



## CSE INSTITUTE POLICY PAPER

### Why “Safe Harbor” Full-Immunity is the Best Policy for Decriminalizing Child Victims of Sex Trafficking

More and more, child victims of sex trafficking are being recognized for who they are – victims of rape and sexual assault, *not* criminals. As jurisdictions throughout the United States come to recognize that sexually exploited children are victims, there has been an increasing realization that sexually exploited children should be granted full-immunity from arrest and prosecution for prostitution and related offenses. Pennsylvania’s pending “Safe Harbor” legislation will provide full-immunity to child victims of sex trafficking, and thus provides an important tool in protecting the human rights of child victims of sex trafficking throughout the Commonwealth.<sup>1</sup>

This CSE Institute Policy Paper explains why child victims of sex trafficking should be immune from arrest and prosecution for prostitution and related offenses, specifies the scope of the proposed immunity and details how Pennsylvania’s proposed “Safe Harbor” legislation (SB 851) will secure this important human rights protection for child victims.

#### I. Why Should Child Victims of Sex Trafficking Be Immune from Prosecution for Prostitution-Related Offenses?

When children are being sexually exploited prostitution and related offenses – they are being victimized in sex trafficking. Indeed, throughout the United States, it is becoming

<sup>1</sup> S. B. 851, 2015-2016 Reg. Sess. (Pa. 2015).

increasingly well-recognized that there is no such thing as a “child prostitute” – rather, these children are victims of sex trafficking.<sup>2</sup> International law and federal law clearly define children involved in prostitution as victims of sex trafficking. Both international law and federal law call for these child victims to be provided “Safe Harbor” from arrest and prosecution for prostitution and related offenses. The Pennsylvania legislature must clarify that prostituted children are victims of sex trafficking and should be provided “Safe Harbor” from arrest and prosecution for prostitution and related offenses<sup>3</sup>.

#### **A. International Human Rights Law**

Child victims of sex trafficking should be fully immune from arrest and prosecution for prostitution and related offenses because treating these victims as criminals violates our obligations under international human rights law. Indeed, the United Nations Human Rights Committee (U.N.H.R.C.) recently condemned the United States because many U.S. States continue to subject victims of sex trafficking to prosecution for prostitution and related offenses, urging the United States to “take all appropriate measures to prevent the criminalization of victims of sex trafficking.”<sup>4</sup> As Cynthia Soohoo, Director of the International Women’s Human Rights Clinic at CUNY School of Law observed, the UN.H.R.C.’s action sent “a clear message that criminalizing trafficking victims violates their fundamental human rights.”<sup>5</sup> Moreover, the United States is party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking

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<sup>2</sup> For more information, see Rights 4 Girls “No Such Thing” campaign at <http://www.rights4girls.org>.

<sup>3</sup> Pennsylvania law defines sexual servitude as “Any sex act or performance involving a sex act for which anything of value is directly or indirectly given, promised to or received by any individual or which is performed or provided by any individual and is induced or obtained from... a minor.” 18 Pa.C.S. § 3001.

<sup>4</sup> See, U.N. Human Rights Comm., Concluding Observations on the Fourth Report of the United States of America, ¶ 14, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) (expressing concern about continued “criminalization of [trafficking] victims on prostitution-related charges” in the United States).

<sup>5</sup> U.N. Condemns Criminalization of Trafficking Victims as a Human Rights Violation, CUNY SCHOOL OF LAW PUBLIC SQUARE (March 27, 2014), <http://www1.cuny.edu/mu/law/2014/03/27/u-n-condemns-criminalizationof-trafficking-victims-as-a-human-rights-violation>.

in Persons, according to which we have committed ourselves to “to protect and assist victims . . . with full respect for their human rights.”<sup>6</sup> By prosecuting victims of sex trafficking for prostitution and related offenses, Pennsylvania is acting inconsistently with these international legal obligations. However, the proposed Safe Harbor legislation (SB 851) grants full-immunity to child victims of sex trafficking, which would make Pennsylvania compliant with international human rights law.

### **B. Federal Law Regarding Sex Trafficking**

In the United States, federal law regarding sex trafficking adopts a clear policy in favor of treating child victims of sex trafficking as victims, not criminals. Ever since the adoption of the Trafficking Victims Protection Act of 2000, federal law has formally recognized that children under the age of 18 years who are engaged in prostitution and related-offenses are victims of sex trafficking.<sup>7</sup> Moreover, the federal law has also encouraged states to adopt laws and policies that treat these children as victims rather than criminals. Most recently, the Justice for Victims of Trafficking Act of 2015 (JVTA) adopted preferential consideration in grant-making to encourage states to adopt laws that “treats a minor who has engaged in, or has attempted to engage in, a commercial sex act as a victim of a severe form of trafficking in persons.”<sup>8</sup> While Pennsylvania already recognizes that children under the age of 18 years who are engaged in commercial sex as victims of sex trafficking, we must clearly offer “Safe Harbor” protection to these victims. If the proposed Safe Harbor legislation (SB 851) is enacted in Pennsylvania, it will grant full-immunity to these child victims, thus fully requiring police and prosecutors to treat sexually exploited

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<sup>6</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, art. 3, U.N. Doc. A/RES/55/25 (Nov. 10, 2000), Art. II.

<sup>7</sup> Trafficking Victims Protection Act of 2000 § 103, 22 U.S.C. § 7102(8) (2012).

<sup>8</sup> Justice for Victims of Trafficking Act, H.R. 181, 114th Cong. §§ 101-121 (2015).

children as victims of severe forms of trafficking in persons, rather than treating them as criminals.

### **C. Basic Principles of Justice**

Child victims of sex trafficking should be immune from arrest and prosecution for prostitution and related offences because, when these children engage in prostitution and related offenses, they are being victimized – and basic principles of justice demand that the criminal *law* not be used to further harm victims by treating them as criminals. Criminal justice systems, if they wish to achieve justice, should target the true offenders – the pimps, traffickers, and buyers – whose conduct victimizes these children. Moreover, criminal justice systems should aim to provide protection, vindication, and support to these child victims – not subject them to arrest, prosecution, and punishment. Targeting child sex trafficking victims for prosecution is a supreme injustice. It violates the basic ideal that criminal law should be used only against those whose conduct is blameworthy and deserving of condemnation. As such, basic principles of justice demand that we end our practice of criminalizing child victims of sex trafficking, and instead provide these victims with the “Safe Harbor” full-immunity provided in SB 851.

### **D. Risk of Further Traumatization**

Victims of child sex trafficking should be immune from arrest and prosecution because criminalizing them risks further traumatizing this vulnerable population.<sup>9</sup> Many victims of sex trafficking have been raped, beaten, branded, lied to, isolated from their families – and, as a coping mechanism, their minds have reframed their situations to make them believe they are in

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<sup>9</sup> Shared Hope International, *JuST Response State System Mapping Report A Review of Current Statutes, Systems, and Services Responses to Juvenile Sex Trafficking*, 2 (2015). <http://sharedhope.org/what-we-do/bring-justice/just-response/>.

control, leaving them feeling responsible for the crimes committed against them.<sup>10</sup> Criminalizing these victims would risk re-traumatizing them because it would potentially reinforce these false beliefs and increase their mistrust of those who seek to help them.<sup>11</sup> Instead, full immunity should be granted to these *victims* because they are not the criminals - rather, horrific crimes have been committed *against them, on their bodies, and their lives*.

## **II. What is the Scope of Immunity under “Safe Harbor”?**

Under the pending legislation (SB 851), child victims of sex trafficking will be entitled to full-immunity for prostitution (18 Pa.C.S. § 5902), and a range of minor related offenses including criminal trespass (18 Pa.C.S. § 3503), disorderly conduct (18 Pa.C.S. § 5503), loitering and prowling at nighttime (18 Pa.C.S. § 5506), obstructing highways and other public passages (18 Pa.C.S. § 5507), presenting false identification to law enforcement (18 Pa.C.S. § 4914), and simple possession of a controlled substance committed as a direct result of being a victim of human trafficking. Providing child victims of sex trafficking with full-immunity for the above-outlined offenses means that these victims will not be jailed, fined, prosecuted, charged or otherwise penalized for these offenses – either in the juvenile delinquency system or in the adult criminal courts.

## **III. Conclusion**

Victims of child sex trafficking should be immune from arrest and prosecution. Granting these minor victims immunity is consistent with the United States’ obligations under international human rights law, federal law, and our own Commonwealth’s recognition that they

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<sup>10</sup> Becca C. Johnson, *Aftercare for Survivors of Human Trafficking*, 39, *Journal of the North American Association of Christians in Social Work*, 370, 376 (2012).

<sup>11</sup> Shared Hope International, *supra* note 9, 11.

are *victims* – not criminals. Moreover, providing “Safe Harbor” full-immunity for child victims of sex trafficking is required by basic principles of justice and reduces the risk that these victims will suffer further trauma. The “Safe Harbor” legislation currently pending in Pennsylvania (SB 851) is most effective way to secure these important goals and preserve the human rights of child victims of sex trafficking.

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