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Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution

PART I OF II

By Toolsi Gowin Meisner¹

This Update is Part I of a two part series. Part I provides an overview of New York's legislative approach addressing youth involved in prostitution and identifies potential concerns. Part I also discusses an alternative response implemented in Boston, Massachusetts, that resembles a child abuse model. Part II will further examine the effectiveness of these models and provide suggestions as to how we may improve our response to youth involved in prostitution.

New York Safe Harbor for Exploited Youth Act

As a society we must do everything in our power to prevent sexual exploitation, but when it does occur we must be prepared to assist our youth with appropriate outreach services. For too long we have been disciplining young children who are the victims of brutal sexual exploitation instead of providing them with the necessary services to reintegrate them into society to ensure they receive adequate crisis intervention.²

New York Governor David S. Paterson issued the above statement upon signing into law the Safe Harbor for Exploited Children Act (the "Safe Harbor Act") on September 25, 2008.³ Prior to passage of the Safe Harbor Act, prostituted youth were arrested, charged, and treated as offenders rather than as child victims of sexual exploitation. The Safe Harbor Act, effective April 1, 2010, amends the New York Family Court Act to allow for child victims of prostitution to defer criminal prosecution and instead petition for consideration as a person in need of supervision.⁴ In addition, the Safe Harbor Act amends the New York Social Services Law by enhancing child protection services in providing critical support and social services to these child victims of prostitution.⁵ Thus, instead of being re-victimized by the criminal justice system, child victims of sexual exploitation will now be able to gain access to emergency shelters and receive medical, therapeutic, and educational services and care necessary to successfully transition back into the community.

Persons in Need of Supervision ("PINS")

A child victim of prostitution addressed as a "person in need of supervision" ("PINS") is defined by the Family Court Act as a person less than 18 years of age who does not attend school in accordance with education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care.⁶ As amended by the Safe Harbor Act, the definition of PINS now also includes those below 18 years of age who are arrested for crimes involving prostitution.⁷ Furthermore, the provision controlling persons who may file as a respondent in a PINS petition was also amended to include victims of child sexual exploitation.⁸

Under the Family Court Act, at the conclusion of a dispositional hearing, the court may substitute a finding that a juvenile is a PINS for a finding that the juvenile is delinquent.⁹ The Safe Harbor Act reflects a presumption that juveniles arrested for prostitution meet the criteria for certification as a victim of a "severe form of trafficking," as defined by the Federal Trafficking Victims Protection Act of 2000.¹⁰ A juvenile arrested for prostitution may motion to

substitute a PINS petition for the delinquency proceedings.¹¹ The court must ordinarily grant the juvenile's motion. However, the court may proceed with delinquency proceedings—instead of PINS proceedings—if the juvenile (i) is not a victim of a severe form of trafficking according to the federal definition, (ii) has been previously found to have committed a prostitution offense, (iii) was previously adjudicated and placed with a commissioner of social services as a PINS, or (iv) expresses an unwillingness to cooperate with specialized services for sexually exploited youth.¹² If the court decides to continue with the delinquency proceedings, it must make written findings of fact to support that decision and make them part of the court record.¹³ If once the court orders a PINS petition the juvenile is not in compliance with conditions imposed, the court may re-substitute the delinquency proceedings.¹⁴

Social Services for Child Victims of Sexual Exploitation

The Safe Harbor Act also enhances New York Social Services Laws by requiring every local social services district to address the child welfare services needs of sexually exploited children and, *to the extent that funds are available*, ensure that preventative services including safe housing and community-based programs are available.¹⁵ These services must be readily available to sexually exploited children whether they seek them voluntarily or as a result of a court ordered condition of PINS.¹⁶ The local social services must also recognize that sexually exploited youth have individual needs according to gender and, *to the extent funding is available*, make appropriate programming available.¹⁷

Under the Social Services Laws, the Office of Children and Family Services must contract with a non-profit experienced in working with sexually exploited children to operate at least one safe house in an area not readily accessible by the perpetrators of sexual exploitation.¹⁸ Safe houses or short-term safe houses can be residential facilities or part of an existing approved runaway and homeless youth program as long as staff has received appropriate training regarding sexually exploited children.¹⁹ The safe houses must directly or through other agencies provide necessary services for sexually exploited children including housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse.²⁰ Safe houses may also provide counseling and therapeutic services, educational services including life skills services and planning services aimed at successfully transitioning exploited children back into the community.²¹

Community service programs may include street outreach, voluntary drop-in services, peer counseling, individual counseling, family therapy and referrals for services such as educational and vocational training and health care.²² In order to determine the extent of community-based programs needed to serve sexually exploited children, the local commissioner must annually consult with law enforcement, runaway and homeless youth program providers, probation departments, public defenders and district attorneys' offices and child advocates who work with sexually exploited youth and include this information in an integrated county plan.²³ Lastly, *to the*

extent that funding is available, the local commissioner must provide training to law enforcement to help them identify and obtain services for the sexually exploited children whom they encounter in their duties.²⁴

Concerns with New York's Legislative Approach

The Safe Harbor Act represents one recent and proactive attempt to protect rather than prosecute juvenile victims of prostitution. It is predicated on available funding which can be problematic in this economic climate. In addition, the Safe Harbor Act is predicated on an arrest of the juvenile involved in prostitution prior to the PINS diversion review. These juveniles are still sent a message that they are offenders deserving of punishment rather than victims in need of services. Furthermore, the PINS provision excludes juveniles who have prior arrests for prostitution crimes. This exclusion fails to appreciate the cycle of violence that sexually exploited teens experience. Similar to many victims in domestic violence situations, juvenile victims of prostitution often do not identify as victims in need of services. They may still be under the control or fear of pimps and return to them only to re-offend.

Multidisciplinary Child Abuse Model Response to Youth Involved in Prostitution

While New York is the only state to go so far as to implement legislation recognizing child victims of prostitution, many local agencies have implemented similar diversion programs as well. For example, county-level agencies within Boston have proactively sought to combat the growing problem of teenage prostitution. These agencies have initiated programs aimed at identifying juvenile victims of prostitution and linking them with necessary treatment and services that help them safely escape the cycle of exploitation and re-integrate into communities.

Suffolk County Teen Prostitution Prevention Project

"There's no doubt that it's easier to prosecute someone arrested for prostitution than it is to investigate, indict, and convict the pimp who exploited her. To do so, however, would only allow this phenomenon to stay hidden in the shadows where it will consume more girls and young women. Ethically and morally, we have to take a different course."²⁵ District Attorney Daniel F. Conley. In 2007 when a 16-year-old neurologically-disabled girl was arrested for prostitution a year earlier, the incident triggered a multi-agency response that would divert her from the street and send her pimp to state prison for the maximum allowed under law.²⁶ This multi-agency response is known as the Teen Prostitution Prevention Project ("TPPP").²⁷ In 2004, District Attorney Conley launched an initiative that changed the way teenage prostitutes were viewed by the criminal justice system. The TPPP was created as a response to the increasing number of girls and young women being lured into prostitution.²⁸ It was one of the top 50 initiatives selected by the Ash Institute for Democratic Governance and Innovation and was recognized for its novelty, creativity, effectiveness at addressing significant issues, and its potential to be repli-

cated by other jurisdictions.²⁹ The TPPP is coordinated by the Children's Advocacy Center and operates out of the Family Justice Center of Boston, which Conley co-chairs. Similar to child abuse and domestic violence response models, the TPPP draws upon a multidisciplinary approach, combining the efforts of over 40 agencies including various law enforcement offices, youth social service providers, medical providers, probation departments, victim-witness advocates, and other community youth health and welfare organizations.³⁰ In fostering interagency communication, TPPP strives to prevent teenage prostitution and to facilitate prosecution of the adult offenders that exploit.

District Attorney Conley remarked on the TPPP at the National Conference on Child Abuse and Neglect in 2005, identifying the Suffolk County District Attorney's Office as a lead partner in this new initiative that seeks to understand why teenagers fall into lives of prostitution, and how to best help them escape that life and get into safer and healthier environments.³¹ Conley further stated that "one major focus of this effort is to view teenage prostitutes as victims rather than defendants."³² Moreover, although prostitution by a child remains a crime in Massachusetts,³³ Conley publicly announced that when a case of child prostitution is referred to the Suffolk County District Attorney's Office "rather than prosecute her, we and our partners make sure that she has safe and suitable housing, that she is enrolled in some sort of educational program, that any mental or physical health issues she may have are being addressed."³⁴

Pursuant to Massachusetts General Laws, Ch. 119, §51A, mandated reporters are required to report all suspected child abuse, including instances of suspected prostitution of children.³⁵ Thus rather than arresting juveniles for crimes involving prostitution, law enforcement is required to file a 51A child abuse report within 48 hours with the Department of Youth Services.³⁶ The Department of Youth Services may also receive independent referrals and is mandated to immediately report cases of suspected child sexual exploitation to the district attorney and local law enforcement authorities.³⁷ The child is treated as a victim/witness rather than a defendant and is referred to the TPPP, conveniently located at the Family Justice Center, to address immediate needs such as safe housing. If the victim is willing to cooperate, prosecutors will begin to build a case against the pimps and johns that may have exploited the child victim.

In late 2008, Conley explained that when the pilot program for TPPP was first launched, it received fewer than five referrals that year, however, when perceptions began to change and information was shared across agencies, referrals skyrocketed—"not because more children were being exploited but because we were paying attention to a phenomenon that had been there all along."³⁸ In its first year of operation, the TPPP identified almost ten times as many exploited youth than had been identified in the prior year by the relatively small number of agencies then aware of the problem.³⁹

The New York Safe Harbor Act and Boston's TPPP are two examples of efforts to recognize juveniles involved in prostitution as victims. These attempts demonstrate a shift in our re-

sponsibility to protect these children from further sexual exploitation. As a society, it is imperative that we give these children an alternative to a future "in the life."

¹ Ms. Meisner is a former Staff Attorney with the National Center for Prosecution of Child Abuse.

² Press Release, New York State, Governor Paterson Signs Law To Protect Sexually Exploited Youth (Sept. 26, 2008), http://www.state.ny.us/governor/press/press_0926082.html.

³ Safe Harbor for Exploited Children Act, Assem. B. 5258, Leg., 231st Sess. (N.Y. 2008).

⁴ See N.Y. Fam. Ct. Act §§ 712, 732, and 311.4 (2008).

⁵ See N.Y. Soc. Serv. §§ 447-a and 447-b (2008).

⁶ N.Y. Fam. Ct. Act § 712(a) (2008).

⁷ *Id.*

⁸ See N.Y. Fam. Ct. Act § 732 (2008) and N.Y. Soc. Serv. § 447-a(1) defining "sexually exploited child" as any person under the age of 18 who has been subject to sexual exploitation as a victim of a crime of sex trafficking or compelled prostitution or someone who engaged in prostitution acts.

⁹ See N.Y. Fam. Ct. Act 311.4 (2008).

¹⁰ See N.Y. Fam. Ct. Act § 311.4(3) (2008); 22 USCS § 7102(8)(A) defining "victim of a severe form of trafficking in persons" as sex trafficking in which a commercial sex act is one in which the person induced to perform such act has not attained 18 years of age.

¹¹ See N.Y. Fam. Ct. Act § 311.4(3) (2008).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ N.Y. Soc. Serv. § 447-b(1) (2008).

¹⁶ N.Y. Soc. Serv. § 447-b(2) (2008).

¹⁷ N.Y. Soc. Serv. § 447-b(4) (2008).

¹⁸ N.Y. Soc. Serv. § 447-b(5) (2008).

¹⁹ N.Y. Soc. Serv. § 447-b(1) (2008); N.Y. Soc. Serv. § 447-a(4) (2008) defining "safe house."

²⁰ N.Y. Soc. Serv. § 447-a(4) (2008).

²¹ *Id.*

²² N.Y. Soc. Serv. § 447-a(5) (2008) defining "community-based program."

²³ N.Y. Soc. Serv. § 447-b(3) (2008).

²⁴ N.Y. Soc. Serv. § 447-b(6) (2008).

²⁵ See *Girl's Arrest Leads to Pimp's Conviction*, SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, July 23, 2007, available at <http://www.mass.gov/dasuffolk/docs/7.23.07.html>; Quoting Daniel F. Conley.

²⁶ *Id.*

²⁷ See *Film on Sex Trade to Screen Tonight in Boston*, WICKED LOCAL, Nov. 17, 2008, available at <http://www.wickedlocal.com/allston/archive/x776448307/Film-on-sex-trade-to-screen-tonight-in-Boston>. TPPP is today known as the Support to End Exploitation Now coalition.

²⁸ See *Teen Prostitution Prevention Project Named Among Top 50 Innovative Government Programs*, SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, Apr. 4, 2007, available at <http://www.mass.gov/dasuffolk/docs/4.4.07C.html>.

²⁹ *Id.*

³⁰ *Id.*

³¹ District Attorney Daniel F. Conley, Remarks at the 15th National Conference on Child Abuse and Neglect (Apr. 21, 2005), available at <http://www.mass.gov/dasuffolk/docs/Speech042105.html>.

³² *Id.*

³³ See MASS. GEN. LAWS ch. 272, § 53A (2009).

³⁴ Conley, *supra* note 31.

³⁵ See MASS. GEN. LAWS ch. 119, § 51A (2009).

³⁶ BOSTON POLICE DEPARTMENT RULES AND PROCEDURES: PROTECTION OF ABUSED PERSONS RULE 327, Section 12(B) (June 12, 2006), available at <http://www.cityofboston.gov/police/pdfs/rule327.pdf>

³⁷ See MASS. GEN. LAWS ch. 119, § 51B(k)(3) (2009).

³⁸ Film on Sex Trade to Screen Tonight in Boston, *supra* note 27.

³⁹ See Biography of Suffolk County District Attorney Daniel Conley, SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, available at http://www.mass.gov/dasuffolk/docs/DC_BIO_2007.html.

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