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# Safe Harbor Laws: Changing the Legal Response to Minors Involved in Commercial Sex

## Phase 1. The Legal Review

### Report

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## 1. Introduction

The Institute of Medicine (IOM) and National Research Council (NRC) in 2013 called for a paradigm shift within the justice system toward treating minors involved in commercial sex as victims instead of criminals (Clayton, Krugman, and Simon, 2013). Their call ultimately led to the proliferation at the state level of safe harbor laws—laws designed to remove the punitive sanctions for young victims of commercial sexual exploitation.

In 2014, the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded Development Services Group (DSG) a grant to evaluate safe harbor laws and their impact on the commercial sexual exploitation of children (CSEC). DSG’s evaluation, among the first to systematically evaluate safe harbor laws, is unfolding in three phases. DSG has completed the first phase, a legal review—the basis of the present report.

This report focuses on the evolution of safe harbor laws in the United States. It presents an overview of CSEC, details the philosophy and conceptualization of safe harbor laws, and presents findings regarding state-level efforts to adopt safe harbor laws.

The findings from Phase 1 will inform DSG’s work in the subsequent evaluation phases. Phase 2 (already under way) will involve a quantitative assessment of safe harbor laws using a quasi-experimental, longitudinal design to compare counties that have and have not implemented safe harbor laws over an 11-year period (2005–15). Phase 3 will involve an in-depth assessment of two states: one that implemented safe harbor laws with positive findings, and one that implemented safe harbor laws with no positive results.

## 2. Background

### SCOPE OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE UNITED STATES

As atrocious and concerning as the sexual abuse of children and adolescents for economic gain is (Albanese, 2007; Barnitz, 2001), little is known about the CSEC in the United States—the second largest market for sex trafficking in the world—and elsewhere (Clayton et al., 2013; Mizus et al., 2003).

For example, nobody knows for certain the extent to which CSEC occurs, who are the perpetrators involved, and how many children are victims (Barnert et al., 2017; Moynihan et al., 2018). Nobody knows whether programs to address the needs of child victims of commercial sexual exploitation benefit or harm them (Dell et al., 2017; Gerassi, 2017; Goldberg and Moore, 2018). And there is scant evidence on whether established interventions to prevent and combat CSEC, including safe harbor laws, work to reduce victimization (Barnert et al., 2017; Coleman, 2016; Davy, 2016; Felner and DuBois, 2017; van der Laan et al., 2011).

Little is known about the CSEC in the United States—the second largest market for sex trafficking in the world.

### Challenges to Understanding the Problem

**Defining commercial sexual exploitation of children.** One challenge to understanding CSEC is lack of a uniform definition. Although some definitions are of a general nature, like the one above adapted from Albanese (2007), others delineate the activities that constitute CSEC. Consider, for example, the three often-cited definitions that follow. The First World Congress Against the Commercial Sexual Exploitation of Children (1996:1) first defined CSEC generally as

Sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery.

Compare that with the more precise OJJDP (n.d.) definition:

A range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person. Examples of crimes and acts that constitute CSEC include child sex trafficking/the prostitution of children; child sex tourism involving commercial sexual activity; the commercial production of child pornography; and the online transmission of live video of a child engaged in sexual activity in exchange for anything of value. CSEC also includes situations where a child, whether or not at the direction of any other person, engages in sexual activity in exchange for anything of value, which includes non-monetary things such as food, shelter, drugs, or protection from any person. Depending on the specific circumstances, CSEC may also occur in the context of Internet-based marriage brokering, early marriage, and children performing in sexual venues.

Or the IOM/NRC definition (Clayton et al., 2013:31) of commercial sexual exploitation and sex trafficking of minors:

A range of crimes of a sexual nature committed against children and adolescents, including recruiting, enticing, harboring, transporting, providing, obtaining, and/or maintaining (acts that constitute trafficking) a minor for the purpose of sexual exploitation; exploiting a minor through prostitution; exploiting a minor through survival sex (exchanging sex/sexual acts for money or something of value, such as shelter, food, or drugs; using a minor in pornography; exploiting a minor through sex tourism, mail order bride trade, and early marriage; and exploiting a minor by having her/him perform in sexual venues (e.g., peep shows or strip clubs).

Note that the IOM/NRC definition encompasses commercially sexually exploited and trafficked youth. Clayton and colleagues (2013:31) asserted that the two were “overlapping but distinct terms”. They pointed to the following definition of trafficking in the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons (United Nations, 2000:54):

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Here, trafficking is the means, and exploitation is the end. In the OJJDP definition, however, sex trafficking is listed as a form of CSEC. Others consider CSEC a form of sex trafficking (Hampton and Lieggi, 2017). In fact, the two are often used interchangeably in the scientific literature (Gozdziaik and Collett, 2005). In practice, as Adams and colleagues (2010:4) observed, “prosecutors used different definitions of what constitutes CSEC. For example, many felt that CSEC involved U.S. citizen victims, whereas human trafficking involved foreign national victims.”

**Characterizing the youth.** Researchers have also noted that the choice of terminology can have a significant impact on the criminal liability of child victims of commercial sexual exploitation (Mitchell, Finkelhor, and Wolak, 2010; Mitchell et al., 2011). For example, “U.S. child victims may be

referred to as ‘prostitutes’ and foreign national child victims may be referred to as ‘sex trafficking victims’” (Adams et al., 2010:4).

While the difference in these characterizations may seem inconsequential at a superficial level, the ramifications of such labels pose an egregious paradox. The latter views the youth involved as virtuous victims coerced into the sex trade by treacherous hustlers and thus entitled to support, compassion, and compensation, whereas the former depicts the same youth as prurient criminals who merit only the sanctions offered by the criminal justice system.

Specifically, research demonstrates that characterizing these youth as criminals affects how they are treated by law enforcement (Adams, Owens, and Small, 2010; Adelson, 2008), leading to a host of negative outcomes, including not receiving necessary services, adjudication as delinquents or criminals, and even incarceration (Smith, Vardaman, and Snow, 2009). Finally, such mischaracterizations can also “contribute to lack of cooperation among the multiple agencies and disciplines involved” in servicing young victims of commercial sexual exploitation (Bounds, Julion, and Delaney, 2015:5).

**At least 100,000 children each year are the victims of CSE in the United States . . . Others have said it is as high as 2 or 3 million children.**

**Describing the population.** Another major challenge to understanding CSEC is that “the populations relevant to the study of human trafficking, such as prostitutes, traffickers, victims/survivors, or illegal immigrants constitute so-called *hidden populations*” (Tyldum and Brunovskis, 2005:18). For example, traffickers employ a variety of tactics to evade law enforcement, including the frequent relocation of youth, online marketing, use of false identification, and making youth appear older (Hampton and Lieggi, 2017). At the same time, victims of commercial sexual exploitation may be reluctant to seek help from law enforcement or service providers out of fear of incarceration, retribution, or humiliation. Or they may not even consider themselves victims (Barnert et al., 2017).

The line often drawn at age 18 as the distinction between youth and adult also poses a challenge to understanding CSEC, as “sexual exploitation may also affect youth who are over 18 and living in vulnerable and exploitative circumstances” (Moynihan et al., 2018:441). Some researchers have also extended the age range for CSEC to include older youth. For example, Murphy, Bennett, and Kottke (2016) operationalized CSEC to include adolescents up to age 19.

Yet another misconception is that CSEC is primarily a problem among girls (Friedman, 2013), although Moynihan and colleagues (2018) said the research shows that boys and girls experience similar rates of sexual exploitation. Nevertheless, the research has been blind to the unique effects of the sexual exploitation of boys.

**Methodological issues.** Researchers point to methodological issues in attempting to understand CSEC. Davy (2016:502) observed a continued lack of reliable data on trafficking, and faulty program designs that impede the ability of researchers to monitor and evaluate anti-trafficking efforts; this led her to conclude that “programs appear to be based on assumptions about what works in preventing and combating human trafficking.”

### **Prevalence of Problem**

Because of the aforementioned challenges, it has been difficult to put a number on the incidence and prevalence of CSEC. As Clayton and colleagues (2013:48) said, “Definitions drive measurement.” Swaner and colleagues (2016) estimated that anywhere from 4,457 to 20,994 youth under age 18 in

the United States are engaged in the sex trade annually. The National Center for Missing and Exploited Children estimated that at least 100,000 children each year are the victims of commercial sexual exploitation in the United States (U.S. Congress, 2010). In their heavily cited report, Estes and Weiner (2002) estimated the annual number of children at risk of commercial sexual exploitation to be between 244,181 and 325,575. Others have said that the number may be as high as 2 or 3 million children (Mitchell, 2011; Stransky and Finkelhor, 2008). Global estimates vary just as widely (Davy, 2016; Willis and Levy, 2002).

Though estimates of the incidence and prevalence of CSEC continue to be elusive, researchers can conjecture the seriousness of the problem based on the exponential increase in the number of traffickers and solicitors arrested and prosecuted on suspicion of CSEC. According to Adams and Flynn (2017), 2,972 people in 2004 were arrested and referred to U.S. attorneys on suspicion of CSEC\*. That number grew to 4,579 in 2013. Similarly, the number of defendants prosecuted went from 1,405 in 2004 to 2,776 in 2013. The year 2003 seemed to be a tipping point at the federal level, “when efforts converged (i.e., legislation, creation of task forces) to bring greater awareness to CSEC and to prosecute its perpetrators by using a collaborative, victim-centered approach” (Adams et al., 2010:5).

### **Risk Factors for Commercial Sexual Exploitation**

Children typically first fall victim to commercial sexual exploitation between ages 12 and 14 (Adams et al., 2010; Estes and Weiner, 2002). Many risk factors—individual, relational (inclusive of familial factors), communal, and societal— increase youth’s vulnerability to commercial sexual exploitation (Barnert et al., 2017). However, little is known about the relative predictability of these factors, and researchers have not established causality (Miller-Perrin and Wurtele, 2017). And, what is known about the risk factors is largely based on qualitative and anecdotal data for all victims, young and old (Greenbaum, Dodd, and McCracken, 2018). What is clear is that victims of commercial sexual exploitation do differ from victims of sexual assault or abuse on several demographic, behavioral, physical, and historical factors (Greenbaum, Dodd, and McCracken, 2018; Shaw et al., 2017).

Individual-level risk factors include a history of sexual or physical abuse or maltreatment; running away or being homeless; being system-involved (such as with the juvenile justice and child welfare systems); being lesbian, gay, bisexual, or transgender; history of substance use; earlier pubertal maturation; psychogenic factors; cognitive impairment or other disability; lack of education; lack of knowledge about legal rights; and adverse childhood experiences, including polyvictimization (Clayton et al., 2013; Bounds, Julion, and Delaney, 2015).

Relationship-level risk factors include exposure to domestic violence and other types of dysfunction, disruption (such as divorce or death of a parent), lack of parental involvement, peer pressure, and gang involvement (Clayton et al., 2013).

Community-level risk factors include social norms; social isolation; poverty; underresourced schools; high-crime neighborhoods; and proximity to international borders, adult markets of prostitution, sporting events, and presence of transient men (Clayton et al., 2013).

Societal-level risk factors include a lack of awareness of safe harbor laws and sex trafficking of minors, the societal sexualization of children, gender biases and discrimination, and the limitation in resources dedicated to serving vulnerable youth populations (Clayton et al., 2013).

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\*Federal CSEC offenses include child sex trafficking and the production, trafficking, distribution, and possession of child pornography.

## Consequences of Commercial Sexual Exploitation

As with the risk factors, there are multiple physical and mental health consequences for victims of commercial sexual exploitation (Ijadi-Maghsoodi et al., 2018). Physical health problems include violence-related injuries, unwanted pregnancies, sexually transmitted infections, malnourishment, and poor dental care. Mental health problems include substance use disorders, posttraumatic stress disorder, depression, suicidality, anxiety, eating disorders, psychosomatic illness, and trauma bonding (Barnert et al., 2017; Goldberg and Moore, 2018). Victims can also be retraumatized through arrest, prosecution, and detention (Geist, 2012) and face social hardships, including homelessness and social isolation (Clayton et al., 2013).

## SAFE HARBOR LAWS

The U.S. government's foray into combating CSEC began with passage of the *Trafficking Victims Protection Act of 2000* (TVPA), the first comprehensive federal law to address trafficking in persons. Since enacted, Congress has reauthorized the TVPA five times (in 2003, 2005, 2008, 2013, and 2017). While the initial Act focused primarily on international trafficking and foreign victims who end up in

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the United States,\* the language of the original TVPA was broad enough to extend its protective blanket to foreign-born and legal permanent residents and U.S.-born trafficking victims (Adelson, 2008).

Similarly, although the TVPA was not specifically enacted to prevent the prostitution of minors, its expansive language marked the beginning of changing the way people in this country think of prostituted youth. Specifically, the TVPA defined sex trafficking as

The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age. (22 U.S.C. § 7102)

Framing the law thusly made it illegal to engage in sex trafficking and equated trafficking with *causing* a minor to engage in any form of commercial sex. In essence, this language characterized prostituted children—regardless of country of origin—as victims of sex trafficking. In short, under the TVPA, if a child engages in a commercial sex act at the behest of another, this situation is legally considered trafficking (Adelson, 2008:102).

Another decisive step in reframing the legal status of prostituted and trafficked minors occurred in 2013 with the release of the IOM/NRC report on the commercial sexual exploitation and sex trafficking of children in the United States. The report, requested by the U.S. Department of Justice, was prepared by a committee of independent experts who reviewed the relevant research and practice-based literatures to inform policy and practices with regard to the commercial sexual exploitation and sex trafficking of children who are citizens or lawful permanent residents of the United States.

\*The 2005 reauthorization of the TVPA fully recognized and addressed U.S. victims of trafficking.

Building on the foundation put in place by the TVPA, the IOM/NRC report called for “a paradigm shift from treating victims and survivors of commercial sexual exploitation and sex trafficking of minors as criminals to understanding and recognizing commercial sexual exploitation and sex trafficking of minors as forms of child abuse” (Clayton et al., 2013:373).

The report concluded with many salient recommendations, including a focus on strengthening the law’s response to minors who are victims of commercial sexual exploitation and sex trafficking. Part of this recommendation emphasized developing legislation to redirect the young victims away from formal processing in the juvenile justice system to state agencies that could provide supportive services. Specifically, the recommendation (Clayton et al., 2013:8) stated that

All national, state, local, tribal, and territorial jurisdictions should develop laws and policies that redirect young victims and survivors of commercial sexual exploitation and sex trafficking from arrest and prosecution as criminals or adjudication as delinquents to systems, agencies, and services that are equipped to meet their needs. Such laws should apply to all children and adolescents under age 18.

This type of legislation was referred to as a “safe harbor law” to recognize the fact that minors involved in prostitution were not in violation of any rule or regulation but rather victims of abuse—an approach that is consistent with child protection principles and goals of federal and state laws regulating treatment of minors (Clayton et al., 2013).

### **Asymmetric Operationalization and Uncertainty**

The National Conference of Commissioners on Uniform State Laws (2013) provides states with model legislation to facilitate the enactment of safe harbor laws. However, states have operationalized these laws using a variety of approaches that can lead to difficulty in declaring whether a state has enacted a safe harbor law. In an attempt to categorize these approaches, a 2012 review of the various laws (Geist, 2012: 86) stated that all safe harbor laws offer “some combination of four functions:

- 1) Decriminalizing prostitution for anyone under a specified age so they cannot be charged with a crime or adjudicated as a delinquent;
- 2) Diverting prostituted minors from delinquency proceedings into other forms of services or specialized programs;
- 3) Providing specialized or regular services for prostituted minors; and
- 4) Reclassifying minors as victims or sexually exploited children.”

But states not only differ in their approach on how to operationalize these functions, but also on who is eligible to be considered for “safe harbor” and who makes the decisions. For example, some states provide protections only to minors who are victims of sex trafficking and not to prostituted minors. Other states provide complete immunity\* from prosecution for prostituted minors, while others do not. Furthermore, the cut-off age for who is a juvenile varies—in some states it is 16, in others it is 18 (Geist, 2012). States also differ in whose discretion it is to offer diversion services—for example, a judge in New York, a prosecutor in Washington, or either of the two in Vermont and Massachusetts (Wasch et al., 2016). To complicate the matter further, some states have passed safe harbor laws that include additional features such as increasing penalties for pimps and johns, establishing training for law enforcement, requiring police investigations into minors’ cases, and providing access to housing or safe shelters for victims (Wayman, 2013).

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\*Complete immunity provides relief, not only from the delinquency adjudication for prostitution but also for other prostitution-related offenses.

These differences in operationalization and eligibility have led to uncertainty about what constitutes a safe harbor state. In fact, different studies have reached different conclusions regarding which states have implemented safe harbor laws (Table 2.1). The National Conference of State Legislatures (NCSL; 2017) found that 31 states had enacted safe harbor laws (2 had immunity-only laws, 11 had diversion-only laws, and 18 had both). Shared Hope International (SHI; 2017a) found that 15 states both 1) prohibited the criminalization of minors under 18 for prostitution offenses, and 2) provided a nonpunitive avenue to specialized services through one or more points of entry. Polaris (2014) found that 27 states had enacted some form of safe harbor law.\*

Although each report assesses the legislative capacity of states to redirect commercially sexually exploited and trafficked youth away from the formal processing of the justice system, they differ in perspective and language. For example, NCSL (2017) accepted diversion as a legitimate approach to implementing a safe harbor law. And, while SHI (2017) acknowledged that some states offer diversion as a means to redirect youth, it is not clear if such an approach is valid. For example, in regard to Nevada, their analysis report stated that

Nevada law mandates access to specialized services for commercially sexually exploited children who are under the juvenile court's jurisdiction pursuant to a supervision and consent decree. Upon successful completion of any terms and conditions, a delinquency petition for prostitution will be dismissed. (SHI, 2017b:38)

Nevertheless, the report recommended that Nevada “eliminate liability for prostitution offenses for all minors under 18” (SHI, 2017b:37).

To muddy the water further, NCSL (2017) did not include Nevada as a safe harbor state, despite strong evidence to the contrary. It is possible that a temporal difference in the publications could account for this difference, but the Nevada statute that SHI (2017b) cited was enacted in 2015, and both the NCSL and SHI reports were published in 2017.

Moreover, the reports contain other temporal sequencing inconsistencies. For example, NCSL (2017) indicated that Massachusetts, New Jersey, and Ohio had not enacted safe harbor legislation. But 3 years earlier, Polaris (2014) indicated that all three states provided services and either granted immunity or diverted youth.

While it is difficult to pinpoint the source of the inconsistencies, it would seem that at least some of the disparity is likely definitional. For instance, NCSL (2017) coded Oklahoma as both an immunity and diversion state. Polaris (2014) coded Oklahoma with partial credit, indicating that it passed a law that meets partial requirements of the category. This discrepancy between the NCSL and Polaris reports may be a result of discrepant interpretations of two Oklahoma statutes. The first statute indicates that

It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking. (Okla. Stat. Ann. tit. 21, § 748(D))

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\*Polaris scoring system: Partial credit = state law meets partial requirements of the category. Half point = state law provides either 1) services for child victims, or 2) immunity from prosecution or diversion from juvenile delinquency proceedings. Full credit = state law provides both components of the category.

Table 2.1. Comparison of Study Findings on Safe Harbor Law Implementation

	NCSL		SHI			Polaris		
	Immunity	Diversion	Immunity	Mandatory Referral	Diversion	Full Credit	Half Point	Partial Credit
AL								
AK								
AZ								
AR								
CA								
CO								
CT								
DE								
FL								
GA								
HI								
ID								
IL								
IN								
IA								
KS								
KY								
LA								
ME								
MD								
MA								
MI								
MN								
MS								
MO								
MT								
NE								
NV								
NH								
NJ								
NM								
NY								
NC								
ND								

	NCSL		SHI			Polaris		
	Immunity	Diversion	Immunity	Mandatory Referral	Diversion	Full Credit	Half Point	Partial Credit
OH								
OK								
OR								
PA								
RI								
SC								
SD								
TN								
TX								
UT								
VT								
VA								
WA								
WV								
WI								
WY								

Yet, the other statute states that

Upon a showing that a minor may be a victim of human trafficking or sexual abuse, the law enforcement officer shall immediately notify the Department of Human Services and the minor shall be transferred to the custody of the Department of Human Services.....If criminal charges were filed against the minor and the investigation shows, at the show-cause hearing, that it is more likely than not that the minor is a victim of human trafficking or sexual abuse, then the criminal charges against the minor shall be dismissed and the Department of Human Services case and services shall proceed. (Okla. Stat. Ann. tit. 21, § 748.2(E))

It is possible that NCSL (2017) interpreted these two clauses in conjunction as immunity given that they afford the victim some protections against prosecution. However, an affirmative defense should not be considered on the same level as immunity, because it puts the burden of proof on the victim. Conversely, immunity places the burden of proof on the plaintiff (i.e., the government) to show that the defendant is not entitled to protection—a difference that should not be underestimated in terms of impact on the victim.

Another ambiguity rests in the first sentence of the second statute above (Okla. Stat. Ann. tit. 21, § 748.2(E)), which indicates that juvenile sex trafficking victims must be transferred to the custody of the Department of Human Services. It is likely that the NCSL report considers this sufficient to meet the definition of diversion. However, in criminal and juvenile justice, formal diversion programs typically redirect youth away from formal processing, while still holding them accountable for their actions (DSG, 2017). In this case, transferring the victim accomplishes the goal of redirecting the

youth, but the court does not retain any authority in the case, which may explain why Polaris (2014) gave Oklahoma only partial credit.

Finally, given these descriptions of immunity and diversion, it seems incompatible for states to be characterized as operating under both a method of immunity and of diversion; if an individual has immunity, the court cannot maintain any legal authority as is necessary, per the definition of formal diversion. In fact, it seems as if there is a third category that does not specifically make commercially sexually exploited and trafficked youth immune from prosecution, but statutorily requires their referral to a youth-serving agency.

### **EFFECTIVENESS OF SAFE HARBOR LAWS**

Researchers are only beginning to systematically assess the effects of safe harbor laws. Early observations found a lag in local law enforcements' treatment of prostituted juveniles as victims rather than criminals and readiness to combat sex trafficking (Coleman, 2016). More recently, McMahon-Howard (2017) found that changes in the law and other efforts to recast prostituted youth as victims of commercial sexual exploitation has had little effect on victims' own interactions with law enforcement and service providers. Mehlman-Orozco's (2015) study of four states—Connecticut, New York, Texas, and Washington—lends credence. She found that the number of juveniles arrested for prostitution increased after passage of safe harbor laws in all but Washington State.

**Researchers are only beginning to systematically assess the effects of safe harbor laws.**

The few studies that exist on the impact of individual state safe harbor laws paint a similar picture. For example, following passage of a safe harbor law in Illinois, the state's child welfare system has struggled to identify and serve victims of commercial sexual exploitation (Bounds, Julion, and Delaney, 2015). Since Minnesota implemented its safe harbor law, communication and coordination of services across agencies, while improved, continues to be a challenge; so does law enforcement's compliance with the safe harbor law (Schauben et al., 2017). At the same time, charges and convictions against sex traffickers in Minnesota have increased since enactment of the safe harbor law, and general awareness of CSEC is on the rise (Minnesota Statistical Analysis Center, 2014; Schauben et al., 2017; Wasch et al., 2016).

Santos (2016), among the first to systematically assess the effects of safe harbor laws, examined whether the passage of safe harbor laws in 18 states led to a decrease in the arrest of child victims of CSE. She hypothesized that arrests would be inversely related to the number of provisions safeguarding children's rights. She also found "no credible evidence that safe harbor laws, in whatever format, are associated with lower average numbers of annual arrests of CSEC" (Santos, 2016: 46). However, she noted that the inverse of that statement was also true and later asserted that it was too early to gauge the effects of safe harbor laws, as 8 of the 18 states examined had enacted their safe harbor laws in 2013.

Finally, Bouche, Farrell, and Witmer (2016), who looked at data between 2003 and 2012, found the existence of safe harbor laws in nine states to be strongly predictive of arrests and prosecutions of people suspected of sex trafficking.

### **3. Methods**

To assess the current scope, nature, and impact of safe harbor legislation, DSG is implementing a three-phase design that integrates qualitative and quantitative components. The first phase (legal review)—the focus of this report—involved

1. Conducting an environmental scan to develop a better understanding of the various elements that comprise safe harbor legislation.
2. Constructing an instrument to capture the status of all states for each element.
3. Subjecting the coding scheme to an expert review panel.
4. Coding all states for each element by tracking the legislative history of relevant bills to pinpoint the effective date of each public law related to safe harbor legislation.
5. Calibrating findings of the coding process by presenting it to the expert review panel for comment.

#### **CONDUCT ENVIRONMENTAL SCAN**

Environmental scans allow researchers to account for diverse types of knowledge, including codified knowledge (information collected from legal and policy documents or research projects) and tacit knowledge (information collected from face-to-face meetings, focus groups, e-mail, or telephone). They can either be internal, external, or both. An internal scan typically involves memos, personal communications, minutes of meetings, or other internal documents within a business or organization. An external scan includes documents outside the scope of the organization and generally addresses the political, social, and academic contexts of the issue (Graham, Evitts, and Thomas-MacLean, 2008).

DSG conducted an external environmental scan to identify the critical elements of a safe harbor law. We first conducted an external scan of codified knowledge by reviewing research and legal documents to establish a foundation of information regarding evidence-based policies on safe harbor legislation.

Our primary data source was the text of safe harbor laws from each state that enacted legislation. We used several resources to confirm the applicable information, including state statutes, legislative bills, committee reports, conference reports, and newspaper articles. We collected these documents from state government websites, state assembly websites, online search engines, newspapers, legal resources (e.g., Legiscan, LexisNexis), and relevant nonprofit organizations. We completed data collection in spring 2016.

The scan revealed the following four important observations:

1. There are inconsistencies in the research as to the safe harbor status of each state.
2. The goal of all safe harbor laws is to repeal the punitive approach to minors who are victims of commercial sexual exploitation and sex trafficking (i.e., prostituted minors).
3. All safe harbor laws must redirect youth away from the justice system via immunity, diversion, mandatory referral, or a combination of these elements.
4. Safe harbor laws may include a variety of other elements designed to protect minors who are victims of commercial sexual exploitation and sex trafficking, but the composition of elements varies widely from state to state.

These observations guided the construction of the instrument to capture the status of all states for each element.

## **IDENTIFY SAFE HARBOR LEGISLATIVE ELEMENTS**

The next step in the project was to develop a data collection tool to frame the conceptual understanding of safe harbor laws and systematically code the status of each element in each state. The basic elements we identified were immunity, diversion, and mandatory referral (see Table 3.1 below).

The initial instrument was modeled after antitrafficking legal frameworks used by the Polaris Project in their annual report of state ratings on human trafficking\* and SHI's Protected Innocence Challenge state report cards.† The SHI report cards and analysis documents were particularly useful—they provided detailed information on 41 legislative components that respond to domestic minor sex trafficking.

The reports, however, lacked a piece of information required for Phase 2 of this evaluation: the effective date for each statute. These dates are necessary to clearly demarcate the periods before and after safe harbor legislation so we can quantitatively assess the impact of the law. Moreover, while the SHI framework was comprehensive, it still needed to be augmented to suit our purposes by focusing on the major elements of safe harbor legislation.

## **IDENTIFY OTHER POTENTIAL SAFE HARBOR ELEMENTS**

While the existence of legislation designed to abolish the punitive approach to minors who are victims of commercial sexual exploitation is the defining factor in being categorized as a safe harbor state, states that have enacted much more sophisticated models rarely fall neatly into such discrete categories. Our scan revealed eight other supplementary elements that enhance the protection of commercially sexually exploited youth (see Table 3.2 below). These eight elements can be grouped into three categories:

1. Penalties for perpetrators of commercial sexual exploitation and trafficking.
2. Criminal justice responses to commercial sexual exploitation and trafficking.
3. Assistance for victims of commercial sexual exploitation and trafficking.

## **CONDUCT EXPERT REVIEW**

The environmental scan provided a good starting point but an incomplete picture regarding what defines a basic safe harbor law and which elements need to be present for a more comprehensive law. Substantial gaps remain in what we know about the elements of safe harbor laws, the environments in which the laws are implemented, and how these factors influence the impact of these laws.

The published literature and public document review could not address a number of the research questions that were the focus of this project. Because many of the design and implementation lessons have not found their way into the published literature, and likely never will, we asked three safe harbor experts (Table 3.3) to provide input on our instrument and address questions where no or limited published information exists.

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\*See <https://polarisproject.org/state-laws-issue-briefs> for more information.

†See <https://sharedhope.org/what-we-do/bring-justice/reportcards/#reportcards> for more information.

**Table 3.1. Basic Elements of a Safe Harbor Law**

Element	Description
Immunity	States can provide prostituted minors with immunity from arrest and prosecution. These laws make it a criminal offense for an adult to engage in sex with a minor, with the assumption that minors cannot consent to sex. The aim is “to protect minors from sexual intercourse” and “to protect minors below a certain age from predatory, exploitative sexual relationships” (Adelson, 2008:107). Proponents of immunity believe it is “logically inconsistent that minors of a certain age are incapable of consenting to sex, but that they simultaneously can be punished for prostitution. The only difference between the two scenarios is that when money exchanges hands, these same children turn from victim to offender” (Adelson, 2008:108). Proponents also maintain that finding prostituted youth criminally liable for engaging in prostitution further victimizes them, and serves as an obstacle to restoration by burdening the victim with a criminal record (Dysert, 2013). Moreover, arresting, prosecuting, and detaining victims of commercial sexual exploitation and trafficking hinder law enforcement efforts to go after the real criminals—pimps and johns—and misses an important opportunity to rescue minors from a system ill-equipped to help them (Geist, 2012).
Diversion	Through diversion, a prostituted minor is charged with a crime but redirected away from formal processing in the justice system and prosecution is deferred, pending completion of therapeutic treatment. Unlike immunity, diverted youths remain under the authority of the court, but they are treated as children in need of services, not as criminal or delinquent. The court has the power to coerce reluctant youth into treatment services or temporary custody to prevent a return to the street. In general, if the minor cooperates, the prostitution charge is dropped. Proponents often include prosecutors and juvenile court judges, who argue that this approach is necessary to keep victims from returning to prostitution and their pimps or traffickers, and ensure victims receive the services they need (Dysert, 2013). This sentiment is not unwarranted. Victims of commercial sexual exploitation frequently display elements of <i>Stockholm Syndrome</i> (Julich, 2005), a condition often associated with kidnapped people who, over time, can develop an attachment to those who victimize and exploit them. Similarly, commercially sexually exploited youth, who are often vulnerable to start with, often view their pimp or trafficker as more of a boyfriend or a father figure rather than as an abuser, making it highly likely they will willingly return if not detained by the state.
Mandatory Referral	Like diversion, prostituted youths under mandatory referral are treated as children in need of services; however, mandatory referral does not come with the threat of formal processing in the justice system that is typical in diversion. This hybrid approach bridges immunity and diversion by completely removing the victim from the justice system and places him or her in a youth-serving agency. It is often, but not always, implemented in conjunction with immunity.

**Table 3.2. Other Legislative Elements**

Element	Description
<b>Penalties for Perpetrators of Commercial Sexual Exploitation and Trafficking</b>	
Demand-Side Penalties	Makes penalties for the buyers of commercial sex acts (i.e., johns) with minors as high as federal penalties. The aim is to curb demand by strengthening the response against individuals who attempt to buy commercial sex acts (Clayton et al., 2013). If convicted under the TVPA and associated federal laws,* the buyer must serve a mandatory minimum sentence that depends on the victim’s age: 10 years if the victim is between ages 14 and 18; 15 years if the victim is under age 14.
Trafficker-Focused Penalties	Makes penalties for the trafficking of minors as high as federal penalties. The aim is to disrupt the supply of minors into the commercial sex trade by strengthening the response to perpetrators of commercial sexual exploitation and sex trafficking (Clayton et al., 2013). If convicted under the TVPA and associated federal laws, the trafficker must serve a mandatory minimum sentence that depends on the victim’s age of victim: 10 years if the victim is between ages 14 and 18; 15 years if the victim is under age 14.
<b>Criminal Justice Responses to Commercial Sexual Exploitation and Trafficking</b>	
Investigation	Authorizes wiretapping to investigate CSEC and sex trafficking to facilitate prosecution through corroborating evidence (e.g., recorded phone conversations or text messages between a victim and buyer or trafficker; Clayton et al., 2013). Wiretapping use should lead to an increase in arrests, better prosecutions, and help alleviate reliance on the testimony of child victims (SHI, 2015a).
Training	Mandates specialized training for first responders. The aim is to provide them with the awareness, skills, and tools necessary to effectively detect a trafficking situation and work with victims to avoid re-exploitation. commercial sexual exploitation and sex trafficking victims are often vulnerable to exploitation (e.g., children and adolescents who are, or have been, neglected or abused; in foster care or juvenile detention; or homeless, runaways, or so-called thrown-away children) and difficult for professionals to identify (Clayton et al., 2013).
Task Force	Mandates the creation of a task force, commission, or advisory committee to address trafficking. Human trafficking task forces are multidisciplinary teams (e.g., local law enforcement agencies; victim service providers; and federal and state investigative, enforcement, and regulatory agencies) that serve three core functions: identify human trafficking; serve victims; and investigate and building cases against traffickers. Task forces often engage in other activities, such as training, technical assistance, and community awareness/education that contribute to the three core functions (OVC Human Trafficking Task Force E-Guide, 2017)
<b>Assistance for Victims of Commercial Sexual Exploitation and Trafficking</b>	
Specialized Services	Provides victims with specialized services (i.e., support/advocacy, emergency financial assistance, legal advocacy, group treatment, information and referral, supervised visitation, therapy, transportation, and victim compensation). The aim is to increase service availability to help assuage the negative impact of victimization and provide victims with material, psychological, and social support that aid in recovery. (SHI, 2015b). The stigma associated with commercial sexual exploitation and sex trafficking pose a significant barrier to victims’ ability to obtain needed services, increasing the likelihood that they will continue to be exploited and likely untreated (Clayton et al., 2013).
Civil Action	Allows victims to seek civil damages. The aim is to empower victims to vindicate themselves and hold perpetrators accountable (Clayton et al., 2013). Restitution should include payment for medical and psychological treatment, lost income, attorney’s fees and costs, and other damages (SHI, 2015c).
Vacating Convictions	Permits victims to vacate delinquency adjudications and criminal convictions for offenses arising from commercial sexual exploitation or sex trafficking. The aim is to mitigate the multifaceted, lasting impact of adjudications and convictions. Consequences can include expulsion from school; an inability to secure academic scholarships, join the military, obtain a driver’s license or professional license; access benefits (such as public housing and crime victims’ compensation); and ineligibility for certain jobs (including work with children)—each of which results in further victimization and hinders survivors’ ability to rebuild their life (SHI, 2015d).

\*18 U.S.C. §1591 (Sex trafficking of children or by force, fraud, or coercion), § 2251A (Selling or buying of children), § 2251(Sexual exploitation of children), § 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), and § 2422 (Coercion and enticement).

**Table 3.3. Safe Harbor Expert Panel**

Member	Relevant Experience	Education
Darren Geist	Practicing attorney in New York, visiting lecturer at Princeton University, and member of the New York City Bar’s Sex and Law Committee. Was a consultant for UNICEF in Sierra Leone, senior policy and legal fellow at Polaris Project, and founder of the New York University School of Law’s Anti-Trafficking Advocacy Coalition. Assisted in the research and writing of the casebook <i>Human Trafficking Law and Policy</i> (eds. Bridgette Carr, Anne Milgram, Kathleen Kim, and Stephen Warnath).	J.D., New York University, where he was managing editor of the <i>Journal of International Law and Politics</i> and received the Vanderbilt Medal for outstanding contributions to the law school
Natasha Slesnick	Licensed clinical psychologist, professor of human development and family science, and associate chair for research in Ohio State University Department of Human Sciences. Focuses research on intervention development with homeless youth and families. Has been continuously funded by the NIH since 1998 and has written more than 70 peer-reviewed publications, book chapters and one book. After opening a drop-in center for homeless youth in Albuquerque, N.M., she moved to Columbus, Ohio, and opened another center.	Ph.D. in clinical psychology, University of New Mexico
Richard Hooks Wayman	National executive director of the Children’s Defense Fund and advisor to the American Bar Association’s commissions on Youth-At-Risk and on Homelessness and Poverty. Served as CEO of LUK, Inc., a regional social service nonprofit offering behavioral health, child welfare, and family support services in central Massachusetts.	J.D., University of Iowa

The expert panel first convened in April 2015 to discuss the project phases and evaluation process. To frame the discussion at the meeting, DSG provided the panel with a draft of the coding protocol and instrument and prepared a set of questions for each member of the panel to consider. The questions concerned the current safe harbor standing of states; the acquisition of relevant statutes and legislative history of safe harbor laws; and a review of the coding protocol, definitions, and instrument.

The DSG research team’s principal investigator led the discussions. Below is a summary of the insights offered by the panel, organized by themes that emerged in the discussions.

- State legislation may not use the term *safe harbor*; state legislators may just amend prostitution laws, so prostitution laws may need to be reviewed and searched by keywords.
- Due to variation of legal definitions across states, some states combine decriminalization and diversion but can be considered two separate components, and some states may not see them as mutually exclusive per their terms.
- Coding elements can have different effective dates based on legislation.
- Services of most importance include counseling/treatment, job training/education, protective housing/shelters, medical treatment.

We used the knowledge and tactics from the review panel to perform the coding of each state.

**PERFORM CODING AND CALIBRATION**

DSG assessed each safe harbor component over a 13-year time frame (2005–2017) to capture the date the law became effective, and if the law was rescinded or changed. Moreover, the instrument recorded enacting legislation (when available), and the statute language (verbatim) to ensure

accuracy. Finally, to ensure coder reliability, we developed a written protocol of rules and procedures to be followed in the coding process.

### **Pilot Testing**

In June 2015, we conducted the initial pilot of the coding scheme (version 1), making modifications to facilitate the coding process. The following three were especially important:

1. To take advantage of previous work completed by the Polaris Project, in which the researchers identified relevant state statutes, DSG researchers used these statutes as a starting point in our own review.
2. The protocol was rewritten to emphasize that the coding should concentrate on the statute (the codified law). Referring to bill or law by article and section (e.g., HF 3172 Subdivision 4) may not be consistent with the language in the statutory code. Thus, while identifying the bill is a useful reference, the citation must refer to the code.
3. To improve reliability, a written protocol was developed to establish a formal system of rules and procedures to be followed in the coding process.

In August 2015, DSG piloted the redesigned instrument (version 2). Again, we made several modifications to improve the data abstraction and reliability of the coding process. The following two were especially important:

1. Added an indicator element to track whether the laws pertain to juveniles or to the general population. While safe harbor laws pertain specifically to juveniles, it is important to track other legal status modifications that may impact the treatment of the juvenile population under consideration.
2. Revised definitions of the components, so coders could more readily identify each component within the legal text.

DSG tested a final pilot of the revised instrument (version 3) in January 2016 to ensure the new protocol correctly abstracted the relevant data elements. The analysis revealed that the revised instrument demonstrated both validity and reliability. No further modifications were made. The final coding instrument and protocol are included as appendices A and B.

### **Legislative Coding**

A team of five researchers coded the applicable legislation from all 50 states (excluding the District of Columbia, Puerto Rico, and other territories). We completed coding in spring 2016. We integrated the coding of each state into a final safe harbor state dataset\* that included the following 11 elements:

1. Immunity
2. Diversion
3. Mandatory referral
4. Demand-side penalties
5. Trafficker-side penalties
6. Investigation
7. Training
8. Task force
9. Specialized services

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\*Protective housing was originally included in the coding instrument; however, too few states enacted laws to include in the final safe harbor state dataset.

- 10. Civil action
- 11. Vacating convictions

### Calibration and Reliability

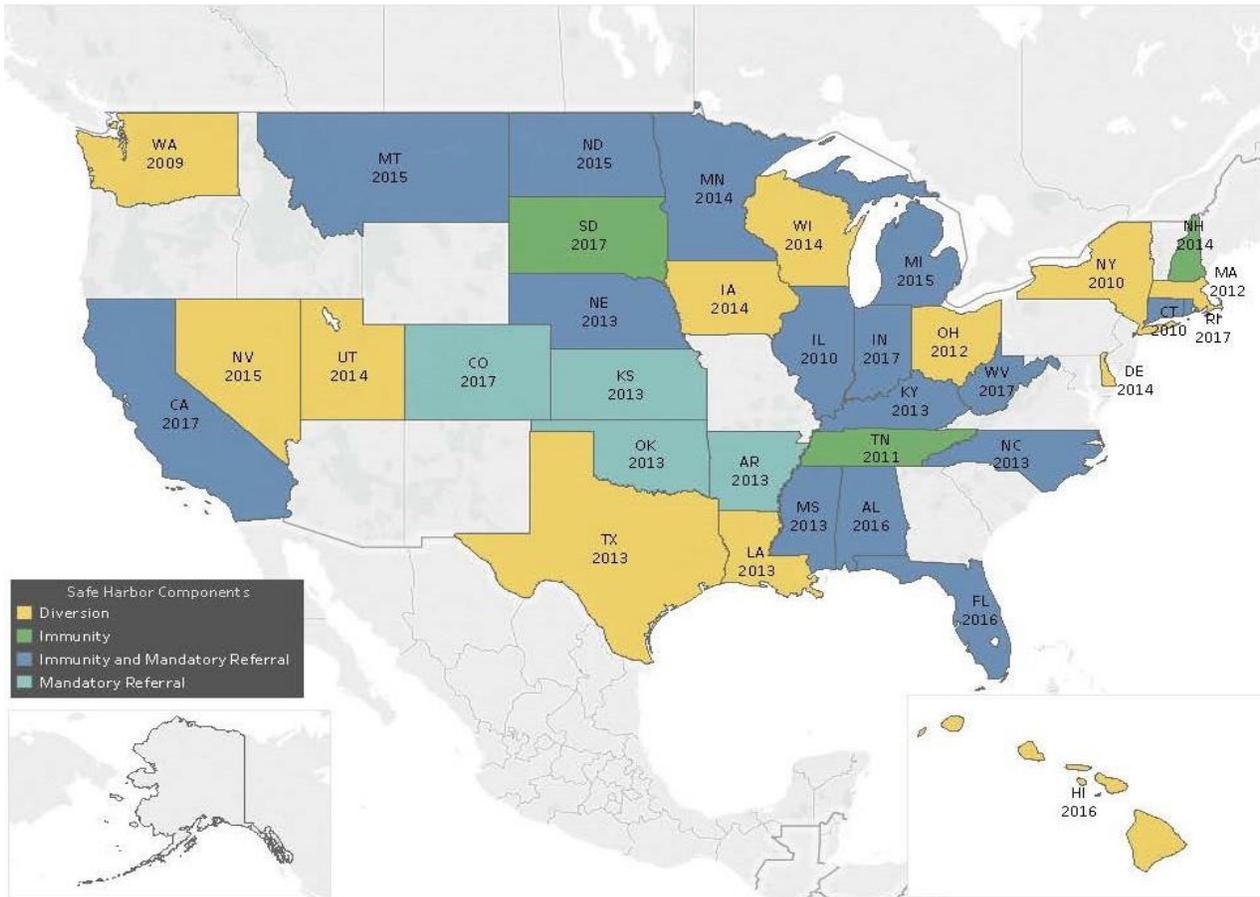
DSG performed a calibration process, in which independent senior reviewers (the principal investigator and a research assistant) assessed the findings of the original coder to ensure the validity of the final dataset.

Moreover, for quality control, DSG provided the advisory group with a summary of the legislative review dataset. The dataset was reviewed by each member to ensure that the coding task adhered to the defined set of quality criteria. We received comprehensive feedback, thoughtful comments, and questions regarding our collection process and coding logic, which we incorporated into the final version of the safe harbor state dataset.

### 4. Findings

By the end of 2017, 35 states (70 percent) had enacted safe harbor statutes redirecting commercially sexually exploited and trafficked youth away from formal processing in the justice system (Figure 4.1). The remaining 15 states do not have a safe harbor law (13 continue to treat these victims as criminals, and 2 states allow for an affirmative defense).

Figure 4.1. Safe Harbor Components Across the United States



## **SAFE HARBOR STATUS AS OF 2017**

### **Immunity**

Three states have enacted statutes providing immunity *only* to prostituted minors but do not mandate access to any specialized services: New Hampshire, South Dakota, and Tennessee.

Tennessee (§39-13-513(d), effective 2011) provides immunity from prosecution to all victims of commercial sexual exploitation identified “after a reasonable detention for investigative purpose” to be under age 18. While Tennessee attempts to connect victims with needed services by requiring law enforcement officers to “provide the minor with the telephone number for the national human trafficking resource center hotline” before releasing them to their parent, the provision of specialized services is not statutorily mandated.

Similarly, New Hampshire (§ 633:7 (VI)a, effective 2014) provides that all victims of commercial sexual exploitation under age 18 are immune from prosecution for prostitution or related charges, but again does not provide statutory access to specialized services.

In contrast, while South Dakota (§ 22-23-1, effective 2017) defines all minors who are victims of commercial sexual exploitation as victims of sex trafficking, only minors under age 16 are immune from prosecution; therefore “any person aged sixteen years or older who engages in or offers to engage in sexual activity for a fee is guilty of prostitution.” Moreover, South Dakota does not provide statutory access to specialized services.

### **Immunity With Mandatory Referral**

Sixteen states have statutes that provide prostituted minors with immunity from prosecution in association with mandatory referral to youth-serving agencies: Alabama, California, Connecticut, Florida, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, Rhode Island, and West Virginia.

Illinois and Connecticut in 2010 were the first to provide immunity to prostituted minors. The Illinois statute (720 ILCS 5/11-14(d), effective 2010) provides immunity to victims under age 18 and mandates that law enforcement officers make a report of child abuse or neglect “to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act.”

Connecticut’s prostitution statute (§53a-82, effective 2010) also provides immunity to minors who are victims of commercial sex, but only those under age 16. An additional statute mandates that law enforcement officers report minors detained for prostitution as incidents of “suspected abuse or neglect to the Department of Children and Families” (§46b-133(d)(2), effective 2011).

Within a 3-year timeframe (2013–2016), another 10 states enacted immunity with mandatory referral laws to protect minor victims of commercial sex. In 2016, Florida enacted an immunity with mandatory referral law as part of their prostitution statute (§796.07(e), effective 2016). Prior to that, minors who are victims of commercial sexual exploitation were diverted from criminal proceedings.

The most recent statutes, effective in 2017, were enacted in California, West Virginia, Indiana, and Rhode Island. All four states provide immunity from prosecution to prostituted minors under 18 and refer them to child services based on abuse, neglect, or dependency. California (§647(b)(5), effective 2017) provides immunity to prostituted minors under 18 and provides that “a commercially exploited child [...] may be adjudicated dependent child of the court.” West Virginia established

immunity for victims who are under age 18 (§61-14-8, effective 2017) and identifies them as abused children eligible for “appropriate child welfare services”. Indiana’s prostitution statute (§35-45-4-2, effective 2017) provides immunity by specifically defining prostitution as a crime committed by “A person at least eighteen (18) years of age who knowingly or intentionally performs, or offers or agrees to perform, sexual intercourse or other sexual conduct” and via statute (§35-42-3.5-4(c), effective 2015) requires law enforcement agencies to “immediately notify the department of child services that the alleged victim (1) has been detained; and (2) may be a victim of child abuse or neglect.” Rhode Island’s human trafficking statutes include both immunity of a minor (§11-67.1-15, effective 2017) for persons under age 18 and the presumption that the minor is “an abused and/or neglected child.”

### **Mandatory Referral**

Four states—Arkansas, Colorado, Kansas, and Oklahoma—require law enforcement officers who detain prostituted minors to refer them to social services; however, they do not specifically provide immunity and, thus, do not prohibit the filing of criminal or delinquency charges.

Arkansas’s juvenile code (§9-27-303(17)(G)-(18), effective 2013) identifies prostituted minors and child victims of human trafficking as dependent or “dependent neglected” and therefore permitting statutory access to child welfare services. However, the juvenile code (§ 5-70-102, effective 2013) does not specifically prohibit the prosecution of minors for prostitution-related offenses.

Similarly, Kansas (§38-2231(b)(3), effective 2013) provides that law enforcement officers may take a minor under 18 into custody if the officer “reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.” Once in custody, child protection statutes mandate that the minor be brought to appropriate child protective services. Colorado (§19-3-308, effective 2017) designates minors under age 18 who have been subjected to human trafficking for sexual servitude as victims of sexual abuse and are referred to the Department of Child Services. The department is to “immediately offer social services to the child [. . .] and to his or her family, and it may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child.” But again, there is no specific provision that prohibits the prosecution of minors for prostitution-related offenses in either state.

Conversely, Oklahoma (OK Stat § 21-1029(A)(1) effective 2013) presumes that a prostituted minor age 16 or 17 was coerced into committing the offense by another person and, thus, provided immunity under the human trafficking provisions of the state code. However, the law is unclear about whether the presumption of coercion extends to younger victims and seriously annuls the protections offered under the statute. Nevertheless, Oklahoma (OK Stat § 21-748.2(E), effective 2013) does provide guidelines for handling victims under age 18. Law enforcement officers, “upon a showing that a minor may be a victim of human trafficking or sexual abuse,” are mandated to refer minors to the custody of the Department of Human Services to “conduct a joint investigation into the claim.” If the court finds “that it is more likely than not that the minor is a victim of human trafficking or sexual abuse, then the criminal charges against the minor shall be dismissed and the Department of Human Services case and services shall proceed.”

### **Diversion**

Twelve states have diversion statutes for prostituted minors: Delaware, Hawaii, Iowa, Louisiana, Massachusetts, Nevada, New York, Ohio, Texas, Utah, Washington, and Wisconsin. These states allow for deferred prosecution of prostitution-related charges contingent upon the completion of a services program. In some cases, these programs are optional or contingent upon prior offenses and not mandatory, meaning that minors could still be prosecuted for prostitution and related offenses.

Furthermore, states differ on whether diversion services are initiated by the court or the prosecutor. New York and Washington State were the first to enact diversion statutes.

New York was the first state to pass safe harbor legislation in 2008; however, the statute did not take effect until 2010 (FCT §311.4). The diversion statute provides that if “the respondent meets the criteria as a victim of a severe form of trafficking” according to definitions from the TVPA, “a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition.” Furthermore, the statute indicates that juveniles would be afforded services for exploited children provided by child welfare services instead of delinquency proceedings, contingent upon cooperation and subject to the court’s discretion.

Washington State (RCW 13.40.213, effective 2009) provides diversion services to juveniles who have been previously arrested for prostitution or loitering for a maximum of 12 months. They are referred by prosecutors to a “comprehensive program that provides: a) Safe and stable housing; b) Comprehensive onsite case management; c) Integrated mental health and chemical dependency services, including specialized trauma recovery services; d) Education and employment training delivered onsite; and e) Referrals to offsite specialized services, as appropriate.” The original diversion statute was written to expire in 2011, but was revised in 2010 to remove the expiration date, thus keeping the statute effective indefinitely.

In a slightly different approach, rather than amending the law, the Supreme Court of Texas in 2010 set a precedent by prohibiting the prosecution of prostituted minors. According to Geist (2012), the case involved a girl who had been arrested for agreeing to engage in oral sex for \$20. After her arrest, police discovered that she had run away from a group home, been missing for 14 months, and was only age 13. On appeal to the Supreme Court of Texas, the defendant noted that under Texas law, a child under age 14 cannot consent to sex and that agreeing, or engaging in sexual conduct for money, should be interpreted to apply only to people over age 14; namely, those who could actually consent to sex. Ultimately, the court ruled that, “because a 13-year-old cannot consent to sex as a matter of law, we conclude B.W. cannot be prosecuted as a prostitute.” Technically speaking, however, because this ruling was case law, Texas does not statutorily provide immunity for minors engaged in prostitution. Nevertheless, 3 years later, Texas enacted legislation (Tex. Fam. Code § 54.04012, effective date 2013) to permit a child to participate in a “trafficked persons program” that will dismiss the case if the child successfully completes the program.

Between 2012 and 2014, eight states enacted legislation to divert prostituted minors away from the justice system. Nevada and Hawaii became the most recent states to enact a diversion-based law, in 2015 and 2016, respectively. Nevada (NRS § 62C.240, effective 2015) provides that if a petition is filed for a child under age 18 for prostitution or related offenses, the court may place the child under supervision of the court and include “services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault.” In addition, the statute provides that upon completing the conditions of supervision or turning age 18, whichever is earlier, the court can dismiss the original petition.

Hawaii’s prostitution statute (§712–1200(6), effective 2016) designates a minor as a person under age 18 and provides that, if taken into custody for prostitution, “the minor shall be subject to the jurisdiction of the family court [. . .] including for the purposes of custody, detention, diversion, and access to services and resources.”

## **OTHER LEGISLATIVE ELEMENTS**

A breakdown of the components in effect by state is displayed in Table 4.1.

Table 4.1. Other Legislative Elements

State	Demand-Side Penalties	Trafficker-Side Penalties	Investigation	Training	Task Force	Specialized Services	Civil Action	Vacating Convictions
AL								
AK					2012–13			
AZ								
AR								
CA								
CO								
CT								
DE								
FL								
GA								
HI					2006–10			
ID								
IL								
IN								
IA								
KS								
KY								
LA								
ME								
MD								
MA								
MI								
MN								
MS								
MO								
MT								
NE								
NV								
NH								
NJ								
NM								
NY								
NC								
ND								
OH								
OK								
OR								
PA								
RI								
SC								
SD								
TN								

State	Demand-Side Penalties	Trafficker-Side Penalties	Investigation	Training	Task Force	Specialized Services	Civil Action	Vacating Convictions
TX								
UT								
VT								
VA					2007–09			
WA					2013–15			
WV								
WI								
WY								

### Penalties for Perpetrators of Commercial Sexual Exploitation and Trafficking

The IOM/NRC recommended that all jurisdictions develop or strengthen laws or policies holding traffickers and solicitors accountable for participating in human trafficking and commercial sexual exploitation (Clayton et al., 2013). In addition, Geist (2012:72) suggested that “aggressive prosecution” of exploiters should be deterrents to sex trafficking of minors.

#### Demand-Side Penalties (Buyers)

As of 2017, 41 states have statutes that make penalties for the buyers of commercial sex acts (i.e., johns) with minors as high as federal penalties: Alabama, Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Idaho, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Rhode island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, and Wisconsin. Colorado and South Dakota were the most recent states to have statutes take effect in 2017.

Twelve states place higher penalties on buyers of services from minors *but* do not provide victims with state-mandated protections (minors may still be arrested and prosecuted for events resulting from trafficking or CSE): Arizona, Georgia, Idaho, Maryland, Missouri, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Vermont, and Virginia.

#### Trafficker-Focused Penalties (Suppliers)

As of 2017, every state except New Mexico has enacted statutes that increase penalties for the trafficking of minors as high as federal penalties. Hawaii was the most recent state to enact a statute, which took effect in 2016.

### CRIMINAL JUSTICE RESPONSE TO COMMERCIAL SEXUAL EXPLOITATION AND TRAFFICKING

Both the IOM/NRC (Clayton et al., 2013) and Geist (2012) recommended that individuals in contact with potential victims be trained in how to properly identify, handle, process, and protect survivors of trafficking. To date, only four states—Maine, Montana, New Hampshire, and South Dakota—have no legislative mandates for using investigative tools, training first responders, or establishing a task force to combat human trafficking.

## **Investigation**

As of 2017, 26 states had enacted legislation amending existing racketeering statutes to include the crime of human trafficking or authorizing the use of wiretapping by law enforcement in human trafficking investigations: Alabama, Arkansas, Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Minnesota, North Carolina, New Jersey, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, and Wisconsin. These statutes provide law enforcement with further tools to investigate and arrest individuals for human trafficking or the commercial exploitation of children.

The earliest states to allow use of recording or wiretapping in law enforcement investigations for human trafficking include Minnesota in 1989 and Arkansas in 1993. Ohio in 2002, Florida in 2004, and New Jersey in 2005 were next to amend their statutes to include human trafficking. By the end of 2014, another 23 states had revised their statutes to include human trafficking. No further legislation has since been passed or taken effect.

## **Training**

To date, 21 states have statutes mandating training for first responders on the identification and handling of sex trafficking victims: Arkansas, Connecticut, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, New York, Ohio, Tennessee, Texas, Virginia, Washington, West Virginia, and Wyoming.

First responders include police, emergency medical technicians, social workers, and any official agent who may come into contact with sexually exploited and trafficked youth. In 2006, the following five states enacted the first statutes mandating training: Connecticut, Florida, Indiana, Iowa, and Minnesota. In the following years, between 2009 and 2015, another 14 states had enacted laws. Tennessee and Maryland were the most recent states to enact training statutes, in 2016 and 2017, respectively.

## **Task Force**

Thirty states have adopted statutes establishing a state-mandated task force, commission, or advisory committee dedicated to addressing human trafficking: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. In 2006, four states—California, Connecticut, Hawaii, and Minnesota—enacted the first statutes establishing a state-mandated task force, commission, or advisory committee dedicated to addressing human trafficking.

Only 26 task forces were still active as of 2017. Hawaii's task force was active from 2006 to 2011, Virginia's was active from 2007 to 2009, Alaska's was active from 2012 to 2013, and Washington's was active from 2013 to 2015.

## **VICTIM REMEDIES AND ASSISTANCE**

A significant component of safe harbor laws is that, after being diverted from the justice system, victims are referred to or receive remedies and assistance appropriate to their needs. While there are no guidelines for the types of services provided to victims of trafficking, some of these services included rehabilitation, counseling, support/advocacy, emergency financial assistance, legal advocacy, group treatment, information and referral, supervised visitation, therapy, transportation, and victim compensation.

Two states—Iowa and Nebraska—have not enacted any statutes specifically providing victims of human trafficking services, including seeking civil actions against traffickers, vacating of past convictions or access to specialized victim’s services.

### **Civil Action**

Forty-four states have laws that allow sexually exploited and trafficked youth to seek civil damages from their perpetrators. The remaining six states that do not have statutes are Georgia, Iowa, Maryland, Nebraska, New York, and Wyoming. Washington was the first to adopt such a statute in 2003, followed by Minnesota in 2005. Hawaii and Virginia were the most recent states to adopt statutes, effective 2016.

### **Vacating Convictions**

Twenty-six states have statutes that allow minors who are victims of commercial sexual exploitation or sex trafficking to vacate delinquency adjudications and criminal convictions that were a result of the trafficking or exploitation: California, Connecticut, Delaware, Florida, Georgia, Illinois, Louisiana, Maryland, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. A *vacatur* sets aside the underlying adjudication, treating the event as if it never happened. In contrast, *expungement* maintains a record of the event, but keeps it from public view or access. (SHI, 2015d).

Ohio, in 2006, was the first state to make this remedy available specifically to minors who are victims of commercial sexual exploitation or sex trafficking. New York enacted statutes that took effect in 2010, followed by Maryland and Nevada in 2011. North Dakota and South Carolina were the most recent to enact statutes, both taking effect in 2015.

### **Specialized Services**

Fourteen states have statutes providing minors who are victims of commercial sexual exploitation and sex trafficking with specialized services typically administered through youth-serving agencies (e.g., child welfare or social services): California, Connecticut, Florida, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, Oklahoma, Texas, Utah, and Washington. Often, these services are included in mandatory referral statutes that instruct law enforcement to refer victims to human or family services rather than the justice system.

Washington in 2009 and Connecticut in 2010 were the first to enact legislation. Between 2013 and 2015, 10 more states followed suit. The final two, Florida and California, enacted statutes in 2016 and 2017, respectively.

States vary in the types of services offered. For example, Washington’s statute (RCW §13.40.213, effective 2009) provides juveniles with “safe and stable” temporary housing, case management, treatment for mental health or substance use disorders, “specialized trauma recovery services,” employment training, and referrals to other services as needed for up to 12 months. Further, another statute (RCW 13.40.087, effective 2010) provides juveniles diverted from the justice system with treatment specific to child victims of sexual assault or sexual abuse through the state’s social and health services department.

California provides specialized services through several avenues. Minors identified as dependents of the court can be placed with foster care or a family agency, a community care facility licensed by the state department of social services, or a group home for children “providing short-term, specialized, and intensive treatment for the child” (Cal. Welf. and Inst. Code § 361.2(e), effective 2017). Through

California’s Law Enforcement Assisted Diversion program (Cal. Penal Code §1001.87 and §1001.88, effective 2017), minors identified as recently involved in “prostitution activity” may receive services such as “case management, [temporary] housing, medical care, mental health care, treatment for alcohol or substance use disorders, nutritional counseling and treatment, psychological counseling, employment, employment training and education, civil legal services, and system navigation.”

## **5. Discussion**

The commercial sexual exploitation and sex trafficking of minors is a critical social problem. Many believe that at their most basic level, they are forms of child abuse. However, unlike other forms of child abuse, which are primarily dealt with by child welfare and juvenile court systems, sexually exploited and trafficked youth historically fell under the purview of law enforcement and the criminal justice system (Clayton, Krugman, and Simon, 2013), where they are treated as criminals rather than victims.

The way these youths were handled in the United States began to change with passage of the TVPA. Although the TVPA was not enacted specifically to protect prostituted minors, the broad language used in the Act characterized minors who are victims of commercial sexual exploitation—regardless of their countries of origin—as victims of human sex trafficking. This cultural shift continued in 2013 with the release of the IOM/NRC report that called for a paradigm shift in the way we treat minors who are victims of commercial sexual exploitation and sex trafficking. Among other things, the IOM/NRC recommended the development of safe harbor legislation to redirect prostituted minors away from the formal processing in the justice system toward youth-serving agencies that could provide supportive services.

DSG’s environmental scan revealed four important observations:

- 1) There are inconsistencies in the research as to the safe harbor status of each state.
- 2) The goal of all safe harbor laws is to repeal the punitive approach to minors who are victims of commercial sexual exploitation and sex trafficking (i.e., prostituted minors).
- 3) All safe harbor laws must redirect youth away from the justice system via either immunity, diversion, mandatory referral, or a combination of these elements.
- 4) Safe harbor laws may include a variety of other elements designed to protect minors who are victims of commercial sexual exploitation and sex trafficking, but the composition of elements varies widely from state to state.

A comparative analysis of the data found that by the end of 2017, 35 states (70 percent) had enacted safe harbor statutes to remove the punitive sanctions for young victims of CSE. The remaining 15 states do not have a safe harbor law (13 continue to treat these victims as criminals, and 2 states allow for an affirmative defense). Thus, 30 percent of states still allow the arrest and prosecution of minors who are victims of commercial sexual exploitation and sex trafficking.

On average, about four states per year since 2009 have enacted safe harbor laws, with 80 percent of states enacting safe harbor laws between 2013 and 2017. This suggests a fundamental change in treatment of prostituted minors on a national level.

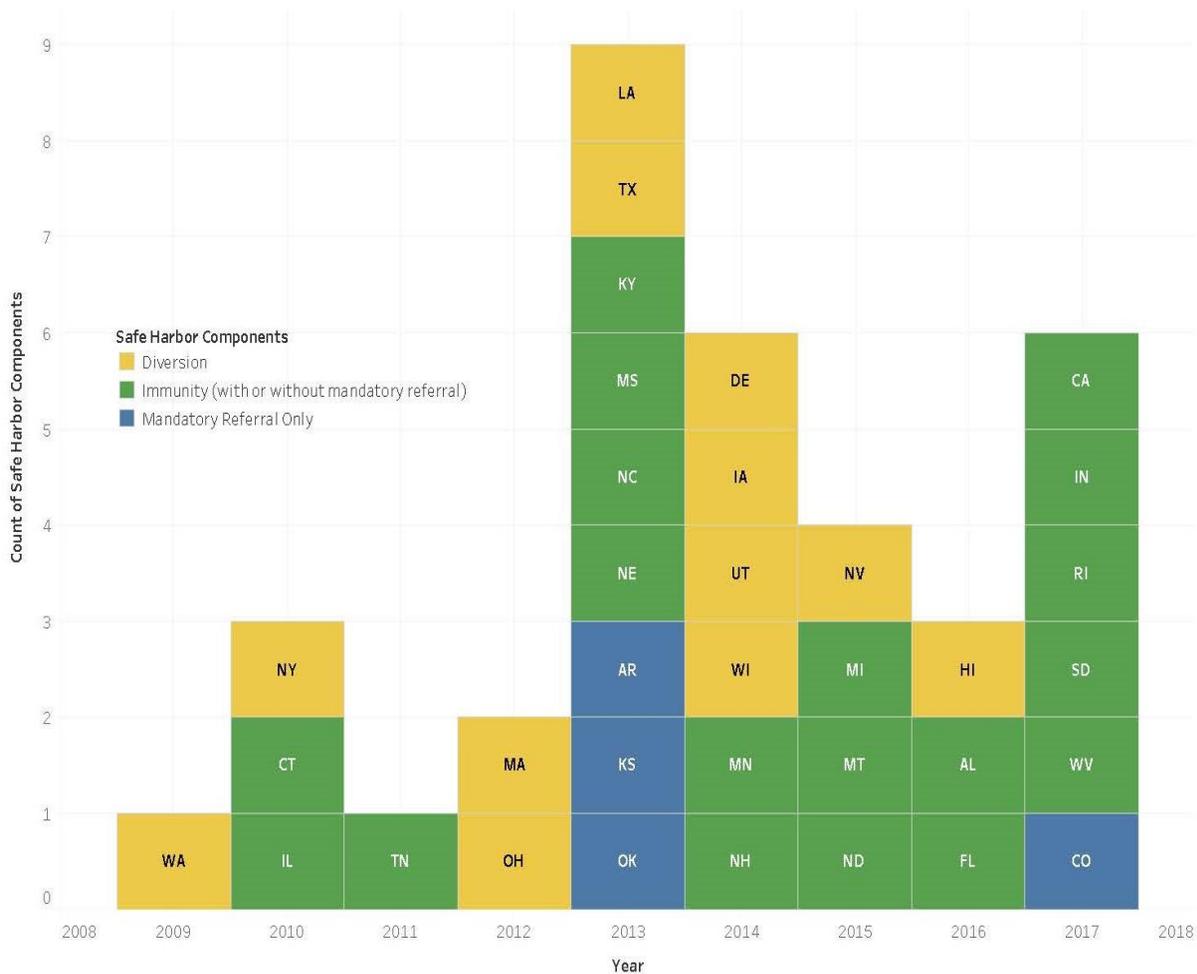
**By the end of 2017, 35 states (70 percent) had enacted safe harbor statutes . . . Thus, 30 percent of states still allow the arrest and prosecution of minor victims of CSE and sex trafficking.**

The most popular method of implementing a safe harbor law is through immunity *with* mandatory referral (16 states), followed by diversion (12 states), mandatory referral only (4 states), and immunity only (3 states).

Examining the method of the implementation temporally (see Figure 5.1), it is evident states preferred diversion early in the reframing movement. From 2009 to 2012, seven states enacted safe harbor legislation. Of these, four (57 percent) used the diversion approach. Overall, prior to 2015, 21 states enacted safe harbor legislation. Of those 21 states, 10 (48 percent) used diversion. Nine states (43 percent) used the immunity approach (seven combined with mandatory referral), and two states used mandatory referral only.

Current trends suggest states are moving away from diversion toward the immunity approach (either with or without mandatory referral). Since 2014, 13 states have enacted safe harbor laws. Of those 13 states, 10 (77 percent) have used immunity (nine combined with mandatory referral). Two states (15 percent) have used the diversion, and one state (8 percent) has used mandatory referral only.

Figure 5.1. Timeline of Safe Harbor Legislation Effective Years



A likely reason states are moving away from the diversion approach is that many legal scholars and policy advocates prefer immunity over diversion. They assert that a model that maintains prosecution as an option fails to fully embrace the perspective that prostituted minors are victims, not criminals (Wasch et al., 2016). In fact, the Uniform Law Commission recommends immunity for minor victims of sex trafficking (National Conference of Commissioners on Uniform State Laws, 2013).

However, the immunity approach is not without critics. It can be argued that immunity without the ability to maintain the victim under the auspices of a youth-serving organization permits the youth, once released, to return to their abusers either willingly or because of fear or other control tactics leading to increases in prostitution (Dysert, 2013). This begs the question of how a state can systematically provide minors with the material, psychological, and social support that aid in recovery.

The effectiveness of safe harbor laws may rest not only in repealing punitive measures but also in the capacity to obtain appropriate referrals to service providers, regardless of legal outcomes. However, the provision of specialized services was the least-implemented supplemental element identified in our analysis, with only 14 states statutorily requiring the provision of services to prostituted minors and sex trafficking victims. It stands to reason that addressing this gap must be part of the next wave of legislation.

Nevertheless, states have enacted more sophisticated models to deal with deficiencies in safe harbor laws. For example, almost all states include penalties for traffickers that meet or exceed federal standards to punish the trafficker and completely sever the tie between victim and abuser. Similarly, nearly half of the states include demand-side penalties (for buyers) that meet or exceed federal standards. Still other states encourage the use of special investigative tools, mandate training for law enforcement and other first responders, and provide for a minor who is a victim of safe harbor or sex trafficking to seek civil damages from the perpetrator for the damages they have suffered as a result of the victimization.

The most popular supplemental element was trafficker-focused penalties, with all states except New Mexico increasing penalties for traffickers that meet or exceed federal standards, followed by civil action (44 states), demand-side penalties (41 states), investigation (27 states), task force and vacating convictions (26 states each), and training (21 states).

**Many legal scholars and policy advocates prefer immunity over diversion. They assert that a model that maintains prosecution as an option fails to fully embrace the perspective that prostituted minors are victims, not criminals.**

## **REGIONAL TRENDS\***

An examination of regional trends reveals interesting patterns. First, the West and East regions have lagged behind the Midwest and South regions in enacting safe harbor legislation: only 12 of 22 states (54 percent) in West and East have adopted safe harbor laws compared with 25 of 28 states (89 percent) in the Midwest and South. Nevertheless, states in the West and East that have passed safe harbor legislation tend to use the diversion approach more often, while states in the Midwest and South take to immunity.

In the Northeast, 5 of 9 states (56 percent) have passed safe harbor legislation. Of those 5 states, 3 (60 percent) have used the diversion approach. Meanwhile, in the West (including Hawaii and Alaska), 7 of 13 states (54 percent) have passed safe harbor legislation. Of those 13 states, 4 (31 percent) have used the diversion approach. Moreover, no states in the West provide minors with immunity from prosecution.

In contrast, 11 of 12 states in the Midwest (92 percent) have passed safe harbor legislation. Of those 11 states, 7 (64 percent) have enacted statutes providing immunity (6 with mandatory referral and 1 without). Similarly, 14 of 16 Southern states (88 percent) have passed safe harbor legislation. Of those 14 states, 7 (50 percent) have enacted statutes providing immunity (6 with mandatory referral and 1 without).

## **PROTECTIVE HOUSING**

This legislative element provides persons under age 18 suspected of engaging in, or attempting to engage in, prostitution with some form of supportive housing to prevent a return to the street. DSG intended to capture and analyze statutes pertaining to safe, supportive housing services or shelters for victims. However, once we completed the state coding, we determined that too few states had implemented such statutes to analyze and draw conclusions from the data.

Just two states have statutes for protective housing; however, the importance of including a discussion or qualitative analysis of this component was highlighted by the DSG expert advisory panel for this study (See section 3.4 above for more on the expert panel) as “one of the main concerns from survivors/victims’ group” and “an area that [. . .] receives scant attention by policy makers and even community advocates.”

New York in 2010 was the first state to define and provide safe housing to sexually exploited minors. The laws defined safe and secure housing, mandated the establishment of at least one safe house to provide short-term shelter and specialized services for exploited minors, and instructed these services be implemented in cooperation with a nonprofit agency. Florida in 2013 followed with statutes defining safe-harbor placement, safe houses and safe foster homes for sexually exploited minors, and certification procedures to become a safe home. These placements are meant to “provide a safe, separate, and therapeutic environment tailored to the needs of sexually exploited children who have endured significant trauma.” (FL 409.1678(2)(a))

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\*Regional state breakdown: *Midwest* (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin), *Northeast* (Connecticut, Maine, Massachusetts, New Hampshire, New York, New Jersey, Pennsylvania, Rhode Island, and Vermont), *South* (Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia), and *West* (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming).

## **6. Implications for Study Phases 2 and 3**

DSG will use the data collected during Phase 1 to inform Phases 2 and 3 of the evaluation.

### **PHASE 2**

Using the data collected in Phase 1, we constructed a state-level safe harbor dataset that logged the enactment year and month of each safe harbor element. This dataset was integrated with crime data from the Uniform Crime Reports, maltreatment data from the National Child Abuse and Neglect Data System (NCANDS), and sociodemographic data elements from the American Community Survey. We are using the integrated dataset to conduct a quantitative assessment of the effectiveness of safe harbor laws.

The quantitative assessment will involve a multivariate interrupted time-series design\* with a comparison group to compare the counties that have and have not implemented safe harbor laws over an 11-year period (2005–2015). The unit of analysis is county. The intervention sample includes all counties with populations of 65,000 or more within states that adopted safe harbor laws as of 2015. The comparison group is all counties with populations of 65,000 or more within states that have not enacted safe harbor laws during the same time period. Overall, the dataset includes approximately 100,000 observations (counties \* years \* months).

In Phase 2, DSG will assess the impact of safe harbor laws on two sets of outcome data: Uniform Crime Reports crime data and NCANDS child maltreatment data. We hypothesize that safe harbor states will demonstrate

- 1) A decrease in minors arrested for prostitution or related offenses.
- 2) An increase in services available to prostituted minors and victims of sex trafficking.

Both crime and maltreatment can be measured through many metrics, including occurrence (yes/no), seriousness (e.g., felony/misdemeanor), and frequency or rate. In this evaluation, both are measured as the number of occurrences per month, or counts.†

We will use the XTNBREG command in Stata 15.0 statistical software to calculate the maximum likelihood estimate of the parameters for the safe harbor estimator and to compute the associated probability values. This will provide estimates of the comparative effects of the counties with and without safe harbor laws. XTNBREG fits random-effects over dispersion models, conditional fixed-effects over dispersion models, and population-averaged negative binomial models.

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\*In its simplest form, an interrupted time-series design begins with a long series of repeated measurements on a dependent variable. The intervention (i.e., enactment of safe harbor laws) breaks this time series into pre- and post-intervention segments, and the data analysis compares the dependent variable in the two periods. An interrupted time-series-control group, like the basic interrupted time-series design, has multiple observation points before and after an intervention but is augmented with a nonequivalent (not randomly assigned) comparison group that did not undergo the intervention (i.e., states that have not yet enacted the law). Consequently, an interrupted time-series-control group design offers both across-group and over-time comparisons (Langbein and Felbinger, 2006). If there is a program impact, one expects a perturbation (i.e., change) of the time series at the time the program is put into operation at the target site. Similarly, there should be no perturbation at the comparison site.

†Count data is a type of data in which the observations can take only the non-negative integer values. A known issue with count data is that it tends to be over dispersed—a situation in which the variance of the response variable exceeds the mean. To account for over dispersion, DSG will use a modeling strategy that is appropriate for count data—negative binomial regression (Long, 1997; Cameron and Trivedi, 1998; Long and Freese, 2003)—to analyze the change in crime and maltreatment trends in the treatment and comparison counties over an 11-year observation period (2005–2015).

The monthly count of prostitution-related crimes (e.g., prostitution, disorderly conduct, vagrancy, curfew and loitering, and runaway) in each county over the 11-year evaluation time period is the primary outcome measure (Y). However, changes in each of the specific crime measures will be analyzed independently, and the maltreatment measures.

Specifically, to estimate the effect of the safe harbor law, we will create dichotomous dummy variables that indicate whether a county was in the treatment group (1) or in the comparison group (0; SHever) and whether the measurement period was pre- (0) or post intervention (1; SHperiod). These two dummy variables will then be interacted (SHimpact). Consistent with prior criminological research, which tends to show that past levels of violence in specific areas are significant predictors of current levels of violence in specific areas (e.g., Sampson, Raudenbush, and Earls, 1997), we will include a covariate (Lagged Y) for the lagged (t-1) number of prostitution-related crimes for each county. To account for linear yearly trends in the dependent variable, we will include a year variable measured as the simple linear additive progression for each year (Year).

DSG will present the results of this analysis in subsequent reports.

### **PHASE 3**

In Phase 3, we will bridge Phases 1 and 2 by conducting two case studies\* to illustrate the complexity of drafting, passing, and implementing a safe harbor law:

- 1) A state that successfully implemented a safe harbor law and demonstrated effective results.
- 2) A state that successfully passed a safe harbor law but has not, to date, produced positive results.

The primary data source for the case studies includes public laws, committee reports, conference reports, newspaper articles, and interviews with legislators and staffers who were responsible for the bill in the state legislature. In this case, each case study is designed to provide an analytical assessment of the forces that both drove and hindered the passage of safe harbor legislation.

Ultimately, the purpose of the case studies will be to provide relevant contextual information concerning the development and implementation of the legislation.

In terms of development, some of the questions include

- How and why safe harbor laws became an important issue?
- Who were the key actors in the creation and passage of this legislation?
- What groups, resources, or support were most useful?
- What competing interests or challenges hindered the legislation?

In terms of implementation, some of the questions include

- Do you think the law helped address these issues?
- Has the current law been implemented and enforced at the local level?

DSG will present the findings of these case studies in a subsequent report.

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\*A case study is an evidence-rich analytical story of a single process, person, event, program, or project. As a reflective tool, a case study can be beneficial for policy development, given how it typically deepens our understanding of systems and processes.

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# Appendix A

## Final Coding Instrument

Coder:		State:														Effective Date	Bill or Public Act No.	Focus of Statute		Statute History	Statute Text	Statute Citation	Notes
SH Component	Applicable Years														General			Minors					
	00	01	02	03	04	05	06	07	08	09	10	11	12	13					14				
<a href="#">Decriminalization</a>																							
<a href="#">Diversion</a>																							
<a href="#">Mandatory Referral</a>																							
<a href="#">Demand-Side Penalties</a>																							
<a href="#">Trafficker-Focused Penalties</a>																							
<a href="#">Investigation</a>																							
<a href="#">Training</a>																							
<a href="#">Task Force</a>																							
<a href="#">Services</a>																							
<a href="#">Protective Housing</a>																							
<a href="#">Civil Action</a>																							
<a href="#">Vacating Convictions</a>																							

# Appendix B

## Final Coding Protocol

## Safe Harbor Coding Protocol

- I. Begin by referencing the 2014 Polaris state reports when coding each state's Safe Harbor components. This step is to familiarize the coder with the state's Safe Harbor components that have already been captured by the Polaris reports and used as a reference when looking for additional information.
  - The 2014 Polaris reports are saved in R:\Safe Harbor\Data\Phase 1\SH Coding Protocol & Material\2014 State Reports

Each Safe Harbor component is roughly associated with a Polaris category.

- For example, Polaris category 7 *should* have the appropriate reference to determine if the law fits under the diversion or decriminalization Safe Harbor component and Polaris category 4(a) *should* have the appropriate reference to determine if the law provides training for the services Safe Harbor component.
- II. Next, conduct a search for any laws, acts, legislative documents, or other applicable material related to Safe Harbor or sex trafficking statutes for your state. Searches can include using Google, state government websites, legal searches, and other resources.
    - Google searches should provide you with Safe Harbor acts and appropriate statute citations.
    - Links or references to plain text language documents describing legislature can be included in the notes section.
    - If no statute is found for a component, record your findings in the notes section.
  - III. Based on the statutes found in the searches, code each state's Safe Harbor components. Definitions and examples of coding components are explained in the following pages.
    - Save coding sheets as: SH Coding Sheet\_State\_coder initials. For example: *SH Coding Sheet\_DE\_apb*

## Safe Harbor Coding Components

### ❖ DECRIMINALIZATION AND DIVERSION

Typically, decriminalization and diversion are ***mutually exclusive***. In other words, you can choose only one, not both. However in some instances where legislation has been updated or revised there may be laws pertaining to both. In those cases, you would code all of the available legislation and add an explanation to the notes section.

➤ It falls under *decriminalization* if it

- (a) Prohibits the charging or prosecution of a juvenile suspected of engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation

*and*

- (b) Makes no reference to the provision of services

➤ It falls under *diversion* if it either

- (a) Prohibits the charging or prosecution of a juvenile suspected of engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation

*or*

- (b) Permits the charging of a juvenile suspected of engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation

*and*

- (c) Offers services to the youth as a victim.

### ❖ OTHER SAFE HARBOR COMPONENTS

All other components are ***mutually inclusive***. In other words, you can choose all that apply. For instance, any state criminal code may make references to 0 or all 9 Safe Harbor components.

### ❖ APPLICABLE YEARS

Please indicate each year the statute is applicable including the year in which the law became effective.

- For example, if a law was put into effect in 2011 but removed in 2013 the coder should mark years 2011, 2012, and 2013 only. Please include mention of statute revisions in the statute history section.

### ❖ EFFECTIVE DATE

Please identify the date (month and year) the law was ***put into effect*** rather than the date the law was enacted.

- For example, if the law was enacted in May 2011 but did not take effect until January 2012 the coder should enter Jan 2012.

❖ **BILL OR PUBLIC ACT NO.**

This field should capture the relevant reference to the state’s legislative bill or public act number associated with the statute being coded, if available. The bill or public act will often include the date in which the statutes were put into effect. These are to be coded separate from statute citations.

❖ **FOCUS OF STATUTE**

Please identify whether the statute being coded focuses on general victims of trafficking or minors only.

❖ **STATUTE HISTORY**

This field should capture any notes on the progression of revisions of the laws separately from the general notes column.

❖ **STATUTE TEXT**

A statute is a written law passed by a legislature on the state or federal level. Statutes set forth general propositions of law that courts apply to specific situations. A statute begins as a bill and becomes law when it is signed by the executive officer. When a bill becomes law, the various provisions in the bill are called statutes. The term statute signifies the elevation of a bill from legislative proposal to law. State and federal statutes are compiled in statutory codes that group the statutes by subject.

- The coder should identify the statute language from the statutory code and ***add the language verbatim***. This information is likely provided by Polaris but should be confirmed.
- Text should only include the section of the statute pertaining to the Safe Harbor component. Definitions of terms and other text do not need to be included.
- If a state has revised statute text coders can indicate changes by highlighting text (change font color, underline, cross out, etc.)

❖ **STATUTE CITATION**

The citation field should capture the relevant reference to the statutory code. The usually preferred format is as follows: Name of law (if available), State Abbreviation Code Abbreviation § section number(s) (Year if available).

- Example Entry: Child Abuse and Neglect Reporting Act, Cal. Penal Code § 11164 et seq.
- Example Entry: Chapter 559 (Cal. Stat. 2010)

Referring to a bill or law by article and section (e.g., HF 3172 Subdivision 4) may not be consistent with the language in the statutory code. Thus while identifying the bill is good and may be a useful reference, ***the citation must refer to the code***.

❖ **NOTES**

The coder may add any information that may be useful to the reviewers or note any questions. This can include

- Statute revisions that may affect coding of the components
- Contradictions between the Polaris report and the general searches
- Links to plain language text describing the statutes
- Questions regarding coding, highlighted in yellow