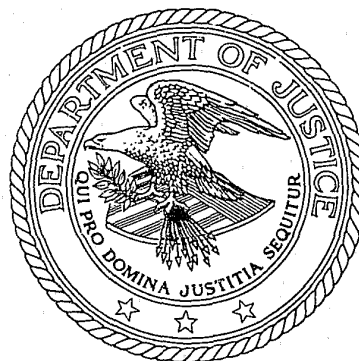


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# Child Pornography and Prostitution

## Background and Legal Analysis



In cooperation with the National Obscenity Enforcement Unit



National Legal Resource Center for Child Advocacy and Protection



Covenant House

109927

# Child Pornography and Prostitution

## Background and Legal Analysis

October 1987

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**National Center for Missing & Exploited Children  
National Obscenity Enforcement Unit, U.S. Department of Justice**

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## Preface

In reaction to the increasing awareness of the harms associated with the production and distribution of child pornography and obscenity, Attorney General Edwin Meese III announced a seven-point program to be implemented by the Department of Justice to combat these problems. The devastating effects that child pornography has had in human terms and the great toll it has taken on society have become increasingly obvious. The victims that child pornography or obscenity leaves in its wake are the men, women, and children used in its production, the families and friends of those exploited, and all of society, which is intimidated and preyed upon by the criminal enterprises that profit from this activity.

### Obscenity and Child Pornography

In the most recent and comprehensive examination of the pornography industry, the Attorney General's Commission on Pornography made several startling findings with respect to the widespread harms associated with the production and distribution of child pornography and what can be best classified as "hard-core adult pornography"—legally called *obscenity*.

First, there may be physical harms suffered by performers during the production of the material. These physical harms include sexually transmitted diseases, rape, assault, and torture.

Second, the Commission examined the effects on viewers of sexually explicit materials, an analysis that was made with reference to specifically identified categories of material. The first category is material that depicts sexual violence. The Commission found that the social and behavioral science data demonstrate extremely negative effects from viewing such material. The Commission also found that this class of material promoted an acceptance of the rape myth, degraded the class or status of women, and induced a "modeling" effect. The second category is sexually explicit material depicting degradation, submission, domination, or humiliation. The Commission again found, based upon the social science data and a totality of the evidence, that the material had serious harmful effects. The third category of material, which constitutes only a small percentage of the total universe of pornographic material, involves sexually explicit depictions, but does not include violence, degradation, submission, domination, or humiliation. All Commissioners agreed that some materials in this classification were indeed harmful. The Commission concluded that the fourth category, which includes depictions of nudity without force, coercion, sexual activity, or degradation, may be harmful.

Third, the Commission also found that the 1978 FBI analyses were correct in determining that "organized crime involvement in pornography . . . is indeed significant and there is an obvious national control directly and indirectly by organized crime figures in the United States. Few pornographers can operate in the U.S. independently without some involvement with organized crime."

*Pornography* is a broad generic term that is defined by *Webster's Dictionary* and the Commission as "depictions or representations of sexually explicit behavior or erotica intended to arouse sexual excitement in the reader or viewer." The legal terms *obscenity* and *child pornography*, however, include more offensive and harmful material within this broad definition. In layman's terms, obscenity is simply a depiction of prostitution, sexual exploitation, and abuse in pictures and in progress, while child pornography can be defined as child sexual abuse and exploitation in pictures and in progress.<sup>1</sup> (See page vii for note.) Obscenity and child pornography are the crimes, as described by the Commission's first three categories, with which the U.S. Department of Justice is most concerned. Based upon these findings and others, the Commission made numerous recommendations, the central theme of which is that "only

through a well-coordinated, all-out national effort from investigative and prosecutive forces can this type of harmful pornography be stemmed."

## The Attorney General's Commission on Pornography

In response to the Commission's findings and recommendations, the Attorney General established a seven-point program to address this national problem aggressively and effectively. The centerpiece of this seven-point initiative is the National Obscenity Enforcement Unit, which houses both the law center and the task force and is responsible for implementing the comprehensive plan. The Unit will work closely with the National Center for Missing and Exploited Children to effectively curb the trafficking and exploitation of children as a commodity in a sex industry. The seven points of the Justice Department's program are the following:

1. The creation of a law center for obscenity and child pornography within the Criminal Division of the U.S. Department of Justice.
2. The creation of a task force of attorneys to spearhead, assist, and coordinate federal obscenity and child pornography prosecutions throughout the United States.
3. An enhanced effort by each U. S. Attorney's office to designate an obscenity and child pornography specialist to work closely with the task force in concentrating on interstate and international trafficking in child pornography and obscenity in multi-district prosecutions against these organized criminals.
4. An enhanced effort by the Organized Crime and Racketeering Strike Forces, in close coordination with the new task force, with emphasis on organized criminal enterprises involved in obscenity production and distribution.
5. A legislative package to be introduced in the 100th Congress.
6. Coordination with the National Center for Missing and Exploited Children in order to eliminate the use and exploitation of children in the production of child pornography and interstate child prostitution.
7. Assistance, in the forms of training and sharing of information, to state and local law-enforcement agencies engaged in obscenity and child pornography prosecutions through task force approaches and Law-Enforcement Coordinating Committees.

In an effort to implement this plan, the Justice Department will build on the foundation that has been laid in the area of obscenity and child pornography prosecution and will vigorously pursue prosecutions of major interstate obscenity producers and distributors, especially if they involve organized criminal activity and international and interstate production, distribution, and receipt of child pornography.

The long-term goals of this comprehensive initiative are ambitious and clearly defined: to use a cooperative national strategy to eradicate child pornography, remove obscene material from the open market, and effectively dismantle the national and international criminal enterprises that produce and distribute most of the harmful material.

An important step in this process of eradicating sexual exploitation is heightening the awareness of those involved in protecting children to the harms associated with child pornography and child prostitution. As this book demonstrates, these two forms of sexual exploitation are integrally linked to obscenity and to one another and often act as parts of a cycle of victimization. Attorney General Meese has stated, "The victims of these crimes are plentiful, from the children and women who are exploited and molested to the families who are destroyed by the sexual abuse of children and women and to the people who are intimidated by gangsters who line their pockets from the production and distribution of obscene materials." *Child Pornography and Prostitution: Background and Legal Analysis* is an excellent resource for helping implement a comprehensive plan to protect children from sexual abuse and exploitation.

H. Robert Showers  
Executive Director, National Obscenity Enforcement Unit  
Special Counsel to the Assistant Attorney General

<sup>1</sup> *Obscenity* has been defined by the Supreme Court in *Miller v. California*, 413 U.S. 15, 24 (1973) as material that meets these requirements:

- (1) the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest. . . ;
- (2) the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The Court went on to give examples of the types of sexual conduct that the states could regulate. These include:

- (a) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated;
- (b) patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals;
- (c) sadomasochistic conduct, such as bondage, torture, domination, etc. (*Ward v. Illinois*, 431 U.S. 767, 773 [1977]).

In *Ward*, the Court emphasized that the examples it had previously given in the *Miller* decision were not exhaustive.

In *New York v. Ferber*, 458 U.S. 747, 764–65, the Supreme Court identified the types of material that could be regulated as child pornography. Child pornography is merely the depiction of sexual conduct involving children. The standard in *Ferber* modified the *Miller* test by eliminating the need to prove the material appealed to the prurient interest, that the sexual conduct was portrayed in a patently offensive manner, or that the material be considered as a whole.

# Introduction

When, in 1977, the U.S. Senate Judiciary Committee announced its finding that "child pornography and child prostitution have become highly organized, multi-million-dollar industries that operate on a nationwide scale,"<sup>1</sup> the news reached a nation already drenched in scandal over the treatment of its young. (Notes to the Introduction are found on page xi.) During the previous decade Americans had learned of the shocking conditions in juvenile "reform schools,"<sup>2</sup> had begun to realize the full extent and horror of the "battered child syndrome" and other forms of child abuse,<sup>3</sup> and had watched as close to three quarters of a million children each year took to the streets as runaways.<sup>4</sup> Tens of thousands of other youths became homeless—"throwaways"—as rising rates of divorce and single parenthood seemed to threaten the nuclear family itself.<sup>5</sup> The 1970s was a decade, in short, when Americans rediscovered what the U.S. Supreme Court would finally term the "peculiar vulnerability of children."<sup>6</sup>

## Legislation and Public Awareness

Concern for children in other areas has in no sense diluted public outrage over their sexual exploitation. Within months after the first major accounts of widespread use of children in prostitution and pornography,<sup>7</sup> Congress held a series of searching hearings on the problem—and by early 1978 had enacted comprehensive legislation to combat it.<sup>8</sup> At the same time public pressure on state legislators was mounting so quickly that by 1982 well over forty states had enacted laws directed specifically at sexual exploitation of children.<sup>9</sup> When in that year the U.S. Supreme Court upheld the constitutionality of one of the strictest of those laws,<sup>10</sup> a flurry of legislative activity quickly followed to extend federal and state protections as far as the Constitution would permit.<sup>11</sup>

Yet even with passage of the Child Protection Act of 1984—a law designed to strengthen the federal role in protecting children from sexual exploitation—public interest did not wane. Thus, in 1985 the U.S. Attorney General declared prosecution of child pornography cases to be "a particular emphasis" of the Department of Justice,<sup>12</sup> and in the first half of that year no fewer than seven bills were introduced in Congress to broaden federal laws against the sexual exploitation of children.<sup>13</sup> By contrast, other federal programs to protect or care for children have been lucky to hold their own since 1975.<sup>14</sup>

The widely shared fury over child pornography and prostitution has not, unfortunately, always generated more light than heat. Anecdotal material describing sexual exploitation of the young abounds—much of it extremely valuable—but analytical works on the problem have been tardy and few. Many of the most important studies of sexual exploitation, indeed, have been published in only the most limited quantities—inaccessible to most professionals and the general public. The explosion of federal and state legislation in this area since 1982 has rendered much previous published legal scholarship obsolete, while not necessarily allaying the fears of the public that child sexual exploitation is a problem out of control.

It is to redress, if only in small part, the imbalance between public perceptions and legislative reality, between anecdote and analysis, that this publication was undertaken. While a comprehensive assessment of the social and political ramifications of the sexual exploitation of children remains to be written, here at least it is possible to provide professionals and interested observers with a brief overview of the problem—its background and its impact—while fully examining its legal contours and their impact for future advocates. By describing and discussing the main legal developments in the field, while referencing as much underlying

material as possible, we hope to give professionals in law-enforcement, juvenile justice, child welfare, and child advocacy a sound basis for discussing the principal issues and proceeding to more extensive research as well as action.

## Child Pornography and Prostitution: Important Distinctions

The issue of sexual exploitation of children is a particularly difficult one to address in overview precisely because it has arisen in two related, but ultimately very distinct, contexts: pornography and prostitution. While child pornography is a problem of recent origin, juvenile prostitution has roots deeply embedded in American history. While the legal response to child pornography has been remarkably swift, and apparently effective, efforts to attack juvenile prostitution have been half-hearted, complex, and often futile. Where child pornography of even a limited magnitude provokes violent public anger, juvenile prostitution on a large scale produces little more than a despairing shrug.

Because *sexual exploitation*—that is, the sexual misuse of a child for profit or personal advantage (*e.g.*, producing pornographic material for barter or as a tool of future seduction)—occurs in both pornography and prostitution, it is tempting to ignore these historical, legal, and political differences. Certainly, for the exploited child and the family, they will seem of little immediate interest. Yet, the distinctions between child pornography and child prostitution cannot be set aside, for they are crucial to the fate of offenders and, in the long run, are of great importance for exploited children and their families. Future efforts at improved protection of children, too, depend on careful recognition of real differences in law and practice that make some areas riper for large-scale reform efforts than others.

In accord with the distinctions between pornography and prostitution involving children, this work addresses the two areas separately. Child pornography, which has received the highest level of public and legislative attention, is considered first, with emphasis on the remarkable degree of consensus that has developed as to legal theory and legislative development. Juvenile prostitution is considered next, with discussion of its historical and contemporary contours and the diverse body of international, federal, and state law that has developed in response to it. Because opinion on the most effective legal response to prostitution is so deeply divided, some attention is devoted to the leading viewpoints, along with potentially effective directions for reform.

Sexual exploitation presents, on close inspection, an extremely perplexing challenge, and efforts at analysis and reform in this area may be offered only with great caution. The interactions between sexual exploitation of children and other “social problems,” such as sexual abuse, poverty, and violent crime, are strong but highly complex—and capable of only tangential attention here. Other professionals are better equipped to explore these connections and their meaning for policymakers in future research and analysis. Likewise, law-enforcement professionals alone are equipped to understand the often wide distances that separate statutory language from real-world practice. Some of that gap is noted where relevant here, but more research in this area is strongly needed. What we can offer, finally, is only an initial attempt to frame questions best left for others to ponder. But the questions are urgent, and many vulnerable children wait desperately for the answers.

## Notes to the Introduction (pages ix-x)

<sup>1</sup> S. Rep. 438, 95th Cong., 1st Sess. 5 (1977), reprinted in [1978] *U. S. Code Cong. & Ad. News* 40, 43.

These decade-old findings should now be read in light of more recent evidence, such as that presented in *Child Pornography and Pedophilia, Report Made by the Perm. Subcomm. on Investigations, Comm. on Governmental Affairs, U.S. Senate*, 99th Cong., 2nd Sess. (1986). The Subcommittee in that report found that "the commercial child pornography industry has declined substantially in recent years," *id.* at 5, due in large part to the success of federal and state laws against sexual exploitation. There is no comparable indication, by contrast, that juvenile prostitution has declined since the 1970s, and no solid evidence that noncommercial child pornography has decreased in amount in that period. Indeed, over the past decade the 1986 report found that there has been "an exponential increase in the reporting of child sexual abuse," *id.* at 2, an increase that likely reflects some actual increase in sexual exploitation. D. Russell, *The Secret Trauma: Incest in the Lives of Girls and Women* 75-84 (1986).

<sup>2</sup> See K. Wooden, *Weeping in the Playtime of Others* (1976).

<sup>3</sup> See C. H. Kempe, *et al.*, "The Battered Child Syndrome," 181 *J.A.M.A.* 17 (1962); R. Geiser, *Hidden Abuse: The Sexual Abuse of Children* 1-10 (1979).

<sup>4</sup> See Opinion Research Corp., *National Statistical Survey of Runaway Youth* (1976), prepared under Contract #HEW 105-75-2105 for the U. S. Dept. of Health, Education, and Welfare.

<sup>5</sup> See *Homeless Youth: The Saga of "Pushouts" and "Throwaways" in America, Report of the Subcomm. on the Const. of the Comm. on the Judiciary*, 97th Cong., 2nd Sess. (1980); C. Lasch, *Haven in a Heartless World: The Family Besieged* (1976).

<sup>6</sup> *Bellotti v. Baird*, 443 U. S. 622 (1979).

<sup>7</sup> See, e.g., "Child's Garden of Perversity," *Time*, April 4, 1977, p. 55; "Kiddie Porn," 60 *Minutes*, Vol. IX, No. 33, May 15, 1977; Sneed, *et al.*, "Child Pornography: Sickness for Sale," and related articles, *Chicago Tribune*, May 15-17, 1977.

<sup>8</sup> The Protection of Children Against Sexual Exploitation Act of 1977, P.L. 95-225, 2(a), 92 Stat. 7-8 (1978). See *Protection of Children Against Sexual Exploitation, Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary*, 95th Cong., 1st Sess. (1977); *Hearings Before the Subcomm. on Select Education of the House Comm. on Education and Labor*, 95th Cong., 1st Sess. (1977).

<sup>9</sup> For a listing of state laws related to sexual exploitation as they existed in 1982, see *New York v. Ferber*, 458 U. S. 747, 749 N. 2 (1982).

<sup>10</sup> *Id.*

<sup>11</sup> Federal laws against sexual exploitation, for example, were significantly expanded by the Child Protection Act of 1984, P.L. 98-292, 1-6, 98 Stat. 204-05 (1984).

<sup>12</sup> Address of the Hon. Edwin Meese III at Obscenity Seminar, July 10, 1985.

<sup>13</sup> See S.554, 99th Cong., 1st Sess. (1985) (Sen. Roth); S.625, 99th Cong., 1st Sess. (1985) (Sen. Hawkins); S.985, 99th Cong., 1st Sess. (1985) (Sen. Grassley); S.1187, 99th Cong., 1st Sess. (1985) (Sen. Specter); S.1305, 99th Cong., 1st Sess. (1985) (Sen. Tribble); H.R. 1704, 99th Cong., 1st Sess. (1985) (Rep. Clinger); and H.R.2539, 99th Cong., 1st Sess. (1985) (Rep. McCain).

<sup>14</sup> See, e.g., Children's Defense Fund, *A Children's Defense Budget: An Analysis of the President's FY 1986 Budget and Children* 1-10 (1985); *Children, Youth, and Families, 1983: A Year-End Report on the Activities of the Select Comm. on Children, Youth, and Families*, U.S. House, 98th Cong., 2nd Sess. 78-79 (1984).

# **Child Pornography**

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# 1. Child Pornography

The use of children as . . . subjects of pornographic materials is very harmful to both the children and the society as a whole.

U.S. Senate Report No. 95-438 p. 5 (1978)

What is commonly referred to as "child pornography" is not so much a form of pornography as it is a form of sexual exploitation of children. The distinguishing characteristic of child pornography, as generally understood, is that actual children are photographed while engaged in some form of sexual activity, either with adults or with other children.

*Attorney General's Commission on Pornography* 405 (1986)

In simple terms, child pornography is the permanent record of the sexual exploitation and abuse of a child.<sup>1</sup> (Notes to the first section, *Child Pornography*, are found on pages 25-29). *Child pornography* is defined for the purposes of this work, and under the federal statute, as a "visual depiction of a minor engaged in sexually explicit conduct."<sup>2</sup> These visual depictions take the form of photographs, videotapes, films, and magazines depicting children in both heterosexual and homosexual activities.<sup>3</sup> The children depicted range in age from a few months to 18 years. While those who molest children may be very selective in the age, sex, and race of their victims, the exploitation of children transcends any economic, social, ethnic, or religious lines.

Individuals with an interest in child pornographic material may also possess a category of material that would more properly be termed child erotica. The term *child erotica* can be defined as follows:

. . . any material, relating to children, that serves a sexual purpose for a given individual. Some of the more common types of child erotica include toys, games, drawings, fantasy writings, diaries, souvenirs, sexual aids, . . . and ordinary photographs of children.<sup>4</sup>

Child pornography, also referred to as "kiddie porn," is the narrower term and is the subject of this chapter. Production, distribution, and sale of child pornography is a secretive business, making a determination of its full extent extremely difficult. Estimates of the number of children involved have ranged from the thousands to the hundreds of thousands. The statistics cannot be accurately verified, and the facts and figures vary, but one thing is clear: A significant number of children have been and are being sexually exploited throughout the country as a consequence of being used in pornography.

The availability of child pornography is a good indicator of its nature and scope. A relatively obscure and unusual product as late as the 1960s, child pornography became increasingly popular in the 1970s. In 1977 there were at least 260 different monthly magazines published in the United States, with such names as *Torrid Tots*, *Night Boys*, *Lolita*, *Boys Who Love Boys*, and *Children Love*.<sup>5</sup>

In the late 1970s a Congressional report concluded that child pornography had become a highly organized industry that operated on a nationwide scale.<sup>6</sup> It was estimated that these enterprises grossed a half-billion to a billion dollars a year.<sup>7</sup> More recently, however, a U.S. Senate inquiry concluded that there was no evidence to support such figures, and it suggested that a more accurate estimate would probably be several million dollars per year.<sup>8</sup> Moreover, since such photographs, videotapes, and films can be taken in private homes and distributed in clandestine underground channels, discovery of the true extent of production and distribution is very difficult.

Child pornography can, of course, be a lucrative business; the outlay is minimal and the profits enormous. A magazine that retails for \$7.50 to \$12.50 per copy can be produced for as

little as 35 to 50 cents. Similarly, a cheap home movie camera can be used to produce films or videotapes that sell thousands of copies for \$50 to \$200 each.<sup>9</sup>

To some degree the market of child pornography has changed in the last decade. Today the child pornography market primarily consists of clandestine activities that result in materials being sold and traded among individuals through private communications. These transactions may involve no money, thereby eliminating the commercial motivation for much of the production and distribution of child pornography. This is not to say, however, that there are not individuals who participate in the distribution of child pornography purely for the pecuniary gain they may realize. In 1982 Catherine Wilson was prosecuted and convicted for distributing child pornography. At the time of her arrest she had a mailing list of 5,000 names.<sup>10</sup> Alvin Nunes, convicted in 1981 for distributing child pornography, found a lucrative market for material depicting children engaged in sexual conduct. During the investigation, Nunes sold videotape cassettes for \$50 each to undercover agents.<sup>11</sup>

### Profile of the Child Pornography "Consumer"

Child pornography exists primarily for the consumption of pedophiles. If there were no pedophiles, there would be little child pornography other than that involving adolescent children.

Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis* 18 (1986)

The rapid growth of child pornography reveals a demand for the material by people who are stimulated by depictions of sexual activity with children. Some of these can be classified as "pedophiles"—people who are predisposed to sexually abuse children or who turn to them as a result of conflicts or problems in their adult relationships. Some pedophiles have organized and become vocal about what they believe is their right to sexual fulfillment. Although the membership claims of pedophile groups have been disputed, the Rene Guyon Society of California purports to have 5,000 members who claim to have each deflowered a child under eight. Their motto: "Sex by eight or it is too late."<sup>12</sup> In May 1977, the first meeting of the International Pedophilic Information Exchange was held in Wales.<sup>13</sup> It advocates a change in the laws to permit sex between adults and "consenting" children, although such permission is a legal impossibility, since children are not capable of consenting, whether because of age, size, or upbringing.<sup>14</sup> The pedophile's sexual access to children is gained by either pressuring the child into sexual activity through enticement, encouragement, or instruction, or by forcing such activity through threat, intimidation, or physical duress. Pedophiles usually seek to control children rather than injure them, however.

The research of Dr. A. Nicholas Groth, Dr. Ann Wolbert Burgess, Supervisory Special Agent Kenneth Lanning, and their colleagues forms an essential basis for understanding the phenomenon of pedophilia.<sup>15</sup> Reports on their observations and experiences have helped separate myths from realities concerning those adults who sexually victimize children.<sup>16</sup> They have found that pedophiles are not "dirty old men" but are rather at the younger end of the age spectrum. Many may commit their first pedophilic offense while in their teens. Generally, they are neither retarded nor psychotic.

Surprisingly, pedophiles frequently have adult outlets for sexual gratification. Many are married, and many have ongoing sexual relationships with adults at the same time that they are carrying on sexual activity with children. There is a common misconception that child sex offenders are often violent and that children are usually physically injured by the offenders. This is rarely the case. Few incidents of sexual abuse are marked by excessive force or brutality, although there may be threats of violence against the child or someone close to the child if the sexual behavior is revealed. In addition, most offenders do not become increasingly violent over time. Indeed, most child sex offenses involve activity in which there is no physical contact (e.g., indecent exposure) or sexual behavior that stops short of penetration.

Although it is commonly believed that children are at greater risk of sexual victimization from homosexual adults than from heterosexuals, this is not true. Dr. Groth's research not only found females victimized almost twice as often as male children, but where child sex offenders had a predominant sexual orientation toward adults, they largely led exclusively heterosexual lives. Another myth is that pedophiles are often addicted to alcohol or drugs. Not only is this false, but the sexual behavior of pedophiles is likely to be highly repetitive, often to the point of compulsion, rather than the result of a temporary lapse of judgment while in a state of intoxication.

Recent research findings note, "By the time he reaches adulthood, the average pedophile or incest offender has attempted over twenty-five child molestations."<sup>17</sup> This type of clinically documented behavior on the part of pedophiles or "preferential molesters" puts a considerable number of children at risk and calls for effective methods to protect the children from victimization.

## Profile of the Child Pornography Victim

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for the camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.

Shouvin, "Preventing the Sexual Exploitation of Children: A Model Act,"  
17 *Wake Forest L. Rev.* 535, 545 (1981)

Children involved in pornography can be psychologically scarred and suffer emotional distress for life. They may see themselves as objects to be sold rather than people who are important.

U.S. General Accounting Office, *Sexual Exploitation of Children—A Problem of Unknown Magnitude* iii (1982)

Child pornographers have little difficulty recruiting youngsters. Many victims are runaways who come to the city with little or no money. A U.S. Senate committee report estimated that between 700,000 to 1 million children run away from home each year.<sup>18</sup> Adult exploiters can pick them up at bus stations, fast-food stands, and street corners and offer them money, gifts or drugs for sexual favors.

Not all children involved in pornography are runaways, however. Many may in fact live apparently normal lives with their families. Frequently, they are children who have been abused at home or come from broken homes or live with parents who simply do not care about their activities. A Senate committee report suggested the following characteristics as typical of a sexually exploited boy:

- between the ages of 8 and 17
- an underachiever in school or at home
- usually without previous homosexual experience
- comes from a home where the parents were absent, either physically or psychologically
- has no strong moral or religious obligations
- usually has no record of previous delinquency
- suffers from poor sociological development<sup>19</sup>

Often the parents are unaware of what their children are doing, but there have been cases in which parents have sold their own children for use in child pornography or played some role in facilitating the involvement of their children in such acts.

The effects of being a subject in child pornography can be devastating. Many children suffer physical harm as a result of the premature and inappropriate sexual demands placed on them. Perhaps more serious is the disruption of emotional development. Although the psychological problems experienced by children who have been the subjects of child pornography have not been extensively studied, there is ample evidence that such involvement can be devastating. One study suggests that children who are used to produce pornography suffer harmful effects similar to those experienced by incest victims.<sup>20</sup> Such effects may include depression, guilt, and psychologically induced somatic disorders.<sup>21</sup> These children may grow up to lead a life involving drug abuse and prostitution.<sup>22</sup> More tragic, children who are sexually abused are more likely to victimize younger and smaller children or—later in life—their own children.<sup>23</sup> By no means can it be said that all, or even most, children who are sexually exploited or abused will become sexual abusers themselves, however.

## The Relationship Between Child Pornography and Child Prostitution

Pornographic activity is a commonplace of life for hustlers.

M. Janus, B. Scanlon, and V. Price, *Child Pornography and Sex Rings* (ed.  
Dr. A. W. Burgess) 139 (1984)

Several authorities have found a close relationship between child pornography and child prostitution. Frequently a person hiring a child prostitute (or paying a child for sexual acts) will

also record the activities. These photographs, tapes, or films are then reproduced and sold, distributed, or exchanged with other adults. There have also been cases in which child pornography and prostitution operations have been organized into "sex rings"<sup>24</sup> that resulted in the production of child pornography. For example, a Tennessee minister who operated a home for wayward boys encouraged the boys to engage in orgies. He then filmed them with hidden cameras and sold the films. Also, he arranged for "sponsors" to come to the home and have sex with the boys.<sup>25</sup> Child pornography is generally a "cottage industry," however, with production occurring surreptitiously in private homes and motel rooms. Consequently, combating the problem and protecting the children can be very difficult.

There has also been a growing awareness of the connection between the use of general pornographic material and the sexual exploitation of children. Investigators and behavioral scientists have discovered that many Preferential Child Molesters [pedophiles] will use "mainstream" pornographic materials to lower the inhibitions of children. This portion of the "seduction process" may also involve the use of pornography as an instructional tool, since the molester will ask the child to pose as the performers have depicted, or ask the child to engage in the activities that are depicted (Hearings before the Attorney General's Commission on Pornography).

An investigator has more fully described the common use of child pornography in this seduction process.

It was seduction. It was at their own choosing that they looked at the magazines. Once the pedophile realizes that secret would be kept, the next time the children would visit, they would see another type of magazine, something like *Schoolgirls*, *Lolita* or, again, if you are a boy lover, something like *Piccolo*.

These magazines depict children in the act of sexual molestation, oral copulation, sexual intercourse, sodomy, fondling, and masturbation. When looking at this material, the children appear to be enjoying it. They would not be forced into it and, again, the children would look at the magazines or the movies, videotapes, photographs of other children, and would question, "Doesn't this hurt, isn't this wrong?"

And the pedophile would demonstrate that it doesn't hurt, that it's a good feeling, a tickling sensation. This is the beginning of the molestation.

The primary use of child pornography is to lower the inhibitions of the child, to show the children that other children are engaged in this type of activity, that it's a normal practice, that children should be photographed this way, that there is nothing wrong with it.<sup>26</sup>

This seduction technique was also recognized in the *Report of the Surgeon General's Workshop on Pornography and Public Health*. The report noted,

Involvement with pornography does seem to have a place in the dynamics of sexually exploiting children. Pornography has been used by adults to teach children how to perform sexual acts and to legitimize the children's participation by showing pictures of other children who are "enjoying" the activity. In some cases involvement in the production of pornography has led to other sexual activity; in others, pornography involvement has followed sexual activity.<sup>27</sup>

## Implications of the *Ferber* Decision

We are persuaded that the States are entitled to greater leeway in the regulation of pornographic depictions of children.

*New York v. Ferber* 458 U.S. 747 (1982)

In 1982, the Supreme Court in *New York v. Ferber*, 458 U.S. 747 (1982), legally distinguished child pornography from obscenity. The Court in *Ferber* focused on the harm to the victim rather than on the effects of the material on the audience. In essence, child pornography became "obscene *per se*" because of the harm its production and distribution has upon the child victim. The Court concluded that if the material depicted children in lewd sexual conduct, the material was subject to regulation.<sup>28</sup>

The Court, addressing the state's ability to regulate non-obscene, sexually explicit material involving children, stated:

*First.* It is evident beyond the need for elaboration that a state's interest in "safeguarding the physical and psychological well being of a minor" is "compelling. . . ."

We shall not second-guess this legislative judgment. Respondent has not intimated that we do so. Suffice it to say that virtually all of the States and United States have passed legislation proscribing the production of or otherwise combating "child pornography." The legislative judgment, as well as the judgment found in the relevant literature, is that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment.

*Second.* The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children in at least two ways. First, the materials produced are a permanent record of the children's participation, and the harm to the child is exacerbated by their circulation. Second, the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled. Indeed, there is no serious contention that the legislature was unjustified in believing that it is difficult, if not impossible, to halt the exploitation of children by pursuing only those who produce the photographs and movies. While the production of pornographic materials is a low-profile, clandestine industry, the need to market the resulting products requires a visible apparatus of distribution. The most expeditious, if not the only practical, method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product. . . .

*Third.* The advertising and selling of child pornography provides an economic motive for and is thus an integral part of the production of such materials, an activity illegal throughout the nation. . . . We note that were the statutes outlawing the employment of children in these films and photographs fully effective, and the constitutionality of these laws not been questioned, the First Amendment implications would be no greater than that presented by laws against distribution: enforceable production laws would leave no child pornography to be marketed.

*Fourth.* The value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceedingly modest, if not *de minimis*. We consider it unlikely that visual depictions of children performing sexual acts or lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work. . . .

*Fifth.* Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is not incompatible with our earlier decisions. . . . Thus, it is not rare that a content-based classification of speech has been accepted because it may be appropriately generalized that within the confines of the given classification, the evil to be restricted so overwhelmingly outweighs the expressive interests, if any, at stake, that no process of case-by-case adjudication is required. When a definable class of material, such as that covered by 263.15, bears so heavily and pervasively on the welfare of children engaged in its production, we think the balance of competing interests is clearly struck and that it is permissible to consider these materials as without the protection of the First Amendment.<sup>29</sup>

These specifically recognized and enumerated harms to the children who are used in the production of pornography shifted the focus from the rights of the producers and distributors of such material to the rights of those who are used in the production. The courts have continued to focus on the vulnerability of the children used and have sought to afford them protection without engaging in the cumbersome process under obscenity laws. The courts also, for the first time, have shifted the focus from the impact on the audience to the effects on the performers through the production and distribution of the material. They have also begun to examine the interrelationship between child sexual abuse, pornography, and juvenile prostitution with an eye toward the impact on the participants or victims of each.

## 2. Federal and State Regulation of Child Pornography

*Rep. Conyers:* It serves no purpose to show the magazines. Please try to restrict your comments to the merits or demerits of the legislation.  
*Dr. Densen-Gerber:* So why don't you clean it up so I won't have any magazines to show?

Extract from a 1977 Congressional subcommittee hearing on child pornography, as quoted in C. Linedecker, *Children in Chains* 278 (1981)

### Federal Regulation of Child Pornography

The current federal statutory scheme regulating child pornography addresses a number of different areas. Production, distribution, and transportation of a minor are all separately treated. There are several statutes that affect the production, distribution, and transportation of pornographic material involving children.

Serious legislative attention to this problem began in early 1978 when the Protection of Children Against Sexual Exploitation Act of 1977, P.L. 95-225, was signed by the President.<sup>30</sup> This law, a result of extensive hearings in both the House and the Senate,<sup>31</sup> extended the federal government's authority to prosecute both the producers and distributors of child pornography. In addition, the law prohibited the transportation of children across state lines for the purpose of commercial sexual exploitation.

An amendment in 1984 raised the age of children protected under the law from 16 to 18, further prohibited the reproduction (e.g., photocopying, printing, or copying in other forms) of child pornography for distribution purposes, raised the penalties for these offenses, and penalized distribution regardless of whether there was an intent to profit commercially from this act, or whether or not the material was legally obscene.<sup>32</sup>

In 1986, the federal act was again amended by two pieces of legislation, the Child Sexual Abuse and Pornography Act of 1986,<sup>33</sup> and the Child Abuse Victims' Rights Act of 1986.<sup>34</sup> The former added a number of provisions that greatly broadened the scope of the prosecutable offenses under the law. First, the specific act of transporting a child in interstate or foreign commerce, when there was an intent to have the minor engage in sexual acts for the purpose of producing child pornography, was made a separate offense. Second, another new set of offenses was created for knowingly advertising or causing a notice to be made that a person was either seeking or offering to: a) receive, exchange, buy, produce, display, distribute, or reproduce child pornography; or b) secure the participation of a child for sexual conduct in order to produce child pornography.<sup>35</sup>

The second 1986 amendment, the Child Abuse Victims' Rights Act of 1986, created a federal civil remedy for personal injuries to a child caused as a result of violations of the federal child pornography law. The law deems such an injured child "to have sustained damages of no less than \$50,000 in value," and it further permits recovery of costs and reasonable attorneys' fees. Such a suit must be commenced within six years after the right of action first accrues or, where the child was a minor at the time, not later than the child's twenty-first birthday. The law also increases the penalties for repeat offenders under the original federal act from a minimum of two to a minimum of five years' imprisonment. Finally, the law requires the Attorney General to report to Congress by October 1987 on changes in evidentiary rules and

courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in federal sexual exploitation cases.

**Title 18, United States Code** Currently the federal laws pertaining to child pornography are concentrated at 18 U.S.C. §§2251–2256 and 2421–2423.<sup>36</sup> (See Appendix 1, pages 31–33, for the full text of the sections.) These sections encompass the provisions originally enacted in 1977 as well as the later amendments.

Production of child pornography is regulated through 18 U.S.C. §2251. Section 2251 prohibits the use of minors for the purpose of producing depictions of sexually explicit conduct. It provides punishment for persons who advertise for, or actually use, employ, or persuade minors (defined as any person under the age of 18) to become involved in the production of visual material which depicts sexually explicit conduct. Further, it prohibits the knowing transportation of minors in interstate or foreign commerce with the intent to produce such materials. Punishment is also specifically provided for parents, legal guardians, or other persons having custody or control of minors who knowingly permit a minor to participate in the production of such material.

The distribution of child pornography is likewise closely regulated. The primary prohibition against the distribution of sexually explicit materials involving children is found in §2252. Section 2252 prohibits the reproduction, shipping, or receiving of child pornography through interstate or foreign commerce or through the mails.

The Mann Act, regulating the transportation of minors for purposes of sexual exploitation, is found at 18 U.S.C. §2423. Protection has been extended to males as well as females who are transported across state or national boundaries for the purpose of prostitution or for any prohibited sexual act (which would include the production of child pornography). Previously, the Mann Act had only prohibited the transportation of females for use in prostitution or other “commercial” sexual conduct.

The sanctions provided in these laws are stiff. Both production and distribution carry penalties of imprisonment up to ten years and fines of up to \$100,000. The penalties for subsequent offenses are a minimum mandatory five years’ (with a maximum of fifteen years’) imprisonment and a fine of up to \$200,000. Organizations violating the laws’ provisions can be fined up to \$250,000.

An important part of the federal regulation of child pornography involves the judicial interpretation and application of the federal laws. Recently, several courts have issued decisions that have had a significant impact of the investigation and prosecution of child pornography violations. Those that deserve special mention here involve the interpretation of the term “lascivious exhibition of the genitals”<sup>37</sup> and the requisite level of knowledge a defendant must have to be guilty of a violation of the statute.<sup>38</sup>

## State Regulation of Child Pornography

As the Court in *Ferber* stated, the “prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.”<sup>39</sup> State governments have taken a number of steps to prevent the sexual exploitation of children. Today, every state has enacted statutes that specifically address the problem of child pornography. State legislation has taken three lines of approach: to prohibit production, to prohibit distribution, and to prohibit receipt or possession of child pornography.

The criminal offense of child sexual exploitation involves several issues requiring detailed analysis. Most important are: 1) the class of offenders covered by the statute, 2) the definition of proscribed conduct, and 3) the kind of performances and visual materials prohibited. In addition, the statutes have variations on the age of protected children and special provisions to aid prosecutors in gathering evidence, while a few states still have a requirement that the child sexual exploitation must be for commercial gain. (See State Child Pornography Laws chart, pages 39–44.)

**Class of Offenders** Generally, the various state statutes impose criminal liability on any or all of four different categories of offenders. Drawing from the description of offenders provided under the federal law, they include the following:

*Producers* any person who employs or uses, or advertises for, any minor to engage in, or assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.



- Coercers* any person who persuades, induces, entices, or coerces any minor to engage in, or assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
- Distributors* any person who sells, loans, gives, distributes, transports, advertises, or receives material with knowledge that it depicts minors engaged in sexually explicit conduct.
- Parents* any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or assists any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

All the child pornography laws impose criminal liability on producers. Coercing a child to participate in the production of material depicting sexually explicit conduct has been outlawed in a majority of states. A significant number of state laws specifically include parents as possible offenders, although many other states describe offenders in a more general sense as "any person who knowingly permits [sexual exploitation of a child]," which could be construed to include parents. Finally, most states follow the federal law in specifically imposing criminal culpability on the distributors of child pornography. Currently, the majority of states have comprehensive laws that specifically cover all four classes of offenders.

It is important to stress that while all the state laws prohibit production of child pornography, not all ban its distribution. As previously noted, child pornography cannot be successfully combated unless both its production and distribution are prohibited.

**Prohibited Sexual Conduct** All child pornography statutes prohibit the depiction of children engaged in certain forms of sexually explicit conduct. The majority of state laws actually provide a definition of the illegal "sexual conduct." An example of a detailed definition can be found in the federal child pornography law, Title 18, at §2256, which defines *sexually explicit conduct* as actual or simulated:

- sexual intercourse, including genital-genital, oral-genital, anal-genital, oral-anal, whether between persons of the same or opposite sex;
- bestiality;
- masturbation;
- sadistic or masochistic abuse; or
- lascivious exhibition of the genitals or pubic area of any person.

Many of the states have defined sexual conduct similarly to the federal statute. In fact, a number of states have adopted definitions that are virtually identical. Others include variations, such as "erotic fondling" and "passive sexual involvement." The depiction of a naked child is prohibited in several states; however, there is usually a requirement that the nudity be depicted for the purpose of sexual gratification or stimulation of any person who might view such depiction.<sup>40</sup>

**Type of Production Prohibited** Statutes that regulate child pornography must describe the type of production prohibited. Most laws prohibit the production of any "visual medium" that depicts children in prohibited sexual conduct. It should be noted that a "visual" depiction, as defined by the recently amended federal law, specifically now includes undeveloped film and videotape, although clearly the federal law is also meant to apply to films, photographs, negatives, slides, books, and magazines.

Children can also be sexually exploited by their use in live performances. Consequently, a majority of states also prohibit the production of live performances that depict children engaged in prohibited sexual conduct.<sup>41</sup> While the use of children in such performances is certainly not as pervasive as other forms of child pornography, these states have found the situation serious enough to afford children this protection.

**Noncommercial Distribution** As stated earlier, in 1984 the federal child pornography law was amended to penalize distribution regardless of whether there was an intent to commercially profit from that act. The original 1978 legislation contained a commercial-use requirement in its distribution section that was viewed by many law-enforcement experts as placing a major barrier in the way of successful prosecution.<sup>42</sup> Since much child pornography is not sold or otherwise disseminated for profit, but rather traded or exchanged among pedophiles, many



interstate child pornography transactions were seen as outside the purview of the federal law. By eliminating the pecuniary gain motive provision, federal law-enforcement officials were given the legal incentive to pursue a greater number of investigations and prosecutions.

Many state laws that prohibit the dissemination of child pornography fail to define the term *distribution* sufficiently to clarify whether noncommercial exchange, lending, trading, giving away, etc., constitutes an offense. Eleven state laws explicitly state that a person who disseminates child pornography may be prosecuted only when there is proof of pecuniary gain or a profit motive,<sup>43</sup> while the remaining states prohibit distribution without specifically imposing a commercial requirement.

**Advertising** As stated earlier, the recent federal Child Sexual Abuse and Pornography Act of 1986 created a federal offense of knowingly advertising or causing a notice to be made that a person is either seeking or offering to receive, exchange, buy, produce, display, or reproduce child pornography, or to secure the participation of a child for sexual conduct in order to produce child pornography. Nineteen states and the District of Columbia also make advertising in connection with child pornography, in some form, a punishable offense.<sup>44</sup> All these provisions were enacted prior to the federal law. The new federal law may therefore now serve as a model for all other states to either pass new legislation or to amend their existing laws so as to have the broadest possible scope of coverage in prohibiting child pornography-related advertising.

**Possession** One of the legal barriers facing the law-enforcement community in its effort to eliminate the production and distribution of child pornography is the fact that the mere *possession* of child pornography generally is not a separate criminal offense. What people maintain, and view, in the privacy of their homes has for the most part been considered beyond government regulation. It is an odd paradox that although it may be a crime to solicit for, purchase, and disseminate child pornography, until quite recently it was rare for any state to be able to prosecute people for having a huge stockpile or collection of it in their homes.

Seven state laws have taken the approach of making the possession of a certain quantity (usually three or more) of the *same* photograph, slide, movie, or videotape *prima facie* evidence that there was an intent to distribute this material, or that there was an intent to commercially profit from having such material in the person's possession.<sup>45</sup> This type of law, however, does not help in prosecuting the pedophile who keeps a large collection of child pornography where no material is duplicative. Since such individuals create the demand for the material, as well as constitute its essential market, law-enforcement specialists in this field would be aided tremendously if simple possession itself were a crime.

The major legal barrier to this, which the *Ferber* decision may have helped to overcome, is the earlier U.S. Supreme Court decision, *Stanley v. Georgia*, 394 U.S. 557 (1969). In the *Stanley* case, police had searched a suspected bookmaker's home pursuant to a search warrant and found several rolls of film later determined to be obscene. At that time, the State of Georgia had a statute prohibiting the mere possession of obscene material. The Supreme Court struck down this law, holding that whatever interest the state might have in the regulation of obscenity, that interest did not extend into the privacy of a person's home. The Court indicated, however, that the *Stanley* holding was limited and did not extend to "statutes making criminal possession of other types of printed, filmed, or recorded materials" and that "compelling reasons may exist for overriding the right of the individual to possess those materials."

The regulation of possession of child pornography has been met with legal challenges based upon the possessor's right of privacy using arguments related to the possession of obscene material contained in *Stanley v. Georgia*.<sup>46</sup> While the U. S. Supreme Court has not addressed the specific issue of the state's ability to regulate possession of child pornography, the state supreme court in Ohio recently spoke to this question. In *State v. Meadows*,<sup>47</sup> the Ohio Supreme Court addressed the issue of whether the tenets set forth in *Stanley* were applicable to an individual convicted of possessing child pornography. The court stated:

Unlike the obscene materials considered in *Stanley*, *Miller*, *et al.*, child pornography involves, by its nature, the physical, mental, and sexual abuse, seduction, and harmful exploitation of children. The depictions sought to be banned by the state are but memorializations of cruel mistreatment and unlawful conduct. Additionally, such material would continue to exploit and victimize the children shown by haunting them in the future [cite omitted]. We believe the interests of the state in protecting the privacy, health, emotional welfare and well-rounded growth of its young citizens,

together with its undeniable interest of safeguarding the future of society as a whole, comprise exactly the type of "compelling reasons" justifying a "very limited" First Amendment intrusion envisioned by the *Stanley* court. At the same time, the cost to the individual possessor's right of free speech, privacy and thought, caused by the state's banning of visual mementos from an episode of sexual abuse of a child, is slight. Moreover, the content value of such material is trifling and alternative means of simulation exist.<sup>48</sup>

It is important to understand that the state of Georgia's argument in *Stanley* as to the constitutionality of its law was its right to control the moral content of an individual's mind and to thus prevent any possible deviant behavior that might result from those thoughts. The Supreme Court found that the state's interest could be adequately protected by punishing the deviant behavior when and if a crime occurred. Of course, with child pornography, several crimes must occur before an individual gets these materials into the home, and the demand to possess the material assures that children will continue to be criminally victimized.

In response to law-enforcement concerns about the need to be able to prosecute successfully those who possess child pornography, thirteen states now make this a separate criminal offense.<sup>49</sup> Another state, Oregon, penalizes possession in a different way, making it an offense to obtain or view child pornography.<sup>50</sup> Constitutional challenges to these laws, based on the *Stanley* case, can be expected, but the strong language of the U.S. Supreme Court in *Ferber* concerning the state's compelling interest in eradicating child pornography may help assure that such laws are upheld. Where the balancing of an individual's right to privacy with the state's protection of certain interests is concerned, the Supreme Court has stated in *Roe v. Wade*, 410 U.S. 151 at 155, 156:

Some state regulation in areas protected by that right is appropriate. . . . Where certain "fundamental rights" are involved . . . regulation limiting these rights may be justified only by a "compelling state interest." . . . and that legislative enactments must be narrowly drawn to express only legitimate state interests at stake.

Given the Court's emphatic pronouncement about child pornography in *Ferber* —i.e., "The prevention of sexual exploitation and abuse of children constitute a government objective of surpassing importance," and "a state's interest in safeguarding the physical and psychological well-being of a minor" is "compelling," states should be well-equipped to face challenges to child pornography possession laws.

**Victim's Age** Child pornography statutes generally prohibit the exploitation of children below the age of majority, but the upper age limit ranges from 16 to 18. Fifteen states and the District of Columbia only protect minors under 16. Another five states protect only those under 17, and thirty states set the age at 18 years. In addition, three states define a child as one who "appears pre-pubescent."<sup>51</sup> This latter category, while helpful to prosecutors in overcoming their burden of proof, appears vague and may be unconstitutionally broad.

**Evidentiary Problems** Prosecutors face several evidentiary obstacles in child pornography cases. Among them is the prosecutor's burden of proving that the victimized or portrayed child was actually a minor at the time of the offense. This is particularly difficult because the identity and location of the child depicted are usually unknown. To overcome this obstacle, the use of expert testimony to establish the child's age has been allowed in some states.<sup>52</sup> Also, several states permit the jury to make a subjective judgment regarding the age of the child without the aid of expert testimony.<sup>53</sup> Others have established a rebuttable presumption that a child appearing in pornography is under the age of majority.<sup>54</sup>

Several states have included other provisions within their new laws that aid prosecutors in proving their case. As mentioned earlier, a number of states have provisions stating that possession of one, three, ten, or more copies of child pornography material is *prima facie* evidence of an intent to sell or distribute that material. The common "mistake of age" defense is dealt with by a number of state laws. Illinois requires the defendant to establish that he made an affirmative, *bona fide* inquiry as to the child's age.<sup>55</sup> In four states, a lack of knowledge of the child's age is not a defense at all.<sup>56</sup>

**Penalties for Offenders** As stated earlier, the maximum permissible penalties for persons convicted of child pornography offenses are quite severe. A number of states provide greater

possible penalties when the involved child is younger than a certain age, and Kentucky and Missouri provide for increased penalties where the involved child has been injured.<sup>57</sup> Like the federal law, eleven states specify increased penalties for repeat offenders. Many states provide different penalties for offenders based upon their specific crime (*i.e.*, production, parental involvement, coercing child to be involved in pornography, distribution, etc.). Maine provides that a sentence may be suspended only when a case has exceptional features warranting a suspended sentence.<sup>58</sup>

Florida, Massachusetts, New Jersey, and New York permit the court to assess, in addition to other penalties, a fine based on the pecuniary gain derived from the offense, or the value of the loss to the child victim, multiplied by a factor of two or three. Following the language of the amended federal law, seven states have forfeiture provisions so that the state can access the perpetrator's property.<sup>59</sup> Finally, only one state, Minnesota, has addressed offender evaluation and treatment issues in child pornography cases, providing that after a second offense the court must order a mental examination for the defendant and that treatment recommendations must be provided to the court.<sup>60</sup>

**Other Unique Provisions** There are several other state child pornography law provisions that are worthy of special mention. Six states have extended their child abuse and neglect mandatory reporting laws to require that commercial film processors inform the police in cases where material provided to them for processing appears to include child pornography.<sup>61</sup> Generally, only health care professionals, teachers, social workers, law-enforcement personnel, psychologists, and others who have direct professional contact with children or their parents are obligated by law to report suspected child maltreatment. To be totally effective, new photographic processor laws must cover all those who duplicate videotape and photographic film, as well as those who process undeveloped negatives. The law must also provide clear immunity from civil liability for those who make reports under these provisions, as well as create a criminal offense for those processors and duplicators who fail to report as required.

Several states also have unique provisions worth considering for replication. Connecticut provides that the importing of two or more copies of child pornography is *prima facie* evidence of the intent to commit the offense of promoting child pornography.<sup>62</sup> Iowa has made the act of purchasing child pornography a separate misdemeanor offense.<sup>63</sup> Montana makes the "knowing" financier of child pornography liable to criminal prosecution.<sup>64</sup> Oregon provides separate offenses for observing sexual conduct and for obtaining or viewing pornographic material.<sup>65</sup> Washington has made the act of communicating with a minor for immoral purposes a distinct crime.<sup>66</sup>

### 3. Court Decisions Related to Child Pornography

A number of issues related to the constitutionality of federal and state child pornography laws, as well as challenges to law-enforcement practices pursuant to those laws, have been addressed in reported judicial opinions. These written decisions are referenced here, with a brief explanation of the case's significance. Cases are listed in reverse chronological order, with the most recently published decisions first. This list does not purport to be a comprehensive listing of all written court decisions related to child pornography, nor is it a complete description of every issue raised in each case.

#### Federal Cases

*United States v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987). Court affirmed the defendant's conviction for sexual exploitation of children. Sufficiency of a warrant searching for photographs is measured by the same standard as that used for judging warrants for other forms of contraband. The court followed the *Hurt* and *Hale* precedents (*see below*).

*United States v. Sherin*, 86 Cr. 480, slip op.(S.D. N.Y. Jan. 20, 1987). Court held that knowledge and character of the material includes knowledge of the minor status of any child depicted in the material. Court dismissed the indictment without prejudice.

*United States v. Diamond*, 808 F.2d 922 (1st Cir. 1987), reh'g *en banc* granted (Mar. 1987). Appeal from granting of a motion to suppress. Court found that a warrant that authorized the seizure of materials depicting children under the age of 18 provided no practical guidance for distinguishing films of 16- or 17-year-old persons from 18-year-old persons.

*United States v. Hurt*, 795 F.2d 765 (9th Cir. 1986). Court found a warrant that authorized the seizure of materials depicting children under the age of 16 engaged in sexually explicit conduct to be sufficient.

*Faloona by Fredrickson v. Hustler Magazine, Inc.*, 799 F.2d 1000 (5th Cir. 1986). Lower court dismissal of multi-million-dollar invasion of privacy suit brought by children and their mother was affirmed. The court rejected the contention that any photographic release signed by parents that is related to a nude portrayal of the child must receive judicial approval before it may be published. Under the facts of this case, publication of the photos by *Hustler* magazine, which first appeared in another publication with the mother's consent, did not violate the children's right of privacy.

*United States v. Hale*, 784 F.2d 1465 (9th Cir. 1986). Defendant, an alleged child pornography collector, challenged his conviction under the amended federal child pornography law for receiving child pornography by mail. He alleged that the search warrant that led to the seizure of the material was illegal. The court held that the material to be seized must be specifically described in the warrant. The court rejected defendant's claim that the U.S. government must seize such pornographic material before the addressee receives it, rather than merely opening and inspecting it before letting it be delivered. His conviction was affirmed.

*United States v. James Smith*, 795 F.2d 841 (9th Cir. 1986). Defendant's conviction of producing and mailing child pornography under the federal law as amended in 1984 was affirmed. He had taken nude photos of teenage girls and mailed the unprocessed film to a photo lab. His claim that the law was not meant to apply to people who produced such material for mere personal use was rejected by the court. The government need not prove that a defendant intends to distribute such material in order to secure a conviction under the law. The court also held that the term *visual depiction* in the law includes undeveloped film, even though the law at that time did not so explicitly state.

*United States v. Reedy*, 632 F.Supp. 1415 (W.D. Okl. 1986). Defendant was charged under the federal child pornography law with photographing his daughter and her girlfriend in the nude. His vagueness and overbreadth challenge to the federal child pornography law was rejected in light of the *Ferber* case. The fact that the law does not require a defendant to have knowledge of the character and content of the material, or of the actual age of the portrayed child, does not render it unconstitutional. Nor does the fact that noncommercial, as well as commercial, material is prohibited.

*United States v. Miller*, 776 F.2d 978 (11th Cir. 1985). Defendant was convicted of receiving child pornography in the mail. The court rejected his contention that Congress did not intend the law to be applied to persons who have no intent to distribute this material. His argument that the law violated his right to privacy, pursuant to *Stanley v. Georgia*, 394 U.S. 557 (1969), was also rejected. The court held that *Stanley* is not properly expanded to create a right to knowingly receive child pornography through the mail.

*United States v. Tolczeki*, 614 F.Supp. 1424 (D.C. Ohio 1985). Defendant challenged his federal conviction for interstate transportation of child pornography through the mails on the basis that the law was unconstitutionally vague and overbroad because it lacked a *mens rea* requirement, as well as constituted a violation of his right of privacy (based on *Stanley v. Georgia*). The court rejected each of these claims and held that the Congress had specifically omitted a *mens rea* requirement in the law in order to ease the requirements for conviction.

*United States v. Andersson*, 610 F.Supp. 246 (D.C. Ind. 1985). Defendant was charged with conspiracy to mail and reproduce child pornography under the federal law as amended in 1984. He claimed that by not requiring proof that the material was legally obscene, the revised law was overly broad and impermissibly vague. In light of the *Ferber* decision, which construed a New York law that was similar to the revised federal law, the court rejected the defendant's claims.

*United States v. Meyer*, 602 F.Supp. 1480 (S.D. Cal. 1985). Defendant was charged with thirteen counts of transporting child pornography material, each count involving an individual photograph contained in a single binder. The court found that Congress had not clearly provided for such multiple charging, and the government was directed to select one count under which to proceed, and the remainder were ordered dismissed.

*United States v. Ames*, 743 F.2d 46 (1st Cir. 1984). Defendant challenged his sentence for violation of federal child pornography laws. The trial court's dismissal of this challenge was affirmed.

*United States v. Thoma*, 726 F.2d 1191 (7th Cir. 1984). Defendant was charged with violations of the original 1978 federal child pornography law by mailing pornographic videotapes to undercover postal inspectors. He claimed that the government's actions, in setting up an undercover organization that solicited people who were interested in advertising for opportunities to produce child pornography, and then placing phony advertisements for child pornography, which defendant responded to, constituted entrapment. The court held that although the government had offered the opportunity for the defendant to commit a crime, and even induced and coaxed the defendant to commit the offense, the claim of entrapment was not proved. Further, the court held that no government misconduct had taken place, and that there was evidence that the defendant was predisposed to commit the crime.

*State v. Petrov*, 747 F.2d 824 (2nd Cir. 1984). Defendant was charged with conspiracy to violate the 1978 federal child pornography law by advertising his availability to process "confidential" photos. The court held that the law, as it existed prior to the 1984 amendments, did not apply to photo processors, who merely reproduced or duplicated material.

*United States v. Nemuras*, 567 F.Supp. 87 (D.C. Md. 1983). Defendant was convicted under the 1978 federal child pornography law with producing child pornography photos involving the "lewd" exhibition of a child's genitals. He asserted that the photos were not "lewd" and that this term was unconstitutionally vague. The court rejected this argument, finding that the word *lewd* has a generally well-recognized meaning connoting sexual suggestiveness, and that the photos in question met that definition.

*United States v. Langford*, 688 F.2d 1088 (7th Cir. 1982). Defendant was convicted under the 1978 federal law, prior to elimination of the obscenity requirement, with sending child pornography through the mails to an undercover postal inspector, as well as to a photo lab. He challenged the trial court's application of the obscenity standard. This challenge was rejected by the appellate court, even though the government had chosen to prove that the material was designed to appeal to the prurient interests of pedophiles (the intended recipients). The court also rejected the defendant's contention that a conviction could not be based on sending the material to a photo lab, since there was no clear showing that the mailing was for the purposes of a sale, as required by the law at that time. The court concluded that the purpose of the mailing was ultimately for the purpose of sale, since the defendant's actions were part of a commercial child pornography chain.

*New York v. Ferber*, 458 U.S. 747 (1982). (See pages 4-5.)

*United States v. Fogarty*, 663 F.2d 928 (9th Cir. 1981). Defendant, convicted of distributing child pornography under the federal law, challenged the law as unconstitutionally vague. The court rejected this challenge. After a photo processor had notified the police of the defendant's bringing in film depicting nude minors, a police search of his home found nude photos of children, ledger sheets, a sexually oriented magazine that carried an advertisement placed by him, and interstate correspondence from individuals responding to his advertisements.

*Graham v. Hill*, 444 F.Supp. 584 (W.D. Tex. 1978). Defendant challenged his conviction under a state child pornography law on the basis that it was unconstitutionally vague and overbroad. There was no requirement in that law that the alleged pornographic material was legally obscene. The law in question prohibited exhibition and distribution of photos of minors "observing" or "engaging" in sexual conduct. The court agreed with the defendant's claim and struck down the law, because it would have prohibited exhibiting a motion picture just because it contained a scene in which a minor was shown observing sexual conduct, without a prerequisite that the film was obscene or that the minor's part in the film in any way involved sexual exploitation.

*St. Martin's Press, Inc. v. Carey*, 605 F.2d 41 (2nd Cir. 1979). The petitioner claimed in this civil action that the New York law for promoting a sexual performance of a child was unconstitutional, as it applied to non-obscene publications, and that it would grievously affect the publication and distribution of a sex-oriented photography book entitled *Show Me!*. Since no criminal action had ever been threatened or brought against the petitioner under the law, the court dismissed this action to have the law declared unconstitutional on the basis that there was no case or controversy justifying intervention by a federal court.

## State Cases

The following cases will suggest the range of issues that have been raised in appeals from convictions under state child pornography laws. Many of these cases are analyzed in an annotation entitled *Validity, Construction and Application of Statutes or Ordinances Regulating Sexual Performance by Child*, 21 ALR4th 239 (1983). The cases are listed here in alphabetical order by state.

**Alabama** *Donnelley v. State*, 397 So.2d 555 (1981). Conviction for producing child pornography affirmed, even though materials had not been produced for profit.

**Arizona** *State v. Limpus*, 625 P.2d 960 (1981). Court rejected defendant's challenge that phrases *lewd exhibition of the genitals* and *harmful to minors* in the law were unconstitutionally vague.

**California** *People v. Burrows*, 67 Cal.Rptr. 28 (1968). Conviction affirmed for employing a child for purposes of producing child pornography, even though there was no intention shown of an intent to distribute it.

**Colorado** *People v. Enea*, 665 P.2d 1026 (1983). Defendant, who had helped arrange for the sale of child pornography, unsuccessfully challenged the law as unconstitutionally overbroad.

**Delaware** *Heartless v. State*, 401 A.2d 921 (1979). Defendant, convicted of distributing obscene photos of nude minors that graphically focused on their genitals, unsuccessfully claimed that the material was not obscene because it did not depict any sexual activity.

**Delaware** *Naughton v. State*, 453 A.2d 796 (1982). Defendant's conviction under federal law for mailing obscene material does not bar state prosecution for producing child pornography.

**Florida** *Griffin v. State*, 396 So.2d 152 (1981). Defendant challenged for vagueness the law under which he was convicted of producing or directing obscene photos of minors and procuring a minor for obscene photos, but the court held that the law proscribed conduct and not constitutionally protected speech.

**Hawaii** *State v. Shingaki*, 648 P.2d 190 (1982). Overbreadth challenge to state child pornography law denied.

**Illinois** *People v. Spargo*, 431 N.E.2d 27 (1982). Defendant unsuccessfully challenged his conviction for exhibiting child pornography to undercover police officer, claiming that it was unconstitutional to prohibit the private noncommercial dissemination or exhibition of child pornography, as well as alleging that the law was unconstitutionally vague.

**Illinois** *People v. Schubert*, 483 N.E.2d 600 (1985). Defendant's vagueness challenge of child pornography law denied (citing *Spargo*), and court held that at trial the child pornography victim neither need be identified, nor proof of age required. Rather, it was permissible for the trier of fact to assess the age of child from a viewing of the photos.

**Illinois** *People v. Lerch*, 480 N.E.2d 1253 (1985). Defendant was convicted of the crime of creating child pornography by photographing his wife and child nude in posed positions, with the child's pubic area exposed. His challenge to the law as unconstitutionally overbroad was denied.

**Indiana** *Smith v. State*, 413 N.E.2d 652 (1980). Conviction of defendant for distributing an allegedly "obscene" photo of a naked child, where photo depicted no sexually provocative gestures or close-up of the genital region, was reversed on appeal.

**Kentucky** *Bach v. Commonwealth*, 703 S.W.2d 489 (1985). Court held that "obscene exposure," required for a conviction under the production of child pornography law, had not been proved.

**Kentucky** *Payne v. Commonwealth*, 623 S.W.2d 867 (1981). Convictions for use of minors in sexual performances were unsuccessfully challenged on basis that the law was unconstitutionally vague and overbroad.

**Missouri** *State v. Helogoth*, 691 S.W.2d 281 (1985). Conviction under law prohibiting the photographing of children nude for the sexual stimulation or gratification of anyone who might view the material was unsuccessfully challenged on vagueness and overbreadth grounds.

**New York** *People v. Ferber*, 441 N.E.2d 1100 (1982). Remand of case following U.S. Supreme Court decision. Defendant's claims that his conviction for promoting non-obscene films violated his right to freedom of expression and his rights under the New York State Constitution were rejected. See also *People v. Ferber*, 422 N.E.2d 523 (1981).

**Ohio** *State v. Meadows*, \_\_\_ N.E.2d \_\_\_, 28 Ohio St.3d 43 (1986). Defendant challenged as unconstitutional a state law that prohibits the knowing possession or control of "material which shows a minor participating or engaging in sexual activity, masturbation, or bestiality." The court held that the law did not violate the First Amendment and affirmed the defendant's conviction.

**Pennsylvania** *Commonwealth v. McCue*, 487 A.2d 880 (1985). Defendant's challenge to his child pornography conviction, on the basis that there was no transfer of possession or an intent to transfer possession, was denied.

**Texas** *Swain v. State*, 661 S.W.2d 125 (1983). Court held that the accused's defense of reasonable good faith that the child pornography victim was 17 or over had not been established.

**Utah** *State v. Jordan*, 665 P.2d 1280 (1983). Defendant's statutory overbreadth and violation of the right of privacy challenges to his conviction were denied.

**Virginia** *Freeman v. Commonwealth*, 288 S.E.2d 461 (1982). Defendant unsuccessfully challenged his conviction under child pornography production law where he had photographed a 5-year-old girl with genitals exposed posing in erotic postures on his bed, and his statutory vagueness and overbreadth challenges were also rejected.

**Washington** *State v. Shuck*, 661 P.2d 1020 (1983). Defendant's overbreadth challenge to child pornography law was rejected.



## 4. Legal Protection for the Child Victim of Pornography

### International Distribution of Child Pornography and Importation of Material into the United States

It has long been a concern of experts on child pornography that much of the material that is disseminated in this country has been imported from Europe. Indeed, after the 1978 federal child pornography law was enacted, the scale of the domestic distribution market was greatly diminished, and pedophiles began to rely upon the availability of European-produced material, mostly magazines and films that, interestingly, largely contained depictions of American children that had been originally furnished to the Europeans by American pedophiles.<sup>67</sup>

The originating countries from which the U.S. Customs Service has seized imported child pornography when it reached the U.S. have mostly been Denmark, the Netherlands, and Sweden.<sup>68</sup> In November 1984 and February 1985 the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Governmental Affairs held hearings that examined this issue. One result of these hearings was the organization by the U.S. Department of State of a federal Interagency Group to Combat Child Pornography.<sup>69</sup> This body visited the three countries in early 1985, meeting with law-enforcement and government officials. Each country later reported recent, encouraging progress in identifying major distributors or otherwise grappling with the problem.<sup>70</sup> An important additional factor in stimulating the U.S. and foreign response was the airing in August 1984 of an NBC documentary on the lucrative international child pornography distribution system, *The Silent Shame*.

The U.S. Customs Service is responsible for seizures of imported child pornography, and in October 1985 it formed a Child Pornography and Protection Unit to coordinate all its child pornography cases and act as a clearinghouse for information on relevant publications and known suppliers or customers.<sup>71</sup> The Customs Service's seizures of child pornography actually diminished by 40 percent between 1984 and 1985. This was possibly because of the impact of the amended federal child pornography law, as well as knowledge of more aggressive Customs action by European distributors and American pedophiles. The number of Customs investigations of child pornography cases and search warrants obtained, however, has been increasing dramatically. For example, it had 12 cases in all of 1983, but by September 1986 it had been involved with more than 220 cases so far that year.<sup>72</sup>

### Child Abuse Reporting Laws

Few child sexual exploitation laws address the problems experienced by the victimized child. All states have child abuse and neglect laws that require people who come into contact with children (e.g., teachers, doctors, social workers, police officers, etc.) to report suspected child abuse to the appropriate child welfare agency or police department. These laws do not adequately protect the victims of pornography, however, as distinguished from children who have suffered from intra-familial maltreatment.

Under the reporting laws, each state defines *abuse and neglect*, setting out the type of abuse that must be reported. Although *sexual abuse* is included within these definitions, this term generally connotes only actual sexual contact between the child and a parent, guardian, or person responsible for the child's care. Sexual abuse, as defined (if at all) in state laws,

usually does not include photographing or filming children engaged in sexually explicit behavior.

To fill this gap, states have been encouraged to include *sexual exploitation* (clearly defined) as a type of abuse that must be reported. Final rules issued by the U.S. Department of Health and Human Services on January 26, 1983, directed that in order for a state to be eligible for funds under the federal Child Abuse Prevention and Treatment Act (42 U.S.C. §5101 *et seq.*), the statutory definition of *child abuse* in the state's mandatory reporting law would have to include sexual exploitation. These rules defined *sexual exploitation* as:

allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare; and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child as those acts are defined by State law, by a person responsible for the child's welfare.<sup>73</sup>

This regulation was intended to implement changes in the original federal Child Abuse Prevention and Treatment Act made necessary by 1978 amendments to the act.<sup>74</sup> Neither the original language of the act nor the original regulations governing state grants under the act included any reference to sexual exploitation. Indeed, the original regulations defined *child abuse* merely in terms of "harm" or "threatened harm" to children and stated that it was not necessary for states to adopt any particular definition of child abuse.<sup>75</sup>

The 1978 amendments to the act added *or exploitation* after the words *sexual abuse* in the definitional section. They also included a new authorization for special state grants related to sexual abuse.<sup>76</sup> Interestingly, *sexual abuse* was here specifically defined to include, in addition to rape, molestation, and incest:

the obscene or pornographic photographing, filming, or depiction of children for commercial purposes . . . prostitution, or other forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary [emphasis added].

On February 6, 1987, the U.S. Department of Health and Human Services issued amended rules under the federal Child Abuse Prevention and Treatment Act (published at 52 Fed. Reg. 3990). The rules promulgated in 1983 were revised in that the term *sexual exploitation* was no longer specifically defined. Rather, the definition of *sexual abuse* in 45 C.F.R. §1340.2(d)(1) was amended to include:

employment, use, persuasion, inducement, enticement, or coercion of any child [later defined as any person under the age of 18] to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct.

All states are now required to have their own definition of sexual abuse in their child abuse reporting laws or regulations substantially matching this new federal definition if they wish to receive funding under the federal act.

Long before this federal funding incentive, it was recommended by Dr. Judianne Densen-Gerber, a seminal force behind the original federal child pornography law, that state child abuse laws be amended to include sexual exploitation.<sup>77</sup> To date, forty-one states have included *sexual exploitation* within the definition of *abuse and neglect* under their mandatory reporting laws, statutes that help assure that child protection agencies are involved in cases of abuse and neglect. A few states have used the term *exploitation of a child*, without a sexual reference, in their reporting laws. These could, of course, be construed to require reporting of sexual exploitation, as could other reporting laws that merely include the term *sexual abuse* or the allowing of *the commission of any sexual act upon a child*.

One possible additional amendment to state child abuse reporting laws would be to require the reporting of suspected abuse when *any person*, not just a parent, guardian, or other person responsible for the child's care, is suspected of sexually exploiting a child. Many children are exploited by non-family members or even total strangers, but they could still use help from child protective service agencies. A caveat must be added here, however. Under the current child abuse reporting procedures, the reporting of suspected abuse is usually an intimation that the child's parent is *at fault*. While the involvement of a child in child pornography may be an indication that something is amiss in the home and should be investigated, it may not

necessarily mean that the parent is at fault, or even aware of the child's activities. This should be kept in mind during any child welfare agency investigation. A family that discovers that the child has been photographed for pornography needs support, not accusations and further family disruption.

### The Child Victim as Witness

In the event that the child is identified and located in a pornography case, the criminal justice system should be sensitive to difficulties encountered by child witnesses. The use of an exploited child as a witness in a criminal prosecution against an adult can cause severe emotional problems for that child. He or she may be forced to relive the experience all over again and endure the guilt and pressure imposed by a court proceeding. To prevent this, innovative techniques developed to protect sexual abuse and incest victims should be used in child pornography cases as well. The system, in its zeal to prosecute the criminal, must not forget the purpose of these laws—to protect children. *Note:* For a detailed discussion of sensitive intervention techniques to protect child witnesses in such cases, see R. Eatman and J. Bulkley, *Protecting Child Victim/Witnesses: Sample Laws and Materials*, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (2nd ed. 1987); J. Bulkley, *Child Sexual Abuse and the Law*, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (1981); and J. Bulkley, *Recommendations for Improving Legal Intervention in Intra-family Child Sexual Abuse Cases*, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (1982).

On August 27, 1986, President Reagan signed into law the Children's Justice and Assistance Act (P.L. 99-401), which could have a significant impact on the way child pornography victims, and their cases, are treated in the judicial system. The law authorizes the U.S. Department of Health and Human Services (HHS) to make grants to eligible states, using a portion of the funds available under the federal Victims of Crime Act of 1984, as amended (42 U.S.C. §10601 *et seq.*), to improve the handling of child victim cases "in a manner which limits additional trauma to the child" and to improve "the investigation and prosecution of cases."

State eligibility for these new funds is conditioned on: a) compliance with all other state grant eligibility requirements of the federal Child Abuse Prevention and Treatment Act (42 U.S.C. §5101 *et seq.*); b) establishment of a statewide "multidisciplinary task force" (or use of a similar commission or task force established after January 1, 1983) that reviews and evaluates the handling of child victim cases and makes relevant reform recommendations; c) adoption by the state (or substantial progress towards adoption) of recommendations (or appropriate alternatives) in the areas of reduction of trauma to children in the handling of cases, development of new innovative programs to improve the success of prosecution and enhance the effectiveness of judicial and administrative actions in these cases, and changes in laws, regulations, and procedures designed to protect children from becoming victims; and d) submission of an application to HHS for these funds.<sup>78</sup>

In addition to the distribution of these funds to qualifying states, the National Center on Child Abuse and Neglect (NCCAN), a program of HHS, is required by the new law to disseminate to the states: a) materials and information that will assist them in achieving the law's objectives; b) model training materials to assist in training law-enforcement, legal, judicial, medical, mental health, and child welfare personnel to meet the law's objectives; and c) results of research on appropriate and effective investigative, administrative, and judicial procedures in these cases.<sup>79</sup> Although the law is meant to impact on all child abuse victims, the special interests of child pornography victims will, one hopes, not be overlooked by the states or NCCAN. Most child pornography laws fail to provide specifically for the evaluation and treatment needs of the victimized child. Programs that provide counseling and other services to treat the serious emotional, psychological, and physical harm suffered by these children should be established and secure funding for these resources provided. Federal funds have been available for some of these programs under the Child Abuse Prevention and Treatment Act, as well as the Runaway and Homeless Youth Act (42 U.S.C. §5701, *et seq.*). It is critical that the states recognize the importance of these programs and continue to provide support for their improvement.

### Law-Enforcement Efforts

A number of excellent programs have been developed during the past few years that provide linkages between the criminal justice system and treatment-related programs for victims and

offenders in intra-family child sexual abuse cases. *Note: See J. Bulkley, Innovations in the Prosecution of Child Sexual Abuse*, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (1981). Programs are just beginning to emerge, however, that focus on the needs of child pornography victims who are identified by law-enforcement agencies.

One of these is the Louisville/Jefferson County Exploited and Missing Child Unit in Louisville, Kentucky, which was established as a model of cooperating service delivery organizations dealing with child prostitution and pornography under the leadership of John Rabun, now Deputy Director of Technical Assistance at the National Center for Missing and Exploited Children. This project of the Jefferson County Task Force on Juvenile Prostitution and Child Pornography began in July 1980 as an arm of the county's Department of Human Services. It is housed in the City/County Criminal Justice Commission office in order to work more closely with law-enforcement agencies. The task force consists of representatives from the human service agency, state and local police departments, the local FBI and U.S. Postal Inspection Service, and the County and Commonwealth's Attorneys' offices.

Following a massive public information campaign, the task force established a 24-hour hotline for reporting matters concerning child sexual exploitation, organized a statewide program, and created a special police/social worker team to handle these cases. Child victims involved with pornography are referred to the Exploited and Missing Child Unit, which acts as a case coordinator when cases are being brought before the courts. The goals of the unit are both to assure effective coordination of the work of the various agencies involved in these cases and also to obtain appropriate services for the child victims. The unit also provides communications liaison between law-enforcement and the social services community, assists the child in the interviewing process (while assuring that his or her legal rights are protected), helps secure necessary protective custody orders from the court, and establishes a long-term relationship and rapport with the child and family so as to enable successful prosecution of the exploiter. Similar units have now been developed in Miami/Dade County, Florida; Rochester, New York; and Anchorage, Alaska. The National Center for Missing and Exploited Children, since its inception, has provided training and technical assistance to new police/social worker teams throughout the country.

## Federal and State Regulatory Protections

The key to a successful and effective implementation of a child pornography prevention, detection, and response program involves a coordinated effort on the part of federal, state, and local law-enforcement and social service agencies. State and local investigative agencies play a vital role in the regulation of child exploitation. Local law-enforcement agents respond to charges of child abuse or neglect and address the primary acts underlying any charges of producing child pornography as well as child pornography cases arising under state laws. State and local agents can coordinate a multi-level investigation that will include private or public social service agencies.

There are numerous instances of a state agency conducting an investigation concerning child molestation charges where the suspect is concurrently under investigation by the Customs Service or the Postal Inspection Service for child pornography violations. A coordinated exchange of information will enhance the effectiveness of law-enforcement efforts in this area. This coordination becomes even more significant when the victim in a sexual molestation case is unable to testify or found to be not credible. In these circumstances, there may be federal charges that would eliminate the need to have testimony from the child. The overriding concern should be for the safety and welfare of the children who may be victimized. The investigative team ideally should include a law-enforcement investigator, who leads and manages the investigation, and a social service professional, who may lead the actual interviewing process and provide social service system support.<sup>80</sup>

There are numerous federal, state, and private agencies that are authorized or required to participate in situations involving the sexual exploitation of a child. On the federal level, three agencies have been vested with the primary jurisdiction to investigate child pornography crimes. Each agency has a distinct sphere of responsibility and jurisdiction.

The U.S. Postal Inspection Service is responsible for investigating any violations using the United States mails. Since many child pornography collectors trade materials individually,

they will frequently use the mails and will therefore be within the jurisdiction of the Postal Inspection Service. In a recent policy statement, the Service outlined its investigative procedure in child pornography cases:

The objective in child pornography cases is to identify and investigate trafficking through the mail. Suspects not found to be mailing materials are referred to local police or other appropriate authorities. . . .

In conducting child pornography investigations, Inspectors should maintain close contact with police, other state and federal law-enforcement agencies, and social workers who, due to their work, frequently become aware of child abuse and/or child pornography. Evidence is examined, such as mailing lists seized during the execution of search warrants, in an effort to identify persons interested in this type of material. Once an individual or firm is identified as possibly using the mails to distribute child pornography, test correspondence is initiated in an attempt to establish a dialogue with the pornographer to determine his predisposition for this material. If other offenses such as child abuse are discovered incident to an investigation, this activity is immediately referred to appropriate local authorities for further attention.<sup>81</sup>

The second federal agency with jurisdiction to investigate child pornography cases is the U.S. Customs Service. The Customs Service is primarily responsible for detecting the importation and exportation of child pornography. There have been several recent changes in the method of investigation used by Customs, and effective means are still being tested:

Investigators are beginning to look for the major distributors, producers, and consumers, using longer-term investigations. Undercover operations are being developed as interoffice and interagency efforts, both at home and abroad. Increased cooperation with foreign governments has led to two successful undercover operations in 1985. . . .

As a result of the adaptation of the Customs program to changing conditions and needs, the pressure on the pornographers shifts as weak spots are found. As a result of the increased foreign cooperation, new methods of smuggling, source countries, and distributors are being identified.<sup>82</sup>

The final agency vested with investigative jurisdiction is the Federal Bureau of Investigation (FBI). The FBI has the ability to conduct undercover operations and long-term investigations, including cooperative efforts with state, local, and foreign law-enforcement agencies. The FBI may focus on the crimes associated with the production of child pornography that include kidnapping and interstate transportation of minors for illegal sexual activities and related crimes.

## **The Attorney General's Commission on Pornography**

In July 1986 the U.S. Attorney General's Commission on Pornography, which had been established in February 1985 by then Attorney General William French Smith, issued its final report. After conducting hearings in six cities and extensively studying all aspects of the pornography issue, the Commission released a 1,960-page report containing 92 recommendations, 48 of which pertain specifically to child pornography. Indeed, one of the longest individual sections of the Commission's report (140 pages) was the chapter dealing with child pornography. The chapter contains an excellent overview of the problem, Congressional and state reaction to it, and the psycho-social dynamics of its producers, consumers, and victims.<sup>83</sup>

The 48 recommendations can be broken down into 6 categories, which cover recommendations for: 1) Congress; 2) state legislatures; 3) The U.S. Department of Justice; 4) federal, state, and local law-enforcement agencies; 5) prosecutors and judges; and 6) miscellaneous recommendations. The 48 recommendations relating to child pornography are summarized in Appendix 2, pages 35-37.

**Congress** Several of these recommendations were enacted into law shortly after the release of the Commission's report. The federal prohibition of the exchange of information through advertisements or other notices concerning child pornography, or for children to be used for its production, and the expansion of the federal law to clearly cover undeveloped film, were included in P.L. 99-628, the Child Sexual Abuse and Pornography Act of 1986. Other

recommendations are likely to be the subject of future bills in Congress (*e.g.*, providing for the U.S. Postal Inspection Service to conduct forfeiture actions; making the acts of child selling or purchasing for the production of pornography federal offenses; and creating federal funding incentives for state task forces on child pornography). As to the latter, the federal Children's Justice and Assistance Act may provide such incentives. The most controversial but potentially far-reaching proposals made in the Commission's report include a call for increasing the maximum age of coverage under the federal child pornography law from 18 to 21,<sup>84</sup> and mandating that producers, retailers, and distributors of sexually explicit materials maintain consent forms and proof of performers' ages. On October 22, 1986, Attorney General Edwin Meese III announced that in the 100th Congress the Justice Department would have legislation introduced to make child selling or purchasing for the production of child pornography a new federal offense. He also indicated that the Justice Department's forthcoming legislative package would include provisions to require producers, retailers, and distributors of sexually explicit visual depictions to maintain records of consent and proof of age by persons appearing in such depictions, as well as to prohibit the use of people under age 21 from performing in such materials.<sup>85</sup>

**State Legislatures** As discussed earlier, many states have already amended their laws to make the changes recommended in the Commission's report. Such changes include prohibiting the possession of, or the advertising or other transfer of information about, child pornography; providing for forfeitures of the property or profits of those involved in child pornography; mandating reporting by photo labs of suspected child pornography; and eliminating the need for child victims to testify, or even to be identified, in order to prove their age. Other recommendations have not yet been the subject of much legislative attention—*e.g.*, making possession of child pornography, in which the offender is depicted, evidence in and of itself of child molestation; creating a separate offense of conspiracy in relation to the various categories of child pornography-related crimes; and providing statutory authority for judges to order lifetime probation for offenders in appropriate cases.

**U.S. Department of Justice** The Commission recommended that the 94 Law-Enforcement Coordinating Committees throughout the country be directed to form child pornography task forces, and that the Justice Department, or some other federal agency, create a centralized data base on child pornography trafficking to be used as a resource for all law-enforcement programs. On October 22, 1986, Attorney General Edwin Meese III announced a new program of the Justice Department to combat both child pornography and obscenity.<sup>86</sup> In addition to the legislative proposals mentioned earlier, the Attorney General stated that the Justice Department would coordinate with the National Center for Missing and Exploited Children in order to aid the investigation and prosecution of child pornography cases. Finally, the Attorney General announced that there would be an enhanced effort in each U.S. Attorney's office to concentrate on cases of international trafficking in child pornography. *Note:* The National Center for Missing and Exploited Children has provided technical assistance training to over 21,000 law-enforcement and criminal/juvenile justice personnel in 40 states in the detection, intervention, and investigation of child sexual exploitation and missing child cases. These sessions consist of 12 hours of training, 65 percent of which is spent in child sexual exploitation cases.

**Federal, State, and Local Law-Enforcement Agencies** The Commission called for the development and maintenance of investigative training programs, as well as specialized units, to handle these cases. It further recommended the expeditious use of search warrants to help gather evidence.<sup>87</sup> Finally, it urged that child victims in sexual abuse cases be asked if photographs or films were made during the course of the abuse.

**Prosecutors and Judges** As with law-enforcement personnel, the Commission suggested that judges (as well as probation officers) receive training related to child pornography in order to assure appropriate sentencing and post-sentencing supervision of offenders. Indeed, where permitted, judges were encouraged to consider ordering a sentence of lifetime probation for convicted child pornographers. Judges and prosecutors were also urged to participate (along with social service agency personnel) on multidisciplinary task forces that develop appropriate protocols to aid child witnesses in these cases.<sup>88</sup> Vertical prosecution of child pornography cases

(involving one prosecutor from the beginning to the end of a case) was also encouraged. The federal Children's Justice and Assistance Act should be of help in implementing these recommendations.

**Miscellaneous Recommendations** The Commission recommended that the key federal agencies continue to work with other nations to detect and intercept child pornography. It also suggested a number of approaches to dealing with offenders in child pornography cases: basing pre-sentence reports on information other than that given by the perpetrator; assuring that evaluators better understand the psycho-social disorders of such perpetrators; and designating appropriate programs in correctional facilities for such offenders.<sup>89</sup> New approaches related to the child victims of these crimes included suggestions that social, mental health, and medical services, as well as the services of legal counsel and guardians *ad litem*,<sup>90</sup> be provided; that crime victim funds be allocated to pay for needed evaluations and treatment;<sup>91</sup> and that clinical evaluators be better trained to aid such children. To assist in assuring that the needs of child victims are adequately addressed, the Commission called for new research on the effects on children involved in the production of pornography.

Finally, the Commission called for new public education programs related to child pornography. One, to be conducted by school systems, would provide education and prevention information for parents, teachers, and children. The other would be a multimedia campaign to increase family and community awareness regarding the production and use of child pornography.

### Notes to *Child Pornography* (pages 1-25)

<sup>1</sup> In *New York v. Ferber*, 458 U.S. 747, 759 (1982), the Court stated, "The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children in at least two ways. First, the materials produced are a permanent record of the children's participation, and the harm to the child is exacerbated by their circulation."

<sup>2</sup> See Appendix 1 for 18 U.S.C. §2256(2) (1987).

<sup>3</sup> K. Lanning, "Collectors," in *Child Pornography and Sex Rings* 83 (A. W. Burgess ed. 1984).

<sup>4</sup> K. Lanning, *Child Molesters: A Behavioral Analysis* 2nd ed. 19, National Center for Missing and Exploited Children (1986).

<sup>5</sup> S. Rep. 95-438, 95th Cong., 2nd Sess. 5, reprinted in [1978] *U.S. Code Congress. and Ad. News* 40, 43 (hereinafter cited as *1977 Senate Report*).

<sup>6</sup> *1977 Senate Report*, *supra* note 5, at 42.

<sup>7</sup> C. D. Baker, "Preying on Playgrounds: The Exploitation of Children in Pornography and Prostitution," 5 *Pepperdine L. Rev.* 809, 813 (1978).

<sup>8</sup> S. Rep. 99-537, 99th Cong., 2nd Sess. 43 (hereinafter cited as *1986 Senate Report*).

<sup>9</sup> *1977 Senate Report*, *supra* note 5, at 44.

<sup>10</sup> In testimony of Joyce Karlin before the U.S. Attorney General's Commission on Pornography in Miami, Florida, on November 22, 1985. Transcripts of the testimony are available for public inspection at the National Archives in Washington, D.C.

<sup>11</sup> In testimony of Marcella Cohen before the U.S. Attorney General's Commission on Pornography, in New York City on January 19, 1986. Transcripts of the testimony are available for public inspection at the National Archives in Washington, D.C.

<sup>12</sup> *1986 Senate Report*, *supra* note 8, at 25. This report (at p. 44) indicated that the membership of all known pedophile support groups in the U.S. probably numbers fewer than 2,000. In addition to the Rene Guyon Society, such groups include the New York City-based North American Man-Boy Love Association (NAMBLA), the San Diego-based Child Sensuality Circle, and the Chicago-based Lewis Carroll Collectors Guild.

<sup>13</sup> J. Densen-Gerber, "Child Prostitution and Child Pornography: Medical, Legal and Societal Aspects of the Commercial Exploitation of Children," in *Sexual Abuse of Children: Selected Readings*, National Center on Child Abuse and Neglect 78 (1980).

<sup>14</sup> G. Abel, J. Becker, J. Cunningham-Rathner, "Complications, Consent, and Cognitions in Sex Between Children and Adults," 7 *International J. of Law and Psychiatry* 89, 96-97 (1984).

<sup>15</sup> See, e.g., A. N. Groth, *Men Who Rape—The Psychology of the Offender* (1979); A. W. Burgess (ed.), *Child Pornography and Sex Rings* (1984); K. Lanning, *Child Molesters: A Behavioral Analysis*, National Center for Missing and Exploited Children (1986).

<sup>16</sup> Groth, *supra* note 15, at 141-164.

<sup>17</sup> G. Abel, J. Rouleau, and J. Cunningham-Rathner, "Sexually Aggressive Behavior," in *Modern Legal Psychiatry and Psychology* 10 (W. Curran, A. L. McGarry, and S. A. Shah eds. 1986).

<sup>18</sup> *1977 Senate Report*, *supra* note 5, at 45. This figure is based on an estimated runaway rate of from 1.7 to 2.06 percent for youths between 10 and 17 years old. For a recent overview of the problems faced by runaway youth generally, see



A. W. Burgess, *Youth at Risk: Understanding Runaway and Exploited Youth*, National Center for Missing and Exploited Children (1986).

<sup>19</sup> *Id.* at 46.

<sup>20</sup> Schoettle, "Child Exploitation: A Study of Child Pornography," 19 *J. Am. Acad. Child Psych.* 289 (1980).

<sup>21</sup> See, e.g., R. Lusk and J. Waterman, "Effects of Sexual Abuse of Children," in *Sexual Abuse of Young Children* (ed. K. MacFarlane and J. Waterman) 101-118 (1986).

<sup>22</sup> See Summit and Kryso, "Sexual Abuse of Children: A Clinical Spectrum," 48 *Am. J. Orthopsych.* 237 (1978).

<sup>23</sup> See D. Finkelhor, *Child Sexual Abuse: New Theory and Research* 47 (1984).

<sup>24</sup> See A. W. Burgess (ed.), *Child Pornography and Sex Rings* (1984); Burgess, Groth, and McCausland, "Child Sex Initiation Rings," 51 *Am. J. Orthopsych.* 110 (1981).

<sup>25</sup> 1977 Senate Report, *supra* note 5, at 45.

<sup>26</sup> In testimony of Lt. Thomas Rodgers before the U.S. Attorney General's Commission on Pornography on November 20, 1985. Transcripts of the testimony are available for public inspection at the National Archives in Washington, D.C.

<sup>27</sup> Report of the Surgeon General's Workshop on Pornography and Public Health, Office of the Surgeon General, U. S. Public Health Service, U. S. Department of Health and Human Services 14 (Aug. 1986).

<sup>28</sup> 458 U.S. at 756.

<sup>29</sup> 458 U. S. at 756-64.

<sup>30</sup> President Carter signed the Protection of Children Against Sexual Exploitation Act of 1977, P.L. 95-225, 92 Stat. 7, on February 6, 1978.

<sup>31</sup> House Committee on the Judiciary, *Hearing before the Subcommittee on Crime*, 95th Cong., 1st Sess. (Hearing held May 23, 25, June 10, and September 20, 1977); Senate Judiciary Committee, *Hearings before the Subcomm. to Investigate Juvenile Delinquency*, 95th Cong., 1st Sess. (Hearings held on May 27 and June 16, 1977).

<sup>32</sup> The law also provided the authority for imposing criminal and civil forfeitures in child pornography cases; required the Attorney General to report annually to the Congress on prosecutions, convictions, and forfeitures under the law; and made changes in certain definitional terms used to describe the sexually explicit depictions that are covered by the law. For a legislative history of P. L. 98-292, signed into law on May 21, 1984, see H. Rpt. 98-536 and S. Rpt. 98-169 (products of the House and Senate Judiciary committees).

<sup>33</sup> P. L. 99-628.

<sup>34</sup> P. L. 99-591, §§701-705, 100 Stat. 3341-74. The original Senate version of this legislation, as reported out of the Senate Subcommittee on Juvenile Justice, contained a provision that child pornography be included as a racketeering offense under the federal Racketeer Influenced Corrupt Organizations Act (RICO). The coverage of child pornography-related offenses under RICO would have allowed prosecution of those "masterminds," "financiers," or "promoters" who exercise control over child pornography but do not technically produce, distribute, advertise for, or receive it. Under RICO violations, defendants can be imprisoned for twenty years (twice as long as first offenders under the existing federal child pornography laws), and the federal government can institute civil suits for money damages and injunctive relief.

These new RICO provisions, however, were not included in the final version of the law that passed the Congress. See S. Hrg. 99-493, *Hearing before the Subcommittee on Juvenile Justice, U.S. Senate Committee on the Judiciary*, 99th Cong., 1st Sess., on S.985, September 24, 1985, 5-6. For the pros and cons of including child pornography under the RICO statute, see 16-17, 28-29, and 69-94. See also G. Loken, "The Federal Battle Against Child Sexual Exploitation: Proposals for Reform," 9 *Harvard Women's Law Journal* 105, 122-123 (Spring 1986).

<sup>35</sup> Representative Hughes, the original sponsor of this legislation, stated at the time of its passage in the House of Representatives that his bill prohibited "advertising to distribute or purchase child pornography." It was also, he stated, intended to prohibit "advertising that will aid in the production of child pornography, such as recruiting or offering children to participate in sex acts for the purpose of making child pornography." Although there was no explicit language in the bill to this effect, Hughes further stated that these provisions would "outlaw the use of computer bulletin boards to exchange information about the availability of children for child pornography." *Congressional Record*, September 29, 1986, H8591.

At the time of U.S. Senate passage of this law, its Senate sponsor, Senator William Roth, stated that this legislation would for the first time make it a federal offense to "produce and publish advertisements for child pornography as well as solicitations for child pornography and sex with children." It would, said Roth, allow federal prosecution of "those who would molest children or solicit child molestation before the innocent child is harmed." His target: material that "is being openly advertised, traded, and sold in pedophile newsletters and other publications" and "thinly disguised advertisements and solicitations for child prostitution, including such things as 'child sex tours' to foreign countries." *Congressional Record*, September 29, 1986, S14226.

In 1984 and 1985, Senator Roth had held hearings before the Permanent Subcommittee on Investigations, which he chaired, on the topic of child pornography and pedophilia. One section of the report on these hearings focused on the use of computer bulletin boards "to buy, sell, or trade child pornography, establish correspondence about sexual interests, trade names of 'available' children, and even propose sexual liaisons." 1986 Senate Report, *supra* note 8, at 13-15.

A bill specifically directed at the use of computer bulletin boards in the sexual exploitation of children had been earlier introduced by Senator Paul Trible. That bill would have explicitly prohibited the entry into, or transmittal by means of, a computer for the publication of notices regarding the buying, selling, receiving, exchanging, or disseminating of child pornography, or of notices containing information about a minor for the purpose of facilitating, encouraging, offering, or soliciting sexual conduct with a minor or the visual depiction of such conduct. This bill, known as the Computer Pornography and Child Sexual Exploitation Prevention Act of 1985 (S.1305) failed to pass the 99th Congress.



It seems clear, however, that the supporters and sponsors of the Child Sexual Abuse and Pornography Act of 1986 (Senator Roth and Representative Hughes) intended to accomplish the same purpose, despite the fact that the word *computer* does not appear anywhere within that act.

<sup>36</sup> See Appendix 1 for the full text of the federal statutes 18 U.S.C. §§2251-2256 and 2421-2423 discussed in this section.

<sup>37</sup> Prior to the 1984 amendments, the statute prohibited "lewd" exhibition of the genitals rather than "lascivious" exhibition. Since the amendment, however, several courts have attempted to define "lascivious." In *United States v. Reedy*, 632 F. Supp. 1415, 1425 n.20 (W. D. Okla. 1986), the court stated:

Reedy contends Section 2251(a) is vague because *lascivious* is no more than a synonym for *lewd*, which is a synonym for *obscene*. This court recognizes the words are often used in a similar fashion. Nevertheless, in connection with the federal child pornography law, Congress intended to use *lascivious* to describe something more than obscenity. Therefore, when *lascivious* exhibition of the genitals is adjudged in light of the *Ferber* standard concerning what may be prohibited in the area of the child pornography, *lascivious* has a distinct legal definition aside and apart from *obscenity*.

In *United States v. Dost*, 636 F. Supp. 828, 832 (S. D. Cal. 1986), the court listed several factors to consider in determining whether a depiction contained a "lascivious exhibition of the genitals":

- 1) whether the focal point of the visual depiction is on the child's genitalia or pubic area;
- 2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity;
- 3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child;
- 4) whether the child is fully or partially clothed, or nude;
- 5) whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity;
- 6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer.

In the most recent statement interpreting "lascivious exhibition of the genitals," the Ninth Circuit in *United States v. Wiegand*, No. 86-5213, 11-12 (9th Cir. Mar. 18, 1987), concluded:

The definition of *lascivious* is a matter of law which we review *de novo*. Necessarily in deciding whether the district court erred as to the facts, we must view the pictures ourselves and must interpret the statutory term. Doing so, we conclude that there was no error either as to fact or law.

The standard employed by the district court was over-generous to the defendant in implying as to the 17-year-old girl that the pictures would not be lascivious unless they showed sexual activity or willingness to engage in it. The offense defined by the statute is depiction of a "lascivious exhibition of the genitals." Plainly the pictures were an exhibition. The exhibition was of the genitals. It was a lascivious exhibition because the photographer narrated it to suit his peculiar lust. Each of the pictures featured the child photographed as a sexual object.

The district court noted the unlikelihood of the 10-year old girl intending any sexual invitation by her pose. "Lascivious" does have such a connotation when applied to the conduct of adults. In the context of the statute applied to the conduct of children, lasciviousness is not a characteristic of the child photographed but of the exhibition which the photographer sets up for an audience that consists of himself or like-minded pedophiles. The district court noted that the pose of the 10-year old was "unnatural." This adjective does not reflect an incorrect reading of the statute, although the term goes beyond what is necessary to find the picture within the statutory definition. The picture of a child "engaged in sexually explicit conduct" within the meaning of 18 U. S. C. 215 [sic] and 2252 as defined by 2255(2)(E) is a picture of a child's sex organs displayed lasciviously—that is, so presented by the photographer as to arouse or satisfy the sexual cravings of a voyeur.

<sup>38</sup> There has been a great deal of confusion regarding the *scienter* requirement under §§2251 and 2252. The courts have addressed this issue on only a few occasions and may have raised more questions than they have resolved. In *United States v. Reedy*, 632 F. Supp. 1415, 1422-23 (W. D. Okla. 1986), the court stated:

Reedy contends Section 2251(a) is constitutionally flawed because it lacks a requirement that the defendant knew the character and content of the visual depiction to be produced. In essence Reedy contends Section 2251(a) imposes strict liability. Criminal statutes that impose strict liability are generally disfavored. . . . Section 2251(a), however, is not a strict liability statute. It requires that a defendant act with the purpose of producing a visual depiction of sexually explicit conduct. It is, therefore, implied the defendant must know the character and content of the visual depiction. Otherwise, how could the defendant purposefully make visual depiction of sexually explicit conduct. . . .

Legislative history concerning Section 2251(a) expressly states, "It is not a necessary element of a prosecution that the defendant knew the actual age of the child" [cite omitted]. In this regard Section 2251(a) is similar to the Mann Act, which the Court of Appeals for the Third Circuit has held to be without such an element [cite omitted]. In deference to legislative intent and because this court finds no Constitutional requirement that knowledge of the victim's age is a necessary element of a prosecution, this court rejects Reedy's contention to the contrary.

In *United States v. Tolczeki*, 614 F. Supp. 1424, 1429 (N. D. Ohio 1985), the court discussed the knowledge requirement under §2252. The court stated:

The court finds that the language of the 1984 amendments do not indicate that they should be interpreted other than in the broad fashion in which the 1977 act has been interpreted, i.e., to effect the clear purpose of the act to eradicate child pornography. Indeed, as noted above, the 1984 amendments eased the requirements for conviction under the act. Accordingly, the court holds that a clear reading of the statute in question against the background of Congress' express intent in enacting the statute, to eliminate the sexual exploitation of children in child pornography, indicates that Congress specifically omitted a *mens rea* requirement for conviction under the statutes in order to establish a *per se* rule making it illegal for persons to knowingly transport, ship, receive, or distribute in interstate or foreign commerce, or mail, or reproduce for distribution in interstate or foreign commerce or through the mails the prohibited materials involving sexual exploitation of minors.

Recently, however, a district court addressed the issue of whether the defendant charged with a violation of Section 2252 must have knowledge that the persons depicted are children. In *United States v. Sherin*, 86 Cr. 480, 21-22 (S. D. N. Y. Jan. 20, 1987), the court concluded:

While the declaration that pornographic material is obscene requires a judge and jury to apply a rather complicated set of legal standards, the determination that pornography depicts children engaging in sexually explicit conduct is a simple matter of fact. To know the "nature and character" of child pornography, almost by definition, one must know that it depicts children.

Any other interpretation of Section 2252 would chill the distribution of protected film and substantially restrict free expression. We live in an age in which stores that rent or sell videocassettes outnumber public libraries. Film distributors, operating under a law which makes even the unknowing distribution of child pornography a crime, might restrict the film sold to that which they had inspected and approved. This would have obvious chilling implications on the distribution of protected speech. Distributors would almost certainly censor films depicting adults engaging in sexually explicit conduct. That result would also be inconsistent with the First Amendment's limitation upon Congress' power to directly restrict non-obscene adult pornography. We construe Section 2252 "so as not to bring about the suppression of the sale to adults of material that is constitutionally protected." Construing Section 2252 in a way which is consistent with the Constitution and not inconsistent with the legislative history or language of the statute, we hold that knowledge of the nature and character of sexually explicit material includes knowledge of the minor status of any child depicted in that material as a required element of the crime.

<sup>39</sup> 458 U.S. at 757.

<sup>40</sup> See, e.g., N.J. Stat. Ann. 2C:24-4 (1981); Pa. Stat. Ann. Tit. 18, 6312 (1981).

<sup>41</sup> See, e.g., Alaska Stat. 11.41.455 (1980).

<sup>42</sup> See, e.g., H. Rpt. 98-536, *supra* note 32, statements of Mark M. Richard, Assistant Attorney General, Criminal Division, and Charles R. Clauson, Assistant Chief Postal Inspector for Administration, at 8-17.

<sup>43</sup> The states are Alabama, Idaho, Iowa, Michigan, Mississippi, Oregon, Pennsylvania, Rhode Island, South Dakota, Washington, and Wyoming.

<sup>44</sup> The states are Arkansas, California, Colorado, Connecticut, Florida, Georgia, Kentucky, Louisiana, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, South Carolina, Tennessee, Texas, Vermont, and Wisconsin, as well as the District of Columbia.

<sup>45</sup> The states are Alabama, Colorado, Florida, Idaho, Kentucky, Louisiana, and Maine.

<sup>46</sup> 394 U.S. 557 (1969).

<sup>47</sup> 28 Ohio St.3d 43 (1986).

<sup>48</sup> 28 Ohio St.3d at 50. In conclusion, the court held that:

Consistent with our understanding of the Supreme Court's pronouncements in *Stanley* and *Ferber*, and based on the foregoing opinion, we hold that R. C. 2907.322 (A) (5), which prohibits the knowing possession or control of material which shows a minor participating or engaging in sexual activity, masturbation, or bestiality, does not violate the First Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment. Ohio's compelling state interests of preserving its children's privacy and protecting them from the cruel physiological, mental, and emotional abuse caused by sexual seduction, exploitation, and mistreatment occasioned by child pornography, outweigh appellee's interest in possessing such visual depictions (*id.* at 52).

<sup>49</sup> The states are Alabama, Arizona, Florida, Illinois, Kansas, Louisiana, Minnesota, Nevada, Ohio, Oklahoma, Texas, Utah, and Washington.

<sup>50</sup> Or. Rev. Stat. 63.483 to 485 (1985).

<sup>51</sup> These states are Colorado, Illinois, and Nebraska.

<sup>52</sup> See, e.g., 18 Pa. Cons. Stat. Ann 6312(d) (1981).

<sup>53</sup> See, e.g., Ala. Code 7-233(b) (Supp. 1980); N.Y. Penal Law 263.25 (1980).

<sup>54</sup> See, e.g., N.J. Stat. Ann. 2C: 24-4 (b)(6) (1981).

<sup>55</sup> Ill. Ann. Stat. Ch. 38, 11-20.1(b)(1) (1985).

<sup>56</sup> The states are Louisiana, Minnesota, North Carolina, and Washington.

<sup>57</sup> See, e.g., Mo. Ann. Stat. 568.060(3) (1985).

<sup>58</sup> Me. Rev. Stat. Ann. Tit. 17, 2922(2) (1983).

<sup>59</sup> The states are Alabama, California, Illinois, Nevada, Oklahoma, Virginia, and Washington.

<sup>60</sup> Minn. Stat. 617.247(7) (1983).

<sup>61</sup> The states are Alaska, Arizona, California, Illinois, Oklahoma, and Washington.

<sup>62</sup> Conn. Gen. Stat. 53a-196b (1985).

<sup>63</sup> Iowa Code 728.12 (1986).

<sup>64</sup> Mont. Code Ann. 45-5-625(1)(e) (1979).

<sup>65</sup> Or. Rev. Stat. 163.483 to 485 (1985).

<sup>66</sup> Wash. Rev. Code Ann. 9.68A.090 (1984).

<sup>67</sup> 1986 Senate Report, *supra* note 8, at 29.

<sup>68</sup> *Id.* at 30.

<sup>69</sup> S. Hrg. 99-18, Pt. 2, *Hearing before the Permanent Subcomm. on Investigations, U.S. Senate Comm. on Governmental Affairs*, February 21, 1985, testimony of Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs, U.S. Department of State, at 23-25.

<sup>70</sup> 1986 Senate Report, *supra* note 8, at 30-35.

<sup>71</sup> See "U.S. Customs: Crusaders in the Child-Pornography War," *The Washington Post National Weekly Edition*, September 8, 1986, at 34.

<sup>72</sup> *Id.*

<sup>73</sup> 45 C.F.R. 1340.2(d)(2)(1983).

<sup>74</sup> P.L. 95-266, 92 Stat. 205, April 24, 1978, amending Section 3 of the 1974 Child Abuse Prevention and Treatment Act.

<sup>75</sup> 45 C.F.R. 1340.3-3(b)(1977).

<sup>76</sup> P.L. 95-266, 92 Stat. 205, April 24, 1978, amending Sections 3 and 5 of the 1974 Child Abuse Prevention and Treatment Act.

<sup>77</sup> See J. Densen-Gerber, *supra* note 13, at 80.

<sup>78</sup> P.L. 99-401, 100 Stat. 903, August 27, 1986. For a description of the act, see 5 *ABA Juvenile and Child Welfare Law Reporter* 114-15 (October 1986).

<sup>79</sup> *Id.*, Section 103, at 100 Stat. 906.

<sup>80</sup> At the present time, there is a trend toward greater use of multidisciplinary interagency collaboration in cases of child molestation. Most of the attention in this area, however, is being directed at intra-familial abuse cases and cases in which children have been abused in daycare settings. Given the greater demands on and limited resources of public child protective service agencies, it may be increasingly difficult to secure the support and assistance of these agencies in child pornography-related cases which do not involve family member perpetrators.

<sup>81</sup> *United States Postal Inspection Service Manual* 5 (Jan. 1987).

<sup>82</sup> R. Martinez, "The U.S. Customs Service Child Pornography Program," *LECC Network News* 2 (Fall 1985).

<sup>83</sup> *Final Report*, Attorney General's Commission on Pornography, U.S. Department of Justice, July 1986, 595-736.

<sup>84</sup> *Id.*, Recommendation 38, at 623-628. See also G. Loken, "The Federal Battle Against Child Sexual Exploitation: Proposals for Reform," 9 *Harvard Women's Law Journal* 105, 124-26 (Spring 1986).

<sup>85</sup> Press Release from U.S. Department of Justice, October 22, 1986.

<sup>86</sup> *Id.*

<sup>87</sup> For an excellent guide for law-enforcement officers on the investigation of child pornography cases, including strategies and practices related to the use of search warrants, see S. Goldstein, *The Sexual Exploitation of Children: A Practical Guide to Assessment, Investigation, and Intervention* (1987).

<sup>88</sup> The use of the multidisciplinary approach in handling the investigation and prosecution of child victim cases, in addition to being encouraged by the recent federal Children's Justice and Assistance Act, has been encouraged by the American Bar Association. *Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged*, approved by the ABA House of Delegates, July 10, 1985 (Guideline 1).

<sup>89</sup> The issue of whether existing treatment programs for pedophiles are effective is highly controversial. See D. Finkelhor, *A Sourcebook on Child Sexual Abuse* 136-42 (1986). See also F. H. Knopp, *Retraining Adult Sex Offenders: Methods and Models* (1984).

<sup>90</sup> The use of court-appointed guardians *ad litem* for child victims who are involved in criminal court actions is becoming more widespread, although it is still statutorily recognized in only a few states. See M. Hardin, "Guardians *ad Litem* for Child Victims in Criminal Proceedings," 25 *J. Fam. L.* \_\_\_\_ (in press 1987).

<sup>91</sup> Child pornography victims are eligible for available state crime victim compensation funds and victim services under the federal Victims of Crime Act of 1984, 42 U.S.C. §10601, *et seq.*

# Appendix 1

## Title 18, United States Code, Chapters 110 and 117 Sexual Exploitation of Children and Transportation of Illegal Sexual Activity and Related Crimes

(As amended through the end of the 99th Congress.)

### §2251. *Sexual exploitation of children*

(a) Any person who employs, uses, persuades, induces, entices or coerces any minor to engage in, or who has a minor assist any other person to engage in or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction or such conduct;

shall be punished as provided under subsection (d).

(2) The circumstance referred to in paragraph (1) is that—

(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce or mailed; or

(B) such notice or advertisement is transported in interstate or foreign commerce or mailed; and

(d) Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than \$250,000.

### §2252. *Certain activities relating to material involving the sexual exploitation of minors*

(a) Any person who—

(1) knowingly transports or ships in interstate or foreign commerce or mails any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct; or

(2) knowingly receives, or distributes any visual depiction that has been transported or shipped in interstate or foreign commerce or mailed or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b) Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than \$250,000.

#### *§2253. Criminal forfeiture*

(a) A person who is convicted of an offense under section 2251 or 2252 of this title shall forfeit to the United State such person's interest in

(1) any property constituting or derived from gross profits or other proceeds obtained from such offense; and

(2) any property used, or intended to be used, to commit such offense.

(b) In any action under this section, the court may enter such restraining orders or take other appropriate action (including acceptance of performance bonds) in connection with any interest that is subject to forfeiture.

(c) The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(d)(1) Except as provided in paragraph (3) of this subsection, the customs laws relating to disposition of seized or forfeited property shall apply to property under this section, if such laws are not inconsistent with this section.

(2) In any disposition of property under this section, a convicted person shall not be permitted to acquire property forfeited by such person.

(3) The duties of the Secretary of the Treasury with respect to dispositions of property shall be performed under paragraph (1) of this subsection by the Attorney General, unless such duties arise from forfeitures effected under the customs laws.

#### *§2254. Civil forfeiture*

(a) The following property shall be subject to forfeiture by the Unites States:

(1) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual depiction in violation of this chapter.

(2) Any visual depiction produced, transported, shipped, or received in violation of this chapter, or any material containing such depiction.

(3) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that

purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officers

*§2255. Civil remedy for personal injuries*

(a) Any minor who is a victim of a violation of section 2251 or 2252 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.

(b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

*§2256. Definitions for chapter*

For the purposes of this chapter, the term—

- (1) "minor" means any person under the age of eighteen years;
- (2) "sexually explicit conduct" means actual or simulated
  - (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
  - (B) bestiality;
  - (C) masturbation;
  - (D) sadistic or masochistic abuse; or
  - (E) lascivious exhibition of the genitals or pubic area of any person;
- (3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;
- (4) "organization" means a person other than an individual; and
- (5) "visual depiction" includes undeveloped film and videotape.

*§2421. Transportation generally*

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.

*§2242. Coercion and enticement*

Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.

*§2423. Transportation of minors*

Whoever knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.

## Appendix 2

### **The Attorney General's Commission on Pornography: Child Pornography—Related Recommendations**

**Recommendation 37.** Congress should enact a statute requiring the producers, retailers, or distributors of sexually explicit visual depictions to maintain records containing consent forms and proof of performers' ages.

**Recommendation 38.** Congress should enact legislation prohibiting producers of certain sexually explicit visual depictions from using performers under the age of 21.

**Recommendation 39.** Congress should enact legislation to prohibit the exchange of information concerning child pornography, or children to be used in child pornography, through computer networks.

**Recommendation 40.** Congress should amend the federal Child Protection Act's forfeiture section to include a provision that authorizes the Postal Inspection Service to conduct forfeiture actions.

**Recommendation 41.** Congress should amend 18 U.S.C. §2255 to define the term *visual depiction* and include undeveloped film in that definition.

**Recommendation 42.** Congress should enact legislation providing financial incentives for the states to initiate task forces on child pornography and related cases.

**Recommendations 43 and 49.** Congress and state legislatures should enact legislation to make the acts of child selling or child purchasing, for the production of sexually explicit visual depictions, a felony.

**Recommendation 44.** State legislatures should amend state child pornography statutes to include forfeiture provisions.

**Recommendation 45.** State legislatures should amend laws, where necessary, to make the knowing possession of child pornography a felony.

**Recommendation 46.** State legislators should amend, if necessary, laws making the sexual abuse of children, through the production of sexually explicit visual depictions, a felony.

**Recommendation 47.** State legislatures should make the conspiracy to produce, distribute, give away, or exhibit any sexually explicit visual depictions of children, or exchange or delivery of children for such purposes, a felony.

**Recommendation 48.** State legislatures should amend, if necessary, child pornography laws, to create a felony offense for advertising, selling, purchasing, bartering, exchanging, giving, or receiving information as to where sexually explicit materials depicting children can be found.

**Recommendation 50.** State legislatures should amend laws, where necessary, to make child pornography in the possession of an alleged child sexual abuser, which depicts that person

engaged in sexual acts with a minor, sufficient evidence of child molestation for use in prosecuting that individual, whether or not the child involved is found or able to testify.

**Recommendation 51.** State legislatures should amend laws, if necessary, to eliminate requirements that the prosecution identify or produce testimony from the child who is depicted, if proof of age can otherwise be established.

**Recommendation 52.** State legislatures should enact or amend legislation so as to require photo finishing labs to report suspected child pornography.

**Recommendations 53 and 75.** State legislatures should amend or enact legislation, if necessary, to permit judges to impose a sentence of lifetime probation for convicted child pornographers and related offenders, and judges, when appropriate, should consider ordering a sentence of lifetime probation for convicted child pornographers.

**Recommendation 54.** The U.S. State Department, U.S. Department of Justice, U.S. Customs Service, U.S. Postal Inspection Service, the Federal Bureau of Investigation, and other federal agencies should continue to work with other nations to detect and intercept child pornography.

**Recommendation 55.** The Department of Justice should direct the Law-Enforcement Coordinating Committees, in which local law-enforcement agencies, as well as United States Attorneys, participate to form task forces of dedicated and experienced investigators and prosecutors in major regions to combat child pornography.

**Recommendation 56.** The Department of Justice, or another appropriate federal agency, should initiate the creation of a data base that would serve as a resource network for federal, state, and local law-enforcement agencies, which would participate by sending and receiving information regarding child pornography trafficking.

**Recommendations 57 and 63.** Federal, state, and local law-enforcement agencies should develop and maintain continuous training programs for agents in techniques of child pornography investigations.

**Recommendations 58, 62, and 65.** Federal, state, and local law-enforcement agencies should have personnel trained in child pornography investigation and, when possible, they should form specialized units for child sexual abuse and child pornography investigations.

**Recommendations 59, 66, and 70.** Federal, state, and local law-enforcement agencies should use search warrants in child pornography and related cases expeditiously as a means of gathering evidence and furthering overall investigation efforts in the child pornography area, and prosecutors should assist these agencies in doing so.

**Recommendations 60, 67, and 71.** Federal, state, and local law-enforcement agencies, as well as federal, state, and local prosecutors, should ask the child victim in reported sexual abuse cases if photographs or films were made of him or her during the course of sexual abuse.

**Recommendation 61.** The Department of Justice should appoint a national task force to conduct a study of cases throughout the United States reflecting apparent patterns of multi-victim, multi-perpetrator child sexual exploitation.

**Recommendation 64.** Law-enforcement agencies should establish a national data base regarding child pornography trafficking.

**Recommendation 68.** U.S. Attorneys should participate in law-enforcement coordinating task forces to combat child pornography.

**Recommendations 69, 78, and 79.** Federal, state, and local prosecutors and judges, as well as public and private social service agencies, should participate in a task force of multi-disciplinary practitioners and develop a protocol for courtroom procedures for child witnesses that would meet Constitutional standards.



**Recommendation 72.** State and local prosecutors should use the vertical prosecution model for child pornography and related cases.

**Recommendation 73.** Judges and probation officers should also get specific education so they can investigate, evaluate, sentence, and supervise persons convicted in these cases.

**Recommendation 76.** Pre-sentence reports concerning individuals found guilty of violations of child pornography or related laws should be based on sources of information in addition to the offender himself or herself.

**Recommendation 77.** State and federal correctional facilities should recognize the unique problems of child pornographers and related offenders and designate appropriate programs regarding their incarceration.

**Recommendation 80.** Social, mental health, and medical services should be provided for child pornography victims.

**Recommendation 81.** Local agencies should allocate victim of crime funds to provide monies for psychiatric evaluation and medical treatment for victims and their families.

**Recommendation 82.** Clinical evaluators should be trained to assist children victimized through the production and use of child pornography more effectively and to better understand adult psycho-sexual disorders.

**Recommendation 83.** Behavioral scientists should conduct research to determine the effect of the production of child pornography and the related victimization on children.

**Recommendation 84.** States should support age-appropriate education and prevention programs for parents, teachers, and children within public and private school systems to protect children from victimization by child pornographers and child sexual abusers.

**Recommendation 85.** A multimedia campaign should be developed that increases family and community awareness regarding child sexual exploitation through the production and use of child pornography.

## State Child Pornography Laws (through November 1, 1986)

State and Citation	Age of Victim (less than)	Classes of Offenders				Non-commercial Acts Covered	Child Abuse Reporting Law Includes Child Pornography	Penalties	Miscellaneous
		Producer	Coercer	Distributor	Parent				
<b>Alabama</b> Ala. Code §§ 13A-12-190 to 198 (rep. law §§ 26-14-1 to 13)	17	X		X	X		X	Possession with intent to distribute D: 2 ≤ 20 yrs., ≤ \$10,000; Pr and Pa: 10 yrs. ≤ life.	State not required to establish identity of depicted child; finder of fact can infer age; possession of 3 or more copies is <i>prima facie</i> evidence of intent to disseminate; obscenity requirement for prosecution; forfeiture provisions.
<b>Alaska</b> Alaska Stat. §§ 11.41.455 and 11.61.125 (rep. law §§ 47.17.010 to 070)	18	X	X	X	X	X	X	D: ≤ 5 yrs., ≤ \$50,000; Others: ≤ 10 yrs., ≤ \$50,000.	Mandatory reporting for film processors.
<b>Arizona</b> Ariz. Rev. Stat. Ann. §§ 13-3552 to 3553 (rep. law §§ 8-546, 546.01 to 03)	18	X	Only in commercial child pornography statute.	X	Only in commercial child pornography statute.	X	X	7 yrs. (maximum fine for all felonies is \$150,000); if minor is < 15, stricter penalty attaches.	Child pornography and commercial child pornography are separate offenses; permits inference of minority; possession and exchange of materials are punishable; mandatory reporting for film and print processors/duplicators.
<b>Arkansas</b> Ark. Stat. Ann. §§ 41-4203, 4206 to 4210 (rep. law §§ 42-807 to 818)	17	X	X	X	X	X	X	D, Pr: 5 ≤ 20 yrs., ≤ \$15,000; Pa, C: 4 ≤ 10 yrs., ≤ \$10,000 (1st offense); 5 ≤ 20 yrs., ≤ \$15,000 (2nd offense).	Advertising prohibited; finder of fact can determine age by personal observation, observation of material, testimony of witness of sexual performance, and expert testimony. (Henceforth this will be referred to as the "Arkansas Factors.")
<b>California</b> Cal. Penal Code §§ 311.2 to 4, 311.10, 312.3 (rep. law Penal Code §§ 11165 to 11166.5)	17 (18—advertising only)	X	X	X	X	X	X	D, ≤ \$10,000, ≤ 1 yr. (subsequent offense > 1 yr.); Pr, C, Pa if commercial purpose: 3 ≤ 8 yrs.; if no commercial purpose: felony, nothing specified; Pr if child ≤ 14: ≤ \$2,000, ≤ 1 yr.; Advertising: 2 ≤ 4 yrs., \$50,000.	Advertising prohibited; forfeiture provisions; mandatory reporting by film processors.
<b>Colorado</b> Colo. Rev. Stat. §§ 18-6-403 to 404 (rep. law §§ 19-10-101 to 115)	18	X	X	X	X	X	X	4-8 yrs.	Advertising prohibited; possession of 3 or more identical copies creates presumption that possession is for commercial purpose; offenders can be prosecuted without commercial purpose.
<b>Connecticut</b> Conn. Gen. Stat. §§ 53a-196a, 196b (rep. law §§ 17-38a to 38f)	16	X		X	X	X	X	Pr: Class A or Class B felony; D: Class B felony; Pa: Class A felony.	Advertising prohibited; separate offense for importing child pornography with intent to promote it; importing 2 or more copies is <i>prima facie</i> evidence of intent to promote; obscenity requirement for prosecution.
<b>Delaware</b> Del. Code Ann. tit. 11, § 1108 (rep. law tit. 16, §§ 901 to 909)	18	X	X		X	X	X	Pr: 3 ≤ 30 yrs.	

State and Citation	Age of Victim (less than)	Classes of Offenders				Non-commercial Acts Covered	Child Abuse Reporting Law Includes Child Pornography	Penalties	Miscellaneous
		Producer	Coercer	Distributor	Parent				
<b>District of Columbia</b> D.C. Code Ann. §§ 22-2011 to 2014	16	X	X	X	X	X		≤ 10 yrs., ≤ \$5,000 (1st offense); ≤ 20 yrs., ≤ \$15,000 (subsequent offense).	Advertising prohibited; defendant's good faith belief that child ≥ 16 is an affirmative defense.
<b>Florida</b> Fla. Stat. § 827.071 (rep. law §§ 415.502 to 514)	18	X	X	X	X	X	X	≤ 15 yrs., ≤ \$10,000 or 2 × pecuniary gain derived from offense or 2 × pecuniary loss suffered by victim. Habitual offenders get extended terms.	Advertising prohibited; possession of 3 or more copies is <i>prima facie</i> evidence of intent to distribute; possession is a separate offense.
<b>Georgia</b> Ga. Crim. Code § 26-9943a (rep. law §19-7-5)	18	X	X		X	X	X	3 ≤ 20 yrs., ≤ \$20,000	Advertising prohibited.
<b>Hawaii</b> Haw. Rev. Stat. §§ 707-750 to 751	16	X		X		X		D: Class C felony; Pr: Class B felony.	Fact of child's minority is <i>prima facie</i> evidence that defendant knew child was a minor; engaging in prohibited conduct is <i>prima facie</i> evidence that person knew character and content of material involved.
<b>Idaho</b> Idaho Code § 18-1507 (rep. law §§ 16-1601, 1602, 1619, 1620, 1629)	18	X	X	X	X		X	≥ 1 yr. (only states that violation is a felony; nothing more specific about penalties).	Possession of 3 or more copies creates presumption of commercial purpose, which is an element of the offense.
<b>Illinois</b> Ill. Ann. Stat. ch. 38, § 11-20.1; § 3-6(c) (rep. law ch. 23, §§ 2051 to 2061)	18	X		X	X	X	X	Pa, C: 4 ≤ 15 yrs., \$2,000 ≤ \$50,000; D: 1 ≤ 3 yrs., \$1,000 ≤ \$25,000; Pr: 3 ≤ 7 yrs., \$1,500 ≤ \$25,000.	Affirmative defense of reasonable belief only when affirmative, bonafide inquiry was made; possession prohibited; forfeiture provisions, court must order a pre-sentence psychiatric examination for second offenders; offenses must be prosecuted within 1 yr. after prosecuting officer aware of the offense; mandatory reporting for film processors.
<b>Indiana</b> Ind. Code Ann. § 35-42-4-4 (rep. law §§ 31-6-11-1 to 4)	16	X		X	X	X	X	1 ≤ 4 yrs., ≤ \$10,000	
<b>Iowa</b> Iowa Code § 728.12 (rep. law §§ 232.67 to 70)	18	X	X		X		X	≤ 10 yrs., ≤ \$25,000 (higher if habitual offender); Purchasing: serious misdemeanor; Promoting: Class D felony; additional fines of up to \$50,000 may be ordered.	Purchasing and promoting material are both prohibited.
<b>Kansas</b> Kan. Stat. Ann. § 21-3516	16	X	X	X	X	X		2 ≤ 5 yrs., ≤ \$5,000.	Profit motive not required for offenses of production and distribution; possession prohibited (carries the same penalties as the other listed categories).
<b>Kentucky</b> Ky. Rev. Stat. §§ 531.300 to 360 (rep. law §§ 199.011, 335, 430, 990)	16 or 18	X	X	X	X	X	X	Pr, C, Pa if child ≥ 18: Class C felony; if child < 16: Class B felony; if minor injured: Class A felony; D: ≤ 1 yr. (Class A misdemeanor).	Possession of more than 1 copy creates presumption of possession with intent to distribute and increases punishment for distribution; advertising and promotion are separate offenses; person who appears to be under 18 or 16 shall be presumed to be under that age; defendant's good faith belief that child was not a minor may be exculpatory.

State and Citation	Age of Victim (less than)	Classes of Offenders				Non-commercial Acts Covered	Child Abuse Reporting Law Includes Child Pornography	Penalties	Miscellaneous
		Producer	Coercer	Distributor	Parent				
<b>Louisiana</b> La. Rev. Stat. Ann. § 14:81.1 (rep. law § 14:403(A)-(C))	17	X	X	X	X	X	X	2 ≤ 10 yrs., ≤ \$10,000	Lack of knowledge of age is not a defense; possession of 3 or more copies is <i>prima facie</i> evidence of intent to distribute or to sell; advertising prohibited; possession prohibited.
<b>Maine</b> Me. Rev. Stat. Ann. tit. 17, §§ 2921 to 2923 (rep. law tit. 22, §§ 4002, 4011 to 4014)	18	X	X	X	X	X	X	5 ≤ 10 yrs. (1st offense); 10 ≤ 20 yrs. (2nd offense).	Suspended sentences only when case has exceptional features; possession of 10 or more copies creates presumption of intent to disseminate; distribution offense requires that defendant receive, or intend to receive, consideration.
<b>Maryland</b> Md. Ann. Code art. 27, § 419A (rep. law Md. Fam. Law Code §§ 5-901 to 905)	16	X	X	X	X	X	X	10 yrs., ≤ \$25,000	Arkansas Factors can be used to prove that child was underage; state not required to identify or produce testimony of child where child not in jurisdiction or his identity is unknown; obscenity requirement for prosecution.
<b>Massachusetts</b> Mass. Ann. Laws ch. 272, §§ 29A to 29B	18	X	X	X	X	X		10 ≤ 20 yrs., \$10,000 ≤ \$50,000; D: maximum \$ penalty is 3 × monetary gain derived from dissemination.	Arkansas Factors can be used to prove that child was underage.
<b>Michigan</b> Mich. Comp. Laws Ann. § 750.145c (rep. law §§ 722.621 to 636)	18	X	X	X	X		X	Pr, Pa, C: ≤ 20 yrs., ≤ \$20,000; D: ≤ 7 yrs., ≤ \$10,000.	Expert testimony on age of children is admissible.
<b>Minnesota</b> Minn. Stat. § 617.246, .247 (rep. law § 625.556(2)(a))	18	X		X	X	X	X	≤ 5 yrs., ≤ \$10,000; Possession: gross misdemeanor (and on a 2nd offense, a mental examination must be ordered, and treatment recommendations provided).	Possession prohibited; consent of child or mistake as to age is not a defense for any offenses; distribution offense requires a profit motive.
<b>Mississippi</b> Miss. Code Ann. §§ 97-5-31 to 37	18	X	X	X	X			2 ≤ 20 yrs., \$25,000 ≤ \$50,000.	"For profit" or "commercial use" or "profit" required for offenses pertaining to child's custodian, coercion, and production; profit element is implied by language in distribution offense clause.
<b>Missouri</b> Mo. Ann. Stat. §§ 568.060, 080 to 100; §§ 573.010 to 050	17 18	X X	X	X	X	X		Pr, C, Pa: ≤ 7 yrs., \$5,000 ≤ \$500,000; Pr, D: imprisonment term depends on degree of offense, \$5,000 ≤ \$500,000	Penalties increased when child is seriously emotionally injured; statutes that cover production and distribution have degrees of the offense for punishment purpose; Arkansas Factors can be used to prove that child was underage.
<b>Montana</b> Mont. Code Ann. § 45-5-625 (rep. law §§ 41-3-102, 201)	16	X	X	X	X	X	X	≤ 20 yrs., ≤ \$10,000.	"Knowing" financier of any of these forms of child pornography is also punishable under this statute; advertising prohibited.
<b>Nebraska</b> Neb. Rev. Stat. §§ 28.1463 to 1464 (rep. law §§ 28-710 to 727)	18	X	X	X	X	X	X	Class III felony (first offense); Class II felony (subsequent offenses); Class IV felony (possession with intent to distribute).	"Knowingly" is the key to prosecution for all of these offenses; advertising prohibited.

State and Citation	Age of Victim (less than)	Classes of Offenders				Non-commercial Acts Covered	Child Abuse Reporting Law Includes Child Pornography	Penalties	Miscellaneous
		Producer	Coercer	Distributor	Parent				
<b>Nevada</b> Nev. Rev. Stat. §§ 200.700 to 750 (rep. law §§ 200.501 to 508)	18	X	X	X	X	X	X	5 yrs. ≤ life, ≤ \$100,000; Possession: misdemeanor (first offense); gross misdemeanor (second offense); 1 yr. ≤ 6 yrs., \$5,000 (subsequent offenses).	"Lend" and "give" included in distribution; finder of fact can determine age by Arkansas Factors; possession is a separate offense that only applies when victim is < 16; forfeiture provisions, advertising prohibited.
<b>New Hampshire</b> N.H. Rev. Stat. Ann. § 649A (rep. law §§ 169-C:1 to 3; §§ 169-C:29 to 39)	16	X		X		X	X	1st offense: < 7 years, < \$2,000; 2nd offense: ≤ 15 years, < \$2,000.	"Otherwise makes available" and "provides" are both punishable.
<b>New Jersey</b> N.J. Stat. Ann. § 2C: 24-4	16	X	X	X	X	X		5 ≤ 10 yrs., ≤ \$100,000 or 2 × the gain to defendant or loss to plaintiff.	Person who appears < 16 is rebuttably presumed to be < 16; advertising prohibited.
<b>New Mexico</b> N.M. Stat. Ann. §§ 30-6A-1 to 3 (rep. law §§ 32-1-3, 15, 16)	16	X	X	X	X	X	X	D, C, Pa, Possession with intent to distribute: 18 mos., \$5,000. Pr: 3 yrs., \$5,000. Pa, C if child < 13: 3 yrs., \$5,000.	Pecuniary profit required as motive for distribution and possession with intent to distribute; if profit motive involved for coercion or parent offenders, penalties are stricter.
<b>New York</b> N.Y. Penal Law §§ 263.00 to 25 (rep. law Fam. Ct. Act § 1012(e)(iii))	16	X	X	X	X	X	X	D: ≤ 7 yrs., ≤ 2 × gain to defendant from crime; Others: ≤ 15 yrs., ≤ 2 × gain to defendant from crime.	Arkansas Factors can be used to prove that child was underage; defendant's good faith belief that child was 16 or older is an affirmative defense; separate offense for obscene materials; advertising prohibited.
<b>North Carolina</b> N.C. Gen. Stat. §§ 14.190.13 to .17 (rep. law § 7A-517; §7A-543)	18	X	X	X	X	X	X	Commercial production, coercion, parental involvement: Class G felony (mandatory minimum 6-yr. sentence); noncommercial production or distribution: Class H felony (mandatory minimum 4-year sentence).	Inference permitted that one who represents or depicts a minor is a minor; mistake as to age is no defense.
<b>North Dakota</b> N.D. Cent. Code §§ 12.1-27.2-01 to 06	16	X	X	X	X	X		Pr, Pa, C: ≤ 10 yrs., \$10,000; D (and sometimes Pr): ≤ 5 yrs., \$5,000.	Trier of fact can determine age by Arkansas Factors; separate offense for obscene materials; advertising prohibited; defendant's good faith belief that child was 16 or older is an affirmative defense.
<b>Ohio</b> Ohio Rev. Code Ann. §§ 2907.321 to 323 (rep. law§ 2151.031; § 2151.421)	18	X		X	X	X	X	2 ≤ 15 yrs., ≤ \$7,500.	Separate offenses for possession and viewing of material; separate offense for obscene materials; advertising prohibited.
<b>Oklahoma</b> Okla. Stat. Ann. tit. 21, §§ 1021.2 to 3 (rep. law tit. 21, §§ 845 to 848)	18	X	X	X	X (only if child < 16)	X	X	≤ 20 yrs., \$25,000.	Separate reporting law for commercial film and photographic print processors; consent is not a defense; possession prohibited; forfeiture provisions.
<b>Oregon</b> Or. Rev. Stat. §§ 163.483 to 485 (rep. law § 418.740(1))	18	X	X	X	X		X	Pr, C: Class B felony; D, Observing Production or Obtaining Material: Class C felony.	Mistake of age is a defense to distribution; separate offenses for observing sexual conduct and obtaining or viewing material.

State and Citation	Age of Victim (less than)	Classes of Offenders				Non-commercial Acts Covered	Child Abuse Reporting Law Includes Child Pornography	Penalties	Miscellaneous
		Producer	Coercer	Distributor	Parent				
<b>Pennsylvania</b> Pa. Stat. Ann. tit. 18, § 6312 (rep. law tit. 11, §§ 2201 to 2224)	16	X	X	X	X		X	D: ≤ 7 yrs., ≤ \$15,000; Pa, C: ≤ 10 yrs., \$25,000.	Can use expert testimony to establish age; inapplicable to materials involving only nudity if materials are made for and have a serious literary, scientific, artistic, or educational value.
<b>Rhode Island</b> R.I. Gen. Laws § 11-9-1 (rep. law §§ 40-11-1 to 16)	18 (16 for parental prosecutions)	X			X		X	Pa (child < 16): ≤ 1 yr. ≤ \$250; Pr (child < 18): ≤ 10 yrs.; Subsequent offenses: ≤ 15 yrs., ≤ \$15,000.	Expert testimony allowed to prove age.
<b>South Carolina</b> S.C. Code Ann. §§ 16-15-360 to 380 (rep. law § 20-7-490; §§ 20-7-510 to 560)	18	X	X	X	X	X	X	Pa, C: Criminal sexual conduct in the 2nd degree; Pr: 2nd or 3rd degree; D: 3rd degree.	Defendant's good faith, reasonable belief that child was ≥ 18 is an affirmative defense; trier of fact can base determination of age on Arkansas Factors; advertising prohibited.
<b>South Dakota</b> S.D. Comp. Laws Ann. §§ 22-22-22 to 25 (rep. law § 26-8-6, §§ 26-10-10 to 12)	16	X	X	X	X		X	Pa, C: 10 yrs. in state penitentiary, \$10,000; D: 2 yrs. in state penitentiary, \$2,000.	Exemption for publication with redeeming social value.
<b>Tennessee</b> Tenn. Ann. Code §§ 39-6-1137 to 1138 (rep. law §§ 37-1-602 to 605)	18	X	X	X	X	X	X	3 ≤ 21 yrs., ≤ \$20,000. Only imprisonment for parent.	Affirmative defense that person in good faith reasonably believed that child ≥ 16; obscenity requirement for prosecution of "producers" and "coercers"; advertising prohibited.
<b>Texas</b> Tex. Penal Code Ann. § 43.25, .26	17	X	X	X	X	X		Pa, C: 2 ≤ 20 yrs., ≤ \$10,000; Pr, D: 2 ≤ 10 yrs., ≤ \$5,000; Possession: Class A misdemeanor.	Good faith, reasonable belief that child ≥ 17 is an affirmative defense; determination of age permitted by Arkansas Factors; separate offense for obscene materials; advertising and possession prohibited.
<b>Utah</b> Utah Code Ann. §§ 76-5a-1 to 4 (rep. law § 78-3b-3)	18	X		X	X	X	X	1 ≤ 15 yrs.	Possession prohibited; material need not be considered as a whole to determine if law violated; statute explicitly says obscenity not required.
<b>Vermont</b> Vt. Stat. Ann. tit. 13, §§ 2821 to 2826 (rep. law tit. 33, §§ 682 to 684)	16	X	X	X	X	X	X	≤ 10 yrs., ≤ \$20,000 (1st offense); ≤ 15 yrs., ≤ \$50,000 (2nd offense).	Age of child may be proved using Arkansas Factors; advertising prohibited; good faith belief that child was 16 or older is affirmative defense.
<b>Virginia</b> Va. Code § 18.2-374.1 (rep. law §§ 63.1-248.1 to 17)	18	X	X	X		X	X	≤ 10 yrs., ≤ \$1,000.	Where child appears under 18, this will be <i>prima facie</i> evidence that child was under 18; forfeiture provisions.

State and Citation	Age of Victim (less than)	Classes of Offenders				Non-commercial Acts Covered	Child Abuse Reporting Law Includes Child Pornography	Penalties	Miscellaneous
		Producer	Coercer	Distributor	Parent				
<b>Washington</b> Wash. Rev. Code Ann. §§ 9.68 A.040 to .130 (rep. law §§ 26.44.010 to 900)	16 or 18	X	X	X	X		X	C, Pa when child < 16: ≤ 10 yrs., \$20,000; C, Pr, D, and Pa if child is between 16 and 18: ≤ 5 yrs., ≤ \$10,000; Possession: Gross misdemeanor; Communication with minor for immoral purposes: Gross misdemeanor.	Mere lack of knowledge of age is no defense (but defense exists if defendant can prove by a preponderance of evidence that he reasonably believed, or should have known, that child was over age, based on child's declaration or other facts); possession prohibited; mandatory reporting for film processors; communication with minor for immoral purposes is a separate offense; forfeiture provisions; minor victim, in a civil suit, is entitled to recover costs and reasonable attorneys' fees; state is not required to establish identity of child victim.
<b>West Virginia</b> W. Va. Code §§ 61-8c-1 to 5 (rep. law § 49-6A-2; § 49-1-3)	18	X	X	X	X	X	X	D: ≤ 1 yr., ≤ \$2,000; Subsequent offenses: ≤ 2 yrs., ≤ \$4,000; Pa, C, Pr: ≤ 10 yrs., ≤ \$10,000.	Court may order offender to pay child's treatment costs; court may limit interviews with child under 11, and it may permit such a child to use dolls or drawings as aids in testifying.
<b>Wisconsin</b> Wis. Stat. § 940.203 (rep. law § 48.981)	18	X	X	X	X	X	X	≤ 10 yrs., ≤ \$10,000.	Advertising prohibited.
<b>Wyoming</b> Wyo. Stat. § 6-4-403 (rep. law §§ 14-3-202 to 205)	16	X	X		X			≤ 1 yr. ~ \$1,000 (1st offense); ≤ 5 yrs., ~ \$5,000 (subsequent offenses).	Protections for privacy of victim.

## KEY TO CHART

rep. law ..... state child abuse mandatory reporting law that requires reporting of child victims of sexual exploitation

Pr. .... producer of child pornography

D. .... distributor/disseminator of child pornography

Pa. .... parent or legal guardian of child who uses, permits, or coerces the child to perform in child pornography

C. .... person who coerces/forces a child to participate in child pornography

"Arkansas Factors" ..... Age of child portrayed in child pornography can be proven by personal observation of material, by testimony by a person who witnessed the production of the pornography, and by expert testimony

# **Child Prostitution**

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# 1. The Oldest Oppression

I know it'd be good if I could say how awful it was and like crime don't pay—but to us it seems like anything else—like a kid whose father owns a grocery store. He helps him in the store. Well, my mother didn't sell groceries.

Interview with "Violet," former child prostitute (from age 10) in New Orleans, circa 1914–1917. A. Rose, *Storyville New Orleans* 150 (1970)

The prostitution of children has been a plague from which no generation of civilized humanity can safely claim to have been free. The ancient world actively countenanced sexual exploitation of the young: It was one of Cicero's first accusations against Antony that as an adolescent he was "just a public prostitute, with a fixed price."<sup>1</sup> (Notes to the second section, *Child Prostitution*, are found on pages 79–90.) Medieval Europe may have had little prostitution of children,<sup>2</sup> but in the China of those centuries young unwanted girls were widely sold into brothels,<sup>3</sup> while the Islamic world regularly used young slaves as prostitutes.<sup>4</sup> The seventeenth and eighteenth centuries witnessed a dramatic reappearance of substantial juvenile prostitution in Europe,<sup>5</sup> by the nineteenth century young prostitutes were an accepted feature of urban life.<sup>6</sup> The pioneering study of Parisian prostitutes by A. J. B. Parent-Duchatelet in the 1830s found that over half the prostitutes who registered did so by age 21, and fully 10 percent while under age 18.<sup>7</sup> The swelling numbers of young prostitutes found little sympathy for their plight in a nominally liberal era; according to Parent-Duchatelet, public opinion considered their activities to be a "crime" placing them "outside society."<sup>8</sup> Usually orphaned or desperately poor, the young who turned to prostitution in the Victorian era found, as one historian has written, that "it did not free [them] from a life of poverty and insecurity, and further subjected them to physical danger, alcoholism, venereal disease, and police harassment."<sup>9</sup> It is an epitaph that could stand for young street prostitutes of any century.

## Juvenile Prostitution in the American Past

Against the broad landscape of sexual exploitation through the ages, the American experience may seem at once less surprising and all the more sudden, mysterious, and brutal. For in strong contrast with England and France of the seventeenth and eighteenth centuries, colonial America—and especially the Northeast—seems to have been largely free of juvenile prostitution.<sup>10</sup> Scattered prostitution of Native Americans existed,<sup>11</sup> as did wholesale sexual exploitation of slave girls,<sup>12</sup> but outright prostitution is rarely mentioned in pre-Revolutionary sources. The extraordinary sexual repression and intrusiveness of theocratic government in New England, Pennsylvania, and elsewhere—combined with some minimal tolerance of sexual relations between engaged couples—were beyond question equally important factors.<sup>13</sup> Whatever the explanation, though, America's premier nineteenth century scholar on prostitution—Dr. William Sanger—could write a massive tome on the history of prostitution in every part of the civilized and semicivilized world with no apparent consciousness of the existence of prostitution in the United States prior to 1800.

The nineteenth century, by contrast, produced a sudden rise in public consciousness of, and young women's involvement in, prostitution along European lines. Much of that development must be viewed as a synergistic outcome of the collision between American and Old World cultures: Thus, prostitution in New Orleans rose dramatically after the American accession to power in 1803,<sup>14</sup> and prostitution in New York achieved substantial prominence only after the beginning of the waves of foreign immigration.<sup>15</sup> The rise of great cities and the gradual shift

to an industrial economy—both of which developments attracted unattached young girls to urban areas—doubtless had strong influence as well.<sup>16</sup> By the 1830s New York City's grand jury had become concerned enough about prostitution that it ordered a survey: 1,438 public prostitutes were counted, and soon thereafter a Magdalen Society for their rescue was established with some fanfare.<sup>17</sup> Although the Society quickly fell apart,<sup>18</sup> it signaled the beginning of nearly a century of intense social awareness of, and controversy over, the existence of widespread American prostitution.

## Nineteenth Century Juvenile Prostitution

Despite high public interest, the nature of prostitution—and particularly its involvement of minors—was far more often shouted about than studied in nineteenth century America. The careful survey by Sanger of 2,000 prostitutes in New York City during the 1850s is the only thorough, scholarly study of the subject until after 1900. What Dr. Sanger found, fortunately, is highly illuminating on the subject of juvenile prostitution: Three eighths of the prostitutes surveyed were between 15 and 20 years old, another three eighths between 21 and 25, and one eighth between 26 and 30.<sup>19</sup> "Youth," he concluded, "is a marketable commodity, and when its charms are lost, they [juvenile prostitutes] must be replaced."<sup>20</sup> In the brothels and on the streets of New York City he found the same characteristics of juvenile prostitution that were common in Europe: its strong relationship with economic destitution and family distress,<sup>21</sup> the frequent use of coercion and the emerging role of the pimp,<sup>22</sup> and the exposure of the girls involved to disease and social ostracism.<sup>23</sup> If there was any bright spot in Sanger's remarkably pessimistic work, it was that the "repulsive theme" of male prostitution so common to the ancient world had been rendered unimportant by "the progress of good morals."<sup>24</sup>

Sanger, indeed, expressed far greater alarm than his European counterparts regarding the risks of involvement in prostitution: He found that the life expectancy of prostitutes was no more than four years from the time they entered prostitution, and the majority of their children would die before their fifth birthday.<sup>25</sup> Urging that prostitutes be licensed and strictly regulated, he nevertheless felt compelled to state: "While juvenile degradation is an irreparable adjunct of prostitution, premature old age is its invariable result."<sup>26</sup>

Sanger's view of the intricate connection between prostitution and youth was over and over again confirmed through the nineteenth century. It had been true in New York in the 1830s, where 9 year olds were spotted in the brothels, and the most common age for entering prostitution was 15 or 16.<sup>27</sup> It was true in Chicago in 1911, when the city's Vice Commission found the average age at which prostitutes entered brothels to be 18, and the average age of dance hall and street prostitutes to be 20.<sup>28</sup> And throughout the century it was true in New Orleans, where girls began working in the spectacular brothel district as young as 10 years of age.<sup>29</sup> As a historian of prostitution in the American West recently found: "Who worked in the brothels, the saloons, and the cribs of the frontier? The poor and the young."<sup>30</sup>

Dire economic need and family disintegration continued, as well, to be the most important causes of young girls succumbing to the "social evil."<sup>31</sup> Outright coercion—labeled "white slavery"—continued to be an important if subsidiary factor.<sup>32</sup> The girls involved at the end of the Gilded Age were as vulnerable to disease, violence, and pregnancy as those in Sanger's day; they remained social outcasts as well.<sup>33</sup> By World War I, however, profound changes had occurred in the *organization* of prostitution, changes that would largely determine the face of prostitution in the twentieth century.

## Twentieth Century Developments

Most prominent of these changes was the at first slow, then precipitous decline of the brothel as the center of prostitution. Brothels seemed first to dwindle as they were restricted in many cities to an established "red light" district;<sup>34</sup> they were then largely swept away by the fervent anti-prostitution sentiment that reached its peak in World War I.<sup>35</sup> Even before the war, moreover, economic and social forces had begun to work against the world of the brothel: The rise of apartment (as opposed to boarding) houses and the introduction of the telephone permitted prostitutes to operate independently of madams. At the same time, according to one historian, these new living arrangements made it easier for the pimp, "who could now dispense

with the services of the madam and retain a larger percentage of the prostitute's earnings for himself."<sup>36</sup> When Storyville and other "red light" districts were closed in the years up to 1918, it is likely that reformers merely accomplished quickly what the market had begun gradually. What had become in the prewar period an enormous commercialized enterprise under the control of a few madams, politicians, and police officials broke apart under economic pressure and reformers' onslaughts into smaller operations governed by pimps.<sup>37</sup> The brothel districts ultimately went the way of the great Trusts,<sup>38</sup> although some individual brothels managed to survive.

The shifts in the organization of prostitution coincided with a sharp decline in the public perception of its presence.<sup>39</sup> In part that perception was justified: Because of the rising prosperity of the laboring classes and the increasing availability of voluntary pre- and extramarital sex, the actual extent of prostitution quite likely declined after World War I.<sup>40</sup> The end of well-known brothel districts decreased the visibility of the trade in women, and made it a largely clandestine affair.<sup>41</sup> Further, the well-publicized findings of scientists prior to 1920 that the vast majority of prostitutes were "feeble-minded" no doubt had a dampening effect on the public's interest in the girls and its vicarious pleasure in imagining the glamour of their lives.<sup>42</sup> The changing moral climate in the United States after 1920 could no longer accommodate the stridency of such great anti-prostitution advocates as Maude Miner and Jane Addams.

Neither Victorian prudishness nor flapper libido were well equipped, in any case, to recognize the final development of significance in juvenile prostitution in the first part of this century: the reemergence, after centuries in obscurity, of homosexual prostitution. As early as 1886 a male brothel had appeared in London,<sup>43</sup> while World War II apparently marked the first significant appearance of male prostitutes in the United States.<sup>44</sup> In 1947 William Butts published a brief study of "boy prostitutes" in a "large city"; of the twenty-six he interviewed fully, eight were aged 19-20, nine 17-18, and three 15-16.<sup>45</sup> Other studies of young male prostitutes would be published in succeeding years,<sup>46</sup> but public interest in this, as in all forms of prostitution, remained minimal until the 1970s.

What transformed public awareness of juvenile prostitution over the last twenty years seems to have been no more complex than a substantial increase in its incidence. From 1935 to 1959 children under 18 accounted for no more than 1 percent of persons arrested for prostitution or "commercialized vice"; by 1965 their share had grown to 2 percent, and in the late 1970s stood at 4 percent.<sup>47</sup> From 1970 to 1983 the number of reported arrests of underage prostitutes climbed by over 150 percent, although the number of juveniles aged 14 to 17 actually declined by nearly 10 percent.<sup>48</sup> Juvenile prostitutes, both male and female, became a regular feature of street life in major cities; not surprisingly, they ultimately became as well a major focus of public attention and outrage. While it is possible to speculate as to the reasons for the renewed prominence of the young in prostitution—the extraordinary rise in runaway behavior at once comes to mind<sup>49</sup>—the causes of the change cannot be separated from the characteristics of contemporary juvenile prostitution, and so must be considered along with a description of those features. At least in this respect—sexual marketing of the young—American civilization in the 1980s can claim little progress from the world of Storyville's "trick babies."

## 2. Juvenile Prostitution in America Today

One 35-year-old mother, for example, told me (husband present) that she wouldn't mind it if her 8-year-old daughter became a prostitute when she grows up. "Why should I mind it?" she said. "The average prostitute is only 25 years old when she decides to give up the business. And during the time she is involved she has a hell of a good time and makes a hell of a lot of money. I mean, the whole thing is temporary, so why get so damned keyed up about it? If she's wise she'll put a lot of that money away and she may never have to work again, especially if she's attractive. A lot of those girls have college degrees and get very good business jobs after they decide to give it up."

"Sex and the Swingers' Children," in Brian Gilmartin, *The Gilmartin Report* 291 (1978)

Twentieth century America is not merely a place where a child may become a prostitute "when she grows up"; many children and adolescents "grow up" while forced to survive as prostitutes. Despite decades of public apathy about juvenile prostitution—especially in contrast to outrage over sexual abuse and child pornography—the diligent work of a few unheralded organizations and scholars has produced a larger pool of knowledge than ever before about its extent, causes, and effects. That knowledge not only makes the views of Gilmartin's "swingers" seem almost heartlessly misguided, it also provides the most crucial tools in designing a response to a historically intractable problem. Who and where young prostitutes are, why and when they have entered "the life," what they find after they arrive, and how their lives are affected—these are the issues that research has addressed, and with which legal policy must grapple in trying to find a way for them to escape.

### The Scope of the Problem

In attempting to describe juvenile prostitution in contemporary society, it is critical to accept at the beginning how hopelessly incomplete the evidence is or can ever be. The nature of prostitution—its existence outside the law, outside legitimate business, and outside mainstream society—makes it wholly unsuitable for "scientific" study. Both in determining the extent of juvenile prostitution and its nature, the available hard information from social service research and popular inquiry is frustratingly limited.

The number of children involved in prostitution is, to begin with, hopelessly elusive. A recent report by the U.S. General Accounting Office—appropriately titled *The Sexual Exploitation of Children, A Problem of Unknown Magnitude*<sup>50</sup>—found the estimates by "experts" to range from "tens of thousands" to 2.4 million children annually. In fact, no reliable estimate exists or is even possible, given the absence of census data on the subject, the inherent limitations of police information,<sup>51</sup> and the weaknesses of unsupported estimates by social service providers and popular journalists who reach only a tiny fraction of juvenile prostitutes in highly specific settings.<sup>52</sup> Even if the number of juveniles involved is "only" tens of thousands, of course, the scandal of child prostitution is not diminished. The fewer the number of children exploited, indeed, the more intense the ostracism and pain those few would seem likely to suffer.<sup>53</sup> Nevertheless, an estimate of between 100,000 and 300,000 children involved annually in prostitution seems, on the balance of the evidence, highly justifiable.<sup>54</sup>

Measuring that pain and attempting accurately to describe the general "characteristics" of young prostitutes is, unfortunately, just as difficult a proposition as measuring their numbers. Where it is impossible to know the size and extent of a particular group, it is, of course, likewise

impossible to take a "random sample" of that group. A number of excellent studies of juvenile prostitutes in the last fifteen years have tried varying approaches to "sampling": interviews with older prostitutes about their early days in "the life";<sup>55</sup> interviews with juvenile prostitutes who present themselves for help at a social service program;<sup>56</sup> interviews with children in the juvenile justice system;<sup>57</sup> interviews with juveniles "on the street";<sup>58</sup> reviews of selected "profiles" of juvenile prostitutes prepared by various social service programs from their own records;<sup>59</sup> and observation.<sup>60</sup> Each of these methods has weaknesses, some of them glaring.<sup>61</sup> On the balance it is difficult to make any claim for methodological progress in this area since Duchatelet's great study in the 1830s. No *one* study can thus be definitive, but careful attention to common threads among the reputable studies is likely to provide a reasonably accurate portrait of "the life" and the young people who find themselves having to live it.<sup>62</sup>

**Origins, Characteristics, and Location** Children as young as 5 years old become involved in "sex rings" that sell them into prostitution and pornography usually (but not always) without the knowledge of their parents.<sup>63</sup> Clearly, though, most juvenile prostitutes are in their mid- to late teens, with the modal age at about 17.<sup>64</sup> A clear majority are white, but not fully in proportion with the population; blacks in particular seem to be substantially overrepresented.<sup>65</sup> They are as a group well behind their peers in school attendance,<sup>66</sup> but no recent study has suggested, as did "experts" of the World War I era, that young prostitutes are intellectually slow or handicapped. Their employment history, likewise, is poor, with many never having worked in any other employment, and many more suffering lengthy periods out of work altogether.<sup>67</sup>

The families of these teenagers are generally in disarray, with a substantial majority of juvenile prostitutes coming from broken homes.<sup>68</sup> The *economic* status of those families, on the other hand, is not remarkably poor; indeed, most juvenile prostitutes have said in interviews that they come from "middle-class," "comfortable," or occasionally even "wealthy" homes.<sup>69</sup> Yet that affluence must seem wholly empty for them: A majority of juvenile prostitutes have been the victims of serious physical abuse, sexual abuse, or both, at home.<sup>70</sup> Economic security, moreover, is no more than a memory for all but a few: close to 9 in 10 young prostitutes say they are now extremely poor.<sup>71</sup>

They are also, it is important to add, generally far from home. A large percentage of the juvenile prostitutes studied in major cities had come from somewhere else;<sup>72</sup> some had peddled themselves all around the country.<sup>73</sup> They have generally had substantial involvement with the juvenile justice system even apart from arrests for prostitution.<sup>74</sup> It can hardly be surprising, then, that they feel radically isolated: In one of the largest studies, 55 percent of the juvenile prostitutes said they had no friends; and 43 percent said they had no one they could turn to when in trouble.<sup>75</sup> Nevertheless, it is shocking that in one study two thirds of the girls and one third of the boys exploited in prostitution said they had attempted suicide.<sup>76</sup>

## The Nature of "the Life"

**Entering "the Life"** Why and when do children start down the road to such an unpleasant destination? Unlike the extensive demographic evidence available for determining who these young people are, little of definitive value bears on the issue of motivation. Outright coercion explains, as it has for centuries, only a fraction of the cases. About 1 in every 6 girls in prostitution (but virtually none of the boys) states that she was made to become a prostitute against her will, usually by a pimp.<sup>77</sup> What of the rest?

The answer begins to seem at least vaguely apparent when the age at which a juvenile left home is compared with the age at which he or she began prostitution. In the striking majority of cases the "runaway" event in the child's life preceded his or her first "trick."<sup>78</sup> On the street after leaving an abusive or fractured home, runaway and homeless youths face long odds and narrow options; for the younger ones especially, legitimate employment is legally and practically out of reach.<sup>79</sup> It is only logical, then, that a leading study would show that 75 percent of female juvenile prostitutes and 85 percent of males "first started prostituting when they were on the run, broke, and needed money for food and shelter."<sup>80</sup>

Logic also suggests, however, that more than the need for money must be involved in a child's entry into prostitution—for it is clear that many destitute and homeless children do *not* turn to that method of survival. Researchers have looked carefully for psychological factors based on special childhood trauma—especially sexual abuse—to explain why some girls enter

prostitution and some do not.<sup>81</sup> Some students of male prostitution have also emphasized early trauma as a cause, while others have pointed to the impact of a homosexual preference on an adolescent in a repressive sexual environment.<sup>82</sup> The theories presented are tantalizing but far from airtight; thus, a major Canadian study found sexual abuse among juvenile prostitutes to have been no more frequent than in the general population.<sup>83</sup> And, despite the clear majority of boys with homosexual tendencies among juvenile prostitutes, a large number are heterosexual.<sup>84</sup> Indeed, in the Canadian study only 7.1 percent of males listed a desire for "sexual knowledge" and only 8.3 percent listed "personal trauma" as among their reasons for entering prostitution; overwhelmingly, their focus was the need for money and employment.<sup>85</sup> In each of these areas it may be that further understanding will have to await the results of clinical research that takes into account the empirical findings of the Canadian and other recent studies.

**Daily Aspects of "the Life"** What future research is *not* likely to illuminate further, unfortunately, is the way juvenile prostitution functions—for, except in a few essentials, it can change quickly. Thus, Kenneth Ginsburg declared in 1967 that for juvenile male prostitution the "call-boy operation has replaced the brothel as a more efficient method of operation,"<sup>86</sup> yet only fifteen years later Professor Weisberg would find that virtually all such prostitution is conducted through street contacts.<sup>87</sup> Likewise, it is dangerous to make confident pronouncements about the hours or location of prostitution activity, when both are subject to almost instantaneous change in the face of police or public pressure.<sup>88</sup> Nonetheless, three features of juvenile prostitution seem likely to survive any ephemeral market fluctuations: the customer, the pornographic photograph, and the pimp—and so deserve ongoing, intensive scrutiny.

**1. Customers.** Juvenile prostitution is a high-volume retail business that ultimately is designed to please the consumer. Whether the prostitute is male or female, old or young, the customer is likely to be middle-aged, white, married, and male.<sup>89</sup> The customer will also be highly selective, highly specific in his demands for sexual satisfaction, and highly fearful of arrest by an undercover agent.<sup>90</sup> A fifth will have been drinking, and 1 in 10 will either be drunk or on drugs.<sup>91</sup> To a certain extent they may want to discuss with the prostitute their personal problems.<sup>92</sup> Thus, the relationship can involve a certain amount of human feeling and even tenderness. On the whole, however, juvenile prostitutes regard their "tricks" with disgust.<sup>93</sup> And they tend, as well, to be far more emotionally uncomfortable with their sexuality than other delinquent youths.<sup>94</sup>

**2. Pornography.** Because by its very nature one item of pornography can be viewed contemporaneously by many patrons and for repeated sittings, the demand for pornographic performers will always be a tiny fraction of the demand for prostitutes. It would hardly be surprising, then, if extant studies of juvenile prostitutes showed little or no incidence of participation in pornography and, indeed, one study (the 1982 *URSA Study*) did conclude that there exists a "slight" relationship between juvenile prostitution and pornography.<sup>95</sup> But it is surprising that the data from several studies—including the one just mentioned—suggest quite the opposite conclusion.

Thus, the *Badgley Report* in Canada found that almost 60 percent of both male and female juvenile prostitutes had been asked to be the subject of sexually explicit films or photographs; 12 percent of the girls and 20 percent of the boys had actually been used in making pornography.<sup>96</sup> A Commission thus found that "juvenile prostitutes are a high-risk group in regard to being exploited by pornographers."<sup>97</sup> Two smaller American studies emphatically confirm this finding.<sup>98</sup> Even the data in the study that rejected the relationship do not support its conclusion. There, 27 percent of the young male prostitutes had been photographed by a "john"; of the 54 young male hustlers for whom information was available, 9 had been photographed for commercial pornographic magazines.<sup>99</sup> In the face of that evidence it seems impossible to deny the existence of a significant link between the exploitation of minors in prostitution and in pornography.<sup>100</sup>

**3. The Pimp.** Nothing so clearly distinguishes the life of young female prostitutes from that of their male counterparts as the utterly pervasive influence of their pimps. Prior to 1900, even prostitutes who worked for madams generally attached themselves to a "man."<sup>101</sup> But this attachment was not cemented in necessity until the historic movement of prostitution out of the

brothel and onto the street occurred, reaching its zenith at the beginning of this century. Since World War II the dominance of pimps has been noted by virtually every observer of prostitution in the West—from Paris to New York to Los Angeles.<sup>102</sup> Though their role specifically with regard to juveniles has received more limited attention, we still have a reasonably clear impression of their power and its source.<sup>103</sup> On the basis of current research it is possible to say with substantial certainty that only a small minority of juvenile male prostitutes have pimps,<sup>104</sup> while the overwhelming majority of girls involved in prostitution do.<sup>105</sup>

For those girls the pimp plays a crucial role both in the initiation and the maintenance of their identity as prostitutes. While a pimp is not usually the first person from whom a young girl on the street hears about prostitution, he is the one who often “turns her out”—usually by persuasion, but sometimes by force.<sup>106</sup> While she is working on the street, he provides her with “protection” from the police, customers, and predators, although the actual value of his services is generally disparaged by young prostitutes themselves.<sup>107</sup> Normally he takes not part but *all* of his girls’ earnings, while returning to them a small allowance and providing them with room, board, and clothing.<sup>108</sup> The pimp usually beats the girls in his employ.<sup>109</sup> In many cases he provides emotional support that the girls have not received elsewhere,<sup>110</sup> but the relationship is so transient and openly exploitive that it is dangerous to make too much of this rationale for the pimp’s role.<sup>111</sup> Usually a girl has a pimp because she does not know how to pursue prostitution safely without him.<sup>112</sup> Yet pimps probably represent both the biggest obstacle to young female prostitutes leaving the street and the most damaging part of their experience while on it—for as the *Badgley Report* concluded, the pimp-prostitute relationship “encompasses one of the most severe forms of the abuse of children and youths, sexual or otherwise,” one that is “based on two forms of ruthless exploitation: psychological and economic.”<sup>113</sup>

Who, then, are these most crucial figures in the world of young prostitutes? The answer, not so surprisingly, is largely equivocal. Pimps are males, usually at least several years older than the girls in their “stable,” who are described by those girls as everything from “affectionate” and “sweet” to “schizophrenic, violent, ugly and sick.”<sup>114</sup> Most are young, single, and poorly educated, with little conventional employment experience and complete dependence on the earnings of their prostitutes.<sup>115</sup> Contrary to legend, pimps tend to dress shabbily and are not easy to detect on the street.<sup>116</sup> Nonetheless, they are skillful manipulators of emotion, and clever enough to do their recruiting of new prostitutes through other prostitutes in their employ, while generally avoiding as well any direct contact with customers.<sup>117</sup> Thus, they are rarely arrested, and even more rarely imprisoned.<sup>118</sup> Prostitutes are extremely reluctant to describe their pimps or testify against them,<sup>119</sup> and so it is likely that their shadowy world will remain sheltered from public view or scientific study. That is all the more unfortunate because they seem to prey disproportionately *more* on younger prostitutes<sup>120</sup>—the coercive and manipulative techniques they use work most effectively on the young. In any case it is fair to say that pimps represent not only the most powerful of the exploitive forces bearing on young prostitutes, but also the most difficult to describe, understand, and attack.<sup>121</sup>

**Effects of Involvement in Prostitution** The structure of contemporary prostitution—with its relationships among consumer (patron), management (pimp), and product (prostitute, pornography)—is an understandable outcome of historic trends and contemporary conditions. How that flourishing industry affects the prostitutes whom it packages and markets, however, is understood little and acted upon less. No study, for example, has ever successfully followed a group of young prostitutes after their “careers” end; it is thus impossible to say with even minimal certainty where life on the street ultimately leads them. Certain consequences are nonetheless highly probable for minors involved in prostitution *during* their involvement, and facing them squarely must be the principal task of those making legal policy in this area. The links between juvenile prostitution and, respectively, violence, crime, disease, drugs, and psychological damage are clear; what so often remains obscure are their implications for efforts to help or “redeem” the children and teenagers who are so exploited.

**1. Violence.** The most tangible consequence of involvement in juvenile prostitution is the extremely high probability of suffering violent assault. The vast majority of young female prostitutes will be beaten by their pimps<sup>122</sup> and abused by their customers<sup>123</sup>—often repeatedly.<sup>124</sup> Young male hustlers are less vulnerable to physical assault, but it remains a substantial risk in their work.<sup>125</sup> For the girls, moreover, rape is a commonplace experience—thus, the leading study on the subject found that 70 percent of the prostitutes interviewed had



been raped or "similarly victimized" by customers an average of thirty-one times per prostitute.<sup>126</sup> Even outside their work prostitutes seem by virtue of their status to be extremely vulnerable to sexual assault. That same study found that 73 percent of the subjects (prostitutes mostly aged 20 or younger) had been raped in situations unrelated to their job.<sup>127</sup> In the majority of rapes by customers, pimps, and others, the victims sustained considerable physical injuries; yet fewer than 1 in 10 such victims pressed charges.<sup>128</sup>

**2. Health Risks.** Apart from the *intentional* physical harm inflicted on young prostitutes, they encounter extremely serious risks to health directly related to their work. Sexually transmitted disease (STD) constitutes the most notorious such risk. Between one half and two thirds of juvenile prostitutes contract such diseases from their work—most commonly, gonorrhea.<sup>129</sup> That is hardly surprising, as almost 30 percent of them take *no* precautions at all against venereal disease,<sup>130</sup> yet, even in tightly regulated brothels, where the managers enforce regular checkups, the STD infection rate has been shown to equal 10 percent *per week*.<sup>131</sup> Younger prostitutes are, of course, at much higher risk in this area because of their ignorance of prevention techniques and perhaps, too, because their inexperience and chronic destitution make it more difficult for them to reject potentially infected clients.<sup>132</sup> They are also more likely to mishandle or avoid available medical care.<sup>133</sup> The advent of Acquired Immune Deficiency Syndrome (AIDS) has brought terrifying new risks for prostitutes of all ages; male prostitutes are at the highest risk of infection, but women prostitutes are in disproportionate danger as well.<sup>134</sup> In view of their indifference to prevention of other STDs, juvenile prostitutes hardly seem likely to be able to practice "safe sex" reliably—even if fully "safe" sex exists at all.<sup>135</sup>

In a recent study by the Center for Disease Control, 108 of 835 prostitutes in seven cities tested positive for HIV antibody, yet only 4 percent reported using condoms faithfully.<sup>136</sup> The Center for Disease Control report concluded, somewhat coolly: "Persons who continue to engage in prostitution remain at risk for acquiring and transmitting HIV."<sup>137</sup> Young prostitutes, who have less experience and less control over their situations, are almost certainly at the greatest risk of all.

Another constant danger for young female prostitutes is pregnancy, with half of the prostitutes under 20 in one sample admitting to a previous pregnancy, and fully 20 percent admitting to more than two.<sup>138</sup> Whether or not it is true, as one researcher declared, that "[p]regnancy for a prostitute is, in effect, a sexually transmitted disease,"<sup>139</sup> it does present enormous problems for the girls affected, who are both financially and psychologically unprepared for parenthood. Worse, the children resulting from such pregnancies are frequently neglected by their mothers, who become, in the words of one scholar, "overwhelmed by the hardships experienced in the prostitution business."<sup>140</sup> Some children of prostitutes are in fact introduced into prostitution by their parents.<sup>141</sup>

Other physical and mental health risks also plague young prostitutes. Young male hustlers are often subjected to traumatic injuries to the rectum.<sup>142</sup> Juvenile prostitutes are a high-risk group for hepatitis and a variety of unusual infections—in part, no doubt, because they eat and dress so inadequately.<sup>143</sup> Certainly the most dramatic of those risks, however, is suicide ideation. In one important study 39 percent of young males and 68 percent of young females involved in prostitution had previously attempted suicide.<sup>144</sup> The danger of suicide is clearly the result of the severe depression experienced by most young prostitutes. Thus, one researcher found that "[a]llmost every juvenile [prostitute] viewed herself as having no current options," resulting in a "sense of psychological paralysis."<sup>145</sup> Young prostitutes, males and female, view their life style in highly negative terms,<sup>146</sup> and it is likely that many are in need of substantial psychiatric intervention.<sup>147</sup>

**3. Drug Dependency.** Many of the hardships facing most young prostitutes stem from their dependency on drugs. The overwhelming majority of juvenile prostitutes admit to using drugs as part of their life style, and an alarming number admit to heavy use or even addiction.<sup>148</sup> Their consumption of alcohol is also significant, but surprisingly somewhat more moderate.<sup>149</sup> The long-term implications of this substance abuse are tragic: In one study of adult prostitution, 96 percent of "low-class" prostitutes (streetwalkers) used heroin regularly, and 84 percent were addicted; a third of "high-class" prostitutes (call girls, "house prostitutes," madams) admitted to being addicted to stimulants.<sup>150</sup> The need for money to support drug habits can hopelessly subvert any move out of "the life" and, of course, dramatically augment the power of the pimp and the bargaining position of the patron.<sup>151</sup>



4. *Crime.* The drug traffic, of course, by itself involves participants in criminal behavior; thus, the use of drugs by young prostitutes can subject them to criminal sanctions far more severe than those against prostitution itself.<sup>152</sup> Yet the danger of criminal involvement for juvenile prostitutes does not end with simple substance abuse. A majority of young female prostitutes admitted to one set of researchers that "they robbed customers regularly or every chance they got."<sup>153</sup> Juvenile male prostitutes are often violent toward their customers, particularly where the strict social norms of the transaction are violated (e.g., in suggesting by word or deed that the youth is homosexual in basic orientation)<sup>154</sup> but, as with their female counterparts, theft and robbery seem to be their most common non-prostitution offenses.<sup>155</sup> The long-term relationship between prostitution and crime is perhaps most dramatically evident in the work of Jens Jersild in Denmark during the 1950s. There he found that of 84 young men facing serious criminal charges in 1953, three quarters had previously resorted to homosexual prostitution. Conversely, over half of a group of 228 young male prostitutes were later convicted of serious crimes, including three murders. Jersild opined that it is the loss of "self-respect" involved in prostitution activity that leads to criminal behavior.<sup>156</sup>

5. *Social Ostracism.* Whether or not prostitution leads a youth to serious crime, it almost invariably inflicts on him or her the sort of social stigma usually reserved for criminals. Thus, teenagers who are prostituting themselves are significantly more likely to describe their peer relations as poor than troubled teenagers who are not<sup>157</sup>—and nearly all try to conceal their prostitution activity, especially from family and friends.<sup>158</sup> Perhaps the clearest measure of the stigma attached to their life is in the attitude of those involved in the social service system. In ways far less crude than the early twentieth century professionals who wrote off prostitutes as idiots, current workers in the "helping" professions often see prostitution not as a problem but as the sign of an underlying mental illness—and, moreover, have difficulty overcoming their moral revulsion against it and the juveniles involved.<sup>159</sup>

## Potential for Rehabilitation

Perhaps as a consequence of revulsion against prostitution, efforts to reach out to young prostitutes have been few and widely spaced, although Magdalen Hospital in London inaugurated such efforts as long ago as 1758.<sup>160</sup> The two subsequent centuries have seen a wide array of well-meaning, sometimes well-conceived efforts to reach "fallen" girls; programs to reach young male prostitutes did not begin even to be talked about until after 1950. By far the most effective model for intervention seems to combine prevention efforts directed especially against physical and sexual abuse, street outreach, crisis shelters located near the area where prostitution occurs, medical and legal services, vocational counseling, job placement, supportive counseling, and longer-term shelters.<sup>161</sup> Programs that are designed to help youths stranded on the street, regardless of their specific involvement in prostitution, may well be most effective in helping young prostitutes, precisely because they avoid stigmatizing them as deviant while addressing the concrete (usually economic) reasons at the heart of their entrance into prostitution.<sup>162</sup> Still, it is fair to say that no program design over the past 200 years has been conclusively shown to be effective in "rehabilitating" prostitutes for more than a brief period.<sup>163</sup> Continued efforts to design effective programs, overcome public and bureaucratic resistance to their implementation, and carefully evaluate their results represent one of the most urgent challenges confronting the youth service professions. Even in the event that the gauntlet is taken up, it may ultimately be discovered, as Diana Gray incisively suggested in 1973, that the best hope for any young prostitute will be the "the formation of a close, intimate attachment to a conventional person who strongly disapproves of her involvement."<sup>164</sup> Most young Magdalenes, in short, need personal miracles not likely to be part of even the best program designs.<sup>165</sup>

## Overview of Juvenile Prostitution in America Today

Modern America does not have to bear the shame of being the *only* society that has ever tolerated the sale of children and teenagers into prostitution. That commerce has its roots deep in human civilization, and today is practiced elsewhere in ways comparable to, or even more vicious than, those that plague the United States.<sup>166</sup> It may well be, however, that in the brief

period since 1965 this country has witnessed the most dramatic rise in the *extent* of juvenile prostitution any society has ever witnessed. And it may be true, as well, that such prostitution springs from and exemplifies fundamental defects in America's commitment to its young—defects far more glaring in this genuinely idealistic country than in more primitive, or cynical, societies that have also permitted such exploitation.

Among street prostitutes in the United States, half or more are under age 21—indeed, some 40 percent may even be younger than 18 years old.<sup>167</sup> While it is extremely difficult to estimate their number or accurately characterize them as a group, they share reasons for entering “the life” common to virtually all youthful prostitutes in history: destitution, family disarray and, in a small but significant minority of cases, outright coercion. Other forces, which were not so clear in the past, have also assumed prominence—particularly the rise in runaway behavior and what may be a substantial increase in familial sexual abuse during this century.<sup>168</sup> Over the last two decades the persistence of poverty, especially among children,<sup>169</sup> may have combined with the weakening of family structures and the decline of sexual taboos to create an environment as conducive to juvenile prostitution as any in history.

As the incidence of that prostitution has widened, so has awareness of its meaning for the children and youths involved. Although young prostitutes do not always view themselves as victims,<sup>170</sup> it is overwhelmingly clear that in fact they are—victims of violence, disease, drugs, criminal involvement, and deep psychological scarring. They are, moreover, branded as social outcasts in ways just as terrible as the ostracism inflicted on prostitutes in almost every age. So bitter is their isolation that in the midst of a liberal, religious, and usually compassionate society they have been almost completely neglected in social programs for the poor.<sup>171</sup> It remains to be seen how state and federal law—largely criminal law—currently addresses their plight, and how it might evolve in ways both more effective and more humane.

### 3. Frameworks for Addressing Juvenile Prostitution

If anyone is hired out for prostitution by his father ... the law says that there shall be no indictment of the boy himself .... the law deprives the father during his lifetime of the benefits of begetting children, just as the father [deprived] the boy of his [full citizenship].

Oration of Aiskhines before Athenian court in 346 B.C., translated in K. J. Dover, *Greek Homosexuality* 28-29 (1978)

Regulation—but not prohibition—of juvenile prostitution has been an implicit or explicit attribute of law in almost every civilized society, and most certainly in the legal traditions of the West. That regulation at times has taken its highly permissive form found in ancient Greece, where children were freely allowed (or, if slaves, required) to prostitute themselves so long as they were not descended from a male citizen.<sup>172</sup> At other times, it has taken the strongly prohibitory form of such laws as the Statutes of Edward I, which near the end of the thirteenth century forbade *any* sexual intercourse with girls under the age of 12, whether for a fee or not.<sup>173</sup> Yet prostitution of the young has only recently excited even a minimal degree of attention by legal scholars and reformers.<sup>174</sup>

As the incidence of juvenile prostitution increases, however, and the devastating effects of such exploitation become clearer, it is imperative to consider—calmly—the current approach of American law to the problem and the potential for improvements on or alternatives to that system. Dr. Sanger to the contrary notwithstanding,<sup>175</sup> the attempt to eradicate juvenile prostitution is no more “utopian” than are the unsuccessful, age-old legal efforts to end homicide, rape, assault, disease, and poverty. The law by definition attempts the impossible task of predicting and regulating future human conduct. Yet no understanding of current law is likely, and no serious attempt at reform possible, without a clear-eyed evaluation of the various approaches the law *could* take—that is, the basic potential frameworks for governmental response to prostitution, and the apparent costs and benefits of each.

#### Systems of Legal Control

The need to take stock of the various potential systems for addressing prostitution is not simply academic, for in fact the propriety and indeed the right of the government to interfere with the sale of sexual services has come of late under substantial attack. Some have argued against governmental involvement, as indicated above, on the grounds that it is ineffectual and wasteful,<sup>176</sup> others have asserted that such involvement violates individual rights to privacy and equal protection of the laws,<sup>177</sup> and one scholar has even maintained, at considerable length, that governmental interference with commercial sex is *immoral*.<sup>178</sup> Not even the most zealous advocates of *laissez faire* regarding adult prostitution, however, have extended their arguments to cover juveniles as well.<sup>179</sup> It is still safe to say, then, that a consensus of legal opinion exists in favor of eradicating juvenile prostitution, if possible, and radically reducing its extent, if not. And it is fair to examine each of the three major systems for addressing prostitution—regulation, decriminalization, and prohibition—with an eye to their likely effect on the incidence of commercial sexual exploitation of children.

**Regulation** The system advocated eloquently by Dr. Sanger in New York, and widely adopted in nineteenth century Europe, was the legalization of prostitution within a tightly regulated

structure.<sup>180</sup> Legalization was justified by the accepted impossibility of eliminating prostitution and, moreover, the perceived *need* for prostitution in some situations—most notably to provide a sexual outlet for men in the military, but also for men who for any reason found their sexual needs unsatisfied by conventional relationships.<sup>181</sup> Regulation—which may variously consist of establishing government brothels, registering and medically examining prostitutes, or simply defining a “red light district”—was seen as critically important to insure against the spread of venereal disease and the disruption of public order.<sup>182</sup> For the prostitutes it offered the prospect of making a respectable living, in comfortable surroundings, without the terror of arrest by police or domination by a pimp.

That was the theory. The reality of regulated prostitution has been sadly different. As Abraham Flexner meticulously documented in his study of nineteenth century European prostitution, regulation failed to achieve nearly all of its objectives. Thus, “every form of medical examination of the prostitute carried on under police auspices [was] more likely to spread them than to isolate and confine diseases”;<sup>183</sup> only a small minority of prostitutes were successfully brought under regulation;<sup>184</sup> pimps and other exploitive forces continued to play a dominant role;<sup>185</sup> and public order was by no means improved.<sup>186</sup> Worse still in “legalized” prostitution is the price prostitutes pay in loss of civil liberties. Regulation has the inevitable effect of “branding” women as prostitutes and sharply circumscribing their freedom of movement and association. The most notorious recent example of this loss of liberty occurred in Germany during World War I, when a seemingly benign regulation system led, in the words of one historian, to “the forcible incarceration in mobile brothels of any woman suspected of indulging in sexual intercourse with more than one man (even without demanding payment)” in order to “cater to the troops.”<sup>187</sup> Yet, even in its least restrictive forms, regulated prostitution was and is often little more than a straightjacket for the women it embraces.<sup>188</sup>

Of most concern in a “legalized” prostitution regime, however, is the position of minors. Flexner pointed out the dilemma in this area long ago:

Shall a mere child be registered and branded as a professional prostitute? Humanity revolts at the very suggestion; yet regulation cannot be effective without it. Time was when the police, bent on making regulation as effective as possible, registered prostitute children on a large scale. The horrible practice has been almost entirely stopped and regulation has decayed accordingly. The same line of argument applies to incidental prostitutes. Is society interested in branding a woman as a professional prostitute and practically forcing her to continue the life, or is society interested in holding her back in the hope that she may subsequently return to an orderly and decent way of living? Obviously the latter. Inscription must therefore be limited to women who practice prostitution as their sole means of livelihood. If, however, the child prostitute and the incidental prostitute are not enrolled and cannot be enrolled, regulation is bound to fail by reason of the fact that it is applicable to only a small part of the prostitute army.<sup>189</sup>

That dilemma continues to haunt present-day Hamburg, West Germany, where only 1,200 out of 5,000 to 6,000 female prostitutes are registered, where between 300 to 400 unregistered children work on the street fulltime, and where thousands of other minors earn pocket money from jobs in the sex industry.<sup>190</sup> For this reason above all others, the vast majority of nations abandoned efforts to “regulate” prostitution after World War II.<sup>191</sup> Most now have adopted either an approach that tolerates prostitution and attempts only the mildest regulation—generally described as “decriminalization” or “abolitionism” (for the abolition of regulation)—or one that prohibits all such conduct outright and relies solely on criminal sanctions for enforcement.

**Decriminalization/“Toleration”** The abolition of strict regulation of prostitution led most nations not toward a frontal assault on the institution itself, but rather toward almost complete toleration of it. Thus, France, England, Canada, and most other western nations do not today consider the *act* of prostitution a crime, and prostitutes are subject to virtually no special requirements. Public soliciting, or otherwise creating a public nuisance, is normally prohibited under this system, as are pimping, procuring, and living off the avails of prostitution. The rationale for such an approach is clear and appealing, even if centered almost wholly on benefits to the prostitute rather than society at large: 1) absence of registration requirements prevent prostitutes from becoming permanently stigmatized; 2) police harassment of prostitutes is

eliminated; and 3) prostitutes are given the ability, without incriminating themselves, to seek protection against pimps and others seeking to exploit or blackmail them.<sup>192</sup>

In practice, however, decriminalization is not nearly as successful in protecting prostitutes as logic would seem to suggest. Police still continually arrest and harass prostitutes,<sup>193</sup> most of whom are forced by the nature of their work at least occasionally to engage in public solicitation of potential "clients." Pimps still prosper and in France, at least, operate through highly organized syndicates that represent one of the largest businesses in the country, with profits in 1978 of \$7 billion.<sup>194</sup> Only in respect of providing prostitutes greater civil liberties, and perhaps somewhat higher social status, can decriminalization be called successful on its own terms.

But what of those terms—and the social costs they ignore? Decriminalization appears to hold some relative benefits for prostitutes, but for precisely that reason it appears to increase the aggregate *incidence* of prostitution, at least in comparison to other systems.<sup>195</sup> It is likely, too, that such an increase will correspond to an increase in other crimes.<sup>196</sup> And it seems almost certain that a rise in prostitution substantially increases the risks to the community of sexually transmitted diseases.<sup>197</sup>

More to the point, however, decriminalization may be, of all systems, the least suited to protection of minors. Because prostitution is, in general, an activity of the young—with many, and quite possibly most, prostitutes under 21<sup>198</sup>—it is no easy matter to sort out minors from adults based on appearance. Falsification of age is common, and the rigorous police scrutiny necessary to determine actual ages of prostitutes would threaten the very anonymity and freedom of movement that make decriminalization a kinder alternative for adult prostitutes. The dilemma so vividly described by Flexner with regard to regulated prostitution—that minors cannot politically or morally be included in the system, but without including them the system becomes useless—remains to plague decriminalized prostitution as well. In effect this dilemma is resolved through turning a blind eye toward underage prostitutes: "Toleration" of prostitution means, generally, toleration of *juvenile* prostitution.

The failure of "toleration" to protect underage boys and girls from involvement in prostitution may stem, as well, from the fundamental ambiguity about prostitution that is at the system's heart. Thus, the British government report of 1968 that recommended continued toleration of the act of prostitution also declared firmly that "loitering and importuning for the purpose of prostitution are so self-evidently public nuisances that the law ought to deal with them...."<sup>199</sup> And the *Fraser Report* to the Canadian government in 1984—which also advocated decriminalization—nevertheless urged that "if prostitution is a reality with which we have to deal for the foreseeable future, then it is preferable that it take place, as far as possible, in private."<sup>200</sup> Directing the energies of law-enforcement not at the act of prostitution itself but at its creation of public nuisances implicitly teaches that it is the public rather than the prostitute who needs protection.<sup>201</sup> This approach of making prostitution "private" means making juvenile prostitution private, too—and so adds to the difficulty of preventing or attacking it.

**Prohibition** Both legalized "regulation" and decriminalized "toleration" of prostitution rest firmly on the assumption that it is an inevitable component of western civilization, if not human society itself. In the words of Britain's Wolfenden Committee, prostitution "has persisted in many civilizations throughout many centuries, and the failure of attempts to stamp it out by repressive legislation shows that it cannot be eradicated through the agency of the criminal law."<sup>202</sup>

A minority of jurisdictions—the United States among them—have rejected this reasoning, at least in principle. Whether because they see a substantial chance to eliminate prostitution through governmental action, or because they believe strong official opposition to sexual exploitation should not depend on the chances for complete success, the U.S.S.R., China, and the United States, among others, have all acted to prohibit prostitution outright. Not simply directed at the public nuisance aspects of prostitution—soliciting, loitering, crime, and disease—the "prohibitionist" approach outlaws the very *act* of prostitution, and subjects the prostitute to the indignity of criminal penalties. Pimping, procuring, and sometimes patronizing prostitutes are also outlawed, with the first two—but not patronizing—receiving far greater penalties than those imposed on prostitutes themselves.

Prostitutes, not surprisingly, attack this approach as the worst of all systems, and in this view they are joined by many dispassionate observers. Prohibition has unquestionably negative effects on the life of prostitutes—subjecting them to imprisonment, police harassment, and even greater public opprobrium than they suffer in other nations.<sup>203</sup> Worse, prostitutes under such

a regime become even more reluctant than usual to seek police protection against pimps and other exploiters.<sup>204</sup>

The great advantage of prohibition, by contrast, seems to be that the actual *incidence* of prostitution declines, often very substantially.<sup>205</sup> By making the life of a prostitute so grim, strict law-enforcement doubtless discourages women from entering "the life"; to the extent women can see alternatives to prostitution, they are likely under prohibition to choose them. Unfortunately, such alternatives are not clear to many poor and coerced women, whose largely unchosen involvement with prostitution subjects them to nightmarish exploitation by pimps and imprisonment by the judicial system.

By suppressing the general incidence of prostitution, prohibition likely reduces as well the incidence of *juvenile* prostitution—but again, at a price. Those who are capable of voluntarily avoiding prostitution in response to the penalties inflicted by prohibitory laws are far more likely to be adults than juveniles. Teenagers turning to prostitution are, as noted above,<sup>206</sup> overwhelmingly in desperate straits, doing so because they are homeless, penniless, or sexually abused. There is, indeed, some evidence that juveniles may make up a greater *percentage* of prostitutes in a prohibitory regime, even while their absolute numbers may be lower than they would be under "regulation" or "toleration."<sup>207</sup> Although the *amount* of prostitution may decline, that prostitution which does remain under a "prohibition" regime is thus more likely to be of the particularly brutal character associated with inexperienced, highly vulnerable juveniles.

On the other hand, prohibitory laws against *all* prostitution make it far easier for police to remove underage prostitutes from the streets quickly—if only to jail or secure detention. False identification and the difficulties of judging age accurately are generally fatal to police efforts to identify minors on the street or even after arrest.<sup>208</sup> Broad laws against all prostitution have, in theory at least, the advantage of increasing the chances for sustained contact by law-enforcement and other governmental officers with juveniles caught up in "the life." The current failure of the criminal justice system to make the most of that opportunity is not in this view a reason for scrapping "prohibition," but rather an argument for increasing the resources, understanding, and sensitivity of those who regularly come in contact with sexually exploited juveniles. It is, too, a reason to rethink the decision to place penalties for the act of prostitution on the prostitute—for whom they produce much misery, but little direct assistance in leaving "the life"—rather than on the other partner in the transaction, the patron, particularly the patron of juvenile prostitutes.

## Features Common to All Existing "Systems"

The three "systems" of prostitution law are commonly presented as mutually exclusive and fundamentally antagonistic in design and effect. And certainly each rests on a distinctive assumption about the place of the prostitute in society. Yet, careful reflection suggests these contradictions may be more apparent than real, for in several crucial respects all the "modern" approaches to prostitution are virtually indistinguishable. They all address public activities of prostitutes, but almost never those occurring in private. They all look tolerantly on patrons. And, worst, they all fail to deliver special protection for minors. Real understanding and "reform" of prostitution laws can only come when these fundamental links between established creeds are carefully examined.

**"Public Nuisance" Regulation** In theory, at least, "prohibition," "regulation," and "toleration" each take a different view of prostitution in private. "Prohibition" outlaws it absolutely; "regulation" subjects it to strict rules at least in regard to control of disease; and "toleration" regards it as entirely beyond the reach of the law. These distinctions, however, mean next to nothing in practice, for virtually all law *enforcement* touches only the public character of prostitution, no matter what the "system" of law being enforced. Thus in "prohibitionist" Los Angeles nearly 80 percent of all prostitution arrests occur on the streets, and less than 6 percent in "sex clubs" or "massage parlors."<sup>209</sup> It is virtually impossible to catch parties in the highly private *act* of prostitution. Instead, police "decoys," pretending to be patrons (or occasionally prostitutes), account for the overwhelming majority of arrests—based on the same "soliciting" or "loitering" charges that are commonly used by police in nominally "decriminalized" countries.<sup>210</sup>

There is some evidence to suggest, indeed, that arrests for prostitution-related activity in "toleration" areas are comparable to—or even greater than—those in "prohibitionist" jurisdictions. Thus, the arrest rate of female prostitutes in Sheffield, Great Britain, in the mid-1970s was fully 60 percent of the rate for "prohibitionist" Los Angeles.<sup>211</sup> During the 1950s, when its laws governing prostitution were even more lenient than they are currently, Great Britain actually seems to have had a *higher* arrest rate for prostitution than did the United States.<sup>212</sup> Recently the situation has been reversed, but not because the law in either country was substantially altered.<sup>213</sup>

It is difficult, in short, to see a clear-cut difference, in practice, between official "toleration" and "prohibition" of prostitution in this area: Law-enforcement aims almost exclusively at the public manifestations of prostitution, rather than at prostitution itself. As for "regulation," both in theory and practice, it is a system wholly committed to allow prostitution so long as it remains out of public view. By encouraging the use of brothels (or, in West Germany, "eros centers") and by punishing unregistered street prostitutes, "regulation" openly mandates what "prohibition" and "toleration" tacitly permit: sexual commerce behind closed doors.<sup>214</sup>

**Preferred Status of Patrons** An even more obvious result shared by all existing "systems" of prostitution control is the highly preferential treatment accorded to patrons. "Regulation" and "toleration" explicitly exempt patrons not only from punishment for hiring sexual services, but also from any regulation related to prevention of public nuisances or control of sexually transmitted disease. Thus it is prostitutes who are arrested for causing "annoyance" to passersby, and it is prostitutes who—in "regulation" jurisdictions—must have "health cards" and medical inspections. Prostitutes, not patrons, must "register" in such jurisdictions as West Germany.

"Prohibitionist" jurisdictions do not always so clearly exempt patrons from censure, but in practical effect give strong preference to the needs and rights of patrons. It is a crime to patronize a prostitute in New York City, yet in 1984 only 154 men were arrested for that offense, as against 3,301 women for prostitution.<sup>215</sup> In Los Angeles the comparable figures for 1975-1976 were 217 customers arrested as against 2,345 prostitutes.<sup>216</sup> The police "decoys" used to secure arrests are overwhelmingly male, and so the very strategy of law-enforcement in American cities dictates action against prostitutes rather than patrons.<sup>217</sup> In many "prohibitionist" jurisdictions, moreover, no laws directed at patrons even exist.<sup>218</sup>

Thus, while in statutory language and philosophy some differences remain between "prohibitionist" and "legalized" approaches to patrons, all existing systems give them dramatically preferential treatment in comparison with prostitutes. That is a curious fact considering that prostitutes—who are subject to coercion by pimps and to enormous pressure from poverty and abusive backgrounds—seem far less capable of changing their behavior than do patrons. This anomaly is particularly striking with regard to *juvenile* prostitutes, whose situation leaves them vulnerable to especially harsh exploitation by pimps and particularly brutal treatment by patrons.

**Failure to Address Juvenile Prostitution** It is precisely in respect to juveniles, of course, that the three major approaches to prostitution have proved themselves most deficient. "Regulation," as noted above, tends to create an unregistered subclass of juvenile prostitutes hidden away in brothels or under false identifications on the street. "Toleration" tends to expand the amount of prostitution generally, and of juvenile prostitution specifically, while failing to prevent exploitation by pimps and harassment by police. "Prohibition," to the extent that it represents a sustained assault on prostitution, does reduce the overall *amount* of prostitution, but is not proportionately as successful in attacking the prostitution of the young. And worse, "prohibition," as currently conceived, tends to create comparatively more brutal conditions for those prostitutes, old and young, remaining on the street.

If traditional responses to prostitution have favored patrons over prostitutes, indeed, they seem also to have discriminated in favor of older and against younger prostitutes. Under "registration" it is older prostitutes who obtain the (all-too-often ephemeral) benefits of a licensed, supervised environment to ply their "trade"; juveniles are by law excluded from registration, and so work in dangerous, subterranean, highly exploitive settings. Deregulated "toleration" likewise officially refuses to tolerate prostitution of minors. But making juvenile prostitution illegal in an environment otherwise encouraging a vibrant sex industry only forces it underground, where exploitation is likely to be most severe and recourse to help from

law-enforcement and social services most limited.<sup>219</sup> Prohibition, finally, creates an environment in which the most desperate, least "streetwise" prostitutes suffer proportionately more arrests and legal penalties; juveniles, usually with false identification, fit precisely into that disadvantaged category.

After carefully reviewing the three major approaches to prostitution, Kathleen Barry finally commented, in some despair: "The fact is that patriarchal government has found no system of prostitution that isn't abusive and doesn't exploit women."<sup>220</sup> The sad corollary to her finding must be that government has found no "system" of prostitution that does not exploit children and adolescents even more than their elders. Only in the context of that chastening thought is it possible to analyze existing American laws on juvenile prostitution with the proper degree of skepticism—and the necessary passion for reform.



## 4. Laws Relating to Juvenile Prostitution

Laws relating to prostitution can be seen as fitting into various "systems" of policy, but ultimately they have a life and a logic all their own. The United States is generally regarded as a nation committed to "prohibition" of prostitution—and certainly that label is more appropriate than the others available—yet its legal structures and traditions reflect substantial exceptions, omissions, and even fundamental contradictions to pure "prohibitionist" ideology. To a significant degree those anomalies reflect the quirks of a federal system in which international, federal, state, and local laws all play a part. Yet even after the law on each of these levels is analyzed, and account is taken of differences related to political structures, some fundamental ideological and practical problems remain at the heart of American legal efforts to protect children from prostitution. Those problems must be squarely addressed if such laws on any level are to have a chance of success.

### International Law

In its rejection of European preferences for "regulated" or "decriminalized" prostitution, the United States has long played the role of persistent, if polite, renegade. Of a long string of international agreements related to prostitution, this country has accepted only one. It is nevertheless useful briefly to review existing treaties and international conventions as part of the basis for federal jurisdiction to prevent and punish traffic in prostitutes.

The one international agreement on prostitution to which the United States is an unqualified party was also the first: the International Agreement for the Suppression of the White Slave Traffic, signed March 18, 1904, and ratified by the Senate in 1908.<sup>221</sup> Under its terms the contracting states agreed to take various measures to detect international trafficking in women and girls for prostitution, and to assist in their rescue and repatriation. No commitments were made, however, to impose criminal penalties on the traffickers; thus, the limited remedial measures spelled out in the treaty remain the only international obligations in this area with legal force in the United States.<sup>222</sup>

**The 1950 Convention** Subsequent international efforts centered on agreements to punish the promotion and exploitation of prostitution—whether or not the crimes were committed in an international context. Before World War II major agreements bound contracting states, including virtually all European states and Canada, but not the United States, to take punitive measures against the procuring or pimping of girls under age 21, whether or not they had consented to become prostitutes, and of all adult women who had entered prostitution against their will.<sup>223</sup> After the war, the United Nations took up the question, reaffirmed existing international agreements, and in 1950 promulgated its own, even stronger, proposal: the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>224</sup> To date it has been ratified by over fifty nations, including France, Italy, Japan, Mexico, Brazil, and the U.S.S.R., but not by Canada, Great Britain, or the United States.

The 1950 Convention is an important document because it declares, for the first time in an international agreement, that all prostitution—whether of men, women, or children—is an "evil" that is "incompatible with the dignity and worth of the human person."<sup>225</sup> In Article I, it makes the following sweeping declaration:

The parties to the present Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
2. Exploits the prostitution of another person, even with the consent of that person.<sup>226</sup>

Subsequently, the Convention commits the parties to outlaw the keeping or financing of brothels. On the other hand, the parties agree to repeal any laws subjecting prostitutes to "special registration or to the possession of a special document or to any exceptional requirements for supervision or notification." It nowhere forbids the imposition of criminal penalties for prostitution, but mandates the taking of measures aimed at rehabilitation and prevention.

In its rejection of registration and "supervision" of prostitutes, the 1950 Convention squarely denounced the "regulationist" system of prostitution that dominated European policy until World War II. It has been read to oppose, as well, the "prohibitionist" approach dominant in the United States,<sup>227</sup> but its silence on the subject of criminal penalties makes that interpretation seem extremely strained—particularly as the U.S.S.R., a major signatory, is at least nominally prohibitionist in its domestic laws. Nevertheless, it is curious and disappointing that the Convention contains no specific provision mandating the prohibition and attempted prevention of all *child* prostitution—including penalties for patrons. Previous international agreements and understandings had always recognized the particular vulnerability of minors, yet the 1950 Convention failed to make any provision for special efforts on their behalf.

**Since 1950** Since 1950 prostitution has received only scattered, somewhat vague attention on an international level. The United Nations' Declaration of the Rights of the Child<sup>228</sup> proclaimed in 1959 that: "The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form." And, in its 1979 Convention on the Elimination of All Forms of Discrimination Against Women,<sup>229</sup> the signatory nations (including the United States) agreed to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution in women."

The words *traffic* and *exploitation* are not defined in the Conventions of 1950 and 1979, and so leave ground for differing interpretations. Read literally, the language suggests that not only are traditional procuring, pimping, and pandering covered by the agreements, but trafficking in hard-core pornography as well—*i.e.*, commercial marketing of photographic material showing sexual activity for which the performers were paid. While it is unlikely that the framers of the agreements had such an interpretation in mind, courts in the United States had held even prior to the 1979 Convention that commercial production of photographic hard-core pornography constitutes pandering under the criminal statutes.<sup>230</sup> "Exploitation" may also cover parental involvement in child prostitution, although that again is not spelled out. The lofty rhetoric of international declarations in this area offers no help to practitioners and only cloudy help to children's advocates. It is only within the familiar arenas of federal and state law that some real framework for protecting children against sexual exploitation can be discerned.

## Federal Law

If an attempt to see a structured American policy regarding juvenile prostitution is limited to the *federal* level, however, it will be highly frustrating. Constitutional separation of powers between the federal government and the states allows the former only a circumscribed role in such matters as prostitution. As Justice John Harlan bluntly put it:

Congress has no substantive power over sexual morality. Such powers as the Federal Government has in this field are but incidental to its other powers, . . . and are not of the same nature as those possessed by the States, which bear direct responsibility for the protection of the local moral fabric.<sup>231</sup>

It is not surprising, then, that federal efforts against juvenile and adult prostitution have always carried at least the veneer of action under constitutionally delegated powers—from control of immigration, to regulation of interstate commerce, to the power to appropriate monies. Five important statutory frameworks—the immigration law, the Mann Act, RICO, the Runaway and Homeless Youth Act, and the Missing Children's Assistance Act—have developed on the narrow foundations provided by those delegated powers.

**Immigration Law** Long before Congress attempted to take action against domestic prostitution, it attempted to shut out what it saw as the corrupting influence of prostitutes from other lands. The first federal action to place any limitation on immigration to the United States was a flat bar, in 1875, on the admission of convicts and prostitutes.<sup>232</sup> During the next forty years the outcry against white slavery led to enactment of broad laws, not only to prevent the admission of foreign prostitutes, but to expel aliens engaging in prostitution *after* their arrival in the United States.<sup>233</sup>

Current immigration law reflects this highly punitive approach. Prostitutes, procurers, and anyone who has been supported by the proceeds of prostitution are excludable at entry.<sup>234</sup> More significant, however, any alien who becomes a member of one of those categories at *any* time after entry may be deported.<sup>235</sup> Finally, any person who imports aliens for the purpose of prostitution or who, in pursuance of such importation keeps, maintains, employs or harbors an alien engaging in prostitution is guilty of a felony punishable by up to ten years' imprisonment and/or a fine of \$10,000.<sup>236</sup>

None of these provisions has been frequently applied in recent years—despite evidence that importation of women for prostitution continues<sup>237</sup>—and it is easy to spot flaws in the statutory design working against its effective enforcement. Most fundamentally, the statutes strongly discourage foreign-born prostitutes from reporting their pimps; the price of obtaining protection is giving an admission that may lead to their expulsion. Pimps of such prostitutes are given by the immigration statutes an unparalleled instrument of blackmail to keep their charges in line—the threat of calling immigration authorities. The imposition of the drastic penalty of deportation against women trapped in prostitution out of fear or desperation hardly seems just, especially as patrons of foreign-born prostitutes are subject to no penalties at all under federal law. It would hardly be shocking, then, if the human beings enforcing the immigration laws tended to ignore all but the most blatant violations of these statutes.

Yet in no way are the federal immigration laws more deficient in this area than in their treatment, or lack of treatment, of juvenile prostitutes. Because they include no special provisions applicable to minors, the prostitution-related mandates of federal immigration statutes have the potential for draconian results. A 16-year-old, foreign-born girl or boy caught up in street prostitution is subject to deportation, while her “tricks” go scot-free. Because declared by law not to be of “good moral character,”<sup>238</sup> he or she is not even allowed access to discretionary relief from expulsion.<sup>239</sup> And here, unlike most domestic laws, procurers and pimps are not even subject to greater penalties for trafficking in minors.

**The Mann Act** If federal statutes aimed at the international traffic in prostitution seem a conceptual morass, the same fortunately cannot be said of federal efforts against interstate sexual commerce. Beginning in 1910 with passage of the White-Slave Traffic Act (known as the “Mann Act” after its sponsor, Representative James R. Mann),<sup>240</sup> Congress has adhered to a strong, generally coherent effort at prohibition of all interstate trafficking in prostitutes.

The original thrust of the Mann Act was simple. The knowing transportation of any woman or girl across state lines for prostitution or any “immoral practice” was declared a federal crime, punishable by up to five years' imprisonment.<sup>241</sup> Persuading, inducing, or coercing a woman to make such a trip using a “common carrier” was defined as a separate crime with similar penalties.<sup>242</sup> And the transportation of any woman or girl under 18 years of age for prostitution or any “immoral practice” was defined as yet another crime—but with penalties twice as severe.<sup>243</sup>

This statutory scheme, virtually unchanged for seven decades, was substantially revised by the recently enacted Child Sexual Abuse and Pornography Act of 1986.<sup>244</sup> First, the 1986 revisions made the Mann Act gender-neutral in all its provisions: transportation of, and the inducement or coercion of travel by men, as well as women, is now covered. The vague phrase “immoral practice” has been replaced by the more concrete “any sexual activity for which any person can be charged with a criminal offense.” For adults, then, providing, causing, coercing, or inducing interstate travel by any other person for purposes of prostitution or other illegal sexual conduct is now a federal crime.

But perhaps more significant, the 1986 changes in the Mann Act removed a major obstacle to enforcement of the Mann Act prohibitions of interstate *child* prostitution. Prior to those changes, the heightened penalties for illicit transportation of minors were applicable only if a “commercial” motive for the transportation could be shown.<sup>245</sup> The 1986 act removed that requirement and thus opened the door for federal authorities to prosecute any person

transporting children across state lines for purposes of illegal sexual abuse including, of course, prostitution. Such higher penalties do *not* apply, it should be noted, to one who only "persuades, induces, entices, or coerces" a minor to travel for unlawful sexual activity; such conduct is subject to the same punishment as that imposed with respect to travel by adults.<sup>246</sup> These changes should make possible a more vigorous federal effort than in the past—an effort that yielded only thirty-eight convictions from 1979 to 1983 under the Mann Act's child-protection provisions.<sup>247</sup>

Logical as this newly revised scheme is, three anomalies remain. First, federal penalties attach only if the *prostitute* crosses state lines; pimps and procurers may move freely from state to state in pursuance of their business. Second, the "clients" who knowingly make use of children transported interstate for prostitution retain their exemption from punishment. Third, what makes each of these exceptions all the more glaring is that under an old Supreme Court holding, those used in prostitution may themselves be indicted under the Mann Act as accomplices to their own interstate transportation.<sup>248</sup> And under the new gender-neutral structure of the act, it is at least technically possible that a juvenile prostitute could be convicted of a crime for purchasing a ticket for interstate travel by a pimp or patron: The intention to engage in illegal sexual activity (*i.e.*, prostitution or statutory rape) with the beneficiary of the ticket in another state would seem to satisfy the strict language of the statute.<sup>249</sup> Obviously, the potential exposure of prostitutes as well as pimps to Mann Act penalties—while wholly ignoring patrons—is a remaining corner of unintended illogic in an otherwise strong statute.

**RICO** While the Mann Act stands as the centerpiece of the federal criminal law on prostitution, one additional criminal statute is of interest: the Racketeer Influenced and Corrupt Organizations Act (RICO). Under RICO's provisions, it is a federal crime to participate in an "enterprise" that "affects" interstate commerce and that involves a "pattern" of "racketeering activity."<sup>250</sup> A highly technical and highly controversial statute,<sup>251</sup> RICO includes violations of the Mann Act among the crimes defined as "racketeering activity."<sup>252</sup> It imposes stringent penalties—twenty years' imprisonment, \$25,000 fine (or forfeiture of defined property)<sup>253</sup>—allows federal prosecutors to seek injunctive relief against violators,<sup>254</sup> and allows victims of racketeering enterprises to sue in federal court for treble damages.<sup>255</sup>

For a RICO prosecution of a child prostitution ring to succeed, proof would be required that two or more violations had been committed, that they constituted a "pattern" of such activity, and that they were part of an ongoing "enterprise." The nature of the "enterprise" may be legal or illegal;<sup>256</sup> thus, the abuse of a role in a legitimate youth organization as a means of promoting interstate prostitution would be covered by RICO. Juvenile prostitution is not typically a highly organized activity,<sup>257</sup> and so it is unlikely that RICO will be frequently used in this context. Nevertheless, the wide scope of the statute would allow prosecutors to attack those who only "indirectly" control or participate in an interstate prostitution ring—and so reach ringleaders not indictable under the strict terms of the Mann Act.<sup>258</sup> And RICO does provide, in its private-civil-remedy section, some victims of prostitution a way of seeking monetary redress.

Once again, however, the broad sweep of a criminal statute threatens to embrace victims as well as villains. Thus—under the literal language of RICO—anyone "employed by" or "associated with" an illegal racketeering enterprise is guilty of an offense if he or she happens to "participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."<sup>259</sup> Does working as a juvenile prostitute, taking money from patrons, constitute such "participation" or "collection of unlawful debt"? Clearly, RICO's thrust in this area is directed at pimps and procurers rather than prostitutes, but its language is loaded with unfortunate ambiguities that might well discourage young prostitutes from coming forward against their exploiters.

**The Runaway and Homeless Youth Act** For those children and adolescents actually facing a desperate choice about entering prostitution, no federal statute is more important than the Runaway and Homeless Youth Act (RHYA).<sup>260</sup> In contrast to the punitive statutes explored above, the RHYA attempts to provide direct help to the group most at risk of involvement in juvenile prostitution—runaway and homeless children.<sup>261</sup> Direct federal funding is offered under the act to almost 300 programs throughout the country providing crisis shelter and services to runaway and homeless youths.<sup>262</sup> The RHYA also helps finance a national runaway

hotline, professional "networks" among runaway programs, and research and demonstration projects.<sup>263</sup>

The existence of runaway shelters allows many teenagers to escape the street—and the pull toward prostitution—and to find their way home or to another stable environment. Yet, the RHYA is limited in its effectiveness by several of its features, and it currently reaches only a small fraction (probably less than 10 percent) of all homeless youths and runaways.<sup>264</sup> The act's funding level is small and not increasing.<sup>265</sup> It places a twenty-bed capacity limitation on every shelter, regardless of its location or the demand on its services.<sup>266</sup> And, finally, regulations impose a cap of fifteen days on the time youths may stay in a program, despite the desperate need of the youths, particularly those caught up in prostitution, for longer-term care.<sup>267</sup> The promise of the RHYA remains, therefore, largely unfulfilled, with ugly consequences. In 1985 alone at least 10,000 desperately vulnerable children were turned away from runaway shelters for lack of space or lack of resources to meet their needs.<sup>268</sup>

**The Missing Children Act and the Missing Children's Assistance Act** The tragic, direct consequences of juvenile prostitution are misery, anxiety, and doubt visited upon thousands of parents. Because so many young prostitutes are runaways, parents frequently know little or nothing of their whereabouts or their safety—only that they are "missing." Two recent federal statutes have relevance as sources of help for such parents.

The Missing Children Act,<sup>269</sup> which became law in 1982, allows the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI) to accept "missing person" entries on its national computer information system from parents, guardians, and next of kin—even when local law-enforcement officials fail to make such entries themselves. Parents, guardians, and next of kin may also obtain confirmation from the FBI that such entries have been made. Because the NCIC computer system is the vital core of efforts to locate missing persons, these new rights are valuable ones.

More recently, Congress passed the Missing Children's Assistance Act (MCAA)<sup>270</sup> to bring specific resources to bear on the problem of lost children. Finding that "many missing children are at great risk of both physical harm and sexual exploitation,"<sup>271</sup> Congress mandated the creation of a national toll-free hotline to give parents of missing children information about procedures to help locate their children. The act defines *missing child* to include persons under age 18 whose "whereabouts are unknown to such individual's legal custodian" if, among other factors, the "circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited."<sup>272</sup> Thus, juvenile prostitutes whose whereabouts are unknown to their parents are clearly covered by the act's mandates.

The MCAA also mandates creation of a national resource center to provide technical assistance to government officials, public and private agencies, parents, and law-enforcement officials in the location of missing children and in the handling of such cases after the child is located. The National Center for Missing and Exploited Children, established in 1984 pursuant to this mandate, currently provides such technical assistance and conducts extensive preventive and educational campaigns to keep public awareness of the issue high. Because it also operates the toll-free hotline mandated by the MCAA, the Center is in a strong position to coordinate efforts among law-enforcement officials and nonprofit organizations to provide prompt help to parents. Although a relatively small program, the MCAA appears to have great value in its aid to those still most vitally interested in the welfare of young runaways caught by prostitution: their families.

**Other Federal Laws** At least two other federal statutes are of at least marginal significance in the battle against juvenile prostitution. First, the Child Abuse Prevention and Treatment and Adoption Reform Act<sup>273</sup> requires that states receiving federal funds for child protection services must include "sexual exploitation" in their statutory definitions of child abuse reportable by doctors, teachers, and other professionals having contact with the child. While on its face admirable, this provision is rendered virtually trivial by another aspect of the required definition: its applicability only to parents, caretakers, and persons "responsible for the child's welfare."<sup>274</sup> As pimps, procurers, and patrons are almost never in legal custodial relationships with the children they exploit, the federal mandate on this aspect of child abuse reporting has little practical meaning.<sup>275</sup>

It is, finally, a federal crime within "special maritime and territorial jurisdiction of the United States" either to commit rape, or to "carnally know" any female under the age of 16.<sup>276</sup>

Such maritime and territorial jurisdiction is extremely limited, of course, and so this provision is seldom applicable to activities of pimps and patrons. Further, young males under age 16 are not protected by the statutory rape provision. (Indeed, it remains unclear whether the prohibition of *actual* rape applies to male victims.) Like its state law counterparts, the federal rape statute seems to have only theoretical relevance to protection of juveniles involved in or at risk of prostitution.

## State Law

Until very recently, statutory rape laws were, for all their inadequacy, virtually the only provisions of most states' statutes that seemed to apply specifically to juvenile, as opposed to adult, prostitution. The drafters of the Model Penal Code, for example, did not identify child prostitution as a serious or special problem, and their approach seems to have been extremely influential.<sup>277</sup> During the past decade, however, a wide variety of state laws have been enacted to attack the problem of child prostitution directly, and legislative interest seems to continue to be strong.<sup>278</sup>

The range and variety of state laws, both new and old, is extensive, and it is not possible here to discuss the laws of each state in depth. Rather, the laws contain a significant number of widely shared features that deserve careful, if general, attention. And they contain, too, important assumptions about the nature of juvenile prostitution that can be discovered only by comparing provisions within, and across, states.

A chart following this text tracks, in somewhat simplified terms, certain major features of state laws respecting adult and child prostitution. (See Adult and Juvenile Prostitution Laws chart, pages 91-95.) Only careful study of the text of the laws themselves, and cases construing them, can produce reliable understanding of any one state's provisions. When viewed as a whole, however, the legislative enactments present a striking degree of consensus on several points: 1) the definition of *prostitution*; 2) the need to punish prostitution, especially in a public setting; 3) the special culpability of the pimp and procurer, particularly with regard to juvenile prostitutes; and 4) the privileged status of the patron, even the patron of very young prostitutes. In at least two other significant areas, by contrast—1) the age at which special protection for juveniles in prostitution ceases, and 2) the civil, remedial measures available to help such youths—no consensus appears. An overview of these points of general agreement and conflict is useful for understanding the context in which any particular state has developed its individual approach.

**Definition of Prostitution** The exact wording changes, but the basic legal meaning of *prostitution* is overwhelmingly constant among the states. Many states have used for a definition the simple phrase "to engage for hire" in sexual acts,<sup>279</sup> without further elaboration. Others have emphasized more the transfer of money, a fee, property, or even, in Tennessee, merely "something of value."<sup>280</sup> In either case the thrust of these statutes, which represent the vast majority of states, is clearly that prostitution is an *exchange* of money or property for sexual favors. A very few states dissent from this limitation and include in their definition not merely sex-for-value, but also "indiscriminate" or "licentious" intercourse.<sup>281</sup> And a small minority leave the term undefined.<sup>282</sup>

This near unanimity among the states about the meaning of prostitution is extremely helpful in developing national policies on the subject. Yet, the normal definition of prostitution is less than ideally effective in addressing the problem of sexually exploited *juveniles*. For it is clear that the formal monetary exchange so standard among adult prostitutes and their patrons is often irrelevant to children and adolescents on the street, who trade sex for a place to sleep, a meal, or other crisis needs. Most state statutes do not contain a definition of *prostitution* capable of capturing that reality and reaching the full range of sexual exploitation of children.

**Prohibition of Prostitution** Along with the strong agreement among states as to the meaning of prostitution stands a virtually unanimous agreement to outlaw it. A tiny number of states do not prohibit the act of prostitution itself, but only loitering and/or solicitation for prostitution.<sup>283</sup> Nevada allows certain rural counties to license regulated "houses of ill fame" but otherwise prohibits any solicitation for or promotion of prostitution.<sup>284</sup> Penalties, however, are uniformly

mild, with maximum potential incarceration usually set at six months or less, and fines under \$500.

Once again, however, the consensus among state lawmakers on adult prostitution does not seem to reflect much appreciation of the particular situation of juvenile prostitutes. In all but a handful of states minors are subject to the same penalties for prostitution as adults.<sup>285</sup> With far less control over the circumstances forcing them into prostitution, sexually exploited children and adolescents seem far less culpable, in the classic terms of criminal law, than their adult counterparts. Further, the failure to exempt them from full criminal sanctions produces at least two unfortunate side effects: 1) the young people involved become "labeled" as prostitutes far younger, and so have their options for escape reduced; and 2) they have less incentive to reveal their true ages to authorities. Although those sanctions undoubtedly do deter some youths from prostitution, the cost—particularly as compared to noncriminal intervention—seems extremely high.

**Promoting Juvenile Prostitution** With regard to those who procure children for purposes of placing them in prostitution, and the pimps who live off their earnings, it is difficult to imagine any social costs resulting from criminal sanctions. And, indeed, over forty states now have laws providing heightened, usually very severe penalties for such conduct. There have been some notable exceptions to this trend: In six states promotion of juvenile prostitution is not a felony.<sup>286</sup> But even in some states where no specific statute exists prohibiting the procuring or pimping of juveniles, the penalties for such conduct in general are severe.<sup>287</sup> On the whole, it is possible to say that this is the aspect of current state laws that most nearly corresponds with the special needs of juveniles in prostitution, yet prosecutions under these provisions seem to have been, unfortunately, rather rare.

**Patrons** Considering the severity with which most states have determined to treat procurers and pimps of juveniles, it is remarkable how little attention they have paid the patrons who actually have sexual contact with the youths involved. Only seven states have statutes providing special penalties for patrons of underage prostitutes, a fact not highly surprising in view of the fact that over twenty states impose no punishment at all on patrons.<sup>288</sup> And even those states that do prohibit engaging a prostitute generally apply only the smallest available penalties, sometimes only a small fine.

The result of this attitude is an extraordinary legal paradox. In only five states is the patron of a juvenile prostitute subject to greater punishment than the child exploited. In fully half the states he is actually subject to *less* punishment, and in the rest the penalties are equal—at least until the second or third offense, when prostitutes young or old are often subject to heightened penalties, but patrons never are.<sup>289</sup> Although in theory statutory rape laws could be used against patrons, in practice they are typically useless—because of defenses for mistake of age, or requirements that the young women have been of "previously chaste character."<sup>290</sup> Further, while the age limits set for statutory rape are based on the assumption that the sexual conduct may be fully consensual and not openly exploitive, the use of a young prostitute is quite a different act. In justice it may be said, then, that the preferential treatment accorded patrons of prostitutes is nowhere more evident than in the laws that wink even at their purchase of children.<sup>291</sup>

**Age** If the states are sharply divided over their approach to patrons, they are even more widely divergent in respect to the age at which special protection for juvenile prostitutes ceases—that is, in those states where it exists at all. Just under half the states set the age of protection at 18; a quarter set it at 16. Age 17 is used by several states, and Mississippi alone uses 14. Nor are the ages used necessarily consistent even with other laws in the same state. California sets its juvenile prostitution age limit at 16 but imposes penalties for statutory rape of girls until age 18.<sup>292</sup> Some states with low age limits or no juvenile prostitution statutes at all have nevertheless provided some theoretical protection to older teenagers in vague, seldom-used "endangering welfare of a minor" statutes.<sup>293</sup> Perhaps the most interesting finding to emerge from a survey of the state laws in this area is that three states—Nevada, New York, and Wyoming—have set age limits for juvenile prostitution laws that are *higher* than the legal age of majority. Nevada, indeed, uses the traditional age of majority, 21, while New York and Wyoming use 19. Now that the overwhelming majority of states have set the age for drinking at 21,<sup>294</sup> and some continue to use that same age as the end of parental support obligations,<sup>295</sup> the often vastly lower ages for juvenile prostitution seem at least arguably anomalous.



**Civil Remedies** The majority of the states rely almost exclusively on criminal law-enforcement to control prostitution, including that involving juveniles. A few, however, have acted to supplement this effort through providing civil remedies to local communities and even private citizens. The most popular such device is a statutory declaration that a building used regularly for prostitution is a "public nuisance" subject to abatement.<sup>296</sup> Tennessee law not only allows such abatements but declares any leases for a "house of ill fame" to be void, and provides for the cancellation of the chauffeurs licenses of anyone using a car to promote prostitution.<sup>297</sup>

A few states have, as well, undertaken measures more specifically addressed to the needs of prostitutes themselves. The most punitive of these approaches has been to mandate testing for sexually transmitted disease in persons convicted of prostitution.<sup>298</sup> (Mandatory testing of convicted patrons, unsurprisingly, has never been tried.) An effort to help children caught up in prostitution can be detected in the few state laws that include the placing or maintaining of a child in prostitution as part of the statutory definition of child abuse.<sup>299</sup> Most important of all, a handful of state legislatures have passed runaway and homeless youth acts to authorize and fund crisis services to the population most at risk of prostitution.<sup>300</sup> On the whole, however, state efforts to target and help young prostitutes have been infrequent and—considering the magnitude of the problem—inconsequential.<sup>301</sup>



## 5. Directions for Reform

But some moralist will ask, "How would you have us treat such women?" Treat them, sir, as human beings, actuated by the same passions as yourself; as susceptible beings, keenly sensitive of reproach; as injured beings, who have a claim upon your kindness; as outraged beings, who have a demand upon your justice. Lead them into a path by which they can escape from danger; protect the innocent from the snares which environ them on every side. And when this is done, pour the vials of your hottest wrath on those of your own sex whose machinations have blighted some of God's fairest created beings.

William Sanger, *The History of Prostitution* 643 (1858)

Recognition of the gap between law and reality, between statutory expressions of concern and real protection, is nowhere more vivid or startling than in respect to juvenile prostitution. The long history and the deep social roots of commercial sex make this breach comprehensible, but not acceptable. Where children and teenagers are caught up in prostitution, public apathy turns to outrage. Yet the stalemate over regulation of adult prostitution—the failure of all the “systems” of prostitution—constantly plagues attempts to turn that outrage into effective government action. Criminal laws against pimps of juveniles grow steadily more punitive,<sup>302</sup> yet prosecutions are few—understandably, given the difficulties of proof—and evidence of any decline in juvenile prostitution is nonexistent.

Increased activity against panderers and pimps is not, however, the only avenue available to lawmakers and enforcement officials toward protection of the young. The upsurge in governmental concern over juvenile prostitution may not have yet been effective in practice, but it has yielded one insight of extraordinary importance. Juveniles, at least, are victims, not perpetrators, of prostitution, whose involvement in “the life” is overwhelmingly unwilling, even if their entry into it is technically “consensual.”<sup>303</sup> Though still subject to the criminal law for their activities, young prostitutes now enjoy more understanding and sympathy than at any time in history.

When a teenage prostitute is perceived as victim rather than public enemy, new approaches to protecting them become readily apparent. With regard to purchase of *juveniles*, for example, patrons of prostitutes no longer seem to deserve the historic preferences accorded them by law and custom. The traditional age range for protecting juveniles from *commercial* sex seems to require consideration separate from that developed in regard to standards for *consenting* juvenile sex. The need for services as opposed to punishment for young prostitutes, finally, becomes far more obvious and politically imaginable. Whether any of these policy shifts actually occur, it is well worth examining the issues raised by each.

### Targeting Patrons

Focusing the efforts of law-enforcement on arresting the patrons of underage prostitutes rather than the prostitutes themselves has at least two strong arguments in its favor: 1) it seems, given the circumstances of the parties, more just; and 2) it is likely to be more effective in reducing the overall incidence of such prostitution. The first needs little more elaboration: In the areas of health alone, young prostitutes are subject to extraordinary risks of violence, pregnancy, and such occupation-related diseases as cervical cancer,<sup>304</sup> while patrons undergo only the substantial risk (fully shared by prostitutes) of sexually transmitted diseases. Patrons, moreover, have financial resources to seek therapy for sexual problems and are never (unlike many, if not most, young prostitutes) actually *coerced* into the sexual exchange. In a

post-Victorian, sexually revolutionized world, finally, it can no longer be said that the only available alternative to sex in marriage is sex in prostitution. What is more, extant information suggests strongly that law-enforcement directed at patrons is more *effective* than that directed at prostitutes. Jurisdictions that have experimented with such nontraditional tactics or simply an "even-handed" approach to patron and prostitute have encountered unexpected, even "devastating" reductions in observed levels of prostitution.<sup>305</sup> Those results hardly seem surprising in theory. Patrons have, after all, far more to lose from arrests than prostitutes, and far greater ability to change their circumstances. Research suggests that at least one half of potential patrons are highly sensitive to obstacles between them and the use of prostitutes—and so may be very easily discouraged by effective law-enforcement.<sup>306</sup> Young prostitutes have little choice about their life style, whether through the coercion of a pimp or the hard facts of survival on the street. Older, richer patrons have many options other than to abuse a child; stringent law-enforcement would almost certainly make those options far more attractive than they currently seem to be.

Yet, for all that, students of prostitution have usually branded patrons' laws "unworkable."<sup>307</sup> The very social position that puts customers at so much risk has been precisely what has given them the ability to avoid prosecution.<sup>308</sup> Further, arrests of customers, even more than prostitutes, require the use of decoys—tools currently unavailable in the area of juvenile prostitution, since undercover officers under age 18 are socially, if not legally, inconceivable.<sup>309</sup>

These objections to patron-focused law-enforcement are not minor, yet these do not seem, on balance, insuperable. No major school of thought, to begin with, has asserted that patrons of juvenile prostitutes are not far more *morally* culpable than the children they exploit. Social position and power may still enable patrons to escape prosecution regarding adult prostitution, and it is on the experience of penalties directed against patrons of *adults* that most wisdom on the effectiveness of patron statutes rests. But the fall of several Congressmen from office during the last decade, after their convictions of sexually exploiting young people, suggests that in the area of juvenile prostitution, power will carry far less weight. And finally, the difficulties of using decoys may be resolved if the age of protection for juveniles is raised in this area to 21.<sup>310</sup>

## Raising the Age of Protection

An upper age limit higher than 18 would provide important benefits to law-enforcement—most significantly, undercover officers could be used to expose procurers, pimps, and patrons of young prostitutes. As a result it seems highly likely that those involved in commercial sex would be far more careful of the ages of those they exploit. But aside from those benefits, does a higher age limit have a reasonable basis in available evidence?

The answer to that question must lie, in part, in the distinctive risks of commercial, as opposed to affectional or casual, sex. Those risks, as outlined fully above, are substantial: far greater likelihood of contracting disease, far greater exposure to violence and drugs, and apparently far greater chances of serious emotional damage. The 18-year-old youth in prostitution clearly must cope with a life, and most particularly with sexual contacts, far more dangerous than those of sexually promiscuous peers.

And it seems evident, too, that older teenagers confront that danger with substantially less maturity, and far fewer resources, than those even a few years older. Fully 40 percent of those aged 18–21 are still in school;<sup>311</sup> of those young adults not in school between one quarter and one third have no job.<sup>312</sup> Indeed, over 30 percent of 18- and 19-year-old youths not in college have no high school diploma<sup>313</sup> and so have little immediate hope of steady work. Extremely high numbers of older adolescents, not surprisingly, are literally homeless—forced out of homes or foster care on attaining legal adulthood, yet lacking any resources to cope with independent living.<sup>314</sup>

Worse, the maturity of these older teenagers in *sexual* matters is by no means fully developed. Thus, one careful study showed that 19-year-old, sexually active but never married women are no more likely than their 16-year-old counterparts to use contraceptives—nearly 40 percent of both groups said they did not with respect to their last intercourse.<sup>315</sup> One researcher despaired that adolescent use of contraceptives "approaches an almost random pattern."<sup>316</sup> Their handling of abortion suggests similar immaturity. Women aged 16–19 are almost twice as likely as women 25–29 to wait to seek an abortion until after the procedure becomes medically risky.<sup>317</sup> Even young women aged 20–24 are 25 percent more likely to wait until the

danger point—suggesting that maturity in this area develops slowly, not overnight at the legal age of majority.<sup>318</sup>

Prostitution is thus a particularly dangerous life style and form of sexual activity, and young people under 21 are an especially vulnerable, inexperienced population. It is inevitable that the legal capacity of this group to vote and to serve in the military will be pointed up as reason enough not to establish higher age limits for juvenile prostitution. Yet even those arguments lose much of their force when closely examined. The 18-20 age group voted in 1982 at a rate of only 40 percent of the national average and indeed at a rate of only 70 percent of those aged 21-24.<sup>319</sup> And those under age 21 are effectively excluded from positions as *officers* in the military; college degrees are required to be commissioned.<sup>320</sup>

The most cogent argument against higher age limits for juvenile prostitution laws may be, ultimately, a quite different one. Why, it has been asked, should poor young people, whose other options are so limited, be denied access to one avenue of employment that offers lucrative monetary rewards?<sup>321</sup> What else would homeless young men and women do to survive if prostitution were not available? While hardly an easy question, there nonetheless remains the certainty that life as a teenage prostitute is so destructive that it can thoroughly demolish any even slim hopes for a more constructive future.<sup>322</sup> And as Kathleen Barry and Lois Lee have pointed out, even in the short run prostitution is often no answer to poverty, for pimps "take all or almost all of the money earned by their prostitutes."<sup>323</sup>

The co-director of COYOTE, a national prostitutes' organization, who opposes sanctions on customers of juvenile prostitutes because it would leave these young people "in a worse economic position"<sup>324</sup> (thus supporting, incidentally, the belief that such sanctions would be effective) nevertheless admits: "Whatever the path of recruitment into prostitution, once there, most juveniles find the work devastating."<sup>325</sup> Two representatives of COYOTE appearing recently on national television strongly supported age 21 as appropriate for defining juvenile prostitution, one of them saying, "I wouldn't have been ready at age 21. . . Every rock has been unturned. Everything I deal with in my clients is something I have to look at in myself. Q: And you think 18 is too young to make that kind of . . . A: Yes."<sup>326</sup>

A higher age of protection, plus a focus on the patrons of young prostitutes, deserves urgent legislative attention. But if public outrage is at long last to be focused on the young, it must in all justice extend as well to the conditions which induce mere children to sell themselves. Outlawing sexual exploitation is supportable only if we seek to *prevent* it with the same energy.

## Social Service Programs

**Runaway and Homeless Youth Programs** As homeless and runaway teenagers are the group most vulnerable to involvement in prostitution, substantial expansion of federal and state runaway and homeless youth (RHY) crisis services seems likely to be a vital part of any attempt to prevent sexual exploitation. Existing RHY programs are successful and widely admired; they stand as a front-line resource for youths at risk. Among the crisis services it is crucial for them to provide are shelter, food, clothing, medical care, legal counseling, sympathetic but structured planning for the future, and family contact.

**Outreach Programs** Many youths caught up in prostitution know little of available crisis services, and even if they are aware that help exists, despair of trying it. Particularly in large urban areas, outreach thus becomes a crucial component of attempting to reach teenagers both before and after they turn to prostitution. Such programs need not be extremely large in scale, but they must be based on a sophisticated understanding of the patterns of prostitution in a particular city and on a flexible approach to searching for vulnerable children.

**Missing Children Programs** Parents of young people who turn to prostitution are, in many cases, their best hope and their worst fear. Families can provide stability and tenderness unavailable in even the best "long-term" programs, yet fear of returning home and facing parental shame and disapproval is part of why many teenagers remain in the streets. Through calming—and educating—parents, missing children's organizations can make reconciliation far easier. Further, such organizations can aid law-enforcement officials in the search for those youths at risk of or involved in prostitution.

The special ties of missing children's organizations to *both* parents and law-enforcement, indeed, make their potential contributions in this area extremely promising. Parents are often frustrated by a feeling of helplessness from pursuing a child who has fallen or drifted into prostitution. Police often see no value in attempting to help young prostitutes because their return home seems wholly unlikely. Missing children's organizations can provide help and encouragement to both parties, especially by educating parents about how to let concern for their child be known to law-enforcement officials and so encourage family reunification once the child is found. They can, in effect, cut through law-enforcement bureaucracies and focus attention on the needs of the children.

**Long-term Programs** Young prostitutes and homeless youths on the brink of prostitution will not, however, be helped substantially unless they receive more than "crisis" intervention. Any "solution" to their plight can only come through addressing the most fundamental of the obstacles they face: their exclusion from the economic mainstream of American life and their deeply imbedded psychological scars. Programs for disadvantaged youth generally assume the availability of shelter with a family or affordable independent housing; for many desperate teenagers, neither option exists. Where programs do embrace a residential component, as in the Job Corps, they may lack the emotional supports crucial to teenagers who have experienced substantial sexual abuse at home, on the street, or both.

Thus it is not surprising that the long-term programs which have targeted sexually exploited youths in the past have attempted to combine a stable residence with educational/vocational resources and, most important, strong relationship building. In the words of one successful counselor to young prostitutes, these youth are mainly "in search of caring."<sup>327</sup> Long-term programs that fail to provide real human affection for sexually exploited children can hope for little success. Advocates for such children must, in a fiscally gloomy climate, find a way to build not simply shelters and programs, but homes and families.<sup>328</sup>

## Decriminalization

For all the efforts directed at helping victims of sexual exploitation, the most controversial issue in this area is likely to remain whether or not the commission of prostitution by a juvenile ought to be a criminal act. It is clear beyond question that such children and adolescents are from every reasonable standpoint best described as victims, yet it is also clear that their activities help promote such social evils as disease, crime, and neighborhood deterioration. Contact with police would not be so negative an event for young prostitutes if it led them to special, long-term programs to help them—and if it did not create for them an indelible, deeply injurious criminal record. Treatment of prostitution as a "status offense" rather than a crime—even for young people beyond the normal age of juvenile court—would seem a useful area for legislative experimentation.

## Conclusion

Whether or not it is deemed legally criminal, however, the sale of physical intimacy by children and teenagers will remain a crime. It is a crime of American history that a society proclaiming human dignity has almost from its independence as a nation tolerated enormous sexual exploitation of the young. It is a crime of the American present that desperate teenagers, and even younger children, must face the physical and emotional terrors, the extreme risk of disease, and the suicidal despair of street prostitution. It is a blot on American—and international—law that juvenile prostitution has not been addressed with skill, care, and dispatch.

Yet no degree of tinkering with the law will by itself address the central problem facing young prostitutes: their utter isolation from mainstream society. That isolation cannot be fully ended even with the best efforts at improving services and care; public attitudes must change, too. Perhaps the stiffest challenge facing professionals, legislators, and advocates is simply to convince the public that children and teenagers caught up in prostitution are not living a glamorous fantasy at society's expense. They are in fact paying the price for the crimes of others, and they deserve no less than what William Sanger demanded over a century ago: "Treat them, sir, as human beings . . ."

## Notes to Child Prostitution (pages 47-77)

<sup>1</sup> *Second Philippic Against Antony*, in *Selected Works* 122 (M. Grant Trans. 1979). For information about ancient prostitution, see V. Bullough, *The History of Prostitution* 9-53 (1964); F. Henriques, *Prostitution and Society* (1962); J. Boswell, *Christianity, Social Tolerance and Homosexuality* (1981). The great work of William Sanger, *The History of Prostitution* (1858) remains valuable.

<sup>2</sup> The lack of evidence for the existence of substantial child prostitution in medieval Europe may in part stem from the vigorous opposition of the Church to the use of children as prostitutes—an attitude contrasting with the views of such Church fathers as St. Augustine, favoring the tolerance of adult prostitution. Boswell, *supra* note 1, at 143-44; Bullough, *supra* note 1, at 67-8, 107-16. In Venice, at least, child prostitution reappeared in the Renaissance. F. Henriques, *Prostitution in Europe and the Americas* 88 (1964).

<sup>3</sup> Henriques, *supra* note 1, at 43; Bullough, *supra* note 1, at 97-103.

<sup>4</sup> Bullough, *supra* note 1, at 75-77.

<sup>5</sup> H. Benjamin & R. Masters, *Prostitution and Morality* 62 (1965); L. Stone, *The Family, Sex and Marriage in England 1500-1800* 619-20 (1977).

<sup>6</sup> See A. Flexner, *Prostitution in Europe* (1914); J. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (1980); F. Finnegan, *Poverty and Prostitution: A Study of Victorian Prostitutes in York* (1979).

<sup>7</sup> A. J. B. Parent-Duchatelet, *De la Prostitution dans la Ville de Paris* 91-94 (3d ed. 1857). Parent-Duchatelet noted that prostitutes could freely falsify their ages, *Id.* at 95-96, making it likely that his data understates the extent of juvenile involvement.

<sup>8</sup> *Id.* at 312 ("... la prostitution est considérée [pour l'opinion publique] comme un delit; que celles qui l'exercent sont en dehors de la société; qu'elles ne peuvent en réclamer les droits, et que des mesures répressives particulières et tout exceptionnelles doivent étre employées contre elles." *Id.*)

<sup>9</sup> Walkowitz, *supra* note 6, at 21.

<sup>10</sup> Bullough, *supra* note 1, at 188-89; Henriques, *supra* note 1, at 230-49 (1965). Ruth Rosen, in *The Lost Sisterhood: Prostitution in America 1900-1918* (1982), has surmised the existence of some Colonial prostitution on the basis of laws passed against brothels and nightwalking. *Id.* at 2. That evidence seems equivocal at best in view of the extraordinary paucity of contemporaneous evidence of prostitution in societies that subjected adulterers and fornicators to extremes of public censure.

<sup>11</sup> Sanger, *supra* note 1, at 372-85; Benjamin & Masters, *supra* note 5, at 69-73.

<sup>12</sup> Henriques, *supra* note 1, at 249-63.

<sup>13</sup> Bullough, *supra* note 1, at 187-89; Henriques, *supra* note 1, at 240-45.

<sup>14</sup> A. Rose, *Storyville, New Orleans* 7 (1970).

<sup>15</sup> Bullough, *supra* note 1, at 192-93; L. H. Whiteaker, *Moral Reform and Prostitution in New York City, 1830-1860* 50-51 (Ph.D. Diss. 1977).

<sup>16</sup> Bullough, *supra* note 1, at 190-91; Whiteaker, *supra* note 15, at 67-68.

<sup>17</sup> Whiteaker, *supra* note 15, at 58-59, 107-15. Magdalen Societies, devoted generally to the establishment of "asylums" for young prostitutes, were not a novelty: A previous group by that name had operated briefly in New York up to 1818, modeled in part on the work of Magdalen Hospital in London. *Id.* at 34-45.

<sup>18</sup> *Id.* at 116-19.

<sup>19</sup> Sanger, *supra* note 1, at 452-53.

<sup>20</sup> *Id.* at 454. See A. Butler, *Daughters of Joy, Sisters of Misery: Prostitutes in the American West 1865-90* 15 (1985) ("The general profile of the frontier prostitute is one that is notable for its youthful element." Thus, 6 of 12 prostitutes in one brothel in Atchison, Kansas, were between the ages of 15 and 19).

<sup>21</sup> *Id.* at 70.

<sup>22</sup> *Id.* at 488.

<sup>23</sup> *Id.* at 488, 508, 516.

<sup>24</sup> *Id.* at 70.

<sup>25</sup> *Id.* at 455, 481. William Acton, for one, strongly disagreed (in his review of prostitution in England) with Sanger's belief that prostitutes suffered extremely early deaths, W. Acton, *Prostitution* 66 (1958) (1st ed. 1858). Unfortunately, Acton's scholarly remove from his subject prevented him from the sort of close observations of prostitutes and their life that informed Sanger's work. Acton's detachment at times flared into a snobbery as virulent as any that Dickens ever chronicled: Thus, in noting the "extreme youth" of many London streetwalkers, he went on to describe them as "[springing] from the lowest dregs of the population"; their plight was "an all but natural consequence of promiscuous herding, that mainspring of corruption among our lower orders." *Id.* at 136. It may be, however, that social conditions in mid-nineteenth century New York, where a rapidly growing population created horrible slums and rampant crime, differed enough from Victorian London that both commentators were correct.

<sup>26</sup> Sanger, *supra* note 1, at 453.

<sup>27</sup> Whiteaker, *supra* note 15, at 69.

<sup>28</sup> The Vice Commission of Chicago, *The Social Evil in Chicago* 169-72 (1970) (1st ed. 1911).

<sup>29</sup> See, e.g., the stories of "Violet" and "Carrie" in A. Rose, *supra* note 14, at 148-50, 159.

<sup>30</sup> Butler, *supra* note 20, at 16.

<sup>31</sup> See Rosen, *supra* note 10, at 147-61; Finnegan, *supra* note 6, at 32; Walkowitz, *supra* note 6, at 19; Flexner, *supra* note 6, at 77-81.

- <sup>32</sup> Ruth Rosen's careful study of the evidence from the period 1900–1918 led her to the conclusion that “despite the sensationalism and the necessary qualifications, . . . a trade in women, however small, existed. . . .” Rosen, *supra* note 10, at 135. In her review of an array of vice commission reports from various cities she found that 7.5 percent of the prostitutes interviewed stated that coercion—“white slavery”—was the cause of their entry into prostitution. *Id.* at 134.
- <sup>33</sup> See Rosen, *supra* note 120, at 86–111.
- <sup>34</sup> See Rose, *supra* note 14, at 168–169; J. Wunsch, *Prostitution and Public Policy: From Regulation to Suppression, 1885–1920* 60–90 (Ph.D. Diss. 1976).
- <sup>35</sup> Between 1912 and 1916 some 200 American cities closed their vice districts. Wunsch, *supra* note 34, at 152. See M. Connelly, *The Response to Prostitution in the Progressive Era* (1982) for the best description of the anti-prostitution crusades.
- <sup>36</sup> Wunsch, *supra* note 34, at 156.
- <sup>37</sup> See Rosen, *supra* note 10, at 69–85, for a description of the increased commercialization and large-scale organization of prostitution nationally, a process also described by A. Rose in his description of Storyville, *supra* note 14, at 29–30. See also Walkowitz, *supra* note 6, at 212, for a discussion of the parallel phenomenon in England.
- <sup>38</sup> This analogy is explicitly discussed by Rosen, *supra* note 10, at 85.
- <sup>39</sup> Connelly, *supra* note 35, at 153.
- <sup>40</sup> This trend is discussed convincingly by Judith Walkowitz, *supra* note 6, at 212–213, with regard to English prostitution.
- <sup>41</sup> Henriques, *supra* note 1, at 320.
- <sup>42</sup> For an excellent discussion of the approach of the medical and educational establishments to intelligence testing of prostitutes in the Progressive Era, see Connelly, *supra* note 35, at 41–44.
- <sup>43</sup> See H.M. Hyde, *The Cleveland Street Scandal* (1976).
- <sup>44</sup> See Urban Rural Systems Associates, *Report on Adolescent Male Prostitution* 2–5 (1982) (hereinafter the *URSA Study*). For a description of juvenile male prostitution in a small American city in the 1950s and the hysteria that resulted from its collision with conservative sexual attitudes, see J. Gerassi, *The Boys of Boise* (1966).
- <sup>45</sup> W. Butts, “Boy Prostitutes of the Metropolis,” 8 *J. Clinical Psychopathology* 673 (1947).
- <sup>46</sup> See, e.g., M. Craft, “Boy Prostitutes and Their Fate” 112 *Br. J. Psychiatry* 1111 (1966); K. Ginsburg, “The ‘Meat-Rack’: A Study of the Male Homosexual Prostitute” 21 *Am. J. Psychotherapy* 170 (1967); P. Gandy and R. Deisher, “Young Male Prostitutes: The Physician’s Role in Social Rehabilitation,” 212 *J. Am. Med. Assn.* 1661 (1970).
- <sup>47</sup> U.S. Dept. of Justice, *Uniform Crime Reports*. For limitations on the usefulness of police data in this area, see note 51, *infra*.
- <sup>48</sup> *Id.* (Table 30) (1985).
- <sup>49</sup> See D. Miller, *Runaways—Illegal Aliens in Their Own Land* 17 (1980).
- <sup>50</sup> *Report to the Chairman of the Subcomm. on Select Education of the House Comm. on Education and Labor, HRD-82-64* 4–5 (1982) (hereinafter the *GAO Report*).
- <sup>51</sup> See V. Bullough, “Problems and Methods for Research in Prostitution and the Behavioral Sciences” 1 *J. Hist. Behavioral Sc.* 244–246 (1965). Professor Bullough points out as well the severe limitations of figures based on registration rolls of prostitutes in countries where prostitution is regulated and where enormous numbers of prostitutes invariably fail to register. *Id.* at 244. See Flexner, *supra* note 6, at 152–155. In assessing police data on juvenile prostitutes it is critical to note that underage prostitutes generally lie about their age when arrested to avoid involvement with the juvenile justice system. L. Lee, *The Social World of the Female Prostitute in Los Angeles* 51 (Ph.D. Diss. 1982); *GAO Report, supra* note 50, at 41.
- <sup>52</sup> The most egregious example of journalists and credentialed experts collaborating to produce nonsensical numbers dates from 1977, when the estimate of 300,000 boy prostitutes was published in R. Lloyd, *For Money or Love: Boy Prostitution in America* (1977). A provider of services to sexually exploited children doubled the figure to include girls, doubled it again after estimating that only half of the number of true prostitutes is known, and doubled it again to include 16- and 17-year-old youths, for a grand total of 2.4 million—or over 15 percent of the entire U. S. population aged 14–17. *GAO Report, supra* note 50, at 4; *Statistical Abstract of the U.S.* 27 (1986). Even within a single jurisdiction a sampling of expert opinion is likely to produce anomalous results: Thus, the *GAO Study* in 1982 found that in New York City “[s]ocial service agencies do not specifically record any prostitution history of clients,” *id.* at 41, but estimates of the percentage of runaways in New York City who engage in prostitution range from 30 percent to 90 percent. N.Y.C. Human Resources Administration, *Juvenile Prostitution: A Suggested Program Response* 5 (1983) (the *HRA Report*).
- <sup>53</sup> In his discussion of family life in England during the eighteenth and nineteenth centuries Professor Laurence Stone has noted that the rise of prostitution may have “helped preserve the virginity” of the vast majority of girls while causing “the creation of an underclass of an abject group of women serving a primarily middle-class market, who had little current happiness and even less rosy prospects.” *The Family, Sex and Marriage* 619–620 (1977).
- <sup>54</sup> That estimate is based on the relationship between the numbers of homeless and runaway youths and prostitution. Relatively solid statistical evidence suggests that about 1 million children each year run away or become homeless. U.S. Dept. of Health and Human Services, Office of Inspector General, *Runaway and Homeless Youth National Program Inspection* 4–5 (1983) (the *Inspector General Report*); Opinion Research Corporation, *National Statistical Survey of Runaway Youth* (1976); *Homeless Youth: Report of Subcomm. on the Constitution, Comm. on the Judiciary, U.S. Senate, 97th Cong., 2nd Sess.* (1980). On the whole those involved with serving those youths believe that 25 percent of such youth become hard-core street youth, of whom half engage in prostitution, *Inspector General Report*, at 2, which would yield 125,000 juveniles annually becoming involved. After considering that perhaps one third of all juvenile prostitutes are not runaways, D. K. Weisberg, *Children of the Night: A Study of Adolescent Prostitution* 71, 100 (1985); that some children are involved in “sex ring” prostitution at a very young age, A. Burgess, *Child Pornography and Sex Rings* 78 (1984); and that some studies of runaway youth have indicated that 30 percent or more admit to involvement in prostitution, see, e.g., J. Rabun, “Combating Child Pornography and Prostitution: One County’s Approach,” in Burgess,

*supra* this note, at 187, 196; it seems reasonable to propose 300,000 as the upper boundary for a national incidence figure.

<sup>55</sup> M. Gilbert & A. Pines, "Early Sexual Exploitation as an Influence in Prostitution," 28 *Social Work* 285 (N=200).

<sup>56</sup> S. Harlan *et al.*, *Male and Female Adolescent Prostitution: Huckleberry House Sexual Minority Youth Services Project* (1981) (*the Huckleberry Study*) (N=60); Enablers, Inc., *Juvenile Prostitution in Minnesota* (1981) (*the Enablers Study*) (N=77).

<sup>57</sup> J. Rabun, *supra* note 54 (N=87); J. James, *Entrance into Juvenile Prostitution: Final Report to the National Institute of Mental Health* (1980) Grant No. MH 29968 (N=136) (hereinafter *Entrance into Female Juvenile Prostitution.*); D. Gray, "Teenage Prostitution," in *Crime in Society* 788 (Savitz & Johnson eds. 1979), reprinted from "Turning Out: A Study in Juvenile Prostitution," 1 *Urban Life and Culture* 401 (1973); J. James & J. Meyerding, Early Sexual Experience as a Factor in Prostitution, 7 *Arch. Sexual Behavior* (1977) (N=136).

<sup>58</sup> *Sexual Offenses Against Children: Report of the Comm. on Sexual Offenses Against Children and Youths Appointed by the Minister of Justice and Attorney General of Canada* (1984) (*the Badgley Report*) (N=229); Delancey Street Foundation, Inc., *Sexual Assault of Prostitutes*, Nat'l Inst. of Mental Health (1982) (*the Delancey Study*) (N=200); D. Bracey, "Baby Pros": Preliminary Profits of Juvenile Prostitutes (1979) (N=32); J. James and D. Boyer, *Entrance into Juvenile Prostitution: Final Report on Male Prostitution to National Institute of Mental Health* (1982) (Grant No. MH 29968) (N=47), 23 of whom were contacted on the street, and 24 of whom were contacted in detention and elsewhere) (hereinafter *Entrance into Male Juvenile Prostitution*).

<sup>59</sup> Urban Rural Systems Associates, *supra* note 44 (N=79). This report was used as the basis of the findings presented in Weisberg, *supra* note 54.

<sup>60</sup> B. Cohen, *Deviant Street Networks* (1980) (a study of adult street prostitution).

<sup>61</sup> Interviewing only those prostitutes who present themselves for help or are arrested has substantial dangers of limiting the persons studied to those with characteristics likely to lead them into contact with the "system," as well as limiting the settings where they are interviewed to those where there may be a real incentive to lie. Interviewing "on the street" risks missing young prostitutes who work out of call services or in brothels. Retrospective interviewing adds to many of these problems the element of faulty memory. Compiling "profiles" of young prostitutes supplied from program records of service providers is perhaps the most dubious approach of all, for it contains in it not only the unreliability of interviewing by a service provider but also the potentially biased decision of the programs involved as to what constitutes "typical" young prostitutes. Simple observation as the basis for study is, of course, invaluable, but in this area, where so many findings are counterintuitive, it is difficult to accept easily the perceptions of middle-class observers of a distinctly marginal activity. See M. Benjamin, *Juvenile Prostitution: A Portrait of "the Life,"* Ministry of Community and Social Services, Toronto 1-7, 16-19 (1985); C. Winick & P. Kinsie, *The Lively Commerce* 38 (1971); Bullough, *supra* note 51. For a number of reasons—the large size of its sample, the wide geographical area surveyed, and the use of on-the-street interviewing with "snowballing" access to juvenile prostitutes known to those already interviewed—the *Badgley Report*, *supra* note 58, seems at present clearly the strongest of the studies published on methodological grounds. As a Canadian study, unfortunately, it can be applied to the American scene only with some caution. Among the American studies the *Huckleberry Study*, *supra* note 56, is particularly noteworthy because it contains first-hand responses from both female and male juvenile prostitutes, matched against a carefully selected control group of non-prostitutes seeking services from the same program. *The Delancey Study*, *supra* note 58, has the advantage of a large sample of prostitutes contacted on the street, but the drawback of depending considerably on retrospective interviewing of former prostitutes.

<sup>62</sup> What follows is of necessity a highly compressed survey of available information on juvenile prostitution. For the best survey and analysis of the literature in this area published to date, see Weisberg, *supra* note 54, *passim*.

<sup>63</sup> Burgess, *supra* note 54, at 72.

<sup>64</sup> Weisberg, *supra* note 54, at 153; *Huckleberry Study*, *supra* note 56, at 7; *Badgley Report*, *supra* note 58, at 970.

<sup>65</sup> See *Huckleberry Study*, *supra* note 56, at 7 (25 percent of juvenile prostitutes being black in San Francisco with an 8.7 percent black population); *Enablers Study*, *supra* note 56, at 18 (12.1 percent being black in Minneapolis with a 2.3 percent black population).

<sup>66</sup> *Badgley Report*, *supra* note 58, at 973-75; *Huckleberry Study*, *supra* note 56, at 16-19; *Enablers Study*, *supra* note 56, at 47; *Delancey Study*, *supra* note 58, at 15.

<sup>67</sup> Weisberg, *supra* note 54, at 158; *Badgley Report*, *supra* note 58, at 1007.

<sup>68</sup> Weisberg, *supra* note 54, at 44-45 (males, 64 percent from broken, reconstituted, or foster homes); *Enablers Study*, *supra* note 56, at 22 (females, 67 percent); *Huckleberry Study*, *supra* note 56, at 11-16 (females, 70 percent; males, 70 percent); Bracey, *supra* note 58, at 40. But see *Badgley Report*, *supra* note 58, at 971 (males/females, only 48.9 percent from broken homes).

<sup>69</sup> Weisberg, *supra* note 54, at 153-54; *Delancey Study*, *supra* note 58, at 12; *Badgley Report*, *supra* note 58, at 972-973.

<sup>70</sup> *Huckleberry Study*, *supra* note 56, at 12, 15, 19, 21; *Delancey Study*, *supra* note 58, at 12-13; *Enablers Study*, *supra* note 56, at 22; Weisberg, *supra* note 54, at 46-50.

<sup>71</sup> *Delancey Study*, *supra* note 58, at 12.

<sup>72</sup> *Huckleberry Study*, *supra* note 56, at 11, 14 (males, 50 percent out of state; females, 40 percent); Bracey, *supra* note 58, at 14-19 (50 percent); *Delancey Report*, *supra* note 58, at 12 (23 percent). But see *Enablers Study*, *supra* note 56, at 25 (18.2 percent).

<sup>73</sup> *Enablers Study*, *supra* note 56, at 80 (only 35 percent said they "never travel" on "business").

<sup>74</sup> *Huckleberry Study*, *supra* note 56, at 25-27; Weisberg, *supra* note 54, at 75; *Enablers Study*, *supra* note 56, at 48.

<sup>75</sup> *Delancey Study*, *supra* note 58, at 16.

<sup>76</sup> *Huckleberry Study*, *supra* note 56, at 24. See also *Delancey Study*, *supra* note 58, at 15 (44 percent had attempted suicide previously; another 27 percent had tried to harm themselves in some other way).



<sup>77</sup> *Huckleberry Study*, *supra* note 56, at 34; *Badgley Report*, *supra* note 58, at 992-993. *But see Enablers Study*, *supra* note 56 (only 5 percent forced, but "situation not clear" in 10 percent of the cases).

<sup>78</sup> *Huckleberry Study*, *supra* note 56, at 31-32; Weisberg, *supra* note 54, at 71; *Enablers Study*, *supra* note 56, at 52; *Badgley Report*, *supra* note 58, at 980-982; *Delancey Study*, *supra* note 58, at 15.

<sup>79</sup> Child labor laws, while loosely enforced in most areas of the country, usually place severe restrictions on the employment of children under age 16, and sometimes up to age 18. *See* N.Y. Labor Law, §§130-140 (1985 Supp.). The unemployment rate in 1984 for persons aged 16 to 19 ranged from 16.0 percent for whites to 42.7 percent for blacks. *Statistical Abstract of the United States* 406 (1986).

<sup>80</sup> *Huckleberry Study*, *supra* note 56, at 31-32, 34. Other studies, while not giving so much emphasis to outright destitution among the children studied, consistently find material rewards to be virtually the only significant reason given by youths for their entry into prostitution. *See* Weisberg, *supra* note 54, at 56, 71; *Enablers Study*, *supra* note 56, at 55-56; *Badgley Report*, *supra* note 58, at 991.

<sup>81</sup> *See, e.g.,* Gilbert & Pines, *supra* note 55; James & Meyerding, *supra* note 57.

<sup>82</sup> *Compare Entrance into Male Juvenile Prostitution*, *supra* note 58, at 14 (early sexual victimization as cause), with Urban Rural Systems Assoc., *Adolescent Male Prostitution, Pornography and Other Forms of Sexual Exploitation: Report Submitted to Youth Development Bureau*, U.S. Dept. of Health and Human Services, Contract #HEW 105-79-1201 (1982) (prostitution seen by most young male hustlers as "a legitimate component of the attitudes about sex, love, self-expression, and relationships that characterize the gay male subculture," *id.* at 14).

<sup>83</sup> *Badgley Report*, *supra* note 58, at 978.

<sup>84</sup> *Id.* at 977-980; *Huckleberry Study*, *supra* note 56, at 19.

<sup>85</sup> *Badgley Report*, *supra* note 58, at 992.

<sup>86</sup> *See* Ginsburg, *supra* note 46.

<sup>87</sup> Weisberg, *supra* note 54, at 61; *Badgley Report*, *supra* note 58, at 1013-1014.

<sup>88</sup> *See* Cohen, *supra* note 60, at 111-138.

<sup>89</sup> *Id.* at 60-66. *Badgley Report*, *supra* note 58, at 1051.

<sup>90</sup> Cohen, *supra* note 60, at 63-65; *Badgley Report*, *supra* note 58, at 1054-1056.

<sup>91</sup> *Id.* at 1052-1053.

<sup>92</sup> *Id.* at 1051.

<sup>93</sup> *Id.* at 1055.

<sup>94</sup> *Entrance into Male Juvenile Prostitution*, *supra* note 58, at 57.

<sup>95</sup> Urban Rural Systems Assoc., *Adolescent Prostitution: A Study of Sexual Exploitation, Etiological Factors, and Runaway Behavior with a Focus on Adolescent Male Prostitutes, Executive Summary 7* (1982) (Contract # HEW 105-79-1201 for U. S. Dept. of Health and Human Services). This report is based on "profiles" of hustlers provided by service providers; *see* note 61, *supra*, for a description of this method.

<sup>96</sup> *Badgley Report*, *supra* note 58, at 1198-1199.

<sup>97</sup> *Id.* at 1198.

<sup>98</sup> M. Janus *et al.*, "Youth Prostitution," in *Child Pornography and Sex Rings* 127, 139 (A. Burgess ed. 1984) (75 percent of young hustlers had participated in pornography); J. Rabun, *supra* note 54, at 196 (37 percent).

<sup>99</sup> *URSA Study*, *supra* note 44, at 84; reprinted in expanded form in Weisberg, *supra* note 54, at 68-69.

<sup>100</sup> In sex rings using small children for commercial child pornography, a substantial risk correspondingly exists that they will also be used in prostitution. A. Burgess, *supra* note 54, at 78.

<sup>101</sup> *See e.g.,* Parent-Duchatelet, *supra* note 7, at 150-168.

<sup>102</sup> M. Sacotte, *La Prostitution* 143-144 (1959); Winick & Kinsie, *supra* note 61, at 109-120; Lee, *supra* note 51, at 128-188; Cohen, *supra* note 60, at 55-59.

<sup>103</sup> *See* Bracy, *supra* note 58, at 31-39 (New York); *Badgley Report*, *supra* note 58, 1057-1076; *Delancey Study*, *supra* note 58, at 16.

<sup>104</sup> *Entrance into Male Juvenile Prostitution*, *supra* note 58, at 117 (6.4 percent of young male prostitutes have had pimp, while 49 percent have had "sugar daddy"). Very young male prostitutes, particularly those who are prepubescent and involved in "sex rings," are "pimped" occasionally in the usual sense of the word. *See United States v. Garrett*, 720 F.2d 705 (D. C. Cir. 1983) (defendant convicted of providing 12-year-old boy to FBI undercover agent for payment of \$300—the boy himself to receive \$20 for sexual services); Burgess, *supra* note 54, *passim*. A number of young male street hustlers do develop regular relationships with older men—"sugar daddies"—that are brutally exploitive but fall short of a true "pimp-prostitute" bond. R. Deisher, *et al.*, "The Adolescent Female and Male Prostitute," 11:10 *Pediatric Annals* 819, 823 (1982). For a graphic description of such a relationship, *see* the recent novel by P. Rogers, *Saul's Book* (1983).

<sup>105</sup> With regard to girls, *see* Lee, *supra* note 51, at 137-138 (99 percent of all female prostitutes in Los Angeles have pimps); *Badgley Report*, *supra* note 58, at 1062 (between one half and three quarters); Bracey, *supra* note 58, at 33 (90 percent, most of whom "insisted that it was impossible for anyone, especially a juvenile, to work the streets without a pimp").

<sup>106</sup> *See* *Badgley Report*, *supra* note 58, at 990-992; Lee, *supra* note 51, at 123-127; Gray, *supra* note 57, at 794; Bracey, *supra* note 58, at 33-34. Other prostitutes, themselves usually working for pimps, are an extremely important group in "recruiting" girls for prostitution under the control of their pimp. Bracey, *supra* note 58, at 20-24.

<sup>107</sup> *See* *Delancey Study*, *supra* note 58, at 16 (41 percent of girls "stated there are absolutely no advantages in having a pimp"); Lee, *supra* note 51, at 139-141 (little protection actually offered by pimp).

<sup>108</sup> *Enablers Study*, *supra* note 56, at 70; Lee, *supra* note 51, at 139; *Badgley Report*, *supra* note 58, at 1059.

- <sup>109</sup> *Enablers Study*, *supra* note 56, at 70 (most of girls beaten); *Delancey Study*, *supra* note 58, at 16 (two thirds); Bracey, *supra* note 58, at 37 (20 of 23).
- <sup>110</sup> Winick & Kinsie, *supra* note 61, at 110–111; Bracey, *supra* note 58, at 35–36; J. James, "Motivations for Entrance into Prostitution," in *The Female Offender* (L. Crites ed. 1976).
- <sup>111</sup> Thus, in the *Delancey Study*, *supra* note 58, at 16, only 4 percent of the girls interviewed "described the pimp as someone they loved or cared about emotionally." The *Enablers Study*, *supra* note 56, at 69–70, found the pimp-prostitute relationship to be extremely transient, with 62 percent of such relationships lasting three months or less. The most frequent descriptions of a pimp given by the girls in the latter study were "someone who has women working for him"; "someone who is out for money"; "the person who gets all the money"; and "the person who beats his women." *Id.* at 69.
- <sup>112</sup> Lois Lee found, *supra* note 51, at 136–138, that prostitutes "must have pimps in order to obtain access to the streets," and that the "protection offered by a pimp is not protection from law-enforcement or customers, but from other pimps." *Accord*, *Badgley Report*, *supra* note 58, at 1058.
- <sup>113</sup> *Badgley Report*, *supra* note 58, at 1061.
- <sup>114</sup> *Id.* at 1063–064; Cohen, *supra* note 60, at 55–60.
- <sup>115</sup> *Badgley Report*, *supra* note 58, at 1062–1063; Cohen, *supra* note 60, at 55–60.
- <sup>116</sup> Cohen, *supra* note 60, at 56.
- <sup>117</sup> Bracey, *supra* note 58, at 20–24; Lee, *supra* note 51, at 138–139.
- <sup>118</sup> Lee, *supra* note 51, at 138; Winick & Kinsie, *supra* note 61, at 119.
- <sup>119</sup> See *Badgley Report*, *supra* note 58, at 1057–1058 (fear of severe punishment if information revealed); Bracey, *supra* note 58, at 27 (threats).
- <sup>120</sup> Cohen, *supra* note 60, at 59; *Delancey Study*, *supra* note 58, at 16.
- <sup>121</sup> In 1984 New York City police made 3,301 arrests (90 percent female) for prostitution and 13,113 arrests (90 percent female) for loitering for prostitution. In that year only 162 arrests (all but 2, males) were made for patronizing a prostitute under N.Y. Penal Code §§230.03, 230.05. For promoting prostitution—i.e., pimping, running a brothel, or otherwise living off the proceeds of another in prostitution—the police made but 119 arrests, only 68 of them males, and only 9 for promoting prostitution of a minor under N.Y. Penal Code §§230.25(2), 230.30(2), and 230.32. An additional 290 arrests were made for loitering to promote prostitution, a misdemeanor (N.Y. Penal Code § 240.37), but only 13 of those arrests were of males. Thus only 81 male pimps were arrested in the entire city during 1984—half of the arrests of patrons, and less than 1 percent of the arrests of women for prostitution offenses. National figures in this area are, unfortunately, unavailable.
- <sup>122</sup> *Enablers Study*, *supra* note 56, at 74; *Delancey Study*, *supra* note 58, at 16; *Badgley Report*, *supra* note 58, at 1069.
- <sup>123</sup> *Badgley Report*, *supra* note 58, at 1026; *Enablers Study*, *supra* note 56, at 77. See R. Leith, *The Prostitute Murders* (1983) (account of brutal murder, kidnapping, and/or torture of New York prostitutes by a customer from 1974 to 1979).
- <sup>124</sup> *Enablers Study*, *supra* note 56, at 77 (28.1 percent of prostitutes under age 20 abused by john three times or more).
- <sup>125</sup> *Badgley Report*, *supra* note 58, at 1069 (21.4 percent of juvenile male prostitutes assaulted by john, 4.8 percent by pimp, 10.7 percent by police, and 13.1 percent by "breeder/queer-basher").
- <sup>126</sup> *Delancey Study*, *supra* note 58, at 16.
- <sup>127</sup> *Id.* at 17.
- <sup>128</sup> *Id.* at 18.
- <sup>129</sup> *Enablers Study*, *supra* note 56, at 85; *Badgley Report*, *supra* note 58, at 1024; Weisberg, *supra* note 54, at 167.
- <sup>130</sup> *Enablers Study*, *supra* note 56, at 86. See also *Badgley Report*, *supra* note 58, at 1024 (46.4 percent of juvenile male, and 13.8 percent of juvenile female prostitutes did not require johns to use condoms).
- <sup>131</sup> B. Donovan, "Gonorrhea in a Sydney House of Prostitution," 140 *Med. J. Australia* 268 (1984). For a commentary on the (underreported) importance of contemporary prostitution as a conduit of sexually transmitted diseases, see W. Darrow, "Prostitution and Sexually Transmitted Diseases," in *Sexually Transmitted Diseases* 109 (K. Holmes ed. 1984).
- <sup>132</sup> Deisher, *supra* note 104, at 820, 824–25.
- <sup>133</sup> *Id.* at 825; *Badgley Report*, *supra* note 58, at 1024.
- <sup>134</sup> See Kreiss, et al., "AIDS Virus Infection in Nairobi Prostitutes," 314 *N. Engl. J. Med.* 414 (1986) (and studies therein) (majority of female prostitutes in some parts of Africa infected); W. Haseltine, Letter to Editor, 314 *N. Engl. J. Med.* 55 (1986) (20 percent of West German prostitutes positive for AIDS antibodies); D. Cooper and A. Dobbs, "AIDS and Prostitutes," 145 (1) *Med. J. Australia* 55 (1986) (case history of transmission of AIDS to patron by West German prostitute).
- <sup>135</sup> See K. Leishman, "Heterosexuals and AIDS," *The Atlantic Monthly* 41 (Feb. 1987); J. Goedert, "What is Safe Sex?," 316 *N. Eng. J. Med.* 1339 (1987).
- <sup>136</sup> J. Cohen, et al., "Antibody to Human Immunodeficiency Virus in Female Prostitutes," 36 *Morbidity & Mortality Rep.* 157, 158–59 (1987). IV-Drug use is an especially important risk factory for prostitutes in regard to AIDS. *Id.* at 159.
- <sup>137</sup> *Id.* at 159.
- <sup>138</sup> *Enablers Study*, *supra* note 56, at 85.
- <sup>139</sup> B. Donovan, "Medico-Social Aspects of a House of Prostitution," 140 *Med. J. Australia*, 272, 275 (1984).
- <sup>140</sup> Lee, *supra* note 51, at 121.
- <sup>141</sup> *Id.* at 117.
- <sup>142</sup> Deisher, *supra* note 104, at 825.
- <sup>143</sup> *Id.* at 825; Bracey, *supra* note 58, at 63.
- <sup>144</sup> *Huckleberry Study*, *supra* note 56, at 24–25.

- <sup>145</sup> *Delancey Study*, *supra* note 58, at 19.
- <sup>146</sup> *Huckleberry Study*, *supra* note 56, at 32, 34 (55 percent of males and 46 percent of females felt prostitution entirely negative experience); *Badgley Report*, *supra* note 58, at 1035-1036 (14 percent would not choose to engage in prostitution if they could do it over again).
- <sup>147</sup> Weisberg, *supra* note 54, at 167-168.
- <sup>148</sup> *Enablers Study*, *supra* note 56, at 89-90 (83 percent use drugs, 37 percent have been chemically dependent); Weisberg, *supra* note 54, at 58 (72 percent of juvenile male prostitutes use drugs); *Badgley Report*, *supra* note 58, at 1021 (94 percent of males, 64 percent of females use drugs; 51 percent of males, 29 percent of females were "frequent or heavy" users). *But see* Bracey, *supra* note 58, at 53 (finding "surprisingly little" relationship between drug use and juvenile prostitution in New York City, but citing no specific proportion of 23 subjects who denied excessive substance abuse).
- <sup>149</sup> *Id.* at 1021; *Enablers Study*, *supra* note 56, at 90.
- <sup>150</sup> P. Goldstein, *Prostitution and Drugs* 66 (1979). *See also* Cohen, *supra* note 136, at 159 (half of prostitutes in National AIDS Study admitted using IV drugs). There is some debate over whether prostitution is a "cause" of drug use, or drug use a "cause" of prostitution. Goldstein, *supra*, at 91. The best answer seems to be that the relationship is highly complex and "synergistic," varying strongly by the type of prostitution in question and the type of drug.
- <sup>151</sup> Goldstein, *id.* at 112-113, argues that madams and pimps strongly discourage drug use by prostitutes. While it seems to be true that most prostitutes addicted to drugs began their abuse prior to entering prostitution, *Delancey Study*, *supra* note 58, at 16, it is also clear that as indicated in note 148, *supra*, the vast majority use drugs extensively during prostitution as well. As most prostitutes have pimps, *see* note 105, *supra*, either the influence of the pimps in this area is negligible (in marked contrast to their influence in virtually every other aspect of their girls' lives) or Mr. Goldstein's sources on the attitudes of pimps were sadly mistaken. *Compare* *Badgley Report*, *supra* note 58, at 1058-1066 ("once a pimp had formed an association with a girl, he was likely to supply her with drugs in order to maintain her dependence upon him"; *id.* at 1058), *with* Bracey, *supra* note 58, at 54 (pimps interviewed were "unanimous in insisting that a good pimp does not need drugs to control young prostitutes, emotional control combined with threats of violence were ample"). *See* note 148, *supra*.
- <sup>152</sup> Thus the penalty for possession of more than a trivial quantity of heroin in New York is 1 to 7 years imprisonment, while habitual prostitution is a misdemeanor usually punished only by a fine and time served prior to trial. *Compare*, N.Y. Penal Law § 220.06 *with* § 230.00 (McKinneys 1980).
- <sup>153</sup> *Enablers Study*, *supra* note 56, at 75.
- <sup>154</sup> *See* Reiss, "The Social Integration of Queers and Peers," 9 *Soc. Problems* 102 (1961).
- <sup>155</sup> Weisberg, *supra* note 54, at 75-76; *Enablers Study*, *supra* note 56, at 63, 93.
- <sup>156</sup> J. Jersild, *Boy Prostitution* 70-75 (Bojesen trans. 1956).
- <sup>157</sup> *Huckleberry Study*, *supra* note 56, at 17-18.
- <sup>158</sup> *Enablers Study*, *supra* note 56, at 63.
- <sup>159</sup> Benjamin, *supra* note 61, at 117-118.
- <sup>160</sup> Whiteaker, *supra* note 15, at 34.
- <sup>161</sup> *See* Weisberg, *supra* note 54, at 240-247; Benjamin, *supra* note 61, at 119-31; *Delancey Study*, *supra* note 58, at 20-27.
- <sup>162</sup> Thus the Orion Center Project, a downtown Seattle crisis shelter program for street youth, with an open intake policy, has demonstrated during its first year substantial success in stopping or decreasing prostitution activity even among youths who leave the program unsuccessfully and return to the streets. In the population of homeless and runaway youths arriving at the Center during its first year, incidentally, over half were involved in prostitution. D. Schram, *Evaluation: Collaborative Services for Seattle's Street Youth*, Prepared for Seattle Youth and Community Services (1985). The Delancey Street Foundation, it should be noted, has claimed substantial success in an intensive, two-year program aimed specifically at juvenile female prostitutes. M. Silbert, "Treatment of Prostitute Victims of Sexual Assault," in *Victims of Sexual Aggression: Treatment of Children, Women and Men* (I. Stuart & J. Geer eds. 1984). The limiting of the Delancey project to sexual assault victims may explain some of its success, for the participants may be strongly motivated by virtue of their recent victimization and may not feel "labeled" in a program focusing on the effects of sexual assault rather than on the "pathology" of prostitution itself.
- <sup>163</sup> Benjamin, *supra* note 61, at 134. Winick and Kinsie, *supra* note 61, described some interesting rehabilitation programs extant in the early 1970s; at least one of those, Street Haven in Toronto, is still functioning with reported success. Winick & Kinsie, *supra* note 61, at 77-85.
- <sup>164</sup> Gray, *supra* note 57, at 799.
- <sup>165</sup> *See* John 8:1-11; Luke 7:36-50; John 20:11-18.
- <sup>166</sup> *See* Report of Jean Fernand-Laurent, *Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, Economic and Social Council, United Nations (1983); *Child Pornography and Pedophilia Hearings before the Perm. Subcommittee on Investigations of the Comm. on Governmental Affairs*, U.S. Senate, 98th Cong. 2nd Sess. 22-30, 75-91 (1984) (testimony of K. Hermann and M. Jupp, of Defense for Children International).
- <sup>167</sup> *See* N. Coombs, "Male Prostitution: A Psychological View of Behavior," 44 *Am. J. Orthopsychiatry* 782 (1974) (male prostitutes range in age from 15 to 23); Allen, "Young Male Prostitutes: A Psychosocial Study," 9 *Arch. Sexual Behavior* 399, 407 (1980) (mean age of male prostitutes studied was 16.1); Lee, *supra* note 51, at 51 (as many as 40 percent of all female prostitutes are juveniles who possess identification substantiating an adult age); *Delancey Study*, *supra* note 58, at 4 (in a survey of female prostitutes ranging in age from 10 to 46, 70 percent were under 21, almost 60 percent were 16 and under). *But see* Cohen, *supra* note 60, at 51-52 (average age, estimated by observer, of street prostitutes in New York City was 26.8).

<sup>168</sup> Professor Diana Russell has found in data collected from a random sample of almost 1,000 San Francisco area women that the incidence of sexual abuse of girls by family members increased by over 100 percent from World War II to 1961, while the incidence of extra-familial sexual abuse remained roughly constant. *Sexual Exploitation: Rape, Child Sexual Abuse, and Workplace Harassment* 198-214 (1984). Because researchers positing a connection between sexual abuse and prostitution have consistently emphasized the particular reliability of incestuous abuse as a predictor of future prostitution, Professor Russell's findings may ultimately point the way to an historical explanation of the rise in juvenile prostitution over the last 50 years as being the result, in part, of the decline of the power of the incest taboo. See especially, J. James & J. Meyerding, "Early Sexual Experience as a Factor in Prostitution," 7 *Arch. Sexual Behavior* 31, 36 (1977).

<sup>169</sup> The percentage of children under 18 in families with incomes below the official "poverty level" rose from 13.8 in 1969 to 21.0 in 1984. *Statistical Abstract of the United States* 458 (1986) (from U.S. Census data).

<sup>170</sup> Thus, a minority of juvenile male prostitutes claims to be involved with "the life" primarily for sexual gratification. Weisberg, *supra* note 54, at 57. This seems almost never to be the case with young female prostitutes. See, e.g., *Huckleberry Study*, *supra* note 56, at 34-36.

<sup>171</sup> Although it is true that young prostitutes are poor enough to satisfy the income tests for such programs as welfare, food stamps, and Medicaid, they are almost never able to make use of those programs. Their typical lack of an address to which checks may be sent and a life style wholly centered on nighttime hours make welfare benefits, as currently offered, difficult for them to obtain and virtually impossible to maintain. Thus one study found that 43 percent of female prostitutes under age 20 had had no contact at all with a welfare worker, probation officer, or social worker since beginning prostitution. *Enablers Study*, *supra* note 56, at 92.

<sup>172</sup> Bullough, *supra* note 1, at 47-49; Boswell, *supra* note 1, at 144.

<sup>173</sup> 3 Edw. 1, ch. 13 (1275); 13 Edw. 1, ch. 34 (1285).

<sup>174</sup> Among the handful of scholarly articles on the subject are: D.K. Weisberg, "Children of the Night: the Adequacy of Statutory Treatment of Juvenile Prostitution," 12 *Am. J. Crim. L.* 1 (1984); Shouvin, "Preventing the Sexual Exploitation of Children: A Model Act," 17 *Wake Forest L. Rev.* 535 (1981); and Comment, "Preying on Playgrounds: the Sexual Exploitation of Children in Pornography and Prostitution," 5 *Pepperdine L. Rev.* 809 (1978).

<sup>175</sup> Sanger, *supra* note 1, at 628.

<sup>176</sup> See Parnas, "Legislative Reform of Prostitution Laws: Keeping Commercial Sex Out of Sight and Out of Mind," 21 *Santa Clara L. Rev.* 669 (1981); J. James, et al., *The Politics of Prostitution* 2nd ed. 22-23 (1977).

<sup>177</sup> See *In re P.*, 92 Misc. 2d 62, 400 N.Y.S. 2d 455 (Family Ct., N.Y. Co. 1979) (prohibiting "recreational commercial sex" violated both equal protection clause and Constitutional right to privacy), *rev'd* 68 A.D. 2d 719, 418 N.Y.S. 2d 597 (1st Dep't 1979). For a discussion of the Constitutional challenges to prostitution laws—virtually all unsuccessful—see Note, "Right of Privacy Challenges to Prostitution Statistics," 58 *Wash. U.L.Q.* 439 (1981); Rosenbleet & Panente, "The Prostitution of the Criminal Law," 11 *Am. Crim. L. Rev.* 373 (1972); Barnett, *Sexual Freedom and the Constitution* (1973).

<sup>178</sup> Richards, "Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution," 127 *U. Penn. L. Rev.* 1195 (1979). For a powerful contrary view of prostitution, see Erbe, "Prostitutes: Victims of Men's Exploitation and Abuse," 2 *Law and Inequality* 609 (1984).

<sup>179</sup> Professor Richards does seem to limit his acquiescence in laws directed against juvenile prostitution to those which protect "young children"—although he neither specifies an appropriate "age of consent" nor explains how one might be fixed except through reliance on "available psychological data." Richards, *supra* note 178, at 1274-1275. A search for such data is likely to be at they very least highly ambiguous. Compare R. Farson, *Birthrights* 129-53 (1974) (advocating sexual freedom for children) with Finkelhor, "What's Wrong With Sex Between Adults and Children," 49 *Am. J. Orthopsychiatry* 692 (1979). And, of course, medical data would also be relevant. See Raub & Burket, "Adolescent Sexual Activity and Resulting Gynecological Problems," 13 *Med. Aspects of Human Sexuality* 56, 57 (1979) (noting the often "serious complications . . . [and] tragic consequences of early adolescent sexual activity").

<sup>180</sup> Sanger, *supra* note 1, at 627-676.

<sup>181</sup> Thus, European nations established nearby brothels to service their troops in World War I—an approach the United States shunned, apparently with happy results, as evidenced by far lower rates of venereal disease among American troops compared with British and French troops in that war. Connelly, *supra* note 35, at 142-44. See also the chapter entitled "The Doctrine of Sexual Necessity and Its Decline" in Wunsch, *supra* note 34, at 101-121.

<sup>182</sup> Sanger, *supra* note 1, at 643-53; Wunsch, *supra* note 34, at 41-43. Bullough, *supra* note 1, at 161-172.

<sup>183</sup> A. Flexner, *An Autobiography* 122 (1960 ed.). See Flexner, *supra* note 6, at 238-40, citing as part of the reason for the failure of government medical inspection "the feeling of security it must logically create" in the men who go to registered prostitutes. See also Patterson, "Prostitution and Sexually Transmitted Disease," 140 *Med. J. Australia* 252 (1984) (idea that licensing of brothels and medical screening of brothel prostitutes would reduce STD "has never been a data-based claim. Indeed, the incidence of STD infections contracted from prostitutes operating outside brothels is probably lower than caught from women employed within brothels." *Id.* at 252).

<sup>184</sup> Flexner, "The Regulation of Prostitution in Europe," 1 *J. Soc. Hygiene* 15, 17-18 (1914-15) (less than 10 percent of prostitutes in Paris, 11 percent in Berlin, and 7 percent in Brussels registered). See Winick and Kinsie, *supra* note 61, at 288 (Eros Center in Hamburg—a regulated vice district with 136 women employed—failed to reduce more than 4,700 known prostitutes in city).

<sup>185</sup> Flexner, *supra* note 6, at 32-33. See Winick & Kinsie, *supra* note 61, at 288 (most of women in Eros Center in Hamburg have pimps).

<sup>186</sup> Flexner, *supra* note 184, at 19-23. See Winick and Kinsie, *supra* note 61, at 224-225 (citing statistics from Hawaii, Terre Haute, Indiana, and World War II military bases indicating a direct correlation between lower rates of prostitution and lower general crime rates); *id.* at 288 ("Nor has Eros Center [in Hamburg] reduced the crime rate in the St. Pauli area of the city; in fact, both have increased since 1967," when the center was established).

- <sup>187</sup> Evans, "Prostitution, State and Society in Imperial Germany," 70 *Past and Present* 106, 127 (1976).
- <sup>188</sup> See Walkowitz, *supra* note 6, at 5; Winick and Kinsie, *supra* note 61, at 221-223 (describing Nevada's system of "legal" prostitution); 2 *Pornography and Prostitution in Canada*, Report of the Special Committee on Pornography and Prostitution 519-520 (1984) (hereinafter cited as the *Fraser Report*). ("The evidence suggests that the [legal, regulated] prostitution ranches in [Nevada] operate with little concern for the civil liberties of the prostitutes. . . ." *Id.*)
- <sup>189</sup> Flexner, *supra* note 6, at 18-19.
- <sup>190</sup> G. Sereny, *Invisible Children* 124 (1985).
- <sup>191</sup> Those jurisdictions retaining regulation include West Germany, South Korea, Holland (Amsterdam), and much of rural Nevada. K. Barry, *Female Sexual Slavery* 130 (1984). For a full discussion of the reasons for ending the system of "licensed brothels" in Europe, see *Home Office & Scottish Home Office Report of the Comm. on Homosexual Offenses and Prostitution* 97-98 (1957) (referred to hereinafter as the *Wolfendon Report* after its chairman, Sir John Wolfendon).
- <sup>192</sup> See Barry, *supra* note 191, at 128.
- <sup>193</sup> See *id.*, at 128-129; Turner & Morton, "Prostitution in Sheffield," 52 *Br. J. Venereal Disease* 197, 198-201 (1976).
- <sup>194</sup> Barry, *supra* note 191, at 128. Pimping is big business in France despite vigorous prosecution—1,451 cases against pimps in 1973 alone. *Id.*
- <sup>195</sup> See Winick and Kinsie, *supra* note 61, at 226 (huge increase of prostitution in New York after virtual decriminalization in 1967); *id.* at 223-225 (reduction of prostitution and other crime in Hawaii and other American jurisdictions after end of legalized prostitution); Rose, *supra* note 14, at 169 (regulated New Orleans vice district substantially reduced number of prostitutes from unregulated period). The *Fraser Report*, *supra* note 188, found, in contrast to (and without apparently considering Winick & Kinsie, that "there is little evidence that decriminalization necessarily results in an increase in prostitution and related criminality." *Id.* at 508. Such increase was found to depend on whether decriminalization is "a random or a planned process"—i.e., whether it is "balanced by the replacement of the criminal law by some form of regulation . . . protecting against an upsurge in the activity. Of course, the imposition of substantial "regulation" is contrary to the basic principles of pure "decriminalization." And, more important, the Fraser Commission itself found that in the two jurisdictions (Canada and New South Wales, Australia) most recently moving toward "toleration," prostitution activity did in fact increase in "dramatic" fashion. *Id.* at 405, 508.
- <sup>196</sup> Winick & Kinsie, *supra* note 61, at 225.
- <sup>197</sup> See *id.* at 224 (end of legalized prostitution in Hawaii brought 37 percent reduction in gonorrhea cases and 44 percent reduction in syphilis cases during first eleven months); E. Turner and R. Morton, *supra* note 193, at 201 (Sheffield prostitutes accounted for one in six cases of gonorrhea); Potterat, *et al.*, "Gonorrhea in Street Prostitutes: Epidemiologic and Legal Implications," 6(2) *Sexually Transmitted Diseases* 58, 60 (1979) ("nearly a third of the [gonorrhea] cases in this community [Colorado Springs] can be attributed to 3 percent of the infected population (0.03% of the total population) [of prostitutes]." *Id.* at 60-61).
- <sup>198</sup> See Rose, *supra* note 14, at 15 (free trafficking in "teenage virgins" during unregulated period of prostitution in nineteenth century New Orleans; *Fraser Report*, *supra* note 188, at 499-500 (in Denmark "drug dependent juvenile prostitutes" common), *id.* at 372 (in Canada most street female prostitutes are in the 18-24 age range, with entry at age 10-12 "exceptional" and entry at age 15 or 16 "likely"; young male hustlers are "typically finished by the time they are in their early 20's"); Turner & Morton, *supra* note 193, at 201 (field worker was "impressed" with the ease with which girls drifted into the local brothel area when they run away from home).
- <sup>199</sup> *Wolfendon Report*, *supra* note 191, at 87.
- <sup>200</sup> *Fraser Report*, *supra* note 188, at 547.
- <sup>201</sup> See *id.*, at 540 ("Having said that the criminal law has a justifiable role to play here, it is important to state clearly what we think its focus should be. In the opinion of the Committee, it is the nuisance caused to citizens...which is the ill to be addressed.") *Accord*, *Wolfendon Report*, *supra* note 191, at 87.
- <sup>202</sup> *Wolfendon Report*, *supra* note 191, at 79. See *Fraser Report*, *supra* note 188, at 517 (rejecting tough laws against patrons of prostitutes because no evidence suggests that with this approach "the street prostitution problem will be solved.")
- <sup>203</sup> For a moving description of the indignities suffered by prostitutes in a nominally prohibitionist jurisdiction, Los Angeles, see Lee, *supra* note 51, at 297-352.
- <sup>204</sup> Barry, *supra* note 191, at 127-28. It should be noted, however, that under a prohibitionist regime prostitutes are likely to become informants for the police in exchange for immunity from prosecution. Lee, *supra* note 112, at 296.
- <sup>205</sup> See note 195, *supra*. China in particular has reported spectacular success against prostitution, albeit colored by totalitarian methods. Barry, *supra* note 191, at 128. That success is especially impressive in view of the extraordinarily pervasive character of prostitution in China prior to the Revolution. See Bullough, *supra* note 1, at 91-103.
- <sup>206</sup> See text to notes 63-94, *supra*.
- <sup>207</sup> Compare Gilbert & Pines, "Entrance into Prostitution," 13 *Youth & Society* 471, 473 (1982) (in sample of 200 street prostitutes in San Francisco, 60 percent were under 16 years of age), with *Fraser Report*, *supra* note 188, at 503 ("A very small percentage of prostitutes in Sweden are under age 18..."). But see Memorandum of Sven-Axel Mannson, Research Consultant, Swedish Comm. on Prostitution dated 04/09/79 (study by Swedish sociologists in 1976 showed that during the period 1969-75 thirty "porno-clubs," which were "slightly masked brothels," opened in one city of 250,000 alone; such clubs "functioned as recruitment places for young teenage girls as prostitutes").
- <sup>208</sup> Lee, *supra* note 51, at 51 (during research on prostitution in Los Angeles, "it became apparent that as many as 40 percent of all female prostitutes were juveniles who possessed identification substantiating an adult age, which resulted in their being processed through the criminal justice system as adults").
- <sup>209</sup> *Id.* at 281.
- <sup>210</sup> *Id.* at 274-79.

<sup>211</sup> Based on annualized figures in Lee, *supra* note 51, at 281, and in Turner and Morton, *supra* note 193, at 197, and on population data, Los Angeles in 1975-76 had a rate of approximately 4.2 female prostitution arrests per 10,000 residents compared with 2.7 in Sheffield for 1973. Considering the vast extent of prostitution in Los Angeles reported by Lee, it is of course possible that the chances for arrest for a prostitute are actually *lower* in that city than in Sheffield, where the problem was traditionally modest. Further, arrest statistics in Sheffield understate substantially the degree of police contact with prostitutes: Prior to arrest police are required to give at least two separate "warnings" to women for "soliciting" or "loitering." *Id.* at 197-98.

<sup>212</sup> For example, in 1953, 10,405 people were prosecuted under British "street offenses" laws, as compared to 20,345 arrests for prostitution and commercialized vice in the U.S. *Compare Wolfendon Report, supra* note 191, at 143, 147 with *Uniform Crime Reports*. Given the difference in population, the British arrest rate for that year was some 50 percent higher than the American.

<sup>213</sup> According to the Public Information Office of the London Metropolitan Police, in 1984 there were 4,359 arrests for prostitution activity in the city: In New York City, police reported 3,301 arrests for prostitution that year, and 13,113 arrests for the offense of "loitering for prostitution."

<sup>214</sup> See Barry, *supra* note 191, at 130-34.

<sup>215</sup> From figures supplied by the New York City Police Department.

<sup>216</sup> Lee, *supra* note 51, at 283.

<sup>217</sup> *Id.* at 291.

<sup>218</sup> Winick and Kinsie, *supra* note 61, at 236-40. See *infra*, text to notes 288-89.

<sup>219</sup> For an excellent discussion of the dominant role played by pimps in the lives of juvenile prostitutes in "decriminalized" Canada, see *Badgley Report, supra* note 58, at 1057-1075. The benign neglect that "toleration" encourages police to practice with regard to prostitution generally seems all too likely, in many cases, to weaken their alertness to the plight of juvenile prostitutes, who often seem older.

<sup>220</sup> Barry, *supra* note 191, at 134.

<sup>221</sup> 35 Stat. 1979, T.S. No. 496, 1 *L.N.T.S.* 83.

<sup>222</sup> Those measures include: 1) designation of an authority charged with coordinating information with other states; 2) having a watch kept at points of embarkation for women and children "destined for an immoral life"; 3) taking declarations of foreign prostitutes with a view to their repatriation; and 4) financial assistance to help in that repatriation. *Id.* See 8 U.S.C. §1557.

<sup>223</sup> International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 103 *B.F.S.P.* 244 (defining "minors" as girls under age 20); International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 116 *B.F.S.P.* 547; 9 *L.N.T.S.* 415 (amending definition of "minors" in 1910 Convention to include girls up to age 21).

<sup>224</sup> March 21, 1950; 157 *B.F.S.P.* 482, 96 *U.N.T.S.* 271, adopted by the General Assembly in Resolution 317(IV), Dec. 2, 1949 (hereinafter the 1950 Convention). See also Protocol Amending the International Agreements and Conventions on the White Slave Traffic, May 4, 1949, 2 *U.S.T.* 1997, *T.I.A.S.* No. 2332, 30 *U.N.T.S.* 23; Protocol to Amend the Convention for the Suppression of the Traffic in Women and Children of Sept. 30, 1921, Nov. 12, 1947, 14 *B.F.S.P.* 871, 53 *U.N.T.S.* 13.

<sup>225</sup> 1950 Convention, *supra* note 224, Preamble.

<sup>226</sup> *Id.*

<sup>227</sup> Barry, *supra* note 191, at 128, 299-300.

<sup>228</sup> Adopted by the General Assembly in its Resolution 1386 (IV) of Nov. 20, 1959.

<sup>229</sup> Adopted by the General Assembly in its Resolution 34/180 of Dec. 18, 1979.

<sup>230</sup> See, e.g., *United States v. Roeden*, 526 F. 2d 735 (10th Cir. 1975), cert den. 462 U.S. 905 (1976); *People v. Fixler*, 128 Cal. Rptr. 363 (Ct. App. 2d Dist. 1976); *People v. Kouner*, 96 Misc. 414 (Sup. Ct. N.Y. Co. 1978).

<sup>231</sup> *Roth v. United States*, 354 U.S. 476, 504-505 (1957) (concurring and dissenting). Accord, *Keller v. United States*, 313 U.S. 138 (1940).

<sup>232</sup> Act of March 3, 1875, 18 Stat. 477.

<sup>233</sup> See Act of Feb. 20, 1907, 34 Stat. 898, 900, §3. The best account of the events surrounding these legislative developments is M. Connelly, *The Response to Prostitution in the Progressive Era*, 48-66 (1980).

<sup>234</sup> 8 U.S.C.S. §1182 (a)(12) (1982).

<sup>235</sup> 8 U.S.C.S. §1251 (a)(12) (1982).

<sup>236</sup> 8 U.S.C.S. §1328 (1982).

<sup>237</sup> See Barry, *supra* note 191, at 81-83; *Badgley Report, supra* note 58, at 970-71.

<sup>238</sup> 8 U.S.C. §1101 (f)(3) (1982).

<sup>239</sup> Thus a young prostitute would not be eligible for suspension of deportation under 8 U.S.C.S. §1254 (a) (1982), nor even for voluntary departure under 8 U.S.C. §1254 (c) (1982).

<sup>240</sup> Act of June 25, 1910, ch. 395, 36 Stat. 825 (codified as amended at 18 U.S.C. §§2421-2424 (1982)).

<sup>241</sup> *Id.* §1,2,5,8,36 (now the basis of 18 U.S.C. §2421). Purchase of a ticket for such a trip is also a crime even if the trip does not take place.

<sup>242</sup> *Id.* §3 (now the basis of 18 U.S.C. §2422).

<sup>243</sup> *Id.* §4 (now the basis of 18 U.S.C. §2423).

<sup>244</sup> P. L. 99-628, §5 (1986) (repealing and recodifying 18 U.S.C. §2421-2423). In 1978 Congress had made 18 U.S.C. §2423, which protects minors, gender-neutral in the Protection of Children Against Sexual Exploitation Act, P. L. 95-225, §3(a), 92 Stat. 8 (1978).

- <sup>245</sup> 18 U.S.C.S. §2423 (a) (2) (1979).
- <sup>246</sup> P. L. 99-628, §5 (1986).
- <sup>247</sup> During the period from July 1, 1978, to June 30, 1983, 38 persons were convicted under 18 U.S.C.S. §2423. U.S. Admin. Office of U.S. Courts, *Annual Report of the Director, Sentences Imposed Chart* (1983).
- <sup>248</sup> *United States v. Holte*, 236 U.S. 140 (1915).
- <sup>249</sup> P. L. 99-628, §5 (1986).
- <sup>250</sup> 18 U.S.C.S. §1962 (1982). For a definition of the operative terms, see 18 U.S.C.S. §1961 (1982).
- <sup>251</sup> See, e.g., *Sedima, S.P.L.R. v. Amrex Co., Inc.*, 105 S. Ct. 3275 (1985).
- <sup>252</sup> 18 U.S.C.S. §1961 (1) (B) (1982 & Supp. 1986).
- <sup>253</sup> 18 U.S.C.S. §1963 (a) (1982 & Supp. 1986).
- <sup>254</sup> 18 U.S.C.S. §1964 (a).
- <sup>255</sup> 18 U.S.C.S. §1964 (c) (1982) (also allowing an award of a "reasonable attorney's fee" and "cost of the suit").
- <sup>256</sup> *United States v. Turkette*, 452 U.S. 576 (1981).
- <sup>257</sup> See, e.g., *Badgley Report*, *supra* note 58, at 1058. Sex rings involving smaller children *et al.* appear to be more often well organized. See Belanger, "Typology of Sex Rings Exploiting Children, in Child Pornography and Sex Rings" 51, 78-79 (A. Burgess ed. 1984).
- <sup>258</sup> Compare 18 U.S.C.S. §1962 (c) (1982) with 18 U.S.C.S. §2423 (1982).
- <sup>259</sup> 18 U.S.C.S. §1962 (c) (1982).
- <sup>260</sup> 42 U.S.C.S. §5701, 5702, 5711-716, 5731, 5732, 5751 (1982 & Supp. 1986).
- <sup>261</sup> See text to notes 72-80, *supra*.
- <sup>262</sup> *Oversight Hearing on Runaway and Homeless Youth: Hearing Before the Subcomm. on Human Resources of the House Comm. on Education and Labor*, 99th Cong., 1st Sess. 14-15 (statement of Dodie Livingston, Comm'r, Admin. for Children, Youth and Families, Dept. HHS) (hereinafter *1985 Oversight Hearing*). In FY 1985, 274 such programs were funded, sheltering 60,500 youths. *Id.*
- <sup>263</sup> *Id.*
- <sup>264</sup> Compare *id.* at 15 (60,500 youths sheltered) with Office of Inspector General, Dept. of Health and Human Services, *Runaway & Homeless Youth: National Program Inspection* 4-5 (1983) (number of runaway and homeless youth estimated at 1.1 million annually); "federal DHHS grantee shelters served no more than one in three and sheltered no more than one in twelve of the individual runaway/homeless youth actually identified and counted last year in this country," *id.*, at 12.
- <sup>265</sup> For FY 1985, \$23.25 million was appropriated for spending under the RHYA, *1985 Oversight Hearing, supra* note 262, at 14-15, an amount that has not increased since.
- <sup>266</sup> 42 U.S.C.S. §5712 (b) (1982). For an analysis of the defects of this and other aspects of the RHYA, see Loken, "The Federal Battle Against Sexual Exploitation: Proposals for Reform", 9 *Harv. Women's L.J.* 105, 116-20 (1986).
- <sup>267</sup> 45 C.F.R. §1351.1 (p) (1986). On the need for longer-term care, see Weisberg, *supra* note 54, at 244-47.
- <sup>268</sup> Nat'l Network of Runaway and Youth Services, *To Whom Do They Belong? A Profile of America's Runaway and Homeless Youth and the Programs That Help Them* 11 (1985).
- <sup>269</sup> 28 U.S.C.S. §534 (a) (Supp. 1986).
- <sup>270</sup> 42 U.S.C.S. §5771-777 (Supp. 1986) The act is administered by the Office of Juvenile Justice and Delinquency Prevention.
- <sup>271</sup> 42 U.S.C.S. §5771 (4) (Supp. 1986).
- <sup>272</sup> 42 U.S.C.S. §5772 (1) (B) (Supp. 1986).
- <sup>273</sup> 42 U.S.C.S. §5101-107, 5111-115 (1983 and Supp. 1986).
- <sup>274</sup> 42 U.S.C.S. §5102 (1983).
- <sup>275</sup> See Weisberg, *supra* note 54, at 208-09.
- <sup>276</sup> 18 U.S.C.S. §2031, 2032 (1979).
- <sup>277</sup> See Model Penal Code §207.12, Comment at 170 (noting that prostitutes are "generally young" but saying no more on the subject). The Code did contain slightly higher penalties for promoting prostitution of a juvenile under age 16 (1-5 years) than for such conduct regarding adults (less than 3 years) *id.*, §207.12 (3) (c).
- <sup>278</sup> See, e.g., Tenn. Acts 1986, ch. 774, §§2-9, 12-15 (revising prostitution laws to give stronger protection to minors).
- <sup>279</sup> See, e.g., Minn. Stat. Ann. §609.321 (9) (Supp. 1987), Ohio Rev. Code Ann. §2907.01 (D) (Page 1982); Model Penal Code, 251.2 (1) (Prop. Off. Draft No. 1 (1961), at 233.
- <sup>280</sup> Tenn. Code Ann. §39-2-623 (3) (Supp. 1986). "Something of value" is subsequently defined as "any money or property, or any token, object, or article exchangeable for money or property." *Id.*, §39-2-623 (5).
- <sup>281</sup> See, e.g., Okla. Stat. Ann., Tit. 21, §1030 (West 1985).
- <sup>282</sup> See, e.g., S.C. Code Ann. §16-15-90 (1976).
- <sup>283</sup> See, e.g., Ala. Code §13A-11-9 (1982).
- <sup>284</sup> Nev. Rev. Stat. Ann. §§244.345 (8), 207.030 (1) (b) (1986).
- <sup>285</sup> See Mich. Comp. L. Ann. §750.448 (Supp. 1986); Me. Rev. Stat. Ann., Tit. 17A, §851 (1983), for example of state laws prescribing special leniency for juvenile prostitutes.
- <sup>286</sup> Those states are Georgia, Kansas, North Carolina, South Carolina, Virginia, and West Virginia. (See Adult and Juvenile Prostitution Laws chart, pages 91-95).



- <sup>287</sup> See, e.g., Mich. Com. L. Ann. §750.457 (West 1986) (accepting earnings of prostitute "without consideration" punishable by up to 20 years' imprisonment).
- <sup>288</sup> See chart on pages 91-95.
- <sup>289</sup> See, e.g., Calif. Penal Code Ann. §647 (Supp. 1986 West).
- <sup>290</sup> See, e.g., *State v. Guest*, 583 P.2d 836 (Alaska 1978) (mistake of age defense required under state constitution); S. Estrich, *Real Rape* 42-53, 88 (1987) (discussing importance of victim's sexual history in rape prosecutions).
- <sup>291</sup> For recent expressions of judicial sympathy for patrons as opposed to prostitutes, see *State v. Evans*, 326 S.E. 2d 303 (N.C. App. 1985) (law need not attack customers in order to avoid being discriminatory because it is "the organized and repeated provision of such services, not their use by unorganized and casual individuals, that constitutes the most readily eradicable evil," *id.* at 307); *People v. Superior Court of Alameda County*, 562 P.2d 1315 (Calif. 1977) (not unconstitutional to attack the "profiteer"—the prostitute—and not the customer).
- <sup>292</sup> Calif. Penal Code Ann. §261.5 (West 1970, 1986 Supp.).
- <sup>293</sup> Compare S.C. Code Ann. §16-15-90 (no special protection for juveniles under anti-pandering law) with §16-17-90 (causing minor under age 18 to enter illegal occupation is illegal, with penalties of up to 3 years imprisonment), and §24-15-270 (aiding minor who is ward of the state to enter or remain in house of prostitution is a misdemeanor) (1976).
- <sup>294</sup> These actions were in response, of course, to a mandate from the federal government. 23 U.S.C.S. §158 (a) (1984). See *South Dakota v. Dole*—U.S.—55 U. S. L. W. 4971 (1987) (upholding statute).
- <sup>295</sup> See, e.g., N.Y. Domestic Relations Law, §32 (McKinneys Supp. 1986).
- <sup>296</sup> Ark. Stat. Ann. §41-3051 (1977). N.Y. Public Health Law, §2320 (McKinneys 1985); Tenn. Code Ann. §39-2-627 (Supp. 1986).
- <sup>297</sup> Tenn. Code Ann. §§39-2-641, 39-2-636 (1982).
- <sup>298</sup> Fla. Sess. Law, ch. 86-143, §2 (West 1986). See *People v. Superior Court of Alameda County*, *supra* note 291, 562 P. 2d at 1323.
- <sup>299</sup> See Colo. Rev. Stat. §19-10-103 (1) (Supp. 1984); N.M. Stat. Ann. §32-1-3 (M) (1984).
- <sup>300</sup> See Fla. Stat. Ann. §409.441 (Supp. 1986); N.Y. Executive Law, §532 (McKinneys 1984); Tenn. Code Ann. §§37-2-501 to -507 (1984).
- <sup>301</sup> See Weisberg, *supra* note 54, at 212-15.
- <sup>302</sup> Among the states that have strengthened their promotion-of-juvenile-prostitution laws during the 1980s are Florida (1981), Maine (1981), Wyoming (1982), Massachusetts (1983), North Carolina (1985), and Tennessee (1986).
- <sup>303</sup> Kathleen Barry labeled as "patriarchal bias" an approach to the "consent" issue that "focuses on the prostitute's internal motivation" rather than "the self-interest of the procurers, their broad range of techniques for procuring the women, and the diverse number of prostitution situations in which women exist." Barry, *supra* note 191, at 84. She calls all female prostitution "sexual slavery" because of "the objective conditions of enslavement in which woman is held, conditions from which she cannot escape and in which she is sexually exploited and abused." *Id.* at 12. See text to notes 101-21, *supra*.
- <sup>304</sup> See text to notes 122-47, *supra*.
- <sup>305</sup> *People v. Superior Court of Alameda County*, *supra* note 291, 562 P.2d at 1325 (Tobriner, J., dissenting). See *United States v. Moses*, 339 A.2d 46, 49-50 note 4 (D.C. Ct. App. 1975).
- <sup>306</sup> Winick and Kinsie, *supra* note 61, at 186-88.
- <sup>307</sup> Winick and Kinsie, *supra* note 61, at 240; Weisberg, *supra* note 54, at 213.
- <sup>308</sup> Winick and Kinsie, *supra* note 61, at 239-40.
- <sup>309</sup> See, e.g., "Use of Youth as Decoy Shocks Kentuckians," *N.Y. Times*, Sept. 17, 1984, at B16, col. 1 (documenting outrage at use of 16-year old boy as police prostitution decoy).
- <sup>310</sup> Police departments in major cities employ officers as young as 19 and 20, and such officers could be—as they are currently in some cities—used in undercover roles. See text to notes 311-20, *infra*.
- <sup>311</sup> U.S. Dept. of Commerce, Bur. of the Census, *School Enrollment—Social and Economic Characteristics of Students: October 1982*, P-20, No. 408, at 7, Table 1 (1986) (hereinafter *School Enrollment Study*).
- <sup>312</sup> *Statistical Abstract of the United States* 397 (1986).
- <sup>313</sup> *School Enrollment Study*, *supra* note 311, at 7, Table 1.
- <sup>314</sup> At the Covenant House program for homeless youths in New York City, for example, over 4,500 18-, 19-, and 20-year-old youths receive crisis shelter each year, in an area that represents one of the city's most prominent prostitution districts.
- <sup>315</sup> M. Zelnik, et al., *Sex and Pregnancy in Adolescence* 245 (1981).
- <sup>316</sup> F. Bolton, *The Pregnant Adolescent: Problems of Premature Parenthood* 35 (1980).
- <sup>317</sup> Center for Disease Control, *Abortion Surveillance* 37 (1985).
- <sup>318</sup> *Id.*
- <sup>319</sup> *Statistical Abstract of the United States* 256 (1986).
- <sup>320</sup> Only 3.2 percent of all 16-or 17-year-old youths are even enrolled in college, and so with some change of graduating prior to their twenty-first birthday. *School Enrollment Study*, *supra* note 311, at 7, Table 1.
- <sup>321</sup> Richards, *supra* note 178, at 1275.
- <sup>322</sup> On the difficulty of "rehabilitating" young prostitutes, see text to notes 160-65, *supra*.
- <sup>323</sup> Barry, *supra* note 191, at 10; Lee, *supra* note 51, at 139.
- <sup>324</sup> Alexander, "Prostitution: A Difficult Issue for Feminists," in *Sex Work* 184, 206 (Delacoste and Alexander ed. 1987). Priscilla Alexander is also executive director of the National Task Force on Prostitution.



<sup>325</sup> *Id.* at 205.

<sup>326</sup> Transcript #03097 of the Phil Donahue Show 8-9 (March 9, 1987) ("Heather").

<sup>327</sup> T. Able-Peterson, *Children of the Evening* 11 (1981).

<sup>328</sup> For a discussion of the most important elements of longer-term intervention programs for young prostitutes, *see* text to notes 160-65, *supra*.

## Adult and Juvenile Prostitution Laws: A Comparison

State and Citation	Prostitution Punishable M = Misdemeanor F = Felony	Sexual Exploitation				Age Limit of Juvenile Prostitution	Defense: Mistake of Age	Prostitution Defined: Sex in Exchange for...
		Promoting Prostitution/Pimping	Promoting Juvenile Prostitution	Patronizing a Prostitute	Patronizing a Juvenile Prostitute			
<b>Alabama</b> Ala. Code §§ 13A-11-9, 13A-12-110 to 13A-12-113 (1982)	M < 30 days (Loitering/ Solicitation required)	M(A) < 1 yr.	F(C) 1-10 yrs.	No	No	18	No	No Statutory Definition
<b>Alaska</b> Alaska Stat. §§ 11.66.100 to 11.66.150 (1986)	M(B) < 90 days	M(A) < 1 yr.	F(B) < 10 yrs.	No	No	16	No	A Fee
<b>Arizona</b> Ariz. Rev. Stat. §§ 13-3201 to 13-3214 (1978, & Supp. 1986)	M(1) < 6 mos.	F(5) 2 yrs.	F(2) 7 yrs.	No	No	18	Yes, if child 15-17 yrs. old	Fee Arrangement
<b>Arkansas</b> Ark. Stat. Ann. §§ 41-3001 to 41-3006 (1977 & Supp. 1985)	1st Off.: M(B) < 90 days 2nd Off.: M(A) < 1 yr.	M(B) < 90 days	F(D) < 6 yrs.	M(C) < 30 days	No Specific Statute	18	No	A Fee
<b>California</b> Cal. Penal Code §§ 266, 266a to 266i, 267, 647(b) (West Supp. 1986)	M < 6 mos. 2nd Off.: not < 45 days 3rd Off.: not < 90 days	F 3, 4, or 6 yrs.	F 3, 6, or 8 yrs.	No	No	16	No	Money or Other Consideration
<b>Colorado</b> Colo. Rev. Stat. §§ 18-7-201 to 18-7-208, 18-7-401 to 18-7-408 (1986)	M(3) < 6 mos.	F(3) 4-8 yrs. plus 1 yr. parole	F(3) 4-8 yrs. plus 1 yr. parole	Petty Offense < 6 mos.	F(3) 4-8 yrs. plus 1 yr. parole	18	No	Money or Other Thing of Value
<b>Connecticut</b> Conn. Gen. Stat. Ann. §§ 53a-82 to 53a-90 (West 1985)	M(A) < 1 yr.	F(D) 1-5 yrs.	F(C) 1-10 yrs.	M(A) < 1 yr.	No Specific Statute	18	No	A Fee
<b>Delaware</b> Del. Code Ann. tit. 11, §§ 1342 to 1356 (1979 & Adv. Sheets 1986)	M(B) < 6 mos.	F(E) 7 yrs.	F(D) 10 yrs.	Violation Fine Only (\$250-\$500)	No Specific Statute	18	No	A Fee
<b>District of Columbia</b> D.C. Code Ann. §§ 22-2701 to 22-2722 (1981 & Supp. 1986)	M < 90 days (Solicitation required)	F < 5 yrs.	F 2-20 yrs. (only if abducted or enticed from home or custodian)	No	No	16	No	A Fee
<b>Florida</b> Fla. Stat. Ann. §§ 796.01 to 796.07 (West 1976 & Supp. 1986)	M(2) < 60 days	M(2) < 60 days	F(2) < 15 yrs.	M(2) < 60 days	No Specific Statute	16	No	Hire

State and Citation	Prostitution Punishable M = Misdemeanor F = Felony	Sexual Exploitation				Age Limit of Juvenile Prostitution	Defense: Mistake of Age	Prostitution Defined: Sex in Exchange for...
		Promoting Prostitution/Pimping	Promoting Juvenile Prostitution	Patronizing a Prostitute	Patronizing a Juvenile Prostitute			
<b>Georgia</b> Ga. Code Ann. §§ 16-6-9 to 16-6-16 (1984)	M < 1 yr.	M < 1 yr. (If compulsion used, F: 1-10 yrs.)	No Specific Statute	No	No	Not Applicable (Statutory Rape Age Limit: 14)	Not Applicable	Money
<b>Hawaii</b> Hawaii Rev. Stat. §§ 712-1200 to 712-1205 (1976 & Supp. 1984)	M 1st Off.: < 30 days 2nd Off.: Mandatory 30 days	M < 1 yr.	F(C) < 5 yrs.	No	No	18	No	A Fee
<b>Idaho</b> Idaho Code §§ 18-5601 to 18-5614 (1979 & Supp. 1986)	M < 6 mos. 3d. Off.: F < 5 yrs.	F 1-20 yrs.	No Specific Statute	M < 6 mos.	No Specific Statute	Not Applicable (Statutory Rape Age Limit: 18)	Not Applicable	A Fee
<b>Illinois</b> Ill. Ann. Stat. ch. 38, §§ 11-14 to 11-19.1 (Smith-Hurd 1979 & Supp. 1986)	M(A) < 1 yr. 3d. Off.: F(4) 1-3 yrs.	M(A) < 1 yr.	F(1) 4-15 yrs.	M(B) < 6 mos. 3d. Off.: F(4) 1-3 yrs.	No Specific Statute	16	Yes	Money
<b>Indiana</b> Ind. Stat. Ann. §§ 35-45-4-2 to 35-45-4-4 (Burns 1985)	M(A) < 1 yr. 3d. Off.: F(D) 2 yrs.	F(C) 5 yrs.	F(B) 10 yrs.	M(A) < 1 yr. 3d. Off.: F(D) 2 yrs.	No Specific Statute	18	No	Money or Other Property
<b>Iowa</b> Iowa Code Ann. §§ 725.1 to 725.4 (1979)	Aggravated Misdemeanor < 2 yrs.	F(D) < 5 yrs.	No Specific Statute	Aggravated Misdemeanor < 2 yrs.	No Specific Statute	Not Applicable (Statutory Rape Age Limit: 18)	No	Sale
<b>Kansas</b> Kan. Stat. Ann. §§ 21-3509 to 21-3515 (1981 & Supp. 1985)	M(B) < 6 mos.	M(A) < 1 yr.	F(D) 1-3 yrs. (Enticement required)	M(C) < 1 mo.	No Specific Statute	16	No	Hire
<b>Kentucky</b> Ky. Rev. Stat. §§ 529.010 to 529.080 (1985 & Supp. 1986)	M(B) < 90 days	M(A) < 1 yr.	F(C) 5-10 yrs.	No	No	18	No	A Fee
<b>Louisiana</b> La. Rev. Stat. Ann. §§ 14:82 to 14:86 (West 1986)	1st Off.: < 6 mos. 2nd Off.: < 2 yrs. 3rd Off.: 2-4 yrs.	F < 2 yrs.	F 2-10 yrs. (Enticement required)	No	F 2-10 yrs.	Enticement: 21 Patronizing: 17	No	Compensation (Indiscriminate intercourse required)
<b>Maine</b> Me. Rev. Stat. Ann. tit. 17-A, §§ 851 to 855 (West 1983)	Crime (E) < 6 mos. (Except for minors)	Crime (D) < 1 yr.	Crime (C) < 5 yrs.	Crime (E) Fine Only: < \$500	Crime (D) < 1 yr.	18	No	Pecuniary Benefit

State and Citation	Prostitution Punishable M = Misdemeanor F = Felony	Sexual Exploitation				Age Limit of Juvenile Prostitution	Defense: Mistake of Age	Prostitution Defined: Sex in Exchange for...
		Promoting Prostitution/Pimping	Promoting Juvenile Prostitution	Patronizing a Prostitute	Patronizing a Juvenile Prostitute			
<b>Maryland</b> Md. Code Ann. art. 27, §§ 1, 15 to 17, 426 to 432 (1982)	M < 1 yr.	F < 10 yrs.	No Specific Statute (M: 0-8 yrs. for enticing minor < 16 yrs. old)	No	No	Not Applicable	No	Hire
<b>Massachusetts</b> Mass. Gen. Laws Ann. ch. 272, §§ 2, 4A, 4B, 7 to 13, 53A (West 1970 & Supp. 1986)	M < 1 yr.	F 5 yrs.	F Not < 5 yrs.	M < 1 yr.	No Specific Statute	18	No	A Fee
<b>Michigan</b> Mich. Comp. Laws Ann. §§ 750.448 to 750.455 (1968 & Supp. 1986)	M < 90 days (Except minors < 16 yrs. old)	F < 20 yrs.	No Specific Statute	M < 90 days	No Specific Statute	Not Applicable (Statutory Rape Age Limit: 16)	No	Money or Other Consideration
<b>Minnesota</b> Minn. Stat. Ann. §§ 609.321 to 609.33 (Supp. 1987)	M < 90 days 2nd Off.: < 1 yr.	F < 3 yrs.	F < 5 yrs.	M < 90 days 2nd Off.: < 1 yr.	F < 5 yrs.	18	No	Hire
<b>Mississippi</b> Miss. Code Ann. §§ 97-5-5, 97-29-49 to 97-29-53 (1973)	M < 6 mos.	M < 6 mos.	M < 1 yr.	No	No	14	No	No Statutory Definition
<b>Missouri</b> Mo. Ann. Stat. §§ 567.010 to 567.100 (Vernon 1979)	M(B) < 6 mos.	F(D) < 5 yrs.	F(B) 5-15 yrs.	M(B) < 6 mos.	No Specific Statute	16	No	Something of Value
<b>Montana</b> Mont. Rev. Code Ann. §§ 45-5-601 to 45-5-604 (1985)	M < 6 mos.	M < 6 mos.	F < 20 yrs.	No	No	18	No	Compensation
<b>Nebraska</b> Neb. Rev. Stat. §§ 28-801 to 28-805 (1985)	M(5) Fine Only < \$100	F(4) < 5 yrs.	No Specific Statute ("Debauching" minor < 17 yrs. old: M(1) < 1 yr.)	No	No	Not Applicable (Statutory Rape Age Limit: 14)	Not Applicable	Money or Other Thing of Value
<b>Nevada</b> Nev. Rev. Stat. Ann. §§ 201.295 to 201.360, 207.030, 269.175 (1986)	M < 6 mos. (Solicitation required; licensed brothels in some counties)	F 1-6 yrs.	F 1-6 yrs. (For pimping and/or inducing minor to enter brothel)	No	No	21 (For parents and custodians: 18)	No	A Fee
<b>New Hampshire</b> N.H. Rev. Stat. § 645.2 (1974)	M < 1 yr.	M < 1 yr.	F(B) < 7 yrs.	No	No	18	No	Consideration
<b>New Jersey</b> N.J. Stat. Ann. § 2C:34-1 (1982)	Petty Offense < 30 days	F(4) < 18 mos.	F(3) 3-5 yrs.	Petty Offense < 30 days	No Specific Statute	16	No	Sexual Activity as a Business

State and Citation	Prostitution Punishable M = Misdemeanor F = Felony	Sexual Exploitation				Age Limit of Juvenile Prostitution	Defense: Mistake of Age	Prostitution Defined: Sex in Exchange for...
		Promoting Prostitution/Pimping	Promoting Juvenile Prostitution	Patronizing a Prostitute	Patronizing a Juvenile Prostitute			
<b>New Mexico</b> N.M. Stat. Ann. §§ 30-6A-4, 30-9-2 to 30-9-9 (1986)	Petty Misdemeanor < 6 mos. 2nd Off.: M < 1 yr.	F(4) 18 mos.	F(3) 3 yrs.	Petty Misdemeanor < 6 mos. 2nd Off.: M < 1 yr.	F(3) 3 yrs.	16	No	Hire
<b>New York</b> N.Y. Penal Law §§ 230.00 to 230.07, 240.37 (McKinneys 1980 & Supp. 1985-1986)	M(B) < 3 mos.	M(A) < 1 yr.	F(D) 1-7 yrs.	M(B) < 3 mos.	M(A) < 1 yr.	17	Yes (Patrons only)	A Fee
<b>North Carolina</b> N.C. Gen. Stat. §§ 14-190.18, 14-190.19, 14-203 to 14-208 (1986)	M < 2 yrs.	M < 2 yrs.	F(G) 6-15 yrs.	No	F(H) 4-10 yrs.	18 (Unless married or judicially emancipated)	No	Hire or Indiscriminate Intercourse
<b>North Dakota</b> N.D. Cent. Code §§ 12.1-29-01 to 12.1-29-05 (1985)	M(B) < 30 days	M(A) < 1 yr.	F(C) < 5 yrs.	No	No	16	No	Hire
<b>Ohio</b> Ohio Rev. Code Ann. §§ 2907.21 to 2907.27 (Page 1982)	M(3) < 60 days	F(4) 6 mos.-5 yrs.	F(3) 1-10 yrs.	No	No	16	No	Hire
<b>Oklahoma</b> Okla. Stat. Ann. tit. 21, §§ 1029 to 1031, 1087, 1088 (1983 & Supp. 1987)	M 30 days-1 yr.	M 30 days-1 yr.	F 1-10 yrs. (Procuring only)	No	No	18	No	Hire or Indiscriminate Intercourse
<b>Oregon</b> Ore. Rev. Stat. §§ 167.002 to 167.027 (1985)	M(A) < 1 yr.	F(C) < 5 yrs.	F(B) < 10 yrs.	M(A)	No Specific Statute	18	No	A Fee
<b>Pennsylvania</b> Pa. Cons. Stat. Ann. tit. 18, § 5902 (Purdon 1983)	M(3) < 1 yr.	F(3) < 7 yrs.	F(3) < 7 yrs.	Summary Offense < 90 days	No Specific Statute	16	No	Hire
<b>Rhode Island</b> R.I. Gen. Laws §§ 11-9-1, 11-9-2, 11-34-1 to 11-34-8 (1981 & Supp. 1986)	M 1st Off.: < 6 mos. 2nd Off.: < 1 yr. (Loitering/Soliciting only)	F 1st Off.: < 5 yrs. 2nd Off.: < 10 yrs.	F < 20 yrs.	M 1st Off.: < 6 mos. 2nd Off.: < 1 yr. (Loitering/Soliciting only)	No Specific Statute	18	No	No Statutory Definition
<b>South Carolina</b> S.C. Code Ann. §§ 16-15-90 to 16-15-110, 16-17-490 (Law Co-Op 1985 & Supp. 1986)	M 1st Off.: < 30 days 2nd Off.: < 60 days 3rd Off.: 1 yr.	M 1st Off.: < 30 days 2nd Off.: < 60 days 3rd Off.: 1 yr.	M < 3 yrs.	No	No	18	No	No Statutory Definition

State and Citation	Prostitution Punishable M = Misdemeanor F = Felony	Sexual Exploitation				Age Limit of Juvenile Prostitution	Defense: Mistake of Age	Prostitution Defined: Sex in Exchange for...
		Promoting Prostitution/Pimping	Promoting Juvenile Prostitution	Patronizing a Prostitute	Patronizing a Juvenile Prostitute			
<b>South Dakota</b> S.D. Codified Laws §§ 22-23-1 to 22-23-9 (1979 & Supp. 1986)	M(1) < 1 yr.	F(5) < 5 yrs.	F(5) < 5 yrs.	M(1) < 1 yr.	No Specific Statute	18	No	A Fee
<b>Tennessee</b> Tenn. Code Ann. §§ 39-2-623 to 39-2-642 (Supp. 1986)	M < 1 yr.	F 1-3 yrs.	F 3-10 yrs.	M < 1 yr.	No Specific Statute	16	No	Something of Value
<b>Texas</b> Texas Penal Code Ann. §§ 43.01 to 43.06 (Vernon 1974 & Supp. 1987)	1st Off.: M(B) < 180 days 2nd Off.: M(A) < 1 yr.	M(A) < 1 yr.	F(2) 2-20 yrs.	1st Off.: M(B) < 180 days 2nd Off.: M(A) < 1 yr.	No Specific Statute	17	No	A Fee
<b>Utah</b> Utah Code Ann. §§ 76-10-1301 to 76-10-1306 (1978)	1st Off.: M(B) < 6 mos. 2nd Off.: M(A) < 1 yr.	F(3) < 5 yrs.	F(2) 1-15 yrs.	M(C) < 90 days	No Specific Statute	18	No	A Fee
<b>Vermont</b> Vt. Stat. Ann. tit. 13 §§ 2631 to 2637 (1974 & Supp. 1985)	M < 1 yr.	F 1-10 yrs.	No Specific Statute	No	No	Not Applicable (Statutory Rape Age Limit: 16)	Not Applicable	Hire or Indiscriminate Intercourse
<b>Virginia</b> Va. Code §§ 18.2-48, 18.2-49, 18.2-346 to 18.2-360 (1982)	M(1) < 1 yr.	F(4) 2-10 yrs.	No Specific Statute	No	No	Not Applicable (Statutory Rape Age Limit: 15)	Not Applicable	Money or Its Equivalent
<b>Washington</b> Wash. Rev. Code Ann. §§ 9A.88.030 to 9A.88.090 (West 1977 & Supp. 1986)	M < 90 days	F(C) < 5 yrs.	F(B) < 10 yrs.	No	No	18	No	A Fee
<b>West Virginia</b> W.Va. Code Ann. §§ 61-8-5 to 61-8-8 (1984 & Supp. 1986)	M 1st Off.: 60-180 days 2nd Off.: 6-12 mos. 3rd Off.: 1-3 yrs.	M 1st Off.: 6 mos.-1 yr. 2nd Off.: 1-3 yrs.	F 2-3 yrs.	No	No	18	No	No Statutory Definition
<b>Wisconsin</b> Wis. Stat. Ann. §§ 944.30 to 944.34 (West 1982 & Supp. 1986)	M(A) < 9 mos.	F(D) < 5 yrs.	F(C) < 10 yrs.	M(A) < 9 mos.	No Specific Statute	18	No	Thing of Value
<b>Wyoming</b> Wyo. Stat. Ann. §§ 6-4-101 to 6-4-103 (1983)	M < 6 mos.	F < 3 yrs.	F < 5 yrs.	M < 6 mos.	No Specific Statute	19	No	Money or Other Property

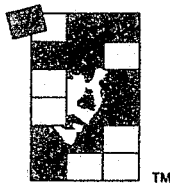
## The National Center for Missing and Exploited Children

The National Center for Missing and Exploited Children serves as a clearinghouse of information on missing or exploited children; provides technical assistance to citizens and law-enforcement agencies; offers training programs to schools and law-enforcement; distributes photos and descriptions of missing children nationwide; coordinates a Speakers Bureau; and provides information and advice on effective state legislation to ensure the safety and protection of children.

A toll-free telephone line is open for those who have information that could lead to the location and recovery of a missing child: 1-800-843-5678. (Washington, D.C., residents will call a local number: 634-9836.) The TDD hotline (for the deaf) is 1-800-826-7653. The 15 toll-free hotlines cover Canada as well as the United States.

A number of publications, listed here, are available by writing the National Center at the address below.

- ☐ *Parental Kidnapping*—a handbook for parents
- ☐ *Selected State Legislation*—state laws to protect children
- ☐ *Summary of Selected State Legislation*—a summary of the above
- ☐ *Interviewing Child Victims of Sexual Exploitation*—for law-enforcement and social service professionals
- ☐ *Investigator's Guide to Missing Child Cases*—a handbook for law-enforcement officers locating missing children
- ☐ *Child Molesters: A Behavioral Analysis*—a handbook for law-enforcement officers investigating cases of child sexual exploitation and abuse
- ☐ *Youth at Risk*—understanding runaway and exploited youth
- ☐ *Child Protection Priorities in State Legislation*—seven legislative priorities to prevent child victimization
- ☐ *Child Protection*—safety and precaution tips
- ☐ *Just in Case . . . Your Child Is Missing*—preparation and action for parents
- ☐ *Just in Case . . . Your Child Is Sexually Abused or Exploited*—guidelines for parents
- ☐ *Just in Case . . . Your Child Is a Runaway*—includes "missing poster" format
- ☐ *Just in Case . . . You Need a Babysitter*—brochure for parents
- ☐ *Just in Case . . . You Are Considering Family Separation*—protecting against parental kidnapping
- ☐ *Just in Case . . . You Are Dealing with Grief Following the Loss of a Child*
- ☐ *For Camp Counselors*—detecting child sexual exploitation
- ☐ Support services in your state
- ☐ Informational brochure



**National Center for Missing and Exploited Children**

1835 K Street, N.W., Suite 700, Washington, D.C. 20006

# **Child Pornography and Prostitution: Background and Legal Analysis**

## **Child Pornography**

1. Child Pornography
2. Federal and State Regulation of Child Pornography
3. Court Decisions Related to Child Pornography
4. Legal Protection for the Child Victim of Pornography

Title 18, U.S. Code, Chapters 110 and 117

Child Pornography-Related Recommendations of the Attorney General's  
Commission on Pornography

State Child Pornography Laws Chart

## **Child Prostitution**

1. The Oldest Oppression
2. Juvenile Prostitution in America Today
3. Frameworks for Addressing Juvenile Prostitution
4. Laws Relating to Juvenile Prostitution
5. Directions for Reform

Conclusion

Adult and Juvenile Prostitution Laws: A Comparison Chart