

Child victims of human trafficking are forced, induced, or coerced into providing labor, services, or commercial sex. A trafficked child may be compelled to engage in illegal activities such as prostitution or the selling of drugs, and instead of being treated as victims, many are treated as criminals and are prosecuted accordingly. Arrest and prosecution can further traumatize the victim as well as leave him or her with a profound distrust of law enforcement, which can prevent victims from seeking assistance. Furthermore, the criminal record that results from being prosecuted can act as a barrier to future employment and other opportunities. Thus, it is necessary for states to enact laws that both protect and assist children that have been exploited for labor or sex. The laws that provide this type of protection are called safe harbor laws.

What a Safe Harbor Law Does

Safe harbor laws were developed by states to address inconsistencies with how children that are exploited for commercial sex are treated. Under federal law, a child under eighteen that is induced into providing commercial sex is a victim of trafficking and must be treated as such. State laws criminalize adults that have sex with children under statutory rape laws, however these laws were not consistently applied in cases where the adult purchased sex. The result was children, recognized under both state and federal law as victims of a crime, were arrested and convicted of prostitution. Safe harbor laws are intended to address the inconsistent treatment of children and ensure that these victims were provided with services.

Fundamentally, safe harbor laws have two components: legal protection and provision of services. The legal protection component provides immunity from prosecution for certain types of offenses because the child was induced or compelled to commit the offense or an established diversion program that affords a means for charges to be dismissed if the child completes a specialized services program. The services component of safe harbor requires that specialized services be made available to survivors. Services should include medical and psychological treatment, emergency and long-term housing, education assistance, job training, language assistance, and legal services. Ultimately, both components are necessary to reduce trauma and provide a path to recovery.

Current Safe Harbor Policy

Thirty-four states have passed safe harbor laws, many of which vary significantly. Most states that have passed safe harbor legislation have limited the scope of the protections to children that have been commercially sexually exploited (CSEC). This means that safe harbor provisions are applicable only to children that have engaged in commercial sex, thus the legal protections offered apply to prostitution and prostitution-related crimes. More recently, a growing number of states are including non-commercial sex, non-violent crimes in their version of safe harbor for minor trafficking victims.

Most state safe harbor laws define a “minor” by specifying a maximum age under which a victim will be decriminalized. Such provisions reflect the presumption that minors who have participated in criminal activity have done so as a result of having been exploited and sexually abused. The most protective age-based statutes for minors have adopted immunity for children under the age of eighteen for prostitution, promoting prostitution, or other non-violent offenses if the offense was committed as a direct result of being a victim of human trafficking. In a less protective approach, some other states only provide immunity for children under a certain age (typically fourteen or fifteen) or for first time offenders. CSEC victims who do not receive immunity are diverted from criminal proceedings to a services program and charges against the child are dismissed when he or she successfully completes the program.

Most states provide services to CSEC victims through the state child welfare system. Typically, children identified as a victim of commercial sexual exploitation are designated as a child in need of supervision or a dependent child, allowing the state child welfare system to intervene and provide assistance to the child. In other states the agency that oversees juvenile justice is designated to provide assistance to victims of CSEC.

Policy Considerations

One of the key safe harbor considerations is whether a state will create immunity from prosecution or create a diversion program. Although experts disagree on which model is best, Polaris believes that the combination of immunity and services provides the most legal protection and goes the furthest to ensure a victim of CSEC is entitled to the benefits of a victim. The determination to pursue immunity versus diversion will likely influence other considerations states must make when drafting safe harbor laws, including the most appropriate agency to provide services and the facilities used to provide housing and care.

The preference for immunity is reflected in recent action taken by the Uniform Law Commission (ULC) and the American Bar Association (ABA). In 2011, the ABA House of Delegates passed a resolution urging states not to charge child trafficking victims with prostitution and related offenses but to instead provide services.¹ In 2013, the ULC released the Uniform Act on Prevention of and Remedies for Human Trafficking (Uniform Act). This guide for state legislators provides language drafted and adopted by lawyers from across the country that can serve as a basis for state legislation. The Uniform Act clearly and unequivocally recommends the immunity model for child victims of trafficking. The ABA House of Delegates endorsed the Uniform Act shortly after it was adopted.

Language from the Uniform Act on Prevention of and Remedies for Human Trafficking (Act):

Section 15. Immunity of a Minor

- (a) An individual who was a minor at the time of the offense is not criminally liable or subject to [juvenile delinquency proceeding] for [prostitution] and [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking.

The Uniform Act also broadens the scope of safe harbor to protect not only children who have been commercially sexually exploited, but also recognizes that child victims of labor trafficking are forced to commit crimes during the course of their exploitation and should be provided with the same protections as victims of CSEC.

Safe harbor legislation can be complex to draft due to the number of state entities involved in a successful safe harbor plan and because there are differing opinions on the best way to provide services. Polaris is eager to support the evolving best practices in this area of anti-trafficking law.

¹ American Bar Association, Child Trafficking August 2011, available at, http://www.americanbar.org/groups/youth_at_risk/commission_policyresolutions/child_trafficking.html
For additional information or assistance, please contact Polaris at policy@polarisproject.org