, at 1106–07 (describing the My Life, My Choice Project in Boston, a non-profit program that provides counseling, mentoring, and training aimed at adolescent girls to prevent them from falling prey to prostitution).
way to help them is through arrest and prosecution. Alternatively, the hybrid model, represented in San Francisco, combines the child-abuse and prosecution models. Under the hybrid approach, prostituted children are prosecuted, but they also receive counseling and community-based support. These approaches are frameworks through which different states’ laws can be analyzed, whether the state has “safe harbor” laws or not. States that do have “safe harbor” laws often do not neatly conform into one approach but more often fit the hybrid model. The ideologies of states are evident in how the criminal system treats prostituted children.

In 2008, New York was the first state to develop “safe harbor” statutes or case law, and many other states such as Washington, Connecticut, Illinois, and Texas have followed in subsequent years. Florida passed the Safe Harbor Act in 2012, becoming the most recent state to adopt such a law. This Article examines the Florida Safe Harbor Act to answer the following: (1) in what context did this law arise; (2) how did international, national, federal, and other states’ laws influence the Florida statute; and (3) what are the statute’s drawbacks and how can they be addressed. This Article concludes that Florida’s “safe harbor” law is superior to other states’ efforts, because, if applied correctly, it will protect prostituted children from being treated as juvenile delinquents, regardless of consent.

II. BACKGROUND

A. One Potential Source of the Problem

In the United States, Christian values are prominent and affect the nation’s moral culture. Laws can be a reflection of society’s values. Interracial marriages, for example, were illegal in the United States from the 1660s until Loving v. Virginia legalized interracial marriage in 1967. Before Loving reached the U.S. Supreme Court, the trial court, in upholding the illegality of interracial marriages, used religious views as a basis for its holding: “Almighty God created the races white, black, yellow, malay, and red, and he placed them on separate continents..."
. . . he did not intend for the races to mix.”32 This quote made apparent how the prejudices and religious views of those in the legal profession can distort reason and affect the law.

Today, interracial marriages are both legal and common, but same-sex marriage is prohibited in many states.33 The persistence of this policy, at least in some states, signals that law is still influenced by religion. Prostitution, like same-sex marriage, was outlawed because it is viewed as an immoral act.34 While prostitution and same-sex marriage are inherently different legal issues, they seem to both be affected by society’s views of religion and morality.

People who believe in God often form their moral views out of their religious beliefs,35 and Christianity played a role in the foundation of the United States as it exists today.36 In Christianity, a person’s virginity is an object of pureness to be reserved for marriage,37 and thus intercourse is immoral if it does not take place within the context of marriage.38 Under this view, an individual who, in exchange for money or before marriage, engages in intercourse is committing a transgression against God, making their act immoral in the eyes of society.39 This same rationale could be applied to children who engage in prostitution by categorizing their acts as immoral.40 Although morality may not be responsible for generating the problem that “safe harbor” laws attempt to fix—the treatment of prostituted children as criminals as opposed to victims—it could be a factor.

In arguing that religion may play a subconscious role in our morals and therefore in our laws, it is important to clarify that this is not a criticism of religion. In fact, religious groups are often involved in helping abused children,41 including those who have perhaps not been down a righteous path. As individuals, our religious views are part of us, and just like biases they affect the way we view the world even when we have the best intentions. As Henri Bergson put it: “the eye sees only what the mind is prepared to comprehend.” 42

B. International Protections

Sex trafficking—different from prostitution in that it involves a lack of consent43—is a mobile crime that spreads across borders and often involves children.44 In 2000, the United

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32 Id.; Loving, 388 U.S. at 3.
35 William J. Wainwright, Religion and Morality (2005) (supporting command theory, a theory that argues that God’s commands determine right from wrong and moral from immoral).
36 Mark David Hall, Did America Have a Christian Founding?, HERITAGE FOUND. (June 7, 2011), http://www.heritage.org/research/lecture/2011/06/did-america-have-a-christian-founding.
37 See 1 Corinthians 7:7–9 (“I wish that all were as I myself am. But each has his own gift from God, one of one kind and one of another. To the unmarried and the widows I say that it is good for them to remain single as I am. But if they cannot exercise self-control, they should marry. For it is better to marry than to burn with passion.”).
38 See id. at 7:2 (“But because of the temptation to sexual immorality, each man should have his own wife and each woman her own husband.”); see also Sieber v. Town of Oliver Springs, No. E1999-01228-COA-R3-CV, 2000 WL 555233, at *3 (Tenn. Ct. App. May 8, 2000) (stating that engaging in sex for money was immoral conduct).
39 See 1 Corinthians 7:2; see Sieber, 2000 WL 555233, at *3.
41 Some of the religious entities involved in efforts to protect children from sexual abuse include the Archdiocese of Chicago Office for Child Abuse Investigations and Review, Jewish Child and Family Services, Misericordia, and the Brevard Interfaith Coalition, to name a few. See Brevard Interfaith Coalition, CATHOLIC CHARITIES OF CENTRAL FLORIDA (Jan. 22, 2015, 9:10 P.M.), http://www.cfloc.org/interfaith_home; Coalition Against Sexual Abuse of Children with Disabilities (CASACD), CHICAGO CHILDREN’S ADVOCACY CENTER (Jan. 22, 2015, 9:00 P.M.) http://www.chicagocac.org/what-we-do/casacd/.
43 Sex trafficking takes place when a child is kidnapped or coerced into exchanging sexual favors for money, whereas prostitution takes place when a child decides to engage in prostitution and does so willingly. See Elizabeth M. Bruch, Models Wanted: The Search
Nations (the “U.N.”), in response to this international concern, created a Protocol to Prevent, Suppress, and Punish Trafficking in Persons (the “Trafficking Protocol”). The Trafficking Protocol’s stated purposes are: (1) to stop and fight human trafficking, especially in women and children; (2) to protect and aid victims; and (3) to promote collaboration among countries. The Trafficking Protocol defines “trafficking in persons” as the “[r]ecruitment, transportation, transfer, harboring, or receipt of persons” against their will and by use of threats, force, or other means of coercion. The Trafficking Protocol protects victims of sexual exploitation—including child and adult prostitutes—by requiring that State Parties: (1) enact legislation criminalizing prohibited actions; (2) protect the victim’s identity; (3) provide treatment and avenues for the victim’s relief; (4) create programs to educate the public about trafficking; and (5) train law enforcement and other relevant authorities.

Joining over one hundred other countries, the United States signed the Trafficking Protocol in December 2000. The protocol provides protection, prevention, and unification at the international level to necessarily deal with this mobile crime. The Trafficking Protocol has been successful in that there are now more resources allocated to dealing specifically with human trafficking. There have also been significant advancements including the creation of a new visa status for victims in order to facilitate their integration into society. Still, the Trafficking Protocol has drawbacks. For example, it does not cover trafficking over the Internet, creating a gap of protection. Further, while the Trafficking Protocol is helpful, it does little to control domestic sex trafficking. Even if a nation agrees to the minimum standards set forth in the protocol, prostitution will not be affected without implementation and enforcement at the local level.

C. Federal and National Protections

1. Federal Law

Approximately 200,000 children are victims of prostitution in the United States annually. Recent reports suggest that many more children may be at risk. Congress has responded by

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46 Id. at 344.

47 Id.

48 Id. at 344–47.


50 Trafficking Protocol, supra note 45, at 345–48.


52 See id. at 379–80.


54 See Enck, supra note 51, at 385. Domestic sex trafficking refers to the trafficking of human beings for sex that takes place within a country’s borders and not at an international level. See HUMAN SMUGGLING & TRAFFICKING CTR., DOMESTIC HUMAN TRAFFICKING — AN INTERNAL ISSUE, U.S. DEPT. OF STATE 2 (2008), available at http://www.state.gov/documents/organization/113612.pdf [hereinafter Domestic Human Trafficking] (discussing the misconception that human trafficking is an international and not a domestic problem).

55 See Domestic Human Trafficking, supra note 54, at 4 (discussing how law enforcement authorities need to be more aware of human sex trafficking in order to better identify victims of these crimes).

passing the Trafficking Victims Protection Act of 2000 (the “TVPA”). The TVPA criminalized human trafficking and granted relief in the form of benefits and services to those identified as victims of severe human trafficking, including children. Severe human trafficking is defined as “sex trafficking . . . induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained [eighteen] years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services.”

As the Criminal Court of the City of New York explained in People v. Samantha R., the TVPA creates federal protections for individuals under eighteen who have been induced to prostitute themselves. Adult victims of human trafficking, unlike child victims, have the additional requirement of becoming certified as victims of severe human trafficking. The Secretary of Health and Human Services certifies only those victims who assist in the investigation and prosecution of traffickers. The benefits of certification include, but are not limited to, temporary asylum (where applicable), housing, food, and other basic needs, such as medical care, health care counseling, case management, legal assistance, transportation, English language classes, and job skills training (for adult victims). Although the TVPA is helpful, it does not fix the problem of unjust treatment of child victims of prostitution at the state level. Because the TVPA has not been successfully implemented locally, critics have described it as a lack of “Prosecution, Prevention, Protection, and Partnership.”

2. National Efforts

In addition to international and federal law, there are national efforts geared at eradicating human trafficking. The American Bar Association (the “ABA”) has a “Task Force on Human Trafficking” (the “Task Force”) that seeks to mobilize the legal profession to combat human trafficking through raising awareness, advocacy, and education. The Task Force engages in a number of national activities, including: corporate training, assisting in pro bono activities, engaging in publication of materials to raise public awareness, training for legal professionals and judges, and education through the development and dissemination of training materials and resources.

60 Id. § 7102(9).
65 Jennifer A.L. Sheldon-Sherman, The Missing “P”: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act, 117 PENN ST. L. REV. 443, 460 (2012) (“Because local law enforcement officers are more familiar with their jurisdiction and are more likely to have personal connections within the community, they are more likely than federal law enforcement to be approached by witnesses of trafficking or to come in first-hand contact with trafficking victims.”), see also Dina Francesca Haynes, Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act, 6 U. ST. THOMAS L.J. 77, 77 (2008) (arguing that the TVPA has not been successfully implemented and that “human trafficking appears to be increasing as traffickers discover how lucrative and easy it is to enslave another human being”).
government agencies, and lobbying and partnering to draft legislation.\(^{67}\) The ABA petitioned the National Conference of Commissioners\(^ {68}\) to draft legislation focusing on human trafficking for sexual purposes in which a child or adult became involved through force, fraud, or coercion—but not intended to cover consensual prostitution.\(^ {69}\)

The ABA, in its proposal to the Committee, posited that uniform state laws on trafficking would promote inter-jurisdictional collaboration, which would in turn help the nation combat human trafficking more effectively.\(^ {70}\) The National Conference of Commissioners, in support of the ABA’s argument, drafted the Prevention of and Remedies for Human Trafficking Act (the “Uniform Act”), which was enacted in its final form in July 2013.\(^ {71}\) The Uniform Act has interesting provisions geared specifically at human trafficking and touching upon prostitution.\(^ {72}\) The Uniform Act combines some of the ideas expressed in previous drafts with some nuances, such as introducing the concept of aggravating circumstances.\(^ {73}\)

The Uniform Act makes human trafficking a felony regardless of whether a minor consented to being trafficked.\(^ {74}\) As set out in the draft, the Uniform Act operates under four grades of felony, A through D.\(^ {75}\) However, the final text\(^ {76}\) bases the severity on whether there is a child\(^ {77}\) involved, and on whether there are aggravating circumstances,\(^ {78}\) as opposed to using mens rea\(^ {79}\) as a guide like the draft. A grade-A felony would constitute the most serious felony (other than the death penalty), while a grade-D felony would be the least serious.\(^ {80}\) Under the Uniform Act, when the trafficked victim is a child, the degree of felony is raised, for example, from a C to a B.\(^ {81}\) Trafficking under the proposed Uniform Act includes: transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an individual for the purpose of forced labor or servitude, including sexual servitude.\(^ {82}\) In addition to penalties for traffickers, the Uniform Act provides immunity from prosecution to minors who committed illegal activities—such as prostitution—as a result of being a victim of human trafficking.\(^ {83}\) If the victim is a child, they must be presumed to be a “child in need of protection” and treated in accordance with the applicable state’s juvenile program.\(^ {84}\)

\(^{67}\) See id.

\(^{68}\) The National Conference of Commissioners is a non-profit association of commissioners appointed by each state, with the purpose of discussing uniformity of laws among the states. About the ULC, UNIF. LAW COMM’N, http://www.uniformlawcommission.com/Narrative.aspx?title=About%20the%20ULC (last visited Jan. 15, 2015) (“[P]roviding states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”).


\(^{70}\) Uniform Human Trafficking Law, supra note 69, at 2.


\(^{72}\) Id. § 3.

\(^{73}\) This is a significant step in...
Finally, the Uniform Act inflicts serious civil consequences on traffickers, giving victims the right to recover monetary damages from their abusers in the form of restitution, for both expenses incurred and for their labor.\(^85\) Further, the Uniform Act would force the forfeiture of property, real and personal, by any person convicted under the Uniform Act, if the property was used or intended to be used to commit the crime or if it was acquired with the proceeds of the crime.\(^86\) Lastly, the victim may bring a civil action against the offender to recover actual, compensatory, and punitive damages and may also request injunctive or other appropriate relief.\(^87\)

Since its enactment, the Uniform Act has been introduced in fourteen states but enacted only in four, not including Florida.\(^88\) The Uniform Act seems promising because it provides strong deterrents against child sexual exploitation. The Uniform Act also provides victims with civil remedies and a defense against criminal liability.\(^89\) The Uniform Act’s provisions show special consideration for children by, for example, providing immunity for crimes committed while victims.\(^90\) Despite these positive features, the Uniform Act only covers victims of trafficking and does not protect children who “consent”—children who are not trafficked but rather engage in prostitution freely are not considered victims under the statute.\(^91\) It is a very promising effort, however, in the field of children’s rights. Uniformity of laws between the states could help stop human trafficking at the national level, while varying local state laws would have the effect of shifting the problem across borders.

D. State Protections

Despite the international and federal efforts to stop the prosecution of prostituted children in states that lack “safe harbor” laws, children under eighteen continue to be treated as criminals because prostitution is considered a crime.\(^92\) At least eleven states have passed “safe harbor” laws to create a “victim status” for child victims of prostitution.\(^93\) This Article will examine the laws of New York, Washington, Connecticut, Illinois, Texas, and Florida—a representative sample of the national situation.\(^94\)

Washington, Connecticut, and Illinois take a hybrid approach, using prosecution and the criminal system as a mechanism for helping prostituted children, while also including a component of outside treatment often provided by child services. Common features of “safe harbor” laws include: (1) an affirmative defense against prosecution; (2) arrest and custody of the child by the delinquency system; (3) discretion to government officials in deciding victim status; (4) use of the delinquency system as a mechanism to manage cases of child prostitution; (5) remedies and relief only for children who are forced or coerced into prostitution; and (6) a

\(^{85}\) Id. § 10(a).
\(^{86}\) Id. § 11(a).
\(^{87}\) Id. § 18(a).
\(^{89}\) See UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING §§ 16, 18.
\(^{90}\) See id. § 15.
\(^{91}\) See id. § 2(15) (defining victim as an individual who is subjected to human trafficking).
\(^{94}\) Although eighteen states have “safe harbor” laws, each different, the states’ laws that this Article discusses are a representative sample of the characteristics shared by “safe harbor” laws nationwide. POLARIS PROJECT, 2013 ANALYSIS OF STATE HUMAN TRAFFICKING LAWS: SAFE HARBOR — PROTECTING SEXUALLY EXPLOITED MINORS 2 (2013), available at http://www.polarisproject.org/storage/2013-Analysis-Category-6-Safe-Harbor.pdf.
presumption that the child was abused. Florida’s statute is unique in that it does not follow these common features, with the exception of the fourth feature—because it gives police officers discretion to decide whether a child is a victim.

The type of model for treating child prostitution that a state utilizes can be used to analyze in a spectrum their legislation’s strengths individually and as they compare to other states. States that follow the prosecution model often provide little protection and can be said to be weak, whereas those that follow the child-abuse model offer the highest level of protection and thus can be said to be stronger. Protection in this case refers to the amount of services and resources available to child victims.

New York enacted the first “safe harbor” law with the passage of the Safe Harbor for Exploited Children Act in 2008. New York’s approach to child prostitution is similar to the prosecution model because it provides services for child victims, but these services often can only be obtained once the child enters the delinquency system. New York’s safe harbor laws provide a defense for children under eighteen who have been arrested for prostitution. The statute effectively operates to divert these children to family courts under a petition for person “in need of supervision.” Nevertheless, children above the age of sixteen can still be charged in criminal court for the crime of prostitution. Further, even if a child is labeled a “person in need of supervision,” if they fail to comply with the court’s orders and with the service plans being provided, the court has sole discretion to substitute their protected status for that of a juvenile delinquent. The statute also directs local social services agencies to provide services for these children but fails to specify a source of funding.

New York’s model has multiple issues that make it inferior to other states’ approaches. These include the lack of protection for all persons under eighteen, the ample discretion given to the court in determining the status of a child, and the use of the criminal system in some instances as a mechanism for “helping” child victims of sexual exploitation. Precluding the prosecution of children sixteen and under is commendable but allowing criminal courts to have jurisdiction over those above sixteen is not ideal. Further, judges can decide to take a victim and criminalize them for their failure to follow orders, something these children more than likely have trouble doing. Finally, by utilizing the criminal law mechanism in its structure, New York’s law fails to recognize the harm that stigmatizing a child victim as a criminal can cause.

Washington followed New York by passing the Sex Crimes Involving Minors Act. Washington’s laws resemble the hybrid model because they provide a solution to the problem of child prostitution through the criminal/delinquency system, but include the community-help

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95 CONN. GEN. STAT. ANN. § 53a-82(b)-(c) (West 2015); FLA. STAT. ANN. § 39.401 (West 2015); N.Y. SOC. SERV. LAW § 447-b(2) (McKinney 2014); WASH. REV. CODE ANN. § 13.40.219 (West 2015); see Ian Urbina, Legislators Work to Improve Laws on Runaways, N.Y. TIMES (Jan. 4, 2010), http://www.nytimes.com/2010/01/04/us/04runaways.html; see also Birckhead, supra note 5, at 1067 (arguing that the “safe harbor” laws passed among the different states have similarities).
96 FLA. STAT. ANN. § 39.401.
97 N.Y. SOC. SERV. LAW § 447-b.
98 Id. § 447-a(1) (providing that any person under eighteen who is sexually exploited or engages in prostitution will be considered a “sexually exploited child”).
100 N.Y. CRIM. PROC. LAW § 170.80 (McKinney 2014).
101 See N.Y. FAM. CT. ACT § 311.4(3).
102 N.Y. SOC. SERV. LAW § 447-b(4).
103 See Annitto, supra note 18, at 60–61 ("[M]ost children with these histories are deemed by courts as unlikely to accept services and are thus forced to endure prosecution as a result, then the ultimate intent of reforms in this arena will be ignored . . . [i]f signs of rebelliousness preclude assistance, the reforms will fail many of the children that they are intended to help.").
elements found in hybrid models. The Washington laws (1) establish a presumption that the suspected individual meets the criteria for certification as a victim so long as he or she is under the age of eighteen and (2) shield a first-time offender from prosecution by encouraging prosecutors to not pursue charges. Furthermore, in addition to directing local agencies to provide services to child victims, the statute actually provides for funding to do so.

In application, the Washington statute provides for the arrest and custody of prostituted children with the caveat that prosecutors are given discretion not to pursue charges. If the prosecutor decides against bringing charges, children may be able to receive remedies similar to those afforded under the TVPA, such as medical care and counseling, because they are taken out of the juvenile system and channeled through dependency. This element is evidenced by the statute’s reference to the TVPA and the way in which the statute mimics the language of the TVPA, using terms like “certification as a victim.” Washington’s adopted hybrid approach is an improvement upon the New York statute, but it can be problematic because it punishes repeat offenders who may need the most help.

Connecticut also passed “safe harbor” legislation titled, An Act Providing a Safe Harbor for Exploited Children, that creates an affirmative defense for children charged with prostitution. Connecticut’s law resembles the hybrid model because it provides help through the criminal system, but also includes a component of outside help provided by the state Department of Children and Families (the “CDCF”). This legislation provides for: (1) a complete bar on the prosecution of children under sixteen, (2) an affirmative defense to prostitution and a presumption of coercion for those who are sixteen or seventeen years old, and (3) an obligation for the arresting officer to report any suspected abuse to the CDCF. In application, the child is arrested and is presumed to have been coerced—consent is not an issue—but provided only with an affirmative defense to the criminal charges, so that the child may still be prosecuted where the defense is ineffective. Further, while children showing signs of abuse will be reported to the CDCF—opening an opportunity for treatment—the delinquency system retains custody of them. Connecticut’s law combines elements of the New York and Washington statutes by adopting an affirmative defense, using the delinquency system as a tool for assistance (features of the New York statute) but including an element of treatment through child services (seen in the Washington statute). Connecticut’s approach is problematic because it allows for the introduction of prostituted children into the criminal system, and whatever help they may receive from the CDCF is not sufficient to overcome the extended trauma that

105 Id. at 2301–02, 2308–09.
107 Id. § 13.32A.270.
109 2010 Wash. Sess. Laws 2302 (“[W]hen a youth who has been diverted under RCW 13.40.070 for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that child with the services and treatment specified in RCW 74.14B.060 and 74.14B.070.”).
113 Id. § 53a-82(1)(a).
114 Id. § 53a-82.
115 Id. § 46b-133(2).
116 If the child is sixteen or older.
118 Id. § 53a-82(1)(a)–(c).
incarceration can cause. On the other hand, the Connecticut approach is successful because it eliminates children under sixteen from the grasp of the delinquency system completely.

Illinois enacted “safe harbor” laws with the passage of the Safe Children Act. This statute resembles the hybrid approach in that it involves the use of the delinquency system as a tool for helping prostituted children while also having a dependency component. The legislature enacted the statute to: (1) preclude the prosecution of child victims of prostitution; (2) establish a presumption of abuse/neglect for minors; and (3) establish temporary custody over a child until placement can be found. In application, a child who is arrested may be detained for a “reasonable” period of time. But, despite being immune from prosecution, the child must remain in protective custody until they can be placed somewhere, through Illinois’s Department of Children and Family Services, where his or her interests can be best served. Further, the statute encourages services for child victims and provides funding.

This approach is an improvement upon the approaches of New York, Washington, and Connecticut because it precludes all criminal charges for all minors under the age of eighteen as opposed to providing immunity only to children of some ages or providing only a defense to the charges or giving someone discretion to decide. Illinois’s approach is problematic, however, in that it subjects children to involuntary confinement despite the lack of criminal charges.

In 2010, a Texas Supreme Court decision held that child prostitutes were victims and not delinquents. On its face, this holding represents the child-abuse model, but because there is no statute on point in Texas, the state’s laws reflect a prosecution model. In In re B.W., the Supreme Court of Texas interpreted the state’s laws as prohibiting the prosecution of prostituted children. The Texas Supreme Court expressed a similar view to that of “safe harbor” law advocates: “[c]hildren are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution, and experts have described in detail the extent to which they are manipulated and controlled by their exploiters.”

Texas’s laws resemble the prosecution model because: (1) they allow for children to be prosecuted regardless of the recognition that they are victims and (2) help trafficked children through the delinquency system (criminal courts). In application, Texas’s laws may allow for prostituted children to be arrested because their penal code provides no defense or bar against a charge of prostitution. Although there is case law that recognizes non-trafficked children can also be victims, lacking a clear statute on point means that prosecution is unlikely to be avoided on every occasion.

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120 2010 Ill. Laws 6931.
121 720 ILL. COMP. STAT. ANN. 5/11-14(d) (West 2015).
122 See id.
123 See id.
124 See id.
125 705 ILL. COMP. STAT. ANN. 405/2-5; see 325 ILL. COMP. STAT. ANN. 5/3 (defining the duty of the state Department of Children and Family Services to take care of children who are at risk).
126 See 720 ILL. COMP. STAT. ANN. 5/11-14(d).
127 In re B.W., 313 S.W.3d 818, 826 (Tex. 2010).
128 Id.
129 Id.
130 In re B.D.S.D., 289 S.W.3d 889, 895 (Tex. App. 2009) (finding that Tex. Penal Code Ann. § 43.05 does not protect a juvenile from adjudication for engaging in delinquent conduct by committing the offense of prostitution despite the language in Tex. Fam. Code Ann. § 51.03(a)(1)).
131 Id.
III. ANALYSIS

A. Florida

Prior to the passage of the Safe Harbor Act, Florida law most closely resembled a prosecution model, because prostituted children were prosecuted as juvenile delinquents. In 2007, Florida passed a statute that made it a felony to “recruit, entice, harbor, transport, provide, or obtain a person knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution.” The statute increased the charge to first degree if the prostituted individual is fourteen years old or younger. Florida laws favor severe punishment for those who engage in the exploitation of children. The statute was helpful in that it provided a deterrent for the trafficking of children. But the statute did not provide protection for sexually-exploited children because it did not recognize these children as victims.

The Florida Safe Harbor Act, as written, resembles the child-abuse model because, unlike other states, it eliminates the role of the delinquency system through police discretion. Children picked up by the police will be taken to child services if the police find probable cause to believe they were sexually exploited. The Florida statute establishes all of the following protections for prostituted children: (1) it amends the definition of sexual exploitation to now include child prostitutes; (2) it gives the police the role of deciding whether there is probable cause to believe the child has been sexually exploited; (3) it gives law enforcement the discretion to either arrest a child prostitute or take them to a safe house if one is available; (4) it increases monetary penalties for those who procure others to engage in prostitution and uses the proceeds from these penalties to create funds for safe houses and other treatment programs for child victims; and (5) it offers relief to children not covered under the TVPA.

On June 17, 2014, the Florida Safe Harbor Act was revised and many of the sections that govern its application were altered to provide further structure for its implementation. One of the weaknesses of the Florida Safe Harbor Act as first implemented was the lack of guidance for child services in determining the needs of a prostituted child. The legislature passed what they have called a “screening assessment” to solve this issue. The assessment takes into account, at a minimum, these factors: (1) risk of a child running away, (2) child’s attachment to the abuser,
(3) risk of the child recruiting other children, (4) child’s interactions with law enforcement, (5) length of time that the child was exploited for, (7) substance abuse, if any, and (8) level and type of trauma that the child is suffering. This assessment is intended to ensure that each child receives the individualized treatment needed in terms of the type of placement and social services they will receive.

Other additions include: (1) a requirement that all government staff, including child protective investigators, case managers, community-based care agencies’ staff, and law enforcement, receive special training geared at sexually-exploited children; (2) the elimination of short-term safe houses and addition of foster homes, and “other setting [if it] is more appropriate” as a possibility for placement; (3) prerequisite that safe houses be certified in order to qualify for housing sexually-exploited children; and (4) the creation of a statewide council on human trafficking for the purpose of encouraging coordination between the states and local authorities. The legislature’s additions resolved some of the flaws of the statute as it was originally enacted: (1) the lack of guidance for authorities in applying the statute; (2) the lack of training that made the prior statute’s implementation difficult; and (3) the short-term housing placements that did not provide the long-term treatment these children need.

In application, the Florida statute is likely to resemble a hybrid model because once a police officer finds probable cause to believe that a child qualifies as sexually exploited, they must take the child to child services. In this way, if the system works as is intended, children would not at any point be introduced into the delinquency system. The statute recognizes children as victims by defining dependency to include prostituted children.

The legislature’s intent in passing the Florida Safe Harbor Act was to ensure that child victims of sexual exploitation receive relief through the dependency system, as opposed to the delinquency system. The purposes of the statute are to: (1) ensure the well-being of children; (2) provide for their treatment as dependents; (3) sever bonds between exploited children and their abusers; (4) reunite children with their relatives or provide them with guardians; and (5) enable these children to be reliable and willing witnesses.

Considering that Florida is the third-most popular destination for human traffickers in the country, it seems logical that the legislature would be concerned about child sexual exploitation. Traffickers are drawn to Florida because of the tourism that its weather, location,
and beaches bring. Aware of Florida’s attractiveness to human traffickers, the legislature recognized the necessity for more protections for the children involved in child prostitution. But the Florida Safe Harbor Act did not come to pass as a result of legislative initiative, lobbying and community efforts by safe house employees and child advocates provided the necessary momentum.

Florida lawmakers first proposed the statute in 2010, but it did not pass until 2012. This delay was due to both opposition and budget issues because offering safe houses required the legislature to budget some funds for this purpose and it was reluctant to do so. The first version of the statute was drafted to decriminalize prostitution for children under the age of sixteen. But the proposed legislation had to be repeatedly amended due to law enforcement opposition likely based on the perception that the decriminalization of prostitution for individuals under the age of sixteen would place a conflicting directive on law enforcement: prostitution is only a crime “sometimes.” The compromise reached instead provided police officers with the discretion to decide if a child is a victim and take the child directly to child services.

Safe houses, like the Kristi House in Miami, Florida, played an important lobbying role in the passage of this statute through its officers and advocates. Safe houses provide services like shelter, clinical aid, and victim advocacy to child victims of sexual abuse, all under one roof. This structure ensures more effective prosecution of the child’s abusers and minimizes trauma to the child. Trauma is minimized in this way because the child is not subjected to multiple rounds of questioning by authorities and the process of getting them to testify against the abuser is treated more delicately than it would be otherwise.

In addition to the community efforts and the high human trafficking that takes place in Florida, case law favors the view that prostituted children are victims and not criminals. Florida courts have a strong policy of protecting minors who engage in harmful sexual conduct,


160 See FLA. STAT. ANN. § 39.001(4)(a).

161 Among the leaders in the effort of passing “safe harbor” laws in Florida was Trudy Novicki. See Telephone Interview with Trudy Novicki, supra note 136. Ms. Novicki was the co-author of the original bill and was involved in the lobbying of this statute. Id.

162 Id.

163 Id.

164 Id.

165 Id.


167 Id.

168 See KRISTI HOUSE, http://www.kristihouse.org/?s=safe+harbor (last visited Jan. 15, 2015) (listing all of the lobbying efforts and events that the Kristi House has been involved with in relation to the Florida Safe Harbor Act); see also Lee Stephens, Nelson Diaz Elected Board President of Kristi House, BISCAYNE BAY, http://www.communitynewspapers.com/biscayne-bay/nelson-diaz-elected-board-president-of-kristi-house/ (last visited Jan. 15, 2015) (recounting Nelson Diaz’s, President of Kristi House’s, statements as to the role that Kristi House played in the passage of the Florida Safe Harbor Act as follows: “Diaz is credited with leading Kristi House’s effort in the successful passage of the Florida Safe Harbor Act . . . . As Kristi House’s pro bono advocate lobbying for the passage of the legislation, he described this legislative victory as the conclusion of a long and, at times, arduous road, but the beginning of many, many success stories for all child victims of sexual abuse”).

169 See generally KRISTI HOUSE, http://www.kristihouse.org/ (last visited Jan. 15, 2015) (explaining that the Kristi House provides all of the services a sexually-exploited child may need under one roof).

170 See Child Sexual Abuse. It Happens. It Hurts, KRISTI HOUSE 2, available at http://www.kristihouse.org/pdfs/outreach.pdf (stating that Kristi House, working closely with other agencies, “provides recorded forensic interviews that are used by the State Attorney to prosecute perpetrators of child abuse. These taped interviews limit the number of times a child must tell the story of his/her abuse, reducing the need to relive the trauma”).

171 See id.
regardless of consent.172 In State v. Cunningham, a Florida appellate court held that a child who had consensually engaged in sexual conduct with an adult should be protected from criminal prosecution.173 Also, in Schmitt v. State, the Florida Supreme Court found constitutional a statute mandated that anyone who owns a nude photograph of a child has committed a crime and that the court considered this type of photograph “sexual conduct by a child.”174 Finally, in State v. Enstice, another appellate court reasoned that when a child was at risk of sexual abuse, a poorly drafted search warrant was valid.175 These cases indicate that Florida case law protects minors involved in sexual behavior, even by sometimes interpreting the rules more liberally.176

2. Strengths of the Florida Safe Harbor Act

The Florida Safe Harbor Act is stronger than other states’ “safe harbor” laws because it follows a child-abuse model by providing: (1) separation between the dependency and delinquency systems—prostituted children’s custody and treatment is handled by child services (dependency system) as opposed to the juvenile delinquency department,177 without compartmentalizing children into different processes depending on their age, or conduct as do other states.178 Further, Florida provides in its law specific methodologies and systems to carry out the goals of the Florida Safe Harbor Act,179 whereas other states have passed laws without providing the means to implement them.180

The provision in the Florida statute giving law enforcement discretion effectivly creates a separation because children who are categorized as victims are not arrested (and therefore do not enter the delinquency system) but are instead taken to the state Department of Children and Families (dependency) and placed in safe houses, where they are not subject to criminal procedure.181 Keeping the children out of the delinquency system is crucial because if the statute is applied as intended, it eliminates the possibility of further traumatizing the child.182 Because the Florida Safe Harbor Act relies solely on the dependency system to carry out its mandate, it does not use the criminal system as a tool or alternative route in the case of any child under

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172 Id. at 1223 (“[A]ny type of sexual conduct involving a child constitutes an intrusion upon the rights of that child, whether or not the child consents . . . society has a compelling interest in intervening to stop such misconduct.”) (quoting Schmitt v. State, 590 So. 2d 404 (Fla. 1991)).
173 Id.
176 See Cunningham, 712 So. 2d at 1223; see Schmitt, 590 So. 2d at 413; see Enstice, 573 So. 2d at 343.
177 See Telephone Interview with Trudy Novicki, supra note 136 (stating that one of the most important features of the safe harbor statute was the separation between dependency and delinquency it provides); see FLA. STAT. ANN. § 39.401(2)(b) (West 2015); see also Barbara Bennett Woodhouse, David C. Baum Memorial Lecture: The Courage of Innocence: Children as Heroes in the Struggle for Justice, 2009 U. ILL. L. REV. 1567, 1581 (2009) (discussing the differences between the dependency and delinquency systems).
178 Cf. FLA. STAT. ANN. § 39.01(12) (operating under the definition of children in Chapter 39, protects all sexually-exploited children under eighteen); N.Y. FAM. CT. ACT § 311.4 (McKinney 2014) (allowing children who do not cooperate with authorities to be charged in criminal court); CONN. GEN. STAT. ANN. § 53a-829(c) (West 2015) (differentiating between children under sixteen, who are immune to prosecution, and children sixteen and older, who are only presumed coerced but not immune).
179 See FLA. STAT. ANN. § 409.1754(1)(a)(1)–(7), (2)(a)(2) (West 2015); see generally id. § 409.1678 (discussing safe foster homes and safe houses); see generally id. § 39.524 (discussing child placement in safe housing); see generally id. § 39.401 (authorizing the taking of dependent children into custody); see generally id. § 796.07 (criminalizing prostitution); see generally id. § 985.115 (discussing the release of minors who are in custody); see generally id. § 394.495 (discussing children’s mental health system care, programs, and services); see generally id. § 16.617 (discussing specific departments and steps to take when implementing the law); see generally id. § 409.997 (discussing child welfare results-oriented accountability programs).
180 See, e.g., N.Y. SOC. SERV. LAW § 447-b(4) (McKinney 2014) (stating that abused children need services but failing to allocate funding towards this end).
181 See Telephone Interview with Trudy Novicki, supra note 136.
182 Kate Brittle, Note, Child Abuse by Another Name: Why the Child Welfare System Is the Best Mechanism in Place To Address the Problem of Juvenile Prostitution, 36 Hofstra L. Rev. 1339, 1351 (2008).
eighteen. This feature makes it a stronger model in the spectrum of protection than that of other states that currently have “safe harbor” laws.

Florida has continued to legislate after the passage of the Florida Safe Harbor Act to ensure a smoother implementation of the law, whereas other states have stagnated after the passage of safe harbor laws. Florida revalued one of the most serious weaknesses of the original legislation—safe house placement—as discussed by professionals in the field and provided solutions through legislation.

Children who are sexually exploited have very specific needs. Initially, the Safe Harbor Act provided for long-term and short-term housing. Short-term housing was problematic because in addition to placing the child back on the street, it would not provide child victims with the extended services they require. Now the statute provides only long-term safe housing and foster homes or other appropriate placements. This approach is more likely to be successful because it can be tailored individually to what each child needs while providing the long-term aspect they all need.

Once placement was resolved, the old statute was not very helpful in combating the child’s instincts to run away and back to their abuser. The amendments that have been made provide for the certification of safe houses to ensure security and staff availability twenty-four hours a day. These amendments and additions to the statute have made Florida’s approach more likely to succeed in the long run. While Florida’s statute is not perfect, it is promising and it is likely to continue to evolve.

3. Weaknesses of the Florida Statute

Despite being a stronger effort than other states’ “safe harbor” laws, the Florida Safe Harbor Act has some drawbacks. These include the less-than-ideal authority given to police officers in having first contact with child victims and the possibility of constitutional rights violations.

183 FLA. STAT. ANN. § 39.001.
185 States like Texas, despite passing some favorable laws or cases, have failed to pass any subsequent laws to improve their existing treatment of children. See In re B.W., 313 S.W.3d 818, 826 (Tex. 2010) (representing the only law in Texas, passed four years ago, which attempts to create safe harbor for child victims).
186 See Interview by Linda Sullivan with Julia Luyster, supra note 165 (discussing that safe housing, as provided for in the original Florida Safe Harbor Act, was problematic due to the child’s possible attachment to their perpetrators).
187 See generally FLA. STAT. ANN. § 409.1678 (West 2015) (discussing safe foster homes and safe houses); see generally id. § 39.524 (discussing child placement in safe housing); see generally id. § 796.07 (criminalizing prostitution).
188 See Sarah E. Twill et al., A Descriptive Study on Sexually Exploited Children in Residential Treatment, 39 CHILD & YOUTH CARE FORUM 187–99 (2010) (finding that low IQ scores and multiple mental health disorders are common conditions in prostituted children); see RAYMOND ARTHUR, FAMILY LIFE AND YOUTH OFFENDING: HOME IS WHERE THE HURT IS 7–20 (2007); see Eric Thomas Berkman, Responses to the International Child Sex Tourism Trade, 19 B.C. INT’L & COMP. L. REV. 397, 402 (1996) (explaining that child victims of prostitution often suffer from depression); see Interview by Linda Sullivan with Julia Luyster, supra note 165; see Graham Bowley, A Rare Case of Justice: Life Has Improved for the Women of Afghanistan Since 2001. But There’s Still a Long Way to Go, N.Y. TIMES 14 (Nov. 5, 2012), available at http://go.galegroup.com/ps/i.do?id=GALE%7CA307525084&v=2.1&u=nysl_me_cms&it=r&inPS=true&prodId=GPS&userGroupName=nysl_me_cms&pg=GPS&dige=bdcb2405071c061895d9a5b07067a7d&rsrs=rss (discussing that because the children are more often arrested for prostitution than their abusers, the abuser is likely to be there when the child returns).
189 See H.B. 7141, 2014 Leg., Reg. Sess. (Fla. 2014) (showing the amendments made to the different statutes that make up the Florida Safe Harbor Act).
190 Twill et al., supra note 188.
192 See Twill et al., supra note 188.
193 See FLA. STAT. ANN. § 39.524.
194 See Interview by Linda Sullivan with Julia Luyster, supra note 165.
195 See FLA. STAT. ANN. § 409.1678(2)(c).
One of the least-concerning weaknesses about the statute is the discretionary role that the Florida Safe Harbor Act gives police officers. The statute is problematic in stating the following: “For such a child for whom there is also probable cause to believe he or she has been sexually exploited, the law enforcement officer shall deliver the child to the department . . . .” This text gives law enforcement officers the role of deciding whether they have probable cause to believe that the child has been sexually exploited. If the answer is yes, then the officer must deliver the child to child services. If the answer is no, there exists a probability that the child can be taken into custody for criminal charges.

It seems like a weakness to put so much power in the hands of police officers, wherein they would be effectively deciding the fate of a child, as opposed to a judge or child legal service—someone who is better prepared to make such a decision. However, it is intuitive to give this kind of role to law enforcement, since law enforcement have historically been asked to make determinations as to whether to arrest someone. Further, it is a weakness that the Florida penal code was not amended to immunize children from criminal prosecution. However, by including children who engage in prostitution within the definition of sexually-exploited children, the police have a clear decision to take such children to child services, despite the illegality of the act committed.

Another current issue with the Florida Safe Harbor Act is that it sets up a process by which the child’s rights are potentially violated. There is a concern in the field that the initial police interview is done immediately, without the presence of an attorney, and without the child having an understanding of his or her rights. The process can be compared to a finding of innocence (victim) or guilt (delinquent), and this could potentially be a violation of the child’s constitutional right to a presumption of innocence. According to a leading expert in the field, however, this situation is only an issue where there are additional charges involved. This is the case because under the statute a prostituted child is a dependent, and thus in order for a child to be found delinquent, he must have committed an additional crime. Because of this distinction, the child’s rights are unlikely to be violated by the initial interview with the police.

Another way in which advocates believe children’s rights could be violated under Florida’s statute is through involuntary confinement, which is prohibited under the U.S. Constitution. Under the Fourteenth Amendment, every citizen has the right to be free from confinement unless that freedom is taken away through due process of the law. A citizen under the Fourteenth Amendment is “[a]ny person[] born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” Due process means can be broken down into substantive—whether a fundamental right
Children who are born in the United States or who are naturalized are considered citizens under the Fourteenth Amendment. Further, the Fourteenth Amendment establishes the fundamental right for individuals to be free of confinement. Under this analysis, the government can be said to be violating children’s constitutional rights to freedom because there are no charges being brought against them that would give the government the right to detain them. There is no easy answer to resolving this dilemma except to perhaps say that the state has an inherent interest in protecting the well-being of children in the state and that this gives them the power to detain children as it gives them the power to terminate parental rights when appropriate. While this is not a very strong argument, it is a possibility and it is likely to be successful in cases where the child requires psychiatric commitment.

IV. SOLUTIONS

A. Improving the Florida Statute

Among all the weaknesses that the Florida Safe Harbor Act may have, the most concerning are that: (1) technically speaking, prostituted children are still criminals under Florida’s penal code, and (2) constitutional violations may result from the Safe Harbor Act as it is currently structured. State legislative action could resolve the present flaws in the Florida statute by doing the following: (1) eliminating the possibility of arrest entirely by decriminalizing prostitution for minors; (2) amending its penal code (unlikely because this approach was previously rejected); and (3) addressing the constitutional concerns by eliminating long-term safe housing for those children who do not mentally need it, and instead placing children in foster homes or other appropriate placements. In the end, only further lobbying and campaigning efforts from children’s rights advocates can help overcome the rigidity that characterizes the legislature and resolve the statute’s remaining weaknesses. In order to solve the statute’s flaws, advocates will need to pursue legislative changes and encourage victims to bring their cases to court.

B. Comparative Approach

Although the Florida statute and “safe harbor” laws generally have a number of shortcomings, a more global and comparative perspective is not often considered, but could be helpful to lawmakers nationwide. Human trafficking and prostitution are global problems and
often these chains of crime spread through different states and countries. Looking at how other countries handle prostitution, and child prostitution specifically, may provide lawmakers with some insight as to where the United States’ laws have gone wrong and what can be done to improve them.

Diverse approaches are illustrated in how different countries cope with child prostitution. In Canada, prostitution itself is legal, but some of the acts related to it are not. In *Bedford v. Canada*, the Ontario Superior Court of Justice found the criminalization of related acts, such as the operation of common bawdy-houses, to be unconstitutional because they intensified the risks that women engaged in this profession already face. But child prostitution remains illegal. Additionally, the laws regarding child prostitution focus on the punishment of those who procure and abet, but not on the punishment of the children themselves. Canadian law punishes the following activities in relation to child prostitution: (1) “§ 170: Parent or guardian procuring sexual activity”; (2) “§ 171: Home owner permitting sexual activity of person under [eighteen] years old for a purpose prohibited in the Criminal Code”; and (3) “§ 172.2: [M]aking an agreement or arrangement through any means of telecommunication to commit an offence under section 151 (sexual interference), 152 (invitations to sexual touching), 153(1) (sexual exploitation), 170 (parents procuring sexual activity), 171 (householder permitting sexual activity), 212 (2) (procuring sexual activity for the purposes of exploitation), 212 (2) (living on the avails of prostitution of a person under the age of [eighteen])."

Under Canadian law, children are not the targets of the criminal system, only their abusers are, thus making it a desirable model. Nevertheless, Canada has serious issues with child prostitution, and the way in which the government has attempted to provide help to these children has proven ineffective. Canada’s Child, Family and Community Service Act allows for the admission of a child into protective custody if there are reasonable grounds to believe that the child is at risk of becoming a prostitute. In operation, this law allows police officers to apply to the court for authorization to detain the children and return them to their families or take them to a safe house. Confinement of child victims of prostitution may be increased if there is reason to believe the child is still at risk and could benefit from further treatment. In addition, restraining

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227 See Ludovica Iaccino, *Top Five Countries with Highest Rates of Child Prostitution*, INT’L BUS. TIMES (Feb. 6, 2014, 5:40 PM), http://www.ibtimes.co.uk/top-five-countries-highest-rates-child-prostitution-1435448 (ranking Canada as one of the top five countries with the highest rates of child prostitution, and describing child prostitution as “deeply rooted” in Canadian communities).

orders can be issued against those, such as “pimps,” who engaged in the procurement of the child.233

Despite the legislation’s focus on abusers and attempts to help child victims, Canada’s laws could use improvement. One problem, highlighted by child advocates, is the inadequacy of non-voluntary programs that have been implemented in some provinces as a result of the law.234 In effect, reviews found these types of programs to be ineffective because of the lack of long-term treatment, leading to constant admission into and expulsion from the programs.235 The Canadian approach is similar to the United States’ approach in that at the national level, the government wants to protect child victims and prosecute their abusers, but at the local level, there is a lack of enforcement, because provinces/states take different approaches to the issue.236

Similar to Canada, prostitution in Brazil is legal.237 Prostituted children in Brazil do not have many protections under the law and are often treated as adults.238 Since 2009, Brazil’s age of consent has been fourteen years old.239 While the highest criminal court in Brazil expressed views that having intercourse with young children was “immoral,” a man who had sexual relations with three twelve-year-olds was found to have engaged in “legal” activity in 2002.240 The court reasoned that the girls were mature beyond their years due to their “wide sexual experience” and thus their ages were not determinative of their ability to consent.241 Some cities have attempted to alleviate child prostitution in the streets by conducting raids led by a child protection unit in order to catch sex tourists, pimps, and other child abusers.242 Some of the children rescued during these raids have found refuge in charity homes.243

Despite these efforts to better the situation of child prostitutes, Brazil continues to be considered an international hot spot for sex trafficking, and the poverty that drives these young children to prostitute themselves continues to be a sad reality.244 As long as poverty continues and the government lacks a unified front protecting child prostitutes across the board, as opposed to the differences that exist now between courts, statutes, and police efforts, Brazil is unlikely to improve the rights of child victims and to lower the levels of child prostitution.

On the other hand, in Russia, while prostitution is illegal, it is an ongoing practice.245 The age of consent in Russia is sixteen and these parameters allow for the legal prostitution of minors who are sixteen and seventeen.246 On the other hand, engaging in sexual acts with children who are fourteen or younger is criminalized.247 In 2007, in Yekaterinburg, Russia, three men were

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233 Id.
234 See McKay-Panos, supra note 226.
235 Id.
236 See BARNETT, supra note 224, at 29.
237 Jen Ross, Brazil Tries to Stem Tide of Sex Slavery, WOMEN’S ENEWS (June 19, 2005), http://womensenews.org/story/prostitution-and-trafficking/050619/brazil-tries-stem-tide-sex-slavery#.UPYAOidkzyM.
238 Id.
240 Id.
241 Id.
243 Id.
convicted for running a child prostitution ring involving children between the ages of nine to fourteen.248 The men were charged for violating the criminal code for trading with people, “sexual violence, sexual violence against underage children, [and] the production and the sale of printed materials or films with the pornographic pictures of adolescents, and the involvement of adolescents in criminal actions.”249 They were respectively given seventeen, sixteen, and twenty years in prison.250

Although cases like this give the appearance of protection for child victims, it is unclear how much enforcement these types of laws actually receive.251 Further, child prostitution has been, and continues to be a growing problem in Russia.252 In reality, child prostitutes do not seem to have any rights, protections, or medical help or treatment and they are unlikely to be viewed as victims because minors are treated like “adults.”253 While the law seemingly attempts to target the abusers, it does not operate to protect victims of trafficking, and the victims may instead be punished as criminals.254 Russian laws are not geared at protecting children who are sexually exploited.255 Currently in Russia, children are not being offered any services or real protection and this is not likely to change soon.256

A look at three different continents is not only enlightening but also revealing. Child prostitution is a worldwide problem and even countries that have specific laws addressing it seem to have large populations of abused children.257 The United States seems to be more procedurally advanced than other countries around the world, because at the federal level there are laws addressing human trafficking, and many states now have “safe harbor” laws that address prostitution as well.258 Nevertheless, the United States’ legal system could incorporate some aspects of other countries’ laws. In Canada, for example, by legalizing adult prostitution and passing laws specifically tailored to protect children, the government has allowed police officers more time to focus on the real abusers: the “pimps.”259 On the other hand, forcing child victims of prostitution into custody for short-term treatment has proved ineffective because these children need long-term assistance.260

Applying a global perspective to the Florida Safe Harbor Act, it seems that the structure and enforcement system set up by this statute is promising.261 But it is also noticeable that

248 Id.
249 Id.
250 Id.
253 See generally Roudik, supra note 245 (discussing that the age of full criminal liability for any offense is twelve years old).
255 Id. at 324–26.
258 Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(a) (2012); CONN. GEN. STAT. ANN. § 53a-82(b)–(c) (West 2015); Fla. STAT. ANN. § 39.001 (West 2015); N.Y. SOC. SERV. LAW § 447-b(2) (McKinney 2014); WASH. REV. CODE ANN. § 13.40.219 (West 2015); In re B.W., 313 S.W.3d 818, 826 (Tex. 2010).
259 Hearing on Bill C-36 Before the S. Comm. on Legal and Constitutional Affairs (Sept. 9, 2014) (statement of Peter MacKay, P.C., M.P., Minister of Justice & Att’ Gen. of Canada), available at http://www.parl.gc.ca/content/sen/committee/412%5CLCJC/51557-e.HTM.
260 Id.
261 See generally Telephone Interview with Trudy Novicki, supra note 136 (discussing how the Florida Safe Harbor Act was a promising start to “safe harbor” legislation in Florida).
Florida’s approach partially targets the victim by providing discretion to police officers instead of making it mandatory262 (like under Canadian law) to take the child into custody for treatment.263 The Canadian approach of completely eliminating the criminalization of child prostitutes while maintaining that child prostitution is illegal, is superior to Florida’s approach because it focuses all resources on the real problem: the abusers.264 But the Canadian approach of detaining child victims involuntarily and then letting them go has proven to be ineffective.265 The finding can be applied to amend the Florida Safe Harbor Act so that it provides more adequate treatment. In the recent amendments to the Florida Safe Harbor Act, the legislature made Florida’s system different from Canada’s by eliminating short-term housing, a decision that is likely to prove fruitful.266

When generating solutions to the flaws of the United States’ “safe harbor” laws, it is often difficult to imagine how they will play out in application. For this reason, having a global perspective can be helpful because other countries have already engaged in similar processes and their experiences are instructive. If a solution to a similar problem has been ineffective in another country, it is likely to be ineffective in the United States. Having this prior knowledge saves resources and time and will allow lawmakers to focus on what will advance the rights of child victims of prostitution.

V. OTHER CONSIDERATIONS

The omission of gender and sexuality in the discussion of child sexual exploitation is likely to result in inadequacies in “safe harbor” laws enacted in the United States. Gender is an essential subject of discussion when dealing with the issue of child prostitution, not because the victims themselves suffer any differently depending on their gender, but because there are many misconceptions regarding child prostitutes.267 The general societal misconception of a child prostitute is that the term refers to a young girl, but in reality many boys are also engaged in prostitution, and they often begin to prostitute themselves at an earlier age than girls.268 While the “safe harbor” law that passed in Florida uses “child” in its language as opposed to boy or girl in an attempt to encompass all victims of child prostitution, it does not recognize or prevent misconceptions that may result in unequal application of the law.269

A lack of discussion about gender when drafting and advocating for “safe harbor” legislation may lead not only to unequal treatment of boys and girls but also to the failure of the purpose of “safe harbor” laws: protecting abused children. For example, the Florida Safe Harbor Act asks law enforcement to determine whether there is probable cause to believe a child was sexually exploited.270 Police officers lacking further guidance or instruction are more likely to view a young girl as a victim than they are to view a young boy as a dependent, because boys are

262 Florida could do this by appealing its penal code.
263 Fla. Stat. Ann. § 39.401(2)(b); see Child, Family and Community Service Act, R.S.B.C. 1996, c. 46(13)(1.1), available at http://www.bclaws.ca/civix/document/id/complete/statreg/96046.01 (setting out the procedures for dealing with abused children); see also Barnett, supra note 224, at 19 (discussing how several provinces allow police officers who have reasonable grounds to believe a child is being prostitute to request permission from the court to take such children into protective custody).
264 Research–Child Prostitution, supra note 226.
265 Barnett, supra note 224, at 22.
267 Birckhead, supra note 5, at 1092; Annitto, supra note 18, at 18–21.
268 Birckhead, supra note 5, at 1092.
usually expected “to engage in sex whenever the opportunity presents itself.” 271 Therefore, despite the drafting of the laws to accommodate the protection of both male and female child prostitutes, current laws may not provide equal protection. Thus, advocates should not assume that the law will be applied as they envision, but look for ways to ensure that it is applied fairly and equally.

Part of advancing children’s rights is reshaping society’s views and educating the public as to the children that are engaged in these activities. 272 It is important to correct the misconception that prostitutes are only female and that child abusers are only male. Advocates should raise awareness about these misconceptions, not only to ensure more equal treatment of child victims, but to also help advance child rights. The more educated that society becomes about the realities of child prostitution, the more likely it will support the passage of legislation and become engaged in programs that help child victims.

Finally, one unexplored topic in relation to gender and child prostitution is sexual orientation. 273 Many child prostitutes are not heterosexual but are lesbian, gay, bi-sexual, or transgendered; often they have been thrown out of their homes as a result of their sexual preferences. 274 Much like the misconception that prostitutes are female, another misconception in society is that child prostitutes are usually heterosexual, and the child’s sexual preferences are rarely if ever taken into consideration. 275 Breaking these notions of who a child prostitute is, and adjusting the definition of “prostitute” to encompass the spectrum of victims that are involved and all of their characteristics, will help lawmakers draft more adequate legislation and will help law enforcement and authorities better implement them.

Each child victim has a unique story and enters the world of prostitution for different reasons. Knowing why these children end up in a particular situation is necessary in order to provide them with adequate aid and treatment. While providing language in “safe harbor” laws that encompasses all children equally is a good place to start, laws must evolve to be specified and tailored in order to be more effective. Florida has started to progress in that direction by adding to the original statute provisions to ensure that sexually-exploited children are separate from other abused children and from other sexes, and that they receive treatment and placement tailored to their needs. 276

VI. CONCLUSION

The treatment of prostituted children as delinquents is allowed too often in the United States. As a result of this tradition, child victims of prostitution are arrested in many parts of the country. 277 Children’s rights advocates are fighting to change this treatment, however, and to protect child victims from further punishment. 278 These efforts to pass “safe harbor” laws that

271 See Annitto, supra note 18, at 19; see Michelle Oberman, Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape, 48 BUFF. L. REV. 703, 715 (2000); see generally Ralph Lillywhite, Boys Are Not Sexually Exploited? A Challenge to Practitioners, 15 CHILD. ABUSE REV. 351 (2006) (describing the expectations that society places on young boys in comparison to girls).

272 See generally Trafficking Protocol, supra note 45 (supporting the proposition that education of the public is a necessary step).

273 See Birckhead, supra note 5, at 1092–93.

274 See id. at 1093.


277 See Arya, supra note 40, at 107–08 (discussing minors being prosecuted as adults).

278 See generally KRISTI HOUSE, supra note 167 (listing all of events in which Kristi House has participated to advocate for exploited children).
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protect sexually-exploited children have been successful in a number of states, including Florida.\footnote{FLA. STAT. ANN. § 39. 001; Telephone Interview with Trudy Novicki, supra note 136.} The Florida Safe Harbor Act represents a “win” for the advocates of “safe harbor” laws because it provides more protection for sexually-exploited children than any other state statute has up to this point. Its main strengths are that it provides a separation between the dependency and delinquency systems—without excluding any child based on age,\footnote{See FLA. STAT. ANN. §§ 39.01(69)(g), 39.401(2)(b).} —and that it provides clear and specific guidelines for implementing its mandates.\footnote{See FLA. STAT. ANN. § 409.1754(1)(a).} These strengths are somewhat undermined by the lack of amendment to the penal code\footnote{FLA. STAT. ANN. § 796.07.} and the constitutional concerns of involuntary confinement,\footnote{See Benk, supra note 13.} but there is hope that these flaws can be fixed through further legislation. In the process, lawmakers could benefit from taking a more comparative approach and exploring issues of gender. Overall, the Florida “safe harbor” laws are a major step in the right direction and have the potential of leading to more positive advancements in this field of law.

\footnote{FLA. STAT. ANN. § 39. 001; Telephone Interview with Trudy Novicki, supra note 136.} \footnote{See FLA. STAT. ANN. §§ 39.01(69)(g), 39.401(2)(b).} \footnote{See FLA. STAT. ANN. § 409.1754(1)(a).} \footnote{FLA. STAT. ANN. § 796.07.} \footnote{See Benk, supra note 13.}