

## **Child Prostitutes: Criminals or Victims?**

By Susan L. Pollet

Commentators throughout the United States have been posing an important question: "Is child prostitution a crime committed by minors, or against them? Is it both?"<sup>1</sup> Child prostitution has been defined as occurring when "a minor performs sexual intercourse in exchange for money."<sup>2</sup> There is a recognition that prostituted juveniles are victims on a federal level in relation to foreign national juveniles; however, domestic juveniles are currently not afforded the same protections and services in most states other than New York.<sup>3</sup>

### **Background**

A startling statistic is that the "average age of entry into prostitution is between twelve and thirteen years old."<sup>4</sup> It is difficult to obtain accurate statistics; however, one study estimated "that nearly 300,000 youth may be at risk for commercial sexual exploitation, including prostitution, within the United States each year."<sup>5</sup> The New York Office of Children and Family Services (OCFS) estimates that there are 2,500 youth engaged in commercialized sex in New York City.<sup>6</sup> One commentator emphasized that "[p]olice across the country have noted a growing number of juvenile prostitutes in the past decade."<sup>7</sup> What is the profile of these youths, and what happens to them?

As one commentator describes it, "[m]any of these exploited youth have been abused at home and turn to life on the streets. After being lured in by false promises from pimps, these youth are sold for sex on street corners, in strip clubs, massage parlors, private homes, and suburban apartments. They are physically beaten, repeatedly raped, kidnaped, and subjected to egregious forms of torture. Once

discovered by law enforcement, these exploited youth are charged with criminal violations, sent to jail, and released back to their abuser. The adults buying and selling these children for sex, usually pimps and johns, frequently manage to avoid the criminal ramifications of their actions."**8**

## **Relevant Laws**

There is no federal law in the United States regarding prostitution. As for the status of legislation, "[i]n almost all fifty states, a minor's selling of him or herself for sex, or prostitution, is a criminal offense. By contrast, the federal Trafficking Victims Protection Act (TVPA)**9** considers all minors engaged in commercial sex acts as victims of trafficking."**10**

Both federal and state anti-trafficking laws "authorize the prosecution of people who traffic juvenile prostitutes across international borders and treat the juveniles as victims."**11** One commentator noted that the TVPA "carries particularly harsh penalties for those trafficking minors, including a possible life sentence. Federal trafficking victims may not be incarcerated or penalized for unlawful acts committed as a result of their victimization and are entitled to numerous benefits under the act including financial assistance, protective custody and medical care - the kind of services all juvenile prostitutes need."**12**

As will be discussed more fully below, in New York, with the passage of the Safe Harbor Act, effective April 1, 2010, prostituted youth will no longer be "arrested, charged, and treated as offenders rather than as child victims of sexual exploitation."**13**

The inconsistency in laws highlighted above is further complicated by the fact that at the same time, "federal and state statutes regarding prostitution do not distinguish between adult and child prostitution and criminalize both."**14** It has been noted, however, that "one distinction is the nomenclature imposed by the juvenile justice system; whereas the system categorizes adult prostitutes as criminals, it considers child prostitutes delinquents and processes their cases in juvenile court.

Whether a delinquent child receives rehabilitative treatment or punishment depends on the state. Some states have progressed toward recognizing juvenile prostitutes as victims rather than offenders and are assisting these minors."**15**

Proposals have been made to "seek to balance the need for holding sex traffickers and pimps accountable with the prosecution of and assistance for prostituted children."**16** Some of these proposals are to encourage states that aggressively prosecute sex traffickers and pimps to "adopt the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; to grant children detained on material witness warrants the right to counsel; and to allow a civil cause of action for prostituted women and children against sex traffickers and pimps."**17** With regard to the prosecution of adults who pimp or patronize juveniles, one expert indicated that a growing number of states have increased penalties for such acts.**18**

## **Services and Protection**

One commentator stated that the "gross inequality in treatment between foreign national and domestic juvenile prostitutes must be rectified."**19** She stated that "[t]he three major discrepancies between the treatment of prostituted youth that must be equalized include providing the domestic youth with immunity from criminal prosecution, safe victim housing, and intensive mental health services."**20** One commentator argues that the child welfare system is the most "appropriate mechanism currently in place to address the needs of prostituted domestic juveniles as victims of child abuse."**21**

There is debate about whether or not utilizing the PINS (Persons in Need of Supervision) process is positive because while it "provides an opportunity for the child welfare system to achieve jurisdiction over the endangered youth and order the services needed to aid the youth in breaking free from the grasp of exploitation," it classifies the juvenile as a status offender which stigmatizes the youth.**22**

It is quite apparent that these children require extensive health and

social services, with the two most frequently listed specialized services being mental health counseling and medical care, followed by crisis shelters, legal advocacy, residential services, and case management.<sup>23</sup> The next phase of services shifts to providing "skills for success in the real world."<sup>24</sup> The housing problem has been complained about by service providers, and it has therefore been recommended that there be therapeutic safe houses developed for these children, similar to domestic violence shelters, where there would be around-the-clock therapeutic support "for youth struggling to break free from the chains of exploitation."<sup>25</sup>

## **Next Steps**

There are several recommendations in the literature about how to solve the problem of prostituted children. First is that since law enforcement is the agency of first response, they must be educated about commercial sexual exploitation, and investigate what the situation is for each of the prostituted youth whom they encounter.<sup>26</sup> Second is that there must be open lines of communication between law enforcement agencies, the local task force and social service agencies.<sup>27</sup>

Third is that district attorneys should institute office-wide policies for dealing with these cases, and, in fact, the Kings County and Queens County District Attorney's offices in New York have such programs for rehabilitating first-time prostitution offenders.<sup>28</sup> Fourth is that social service agencies are in the best position to offer services to these youths, to work closely with law enforcement, and to reach out to juveniles being exploited by developing and implementing street-level task forces.<sup>29</sup>

## **New York's Response**

On Sept. 25, 2008, the New York Governor signed into law the Safe Harbor for Exploited Children Act, which is effective on April 1, 2010.<sup>30</sup> In sum, the act will convert all family court juvenile delinquency proceedings for prostitution-related offenses into Persons

in Need of Supervision (PINS) proceedings, which will decriminalize prostitution for juveniles, and will mandate specialized court services and prohibit detention.**31**

One commentator argues that in order to provide adequate treatment for youth, courts should "continue to demand more and broader studies of effective juvenile prostitution treatments, including monitoring of pilot programs, before deciding on the proper model of treatment."**32** Concerns about the act have been expressed by some experts. One concern is that it carries with it no funding for support services and only mandates the creation of one safe house for the entire state.**33**

Other concerns are that the act is "predicated on an arrest of the juvenile involved in prostitution prior to the PINS diversion review," which sends the message that these youth are offenders rather than victims in need of services.**34** Further, that the PINS provision "excludes juveniles who have prior arrests for prostitution crimes," which fails to recognize that they may still be "under the control or fear of pimps and return to them only to re-offend."**35**

## **Conclusion**

New York has taken a momentous step forward in recognizing and addressing the needs of commercially sexually exploited children. More states throughout the United States need to do the same, by recognizing that prostitution and sex trafficking are often the same crimes, that youths who have been prostituted "overwhelmingly have extensive trauma histories and require long term social service to rebuild their lives, and that predators need to be held accountable for their crimes."**36**

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Endnotes:

1. Wendi J. Adelson, "Child Prostitute or Victim of Trafficking?" 6 U. St. Thomas L.J. 96 (Fall 2008).
2. *Id.* at 107.
3. Kate Brittle, "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, 1341 (Summer 2008).
4. Kate Brittle, "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, 1340 (Summer 2008).
5. *Id.*
6. Shelby Schwartz, "Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York," 18 Colum. J. Gender & L. 235, 238 (2008).
7. Cynthia Godsoe, "Finally, There's a Safe Harbor," 218 PLI/Crim 355 (Aug. 3, 2009).
8. Kate Brittle, "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, 1340-41 (Summer 2008).
9. See Trafficking Victims Protection Reauthorization Act of 2008, 22 U.S.C.A. Sec. 71017112 (Supp. 2009).
10. Wendi J. Adelson, "Child Prostitute or Victim of Trafficking?" 6 U. St. Thomas L.J. 96, 97 (Fall 2008).
11. Cynthia Godsoe, "Finally, There's a Safe Harbor," 218 PLI/Crim 355 (Aug. 3, 2009).
12. *Id.* at 357.
13. Toolsi Gowin Meisner, "Shifting the Paradigm From Prosecution to Protection of Child Victims of Prostitution," 43-JUN Prosecutor 22 (April/May/June, 2009).
14. Wendi J. Adelson, "Child Prostitute or Victim of Trafficking?" 6 U. St. Thomas L.J. 96, 97 (Fall 2008).
15. *Id.* at 108, 109.
16. Geneva O. Brown, "Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds Against Teenaged Prostitutes," 57 Cath. U. L. 471, 507 (Winter, 2008).
17. *Id.* at 507.

18. Cynthia Godsoe, "Finally, There's a Safe Harbor," 218 PLI/Crim 355, 358 (Aug. 3, 2009).
  19. Kate Brittle, "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 (Summer 2008).
  20. Id. at 1351.
  21. Id. at 1360.
  22. Id. at 1368.
  23. Id. at 1372.
  24. Id. at 1372.
  25. Id. at 1372.
  26. Id. at 1375.
  27. Id. at 375.
  28. Id. at 375.
  29. Id. at 375.
  30. Toolsi Gowin Meisner, "Shifting the Paradigm From Prosecution to Protection of Child Victims of Prostitution," 43 JUN Prosecutor 22 (April/May/June, 2009); A.B.5258-C, 2007 Leg., 231st Sess. (ICY. 2007); S. 3175-C, 2007 Leg., 231st Sess. (ICY. 2007).
  31. Shelby Schwartz, "Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York," 18 Colum. J. Gender & L. 235, 237 (2008).
  32. Id. at 280.
  33. Thomas Adcock, "Legal, Social Services Communities Prepare for Enactment of Safe Harbor Act," 218 PLI/Crim 347, 351 (Aug. 3, 2009).
  34. Toolsi Gowin Meisner, "Shifting the Paradigm From Prosecution to Protection of Child Victims of Prostitution," 43 JUN Prosecutor 22 (April/May/June, 2009).
  35. Id.
  36. Suzanne Koeplinger, "Sex Trafficking of American Indian Women and Girls in Minnesota," 6 U.St. Thomas L.J. 129, 136 (Fall 2008).
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