

The Advocates for Human Rights

Safe Harbor

Fulfilling Minnesota's Promise to Protect
Sexually Exploited Youth



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February 2013

About The Advocates for Human Rights

The mission of The Advocates for Human Rights is to implement international human rights standards in order to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and select global communities.

The Advocates for Human Rights investigates and exposes human rights violations and abuses internationally and in the United States; represents immigrants and refugees who are victims of human rights violations and abuses; trains and assists groups to protect human rights; and works through research, education, and advocacy to engage the public, policy makers, and children in understanding human rights.

The Advocates for Human Rights was founded in 1983 by a group of Minnesota lawyers who recognized the community's unique spirit of social justice as an opportunity to promote and protect human rights in the United States and around the world. Today The Advocates has produced more than 75 reports documenting human rights practices and policy recommendations, and works with partners overseas and in the United States to restore and protect human rights. The Advocates for Human Rights holds Special Consultative Status with the United Nations.

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SAFE HARBOR: FULFILLING MINNESOTA'S PROMISE TO PROTECT SEXUALLY EXPLOITED YOUTH reflects three years of work on the Safe Harbor initiative. In that time, The Advocates for Human Rights has been guided by an extraordinary array of experts in this field who lead Minnesota, the nation, and the world in creating a better understanding of and response to sex trafficking.

First, we thank the courageous women who stepped forward to share their stories of sexual exploitation during the 2011 legislative session, and we thank our colleagues who provide services to sexually exploited individuals including Breaking Free, the Minnesota Indian Women's Resource Center, the PRIDE Program of The Family Partnership, Duluth's Program to Aid Victims of Sexual Assault, the Minnesota Coalition Against Sexual Assault, and many others. We relied upon these extraordinary women to bring the voices of those directly affected into the public policy discussion.

We also thank the law enforcement and public safety officials, including in particular senior members of the Ramsey County Attorney's Office and the Saint Paul and Minneapolis Police Departments, who have greatly contributed to our understanding of this problem and who work every day to see that Minnesota's children are safe from sex trafficking and that traffickers are held accountable.

The Statewide Human Trafficking Task Force, led initially by Danette Buskovich at the Department of Public Safety, Office of Justice Programs and today by Amy Kenzie of the Minnesota Department of Health's Sexual Violence Prevention Program, has provided us with the supportive and multidisciplinary venue to work through the complex problem of sex trafficking in Minnesota. We are grateful to the organization End Child Prostitution and Trafficking-USA (ECPAT-USA), who first approached The Advocates about exploring Safe Harbor in Minnesota and who provided funding for our work in 2010-11.

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INTRODUCTION

In 2011, Minnesota passed the Safe Harbor for Sexually Exploited Youth Act (Safe Harbor 2011), laying the groundwork for a victim-centered response to sexually exploited children and those at risk of sexual exploitation. Safe Harbor 2011 defined prostituted children as the victims of sexual exploitation, ended reliance on delinquency proceedings as the sole systems response to meeting the needs of these crime victims, and called for the creation of a framework for implementation of the changes to the delinquency definition, which become effective on August 1, 2014.

Safe Harbor 2011 reflects a sea change in how sexually exploited youth are treated in Minnesota. In addition to identifying these children as victims, initial training efforts, followed by increasing and innovative law enforcement, are beginning to result in arrest, prosecution, and conviction of sex traffickers. The public campaign by the Women's Foundation of Minnesota, which reminds Minnesotans that "Minnesota Girls Are Not For Sale," increases the public's understanding that sex trafficking is not something that only happens in other countries, but is a crime and a human rights abuse suffered by girls (as well as boys, women, and men) in our own communities.

Safe Harbor 2011 mandated a stakeholder engagement process to envision a model for ensuring that Minnesota has an effective, systematic response to sexually exploited youth. That process has proven to be critical in propelling Minnesota's response to child sex trafficking forward, not only developing a comprehensive framework but also creating momentum for making the proposed changes a reality.

In spite of the strong protections enshrined in the law, Safe Harbor 2011 is limited. Its provisions apply only to children age 15 and under; sex trafficking victims ages 16 and 17 are not protected. Moreover, Safe Harbor 2011 does not provide the mechanisms or the funding to implement the changes to Minnesota's delinquency code when Safe Harbor goes into effect in 2014. Comprehensive supportive services and housing must be funded and implemented immediately so that they are available when Safe Harbor's changes to Minnesota's delinquency definition go into effect in 2014.

This report analyzes Safe Harbor 2011, including the Safe Harbor Working Group process and the comprehensive approach to Safe Harbor which it developed, entitled *No Wrong Door: A*

*Comprehensive Approach to Safe Harbor for Minnesota's Sexually Exploited Youth.*¹ In addition, this report examines Safe Harbor 2011 against international standards, federal laws, and emerging state practice related to the sexual exploitation of children to identify gaps that remain.

¹ MN Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota's Sexually Exploited Youth*, Jan. 2013.

SUMMARY CONCLUSIONS

Core Principles of a Human Rights Approach to Child Sex Trafficking

- Prohibition of the prostitution of children, prosecution of traffickers and punishment with appropriate sanctions
- Protection of trafficked persons from prosecution without conditioning protection on cooperation
- Access by trafficked persons to legal counsel, witness protection, reparation, rehabilitation, and other protections.

PROHIBITION AGAINST SEX TRAFFICKING OF CHILDREN

Prostitution of children in Minnesota is illegal. Minnesota law criminalizes sex trafficking, or the “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.” Sex trafficking of a child under the age of 18 is punishable by up to 20 years in prison and a fine of up to \$50,000. Engaging in, hiring, or agreeing to hire a minor to engage in prostitution is a felony. Punishment differs depending on whether that minor is under the age of 13 years, 16 years, or 18 years, ranging from terms of imprisonment up to 20 years and fines up to \$40,000. Housing an unrelated minor engaged in prostitution is also a punishable offense.

How Minnesota Compares

Minnesota meets human rights standards.

CLASSIFICATION OF SEX TRAFFICKED PERSONS AS CRIME VICTIMS

Although Minnesota’s criminal code does make both the trafficking of persons under 18 and engaging in prostitution with a minor felonies, Safe Harbor 2011 fails to recognize all trafficked persons under 18 as child victims. This is an inherent inconsistency. Children ages 16 and 17 still face either mandatory diversion, if qualified, or juvenile delinquency adjudication.

How Minnesota Compares

Changes made by Minnesota’s 2011 Safe Harbor law create a diversion program, set to go into effect in 2014 for youth ages 16 and 17. The 2011 Safe Harbor diversion scheme fails to take into account, as directed by international guidelines, both sexually exploited juveniles’ status as

crime victims and their vulnerability to reentry into sexual exploitation. Under the 2011 Safe Harbor diversion scheme, qualifying sex trafficking victims ages 16 and 17 will be subject to mandatory diversion for their first prostitution offense but thereafter may be adjudicated delinquent. If the child fails to complete or fully comply with the diversion program, she may be referred back to juvenile court for delinquency adjudication.

Many 16- or 17-year-old victims, however, are ineligible for diversion in the first place, including victims who have prior delinquency adjudications for prostitution offenses; victims who have participated in or previously completed a diversion program for engaging in prostitution; victims who have previously been placed on probation without an adjudication or received a continuance under section 260B.198, subdivision 7, for engaging in prostitution; victims who have previously been found to be a child in need of protection or services for engaging in prostitution or have been found to be a sexually exploited youth as defined in section 260C.007, subdivision 31, clause (1), are not eligible for diversion.

Minnesota fails to meet human rights standards.

How Minnesota Compares

ACCESS TO SERVICES FOR SEXUALLY EXPLOITED CHILDREN

While Minnesota's Safe Harbor 2011 did not outline specific services for sex trafficked children, it did direct the state of Minnesota to engage stakeholders in creating a model for the law's implementation, including identifying needed services. The No Wrong Door model, which resulted from Minnesota's year-long stakeholder engagement process, identified the housing, supportive services, and staffing needed for child sex trafficking victims and those at risk of trafficking. Although the No Wrong Door model leaves many issues, such as provisions regarding confidentiality, to future implementation, it does lay the groundwork for meeting Minnesota's obligation to provide access to services for trafficked children.

With funding for the No Wrong Door model of comprehensive services, Minnesota will meet human rights standards.

THE SAFE HARBOR INITIATIVE IN MINNESOTA

Safe Harbor 2011 changed Minnesota’s approach to meeting the needs of sexually exploited youth and youth at risk of sexual exploitation by recognizing that prostituted children are the victims of sexual exploitation, ending reliance upon delinquency proceedings as the sole systems response to these crime victims, and calling upon the state to create a framework for implementation of the changes when they become effective on August 1, 2014. These provisions were designed to work in tandem with one another, giving Minnesota time to shift to a victim-centered model before the elimination of delinquency authority.

In the year that followed the enactment of Safe Harbor 2011, the commissioner of public safety, together with the commissioners of health and of human services, convened a statewide stakeholder consultation process to create recommendations for the structure needed to support the approach to providing services and support to sexually exploited youth and to youth at risk of sexual exploitation. A Safe Harbor Working Group was formed to identify the necessary steps to effectively implement Minnesota’s Safe Harbor law. The Working Group was funded by private dollars made possible by the Women’s Foundation of Minnesota.² The outcome of that Working Group is the No Wrong Door³ model for responding to sexually exploited youth and youth at risk of sexual exploitation. The No Wrong Door report was presented to the legislature in January 2013.

Safe Harbor 2011

Excludes sexually exploited youth under age 16 from the definition of “delinquent child.”
Effective August 1, 2014

Creates mandatory first-time diversion for qualifying children ages 16 and 17 who have been exploited through prostitution.
Effective August 1, 2014

Includes the definition of sexually exploited youth in Minnesota’s child protection codes.
Effective August 1, 2011

Increases penalties against commercial sexual abusers.
Effective August 1, 2011

Directs the commissioner of public safety to work with stakeholders to create a victim-centered response to sexually exploited youth.
Effective August 1, 2011

² The 2011 Legislature faced significant budget shortfalls, and any costs created by the Safe Harbor legislation threatened its passage. The Women’s Foundation of Minnesota, involved in the issue through its A Future Not A Past initiative and as part of The Advocates’ Safe Harbor steering committee, stepped forward during bill negotiations with the offer of providing private support to the planning process.

³ The “No Wrong Door” model is named after the report by the MN Department of Public Safety, Office of Justice Programs to the Minnesota Legislature entitled *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota’s Sexually Exploited Youth*.

THE NEED FOR SAFE HARBOR IN MINNESOTA

Fundamentally, Minnesota’s legal response to sexually exploited children reflected the long-held ambivalence about prostitution. On the one hand, Minnesota treats the crime of engaging in prostitution with a minor as a serious crime.⁴ On the other, those minors who “engage in prostitution” were considered to be juvenile delinquents and understood to be “prostitutes” who are willing participants in consensual transactions.

Despite changes to Minnesota law in 2005, which recognized the crime of “sex trafficking,” prostituted persons, including children, in general continued to be treated as part of the criminal enterprise of prostitution. On paper, children found to be “engaging in prostitution” continued simultaneously to be considered to be victims of sex trafficking, children in need of protection or services, in some cases maltreated minors, and juvenile delinquents. Overall, these laws left much room for diverse interpretation and confusion about how the legal system should respond to sexually exploited children.

Sex trafficking of children is a predatory and violent crime which often results in significant harm to the victim.⁵ Traffickers use manipulative and sophisticated grooming, breaking, and control tactics. Manipulated by the traffickers, victims often view their traffickers as boyfriends and quickly return to them after any legal intervention. Traffickers use violence or threats of violence against the children or their families, keeping them from voluntarily leaving the trafficking situation or seeking help. Victims of trafficking often are ashamed and fear rejection or ostracism by their families or communities if they try to return home.

Further, sex traffickers prey upon those they see as vulnerable. While in some cases very young children are trafficked, by and large, trafficked children are adolescents. Children who are sex trafficked often have other risk factors. For example, many are runaway or homeless youth, have drug or alcohol problems, are in a gang, or are gay, lesbian, or transgender homeless

⁴ MN Stat. 609.324, subdivision 1(a) (2012) (defining “engaging in, hiring, or agreeing to hire minor to engage in prostitution” as a felony punishable by imprisonment for not more than 20 years or payment of a fine of not more than \$40,000, or both, if the child is under age 13; imprisonment for not more than 10 years or payment of a fine of not more than \$20,000, or both, if the child is at least 13 but under age 16; and imprisonment for not more than 5 years or payment of a fine of \$10,000, or both, if the child is at least 16 but under age 18.)

⁵ See Martin, Lauren, Richard Lotspeich, and Lauren Stark, *Early Intervention to Avoid Sex Trading and Trafficking of Minnesota’s Female Youth: A Benefit-Cost Analysis* (2012), p. 23.

youth.⁶ Homeless youth are particularly susceptible, often being exploited by men extorting sex in exchange for food or shelter. On any given night, an estimated 2,500 Minnesota youth experience homelessness.⁷ Some trafficked children have run away from home or have suffered physical or sexual abuse in their homes, making family reunification difficult or impossible.

Adding to the problem, the child protection system lacks the ability to intervene where children face danger at the hands of traffickers. Although Minnesota law long has defined prostituted children as “children in need of protection or services,” child protection systems rarely have the capacity to take these cases. In practice, child protection’s response often is limited to cases falling under the maltreatment of minors statute.⁸ By focusing on family reunification and the needs of very young children, trafficked youth fall largely outside the purview of county child protection systems. The absence of an effective protection system designed and ready to meet the needs of these children has left the juvenile delinquency system as the only response.

Because of these issues, removing sexually exploited children from delinquency jurisdiction without replacing it with the ability to intervene with trauma-informed, victim-centered housing and services could have left children at risk of falling through the cracks. The delayed implementation date of Safe Harbor 2011 was designed to give time to recommend necessary changes to ensure that children find safety when leaving prostitution.

In its *2008 Sex Trafficking Needs Assessment for the State of Minnesota* (2008 Needs Assessment), The Advocates identified several key recommendations to strengthen victim safety.⁹ The Advocates found that trafficked persons need greater access to services tailored to meet their specific needs, that Minnesota law should prioritize the protection of trafficked

⁶ See Birckhead, T.R. (2011). *The “Youngest Profession”: Consent, Autonomy, Prostituted Children*, 88 Wash. L. Rev. 5, cited in MN Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota’s Sexually Exploited Youth*, p. 6.

⁷ “Homeless Youth in Minnesota,” Amherst H. Wilder Foundation, *available at* www.wilder.org/Wilder-Research/Research-Areas/Homelessness/pages/Homeless-Youth-in-Minnesota.aspx (last accessed Feb. 5, 2013) (note that this study defines “youth” to include anyone under age 21).

⁸ MN Stat. 626.556 (2012).

⁹ The Advocates for Human Rights, *Sex Trafficking Needs Assessment for the State of Minnesota*, Sept. 2008, p. 15-16.

persons over their arrest and prosecution, and that professionals who respond to sex trafficking need effective protocols for victim identification and referral to services.¹⁰ The approach adopted by Safe Harbor 2011 took strides toward meeting these recommendations.

THE GROUNDWORK FOR MINNESOTA’S SAFE HARBOR

Minnesota has unique criminal provisions which recognize that the most common form of prostitution is human trafficking. Although training about how to effectively implement these laws remains a priority, the existing legislative framework largely addresses offender accountability. Minnesota also is home to an innovative pilot project which uses a victim-centered, public health approach to dealing with sex trafficked children. Minnesota’s statewide trafficking task force has been in existence since 2006, providing a mechanism for public safety officials, public health professionals, service providers, advocates, and others to regularly discuss emerging issues, best practices, and legislative developments. Minnesota is home to several nationally recognized providers of services for sexually exploited women and girls and has a long history of advocacy against violence against women. These factors positioned Minnesota to enact strong Safe Harbor legislation.

RECOGNIZING THE CRIME OF HUMAN TRAFFICKING

In 2005, Minnesota amended its criminal statutes to define sex trafficking as a type of promotion of prostitution. Minnesota law defines sex trafficking as “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”¹¹ Sex trafficking of a child under age 18 is a felony punishable by up to 20 years in prison and up to a \$50,000 fine.

Engaging in prostitution with a minor also is a felony, with punishment depending on the age of the victim. Engaging in prostitution with a child who is at least 16 but not yet 18 can result in imprisonment up to 5 years and a fine up to \$10,000.¹² Penalties for engaging in prostitution

¹⁰ The Advocates for Human Rights, *Sex Trafficking Needs Assessment for the State of Minnesota*, Sept. 2008, p. 15-16.

¹¹ MN Stat. 609.321, subd. 7b (2012).

¹² MN Stat. 609.324, subd. 1(c) (2012).

with younger children range from up to 10 years and \$20,000 fines when the child is between the ages of 13 and 16 to up to twenty years in jail and \$40,000 when the child is under the age of 13.¹³ This recognition in Minnesota’s criminal law that the most common forms of prostitution constitute sex trafficking is consistent with Safe Harbor’s premise that sexually exploited youth are crime victims, rather than perpetrators of offenses.

THE SAFE HARBOR YOUTH INTERVENTION PILOT PROJECT

The Ramsey County Runaway Intervention Project¹⁴ inspired many of the core concepts and values of the 2011 Safe Harbor legislation.¹⁵ Importantly, the Runaway Intervention Project provided essential experience and data for the 2011 Safe Harbor initiative and served as a blueprint for statewide reform. The Runaway Intervention Project showed that victim-centered intervention far surpassed delinquency adjudications in achieving positive outcomes.

The Runaway Intervention Project was created by Assistant Ramsey County Attorney Kate Richtman, who knew that the revolving door of juvenile delinquency adjudications for girls exploited through prostitution was not working and was convinced that victim-centered intervention could work to get these girls off the prostitution track. The Ramsey County Attorney’s Office worked with the Midwest Children’s Resource Center, the local children’s advocacy center, and with SOS-Ramsey County, the local sexual assault victim services organization. Together they designed a victim-centered intervention program where success was measured by improved outcomes for the youth. The Runaway Intervention Project addresses the needs of both sexually exploited girls and girls at risk of sexual exploitation.

¹³ MN Stat. 609.324, subd. 1(a), (b) (2012).

¹⁴ H.F. 4162, art. 13, sec. 4, subd. 4(b) (2006) (Authorizing legislation referred to the project as the Safe Harbor for Youth Intervention Project).

¹⁵ The 2011 Safe Harbor law specifically references the Runaway Intervention Project, directing that “[t]he commissioner [of public safety] shall take into consideration the findings and recommendations as reported to the legislature on the results of the safe harbor for sexually exploited youth pilot project authorized by Laws 2006, chapter 282, article 13, section 4, paragraph (b).

The Runaway Intervention Project's documented results have been remarkable.¹⁶ Professor Elizabeth Saewyc of the University of British Columbia, who has documented the impact of the Runaway Intervention Project, reports that girls completing the program "have shown dramatic improvement in healthy sexual behaviors, increased connectedness with family and school, higher self-esteem, improved mental health, and reduced drug use. Participants have gotten back on healthy development tracks, almost, statistically, as if they had not been abused."¹⁷

While Safe Harbor 2011 did not mirror the Runaway Intervention Project, the project was instrumental both in Safe Harbor's passage and its vision.

2010-2011 STRATEGY FOR SAFE HARBOR LEGISLATION IN MINNESOTA

In early 2010, the New York-based group ECPAT-USA (End Child Prostitution and Trafficking) engaged The Advocates in exploring the possibility for introducing a Safe Harbor law in Minnesota. The Advocates interviewed stakeholders and experts to determine the need and political will for such legislation in Minnesota. The Advocates also assembled a steering committee, which included staff of the Women's Foundation of Minnesota, Minnesota Coalition Against Sexual Assault, the Minnesota Department of Health, the Minnesota Department of Public Safety's Office of Justice Programs, the Minnesota Department of Human Services, the Ramsey County Attorney's Office, Breaking Free, Duluth's Program for Aid to Victims of Sexual Assault (PAVSA), the PRIDE Project of The Family Partnership, Ramsey County SOS, and Professor Mary Louise Fellows of the University of Minnesota Law School.

Introducing legislation that would ensure an appropriate and effective response to sexually exploited children was a priority. The Advocates conducted interviews with law enforcement officers and command, county and city attorneys, public defenders, juvenile court judges, service providers, and public health professionals to develop the model for the 2011 Safe Harbor legislation. Each of these stakeholders was essential to developing an effective response.

¹⁶ *Early Intervention to Avoid Sex Trading and Trafficking of Minnesota's Female Youth: A Benefit-Cost Analysis*, a report by Lauren Martin, Richard Lotspeich, and Lauren Stark (2012), p. 52, provides an excellent overview of the Runaway Intervention Project.

¹⁷ www.co.ramsey.mn.us/Attorney/RunawayInterventionProject.htm

The Family Partnership spearheaded efforts at the legislature to find legislative champions for the proposed legislation. Lead authors became Rep. Steve Smith (R) and Sen. Sandy Pappas (D). The Statewide Human Trafficking Task Force endorsed the legislation. The City of Minneapolis and others put Safe Harbors on their legislative agendas. Introduction of the bill spurred county attorneys in the Metro, Rochester, and Duluth areas to adopt a policy of not pursuing delinquency charges against prostituted children under age 18 and have begun to see results.¹⁸ The Women’s Foundation of Minnesota committed to provide private funding for a stakeholder planning process.

The Safe Harbor bill was heard in the house public safety and judiciary committees, but never received a hearing in the senate. During conference committee negotiations, Safe Harbor was included in the conference report, but significant modifications were made to the legislation which had not been considered in committee hearings. Unlike the initial legislation, children ages 16 and 17 remained subject to delinquency adjudication and a diversion scheme was created for first-time “offenders.” Other key provisions remained intact: young children were excluded entirely from delinquency, “sexually exploited youth” were included in the child protection code, minimum penalties for commercial sexual abusers were established, and the safe harbor working group was authorized. On July 20, 2011, Governor Dayton signed Safe Harbor 2011 into law.

MINNESOTA’S SAFE HARBOR 2011 LAW

THE SAFE HARBOR WORKING GROUP: ENVISIONING MINNESOTA’S NEW APPROACH

During the process of drafting the 2011 legislation, it was clear that the juvenile delinquency approach to dealing with sexually exploited youth had to be replaced by another system that would meet the needs of the children and, most importantly, keep them safe. It was equally clear that the expertise of a wide array of professionals from across sectors would be needed to envision an effective replacement system. Safe Harbor 2011, therefore, included the creation of the working group and delayed implementation of the changes to the delinquency definition to accommodate this process.

¹⁸ In testimony before the Minnesota House of Representatives Public Safety Finance and Policy Committee on January 29, 2013, Ramsey County Attorney John Choi attributed the successful prosecution of Samuel Cozart, resulting in a plea agreement to a 21 year sentence, in large part to the cooperation of the 17-year-old trafficking victim. The Roseville Police Department repeatedly assured the victim during their initial interview that she would not face delinquency adjudication under the new Ramsey County policy.

THE SAFE HARBOR WORKING GROUP MANDATE

Throughout 2011-12, as directed by Safe Harbor 2011, the commissioner of public safety, together with the commissioners of health and of human services, convened a statewide stakeholder consultation process to create recommendations for the structure needed to support the approach to providing services and support to sexually exploited youth and to youth at risk of sexual exploitation. A Safe Harbor Working Group was formed to identify what was needed to ensure the law would work when the final provisions go into effect in 2014. The working group was multi-jurisdictional and included prosecutors, public defenders, judges, public safety officials, public health professionals, child protection workers, and service providers from around the state.

THE NO WRONG DOOR MODEL

The Safe Harbor Working Group adopted the vision that no matter where a sexually exploited youth or a youth at risk of sexual exploitation seeks help – no matter which door she knocks on – she will be met with an effective victim-centered response. This vision became known to the Working Group participants as the No Wrong Door model.¹⁹

The Working Group's core values included recognition that trauma-informed, individually-responsive care, combined with prevention strategies and effective victim identification, is the most appropriate response to sexually exploited youth. Research has shown that the upfront commitment to preventing and protecting youth from trafficking is a worthwhile investment for Minnesota. In 2012, alongside the work of the Safe Harbor Working Group, the Minnesota Indian Women's Resource Center undertook research, conducted by Lauren Martin and Lauren Stark of the University of Minnesota and economist Richard Lotspeich of Indiana State University. The research focused on the financial benefits and costs of early intervention to prevent sex trading and trafficking of adolescent females. The researchers analyzed the projected impact on the public budget by Safe Harbor. The research indicates that for every \$1 of public cost, early intervention yields \$34 in benefit.²⁰

¹⁹ This inspired the title of the Department of Public Safety's report to the legislature: Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota's Sexually Exploited Youth*, Jan. 2013.

²⁰ Lauren Martin, Richard Lotspeich, and Lauren Stark, *Early Intervention to Avoid Sex Trading and Trafficking of Minnesota's Female Youth: A Benefit-Cost Analysis* (2012), p. vi, 3.

The Working Group recognized several basic model assumptions. Among them is that Minnesota’s model for implementing Safe Harbor will rely on existing assets and strengths and that duplication of resources must be avoided. Minnesota has developed many resources and best practices that are relevant and useful to responding to sexually exploited youth. For example, Minnesota long has led the world in developing innovative responses to domestic violence. In recent years, that system has seen significant cuts in resources resulting in shelter and program closure. Minnesota also has sophisticated sexual assault nurse examiner and sexual assault response team systems, which also have faced significant funding cuts. Finally, Minnesota is at the cusp of addressing longstanding systemic resource deficiencies for shelter and services for homeless youth, which long have been underfunded despite dramatic need.



The Safe Harbor Working Group recognized that funds for domestic violence, sexual assault, and homeless youth shelter and services are vital to providing for the needs of Minnesota’s sexually exploited youth without creating costly bureaucracy and infrastructure. Support for existing programs must be maintained and strengthened, while at the same time making available to those and other programs funding specific to meeting the need for housing and services for sexually exploited youth. Rather than develop a duplicative infrastructure, the Safe Harbor Working Group sought to build on these

existing resources. The resource needs identified by the Safe Harbor Working Group rely on the full funding of existing services and shelter for sexually exploited youth in Minnesota through appropriations.

Another assumption made by the Working Group is that while holding youth in detention is undesirable, keeping youth safe is paramount. One of the most difficult issues for the Safe Harbor Working Group was the issue of secure detention. County attorneys, law enforcement officials, and service providers all expressed concern that removing children from delinquency jurisdiction would take away the authority to detain sexually exploited children in secure facilities. These stakeholders identified short-term secure detention as one important tool for keeping traffickers away from youth.

Finding a balance between the primary goal of Safe Harbor – treating sexually exploited children as crime victims rather than criminals – and providing a mechanism to permit short-term secure detention was difficult.²¹ Eventually a committee of county attorneys, child protection workers, public defenders, and advocates identified a procedure for allowing secure placement for up to 72 hours. This mechanism relies on articulation of immediate danger to the child’s health or welfare and includes judicial oversight.²²

No Wrong Door Recommendations

1. Create a statewide director position.
2. Create six regional navigator positions.
3. Provide comprehensive training on juvenile sexual exploitation.
4. Ensure effective outreach to youth.
5. Support coordinated law enforcement investigations across Minnesota.
6. Provide appropriate, effective diversion opportunities to youth ages 16 and 17.
7. Modify the Juvenile Protection Hold Statute to meet the needs of sexually exploited youth.
8. Ensure access to safe and supportive housing.
9. Provide appropriate and accessible supportive services to sexually exploited youth.
10. Support efforts to prevent the sexual exploitation of youth.
11. Conduct comprehensive evaluation to ensure the No Wrong Door Model is an effective model of intervention.

THE SAFE HARBOR WORKING GROUP: PROCESS AND LESSONS LEARNED

The Safe Harbor Working Group has focused on the safety and security of victims, non-discrimination, accountability, and community and civil society participation.²³ The Advocates applauds this human rights approach to public policy.

The legislative mandate, which directed that a “victim services model to address the needs of sexually exploited youth and youth at risk of sexual exploitation,”²⁴ be created helped keep the focus on the safety and security of the victim. The working group committed to that mandate and returned to it when considering difficult questions.

²¹ The Juvenile Justice and Delinquency Prevention Act of 1974 sought to ensure that status offenders were not held in jails or other secure detention centers. 28 C.F.R. sec. 31.204(h) defines a status offender as “a juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

²² MN Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota’s Sexually Exploited Youth*, Jan. 2013, at 18.

²³ See The Advocates for Human Rights, *Discover Human Rights: A Human Rights Approach to Social Justice Work*, July 2011.

²⁴ Laws of Minnesota 2011, chapter 1, section 9 (effective Aug. 1, 2011).

The Safe Harbor Working Group identified as core values the need to be responsive to the needs of individual youth and to make services available to all youth. The working group also sought to ensure that the model it created was open and accessible to all victims without discrimination. Creating a system with the flexibility and expertise to provide services that “gender-responsive, culturally competent, age-appropriate and supportive for youth who are gay, lesbian, bisexual, transgender and questioning”²⁵ was a priority.

The leadership of the Safe Harbor Working Group was directly responsible for the success of the process. Safe Harbor 2011 intentionally structured the stakeholder engagement process to be multi-disciplinary by directing the commissioner of public safety, in consultation with the commissioners of health and of human services, to engage with stakeholders to envision a victim-centered model for Safe Harbor. Each commissioner delegated that responsibility to individuals within their departments who had been deeply involved in the issue of sex trafficking. Danette Buskovick, director of the Statistical Analysis Center of the Department of Public Safety’s Office of Justice Programs had led the Statewide Human Trafficking Task Force since its inception and is responsible for producing the department’s data collection and reporting on human trafficking. Amy Kenzie is coordinator of the Minnesota Department of Health’s Sexual Violence Prevention Program and, in 2012, became the lead for the Statewide Human Trafficking Task Force. Beth Holger-Ambrose serves as the Minnesota Department of Human Services’ Homeless Youth Services Coordinator. Delegating the departments’ leadership to these individuals ensured that the process would reflect a multi-disciplinary approach that includes sexual violence prevention and the needs of homeless youth, in addition to the more familiar public safety approach. They each participated actively in all phases of the process, leading committees, obtaining needed data, reaching out to others who were not directly involved in the working group, and bringing their practical knowledge about how various systems operate to the discussion.

The Safe Harbor Working Group process itself provided a unique opportunity for the wide spectrum of professionals who work with sexually exploited youth to learn about and understand the various approaches of their colleagues from other disciplines or sectors. The working group was comprised of professionals working in the field, including several professionals who are also survivors of sex trafficking. The relatively long process, which

²⁵ MN Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota’s Sexually Exploited Youth*, Jan. 2013, at 8.

involved multiple meetings, allowed for people to build trust. Participants who are often adversaries in their roles relating to specific cases were able to step back and understand that both sides were attempting to help and protect sexually exploited children. At the same time, while approximately 70 stakeholders participated in the year-long planning process, for various reasons, not all invited stakeholders prioritized participation. In some cases, stakeholder organizations could not commit staff to participate, and as a result they were less engaged as Safe Harbor Working Group's concepts took shape. Newly identified participants were able to join even after the working group had begun work. This flexibility was critical to ensuring that the necessary experts were part of the discussion.

The Safe Harbor Working Group process also spurred others to address child sex trafficking. In August 2012, the Ramsey County Attorney's Office and Minnesota Lodging Association presented "Making a Difference: Ways to Help Prevent Sex Trafficking" to hotel employees, enlisting them in the effort to combat sex trafficking in area hotels. In September 2012, the Ramsey County Board of Commissioners held a morning workshop entitled "Continuing Leadership to Stop Sex Trafficking of Minors," resulting in a resolution supporting a comprehensive statewide intervention model and amending Minnesota's Safe Harbor Act to define all sex trafficked children under the age of 18 as victims, not delinquents. Ramsey County board members brought a similar resolution before the Association of Minnesota Counties in December 2012, resulting in adoption of that resolution by all 87 Minnesota counties. The City of Minneapolis is moving forward with renewed efforts to combat child sex trafficking, including working with Hennepin County and the Minnesota Lodging Association to train area hotel employees. In January, the "Northland Girls Are Not For Sale" press conference affirmed the region's commitment to ending child sex trafficking and to supporting resources needed for victim services. Meanwhile, anti-trafficking task forces in Duluth, Rochester, Saint Cloud, and other regions in Minnesota have formed to focus on the issue.

The Safe Harbor Working Group focused on making necessary recommendations for the implementation of the 2011 Safe Harbor Act as it was written. It created an ambitious plan using the best available information and expertise. The working group, however, never contemplated any changes to the legislation passed in 2011. Continued monitoring and evaluation of the No Wrong Door model's outcomes, as recommended by the working group, will be critical to ensuring that the fundamental vision and values of Safe Harbor are met. While the Working Group's mandate was to envision a framework for effective implementation of Safe Harbor 2011, it was not charged with implementing those changes, creating model policies or protocols, or drafting implementing regulations. The Working Group deferred those tasks to

the statewide human trafficking director position, which is a recommendation of the No Wrong Door report. As a result, several issues remain on the table.

Avoiding “Ageing Out”

Law enforcement and service providers have expressed the need to ensure that access to housing and services does not end on the victim’s eighteenth birthday. Survivors of sexual exploitation face many challenges to recovery. While each individual follows a unique path, common challenges include pregnancy and child-rearing, sexually transmitted diseases and infections, physical and psychological injuries, interrupted education, and lack of job training and experience. The need for housing and services may extend beyond an individual’s childhood. The No Wrong Door evaluation should include specific recommendations for continuing housing and services for individuals over 18.

Development of Protocols

Identification of sexually exploited children and children at risk of exploitation is the key to successful intervention. With funding from the Women’s Foundation of Minnesota, Ramsey County and the Saint Paul Police Department have undertaken an audit of closed cases to identify protocols which could better and earlier help with victim identification. Existing protocols, including those relating to sexual assault, may warrant revision as resources for sexually exploited youth come online. The No Wrong Door evaluation should consider the findings of this project and how those findings might inform the No Wrong Door operations statewide.

The Need for Training

The No Wrong Door model recognizes training as the foundation of effective implementation of Minnesota’s Safe Harbor laws, including it as a core value.²⁶ The No Wrong Door model envisions making grant funds available to trainers to accomplish this training. Because the effectiveness of training will play a significant role in the implementation of the No Wrong Door model, training should be identified as a priority by the incoming Safe Harbor director. The request for proposals for training should be available as early as possible. Training should be envisioned for a broad range of frontline responders, including members of the justice system

²⁶ Minnesota Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota’s Sexually Exploited Youth*, Jan. 2013, p. 8.

and service providers, so they can identify victims, respond to their specialized needs, and make appropriate referrals.

Data Practices

While the No Wrong Door model is premised on providing seamless access to housing and services, protection of data privacy and confidentiality is critical to ensuring victim safety, respecting victims' rights, and creating a system which promotes voluntary access to services by victims without fear of unauthorized disclosures. Victims must be assured that data is private to promote their participation in services. Mandated reporters must understand that sexual exploitation is not necessarily a mandatory reporting offense. Involving a minor in prostitution or in sexual performance could be a mandated report if the person who has subjected the child to it is a person responsible for the child's care, a person with a significant relationship to the child, or a person in a position of authority.²⁷ If the person exploiting the child is not in such a relationship – including in the common scenario of the “pimp” – there is no mandatory report, and basic confidentiality provisions apply. Regional navigators must be able to protect data privacy, sharing only when the victim provides informed, time-limited consent to share that data, including when, how, and with whom that information will be shared. The evaluation of No Wrong Door should include specific recommendations for ensuring protection of data privacy.

The Need for Cultural Navigators

Research by the Minnesota Indian Women's Resource Center in 2009²⁸ and by the Minnesota Indian Women's Sexual Assault Coalition in 2011²⁹ have made clear that sex trafficking of American Indian women is a deeply-rooted, complex, and pervasive problem. While the Safe Harbor Working Group and the No Wrong Door model articulated the need for culturally appropriate services as a core value, evaluation of No Wrong Door's implementation should give specific attention to whether the geographically-based regional navigators need to be replaced or augmented by culturally-based navigators.

²⁷ See MN Stat. 626.556, subd. 2(d) (2012).

²⁸ Minnesota Indian Women's Resource Center, *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota* (2009).

²⁹ Minnesota Indian Women's Sexual Assault Coalition, *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota* (2011).

Understanding Sexual Exploitation of Boys and GLBTQ Youth

The Safe Harbor Working Group continually struggled to identify evidence-based models for effective services for boys and for GLBTQ youth. The No Wrong Door model has as a core value the need to provide appropriate services to all youth, regardless of gender, gender identity, or sexual orientation. Nonetheless, evaluation of No Wrong Door's implementation should include how well and how better the needs of this population can be met.

Advisory Board

The Safe Harbor Working Group identified an advisory group as an important part of the No Wrong Door's structure. Due largely to time constraints, the Working Group did not provide any guidance as to how such an advisory group would be configured. Evaluation should identify appropriate models for the advisory group, keeping in mind the vibrant Statewide Human Trafficking Task Force that operates in Minnesota.

Impact on Other Victim Services

The No Wrong Door model, including its cost estimates, is premised on fully funded and functioning systems that respond to violence and homelessness. Research indicates that sexual assault, sexual abuse, domestic violence, and homelessness are co-occurring risk factors among sexually exploited youth. Ending sexual exploitation of youth depends in large part on preventing the violence and homelessness. More directly, No Wrong Door does not seek to build a stand-alone bureaucracy or system. Minnesota's sexual assault services, domestic violence shelters, and homeless youth outreach and shelters are expected to form the backbone of the services and housing available to sexually exploited youth. They must be both fully funded to meet their core needs *and* have access to dedicated funding for specialized services necessary to work effectively with sexually exploited youth they encounter. The No Wrong Door evaluation should consider what impact the new approach has had on other core services.

CLOSING THE GAPS IN MINNESOTA'S SAFE HARBOR 2011

Although Safe Harbor 2011 was a step forward in ensuring that Minnesota has an appropriate and effective response to sex trafficked children, gaps in Safe Harbor 2011 must be filled prior to August 2014, when all of Safe Harbor's changes are set to take effect. First, Minnesota must ensure that all sexually exploited children are subject to the victim-centered response that has shown to be not only effective in combating sex trafficking and helping exploited children recover, but also cost-effective. Second, Minnesota must fully fund and implement the recommendations of the No Wrong Door model in order to be ready to meet the needs of sex trafficked children by 2014.

TREATING ALL SEX TRAFFICKED CHILDREN AS CRIME VICTIMS

Despite significant progress made by Safe Harbor 2011, Minnesota law continues to leave sexually exploited children ages 16 and 17 subject to delinquency proceedings for being trafficked.³⁰ Safe Harbor 2011 also created a troubling diversion scheme for children ages 16 and 17. To remain consistent with state, federal, and international standards, Minnesota's law should be amended to treat all sex trafficked children under 18 as crime victims who have access to appropriate victim-centered housing and services.

Although Safe Harbor 2011 excluded children aged 15 and younger from the definition of "delinquent child," *older children remain within that definition.*³¹ Without amendment

³⁰ Although the rationale for continuing to treat children ages 16 and 17 as delinquents was never considered by the Legislature, the distinction appears to rest on a misappropriation of the concept of the "age of consent." The "age of consent" is not defined in Minnesota law. Rather, the notion of the "age of consent" relates to the criminal liability of the assailant in rape and sexual assault cases where the child is under the age of 16. In some cases, Minnesota's criminal law does not consider sexual penetration of a child age 16 or 17 by an adult to be "criminal sexual conduct" if the child consents to the act. This means that a commercial sexual abuser (a "patron" or "john") might not be charged with rape based only on the ages of the parties if he buys sex from a "consenting" child age 16 or 17.

³¹ No public discussion took place regarding whether children ages 16 and 17 should be treated differently than other child sex trafficking victims. Public hearings were held on proposed Safe Harbor legislation which would have protected all sexually exploited children from delinquency. During conference committee negotiations, however, language was changed to exclude only children ages 15 and younger from delinquency jurisdiction and to create a diversion scheme for children ages 16 and 17.

to the Safe Harbor law, children ages 16 and 17 who “engage in prostitution” will continue to be defined simultaneously as victims of sex trafficking, children in need of protection and services, maltreated minors, *and juvenile delinquents* when the law takes effect in 2014. These children will be left outside of the housing and services promised by the No Wrong Door model.

Continuing to consider prostituted children ages 16 and 17 as delinquents is inconsistent with Minnesota’s anti-trafficking laws, which consider the prostitution of children under 18 as a serious crime. Under Minnesota law, the promotion of prostitution/trafficking of victims under 18 subjects the perpetrator to imprisonment up to 20 years and fines up to \$50,000.³² Similarly, a commercial sexual abuser (the “patron” or “john”) who engages in prostitution with a minor may be charged with a felony.³³ The penalties for engaging in prostitution with a child at least 16 but under the age of 18 reflect Minnesota’s view that it is a serious crime: perpetrators face imprisonment for not more than five years or payment of a fine of not more than \$10,000 or both.³⁴

Similarly, federal and international law recognizes that prostituted children under 18 are crime victims. The Trafficking Victims Protection Act defines as a “severe form of trafficking” “sex trafficking in which a 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.”³⁵ Minnesota’s anti-trafficking law is also consistent with international standards, including the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, to which the United States is a party. That treaty requires states to prohibit the “use of a child in sexual activities for remuneration or any other form of consideration.”

The Safe Harbor 2011 provisions, which treat trafficking victims ages 16 and 17 as delinquents, is inconsistent with these standards. Allowing the delinquency adjudication of prostituted children ages 16 and 17 and relying on the idea of “consent” ignores the exploitation involved in child sex trafficking. It perpetuates the false notion that prostitution is a victimless transaction between consenting parties in the face of its reality as a violent and predatory

³² MN Stat. 609.322(a) (2012).

³³ MN Stat. 609.324, subdivision 1(c) (2012).

³⁴ MN. Stat. 609.324, subd. 1(a) (2012).

³⁵ 22 U.S.C. sec. 7102(8) (2012).

crime against children. Sex trafficking is a violent and predatory crime against children to which they can never consent.

Treating the victims as criminals causes them further harm and offers a weak and ineffective counter-offensive to what is a highly manipulative and sophisticated grooming and control process by the trafficker. Delinquency charges also interfere with attempts to escape trafficking, find help, or otherwise deal with the trauma inflicted by being trafficked. Treating exploited children as victims of crime builds their trust and indicates to children that they are not at fault for being abused. It also reduces victim contact with juvenile offenders, eliminates stigmatizing records, provides assistance, and sets them on a path to recovery.

Safe Harbor 2011 also created a diversion program, which is mandatory for qualifying children who are charged with a first prostitution-based delinquency offense. Under the Safe Harbor 2011 diversion scheme, qualifying sex trafficking victims ages 16 and 17 will be subject to mandatory diversion for their first prostitution offense but thereafter may be adjudicated delinquent. If the children fail to complete or fully comply with the diversion program, they may be referred back to juvenile court for delinquency adjudication.³⁶

Many victims, however, are ineligible for diversion in the first place, including: 1) victims who have prior delinquency adjudications for prostitution offenses; 2) victims who have participated in or previously completed a diversion program for engaging in prostitution; 3) victims who have previously been placed on probation without an adjudication or received a continuance under section 260B.198, subdivision 7, for engaging in prostitution; and 4) victims who have previously been found to be a child in need of protection or services for engaging in prostitution or have been found to be a sexually exploited youth as defined in section 260C.007, subdivision 31, clause (1).

The diversion scheme set to take effect on August 1, 2014, does not take into account the particular vulnerability of trafficking victims, their status as crime victims, or their vulnerability to reentry into sexual exploitation.

³⁶ MN Stat. 609.093 (effective date Aug. 1, 2014).

FUNDING THE IMPLEMENTATION OF NO WRONG DOOR

The 2011 Safe Harbor law provided Minnesota with the opportunity and motivation to create a system that responds appropriately and effectively to child victims of sexual exploitation and those at risk of sexual exploitation. With changes to Minnesota's delinquency laws set to go in effect in 2014, stakeholders face a deadline for envisioning a new, victim-centered, approach to sexually exploited youth.

Funding and implementation of the No Wrong Door recommendations are essential to ensuring that Minnesota will be able to meet the needs of sexually exploited children and children at risk of sexual exploitation. Law enforcement officials who encounter sexually exploited youth must have access to readily available safe and secure housing in which to place youth so the children do not end up back in the hands of their traffickers. Increasing awareness of the problem of child sex trafficking continues to grow, and with that increased awareness comes increased victim identification, creating greater demand by law enforcement and other frontline responders for specialized services that meet the needs of sex trafficking victims. Without the housing and supportive services recommended by the No Wrong Door report, sexually exploited children in Minnesota will be left without any systems response – and left even more vulnerable to traffickers – when Minnesota's delinquency jurisdiction changes in 2014.

Safe Harbor 2011 modified Minnesota's penalty assessments against traffickers³⁷ and commercial sexual abusers.³⁸ Safe Harbor 2011 directed these penalties be deposited in the safe harbor for youth account and appropriated to the commissioner of public safety to distribute to organizations that provide services to sexually exploited youth.³⁹ To date this fund

³⁷ MN Stat. 609.322 (2012) (Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking).

³⁸ MN Stat. 609.324 (2012) (Patrons; Prostitutes; Housing Individuals Engaged in Prostitution; Penalties).

³⁹ MN Stat. 609.3241(a) (2012) authorizes penalties when a court sentences an adult convicted of violating 609.322 or 609.324, while acting as other than a prostitute. 609.3241(b) provides that these penalties may not be waived and sets a minimum penalty of \$100. 609.3241(c) distributes the assessment as follows: (1) 40 percent of the assessment shall be forwarded to the political subdivision that employs the arresting officer for use in enforcement, training, and education activities related to combating sexual exploitation of youth, or if the arresting officer is an employee of the state, this portion shall be forwarded to the commissioner of public safety for those purposes identified in clause (3); (2) 20 percent of the assessment shall be forwarded to the prosecuting agency that handled the case for use in training and education activities relating to combating sexual exploitation activities of youth; and (3) 40 percent of the assessment must be forwarded to the commissioner of public safety

has accumulated approximately \$7000,⁴⁰ far short of the investment needed to support the high-quality, victim-centered housing and services needed to effectively respond to sexually exploited youth and youth at risk of exploitation.

The No Wrong Door report identifies a biennial budget of approximately \$13.5 million to provide staffing, training, outreach, transportation, housing, and supportive services for sexually exploited youth. As it moves forward in the statewide model, Minnesota should ensure the services are funded to meet victims' various needs, including medical, psychological, financial, educational, legal, and housing-related. Again, research shows that this investment will yield \$34 for every \$1 invested.⁴¹

to be deposited in the safe harbor for youth account in the special revenue fund and are appropriated to the commissioner for distribution to crime victims services organizations that provide services to sexually exploited youth, as defined in section 260C.007, subdivision 31. 609.3241(d) establishes a safe harbor for youth account in the state treasury. This penalty assessment is in addition to any fines or imprisonment to which the individual is sentenced.

⁴⁰ As reported by Danette Buskovich, Office of Justice Programs, Minnesota Department of Public Safety, at the hearing before the Minnesota House Public Safety Finance and Policy Committee, Jan. 29, 2013.

⁴¹ Martin, Lauren, Richard Lotspeich, and Lauren Stark, *Early Intervention to Avoid Sex Trading and Trafficking of Minnesota's Female Youth: A Benefit-Cost Analysis* (2012).

UNDERSTANDING SEX TRAFFICKING AND THE SEXUAL EXPLOITATION OF YOUTH

The Safe Harbor Act and the No Wrong Door model are integrally related to sex trafficking in Minnesota. Sex trafficking is a human rights violation that involves individuals profiting from the sexual exploitation of others and often results in brutal physical and psychological assaults and devastating injuries. While sex trafficking victims can be any age, juveniles have certain vulnerabilities that can make them a target for traffickers.

Legal definitions of human trafficking vary, but international, federal, and state law all reflect the idea that human trafficking involves the recruiting, harboring, receipt, or transportation of persons for some exploitative purpose.⁴² Exploitation includes practices such as prostitution and other forms of sexual exploitation, forced labor or services, domestic servitude, slavery or practices similar to slavery, or the removal of organs.⁴³ Generally, laws and intervention strategies view these forms of exploitation in two broad categories: labor trafficking and sex trafficking.

Sex trafficking is not new to Minnesota nor is it confined to the Twin Cities metropolitan area; it affects communities throughout the state. Minnesota has been a place of origin, transit, and destination for sex trafficking operations even before federal or state law defined the crime of “sex trafficking.” The Federal Trafficking Victims Protection Act⁴⁴ (“TVPA”) was passed in 2000, while the Minnesota sex trafficking law⁴⁵ was originally passed in 2005 and later amended in 2009.

The *Advocates’ 2008 Sex Trafficking Needs Assessment* indicated that misconceptions exist about the dynamics of sex trafficking in Minnesota, and that the community and the legal system lack information about the Minnesota law against sex trafficking, its amendments, and

⁴² 18 U.S.C. § 1591(a) (2012); MN Stat. 609.321, subd. 7a (2012); Art. 3(a), United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25 (entered into force Dec. 25, 2003) [hereinafter U.N. Trafficking Protocol]; See also 18 U.S.C. §§ 1589-1590 (forced labor); See 18 U.S.C. § 1591(a).

⁴³ Art. 3(a) U.N. Trafficking Protocol.

⁴⁴ 18 U.S.C. 1591 (2012).

⁴⁵ MN Stat. 609.321, subd. 7a (2012).

its overall implementation. Common misconceptions include the beliefs that sex trafficking involves only foreign nationals and not local citizens; sex trafficking is limited to only those cases involving force, fraud, or coercion; prostituted women who also may be victims of trafficking are not entitled to protection; and sex trafficking is limited to only those cases involving transportation across state or national borders.

Under Minnesota law, sex trafficking does not require transportation across any border; it can involve U.S. citizens as well as foreigners. Unlike the federal law, it does not require proof of force, fraud, or coercion to prove the elements of a sex trafficking crime regardless of the victim's age. The Minnesota sex trafficking law is closely connected with the laws related to prostitution, acknowledging that sex trafficking and the prostitution of others are part of the same continuum of criminal activity – that is, the sexual exploitation of humans, most often women and girls.

SPECIAL VULNERABILITY OF JUVENILES

What we have learned is overwhelmingly, while these kids may leave home voluntarily, while they may be runaways or any one of a variety of variations on that theme; they are seduced, they are tricked, they are lured into this practice and then they lose the ability to walk away. These kids literally become 21st century slaves.

Shared Hope International, National Report on Domestic Trafficking, p. 42

Sex trafficking occurs throughout Minnesota communities and, while victims are predominantly women and girls, anyone can become a victim of sex trafficking. Generally speaking, however, traffickers will seek out individuals who are vulnerable or susceptible to manipulation. Research has shown that there are numerous factors that can make a person more vulnerable to trafficking. Many risk factors overlap and stem from systemic problems that decrease viable alternatives, including not only poverty but gender discrimination, violence against women, racism, restrictive U.S. immigration policies, age, and homeless or runaway status.

The sexual exploitation of children in the United States and in Minnesota is a problem of growing urgency. The National Center for Missing and Exploited Children conservatively estimates that 100,000 children are exploited each year for prostitution in the United States.⁴⁶

⁴⁶ National Center for Missing and Exploited Children, Testimony of Ernie Allen for the U.S. House of Representatives, July 19, 2010.

Nationally, the average age a child enters into sexual exploitation is between 12 and 14 years.⁴⁷ In 2003, the FBI identified Minneapolis as having a high concentration of criminal enterprises exploiting children through prostitution.⁴⁸ Sexual exploitation of children often begins with physical and/or sexual abuse or neglect in the home. Research from Minneapolis, which is supported by local service providers, finds four common paths for young people⁴⁹ into prostitution: a relationship with someone involved in prostitution; homelessness, often due to estrangement or rejection by family; drug abuse; or solicitation by an adult.

The children who are at the most risk are those who have run away or have been “thrown away” from their homes.⁵⁰ Between 1.6 and 2.8 million youth run away in the United States each year.⁵¹ Traffickers prey upon runaway children because of their mental, physical, and financial vulnerability. American youth are the most vulnerable to becoming victims of sex trafficking in the United States.⁵² Research shows that homeless or runaway youth are

http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=4312, Accessed on 11/23/10.

⁴⁷ R.J. Estes, Ph.D., and N. A. Weiner, Ph.D. *Commercial Sexual Exploitation of Children in the U.S. Canada and Mexico*. 2001. http://www.sp2.upenn.edu/~restes/CSEC_Files/Complete_CSEC_020220.pdf (last visited Feb. 6, 2013) (noting the average age of entry into sex trafficking/prostitution as 12-14 years old). Current service providers in Minnesota, including Breaking Free and Minnesota Indian Women’s Resource Center, confirm this statistic, and report that they are now seeing that the average age of entry is between 11 and 14 years old based on the clients they serve.

⁴⁸ Federal Bureau of Investigation, Office of the Inspector General, *Audit Report 09-08: The Federal Bureau of Investigation’s Efforts to Combat Crimes Against Children*, Ch. 4, Jan. 2009, available at <http://www.justice.gov/oig/reports/FBI/a0908.chapter4.htm>.

⁴⁹ The term “young people” refers to individuals up to age 21. See Trudee Able-Peterson & Richard A. Hooks Wyman. *StreetWorks: Best Practices and Standards in Outreach Methodology to Homeless Youth*. 2006. (Discussion of working with young people engaging in survival sex), pages 113-14 (citing C. Zierman. *Pathways Into Prostitution: Report To Project Offstreets*. 1998).

⁵⁰ Kotrla, K. (2010). *Domestic Minor Sex Trafficking in the United States*. *Social Work*, 55(2): 181-7.

⁵¹ National Runaway Switchboard website at <http://www.nrscrisisline.org>, Accessed on 2/6/11.

⁵² *Playground*. Film clip. Directed by Libby Spears. Produced by Martha Adams et al. Los Angeles, CA: The Nest Foundation, 2011.

approached for sex within 48 hours of becoming homeless.⁵³ Due to their vulnerability, children are an easy target for traffickers.

Most often, this prostitution is controlled or directed by someone else who also profits from the commercial sexual exploitation of the juvenile, thereby making it sex trafficking under Minnesota law. Recruitment into gangs is another path of entry into being trafficked.⁵⁴

The sexual violence, manipulation, and torture children suffer at the hands of pimps and buyers results in devastating mental and physical trauma. Children often suffer from substance abuse, sexually-transmitted infections, post-traumatic stress disorder, depression, suicidal ideation, and self-mutilation.⁵⁵ Trauma-bonding with traffickers – the “Stockholm syndrome” – also complicates the child’s rescue and recovery.

INTERNATIONAL STANDARDS RELATING TO CHILD SEX TRAFFICKING

Sex trafficking is recognized as a human rights violation and is condemned throughout the international human rights community.⁵⁶ Governments, including the United States and, by extension, the state of Minnesota, have committed to combat sex trafficking through a number of international treaties, including protocols specifically addressing trafficking.⁵⁷ These

⁵³ The State of Minnesota, Office of the Attorney General. *The Hofstede Committee Report: Juvenile Prostitution in Minnesota*. 1999. <http://www.heart-intl.net/HEART/080105/JuvenileProstitutionMinn.pdf> (last visited April 1, 2011).

⁵⁴ Minnesota Indian Women’s Resource Center. *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls*. 2009. http://www.miwrc.org/shattered_hearts_full_report-web_version.pdf (last visited March 30, 2011).

⁵⁵ Shared Hope International, “The National Report on Domestic Trafficking: America’s Prostituted Children,” May 2009, pgs 36 and 42.

⁵⁶ In passing the Trafficking Victims’ Protection Act of 2000, the U.S. Congress found that “trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports [...]” Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1468 (2000) (codified at 22 U.S.C. § 7101(b)(23) (2007).

⁵⁷ Specifically, the United States has ratified both the *United Nations Optional Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women And Children, Supplementing the United Nations Convention against Transnational Organized Crime* on Nov. 3, 2005, and the *Optional Protocol to the Convention on the Rights*

instruments set forth the government’s obligation to increase efforts to prosecute perpetrators, protect victims, and prevent future trafficking.⁵⁸ Core principles of a human rights approach to combat sex trafficking include: prosecution of sex traffickers for sex trafficking, including its component acts and related conduct; punishment of sex traffickers with sanctions proportionate to the offense, including enhanced sentences when children are trafficked or government officials are involved, and the confiscation of assets involved in trafficking; the principle that trafficked persons should not be detained, charged, or prosecuted for their illegal entry into transit or destination countries, nor should their protection be conditioned on cooperation in legal proceedings; and access by trafficked persons to legal counsel, witness protection, reparation and rehabilitation for harm, consular and diplomatic representatives, and immigration relief.⁵⁹

Core Principles of a Human Rights Approach to Trafficking

- **Prosecution** of traffickers
- **Punishment** with appropriate sanctions
- **Protection** of trafficked persons from prosecution without conditioning protection on cooperation
- **Access** by trafficked persons to legal counsel, witness protection, reparation, rehabilitation, and other protections.

PROHIBITION AGAINST CHILD PROSTITUTION

International law prohibits sex trafficking and specifically child prostitution. The United States has ratified several treaties that prohibit sex trafficking of children in its various forms and call upon states to criminalize it. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OP-CRC-SC) requires parties to the protocol to prohibit the “use of a child in sexual activities for remuneration or any other

of the Child on the Sale of Children, Child Prostitution and Child Pornography on Dec. 23, 2002. These instruments set forth the government’s obligation to protect trafficked persons, hold perpetrators accountable for their crimes, and take action to prevent trafficking.

⁵⁸ The *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* declares that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries (states and counties) of origin, transit, and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.” Preamble, U.N. Trafficking Protocol, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (last visited April 22, 2011).

⁵⁹ United Nations Office of the High Commissioner on Human Rights. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. 2002. <http://www.unhcr.org/refworld/docid/3f1fc60f4.html> (last visited April 22, 2011).

form of consideration.”⁶⁰ The International Labour Organization’s Worst Forms of Child Labour Convention requires parties to the treaty to prohibit and eliminate the worst forms of child labor, including child prostitution, as a matter of urgency.⁶¹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime requires states to criminalize the recruitment, transportation, transfer, harboring, or receipt of children for purposes of exploitation, including prostitution or other forms of sexual exploitation.⁶²

In addition, the sexual exploitation of children violates other international legal protections to which the United States is bound, including the right to liberty and security of person,⁶³ the right to be free from slavery and forced labor,⁶⁴ and the right to be free from torture or cruel, inhuman or degrading treatment or punishment.⁶⁵ The ban on sex trafficking of children and the obligation to criminalize this offense is well-established in international law.

How Minnesota Compares

Minnesota meets human rights standards. Minnesota law criminalizes sex trafficking, or the “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”⁶⁶ Minnesota punishes the sex trafficking of children severely, with terms of imprisonment up to 20 years and fines up to \$50,000.⁶⁷ Minnesota law also punishes offenses related to prostitution. It punishes engaging in, hiring or agreeing to hire a minor to engage in prostitution; punishment differs depending

⁶⁰ Art. 2(b), OP-CRC-SC. The United States ratified the OP-CRC-SC on December 23, 2002.

⁶¹ Art. 1, ILO No. 182.

⁶² Art. 3(a), Trafficking Protocol. The United States ratified the Trafficking Protocol on November 3, 2005.

⁶³ Art. 9(1), ICCPR.

⁶⁴ Art. 7, ICCPR.

⁶⁵ Art. 7, ICCPR; Art. 2, CAT. See also para. 53, The U.N. Guidelines for the Prevention of Juvenile Delinquency.

⁶⁶ MN Stat. 609.321, subd. 7a (2012). Prostitution is defined as the “hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact, or being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.” MN Stat. 609.321, subd. 9 (2012).

⁶⁷ MN Stat. 609.322, subd. 1(a) (2012).

on whether that minor is under 13, 16, or 18 years of age.⁶⁸ Housing an unrelated minor engaged in prostitution is also a punishable offense.⁶⁹

Minnesota's definition of sex trafficking differs in two significant ways from international and federal standards, making Minnesota's protection against sex trafficking of children more expansive. Unlike the Optional Protocol, Minnesota's sex trafficking definition does not require the crossing of any borders. And unlike federal law, Minnesota's sex trafficking definition does not require prosecutors to prove force, fraud, or coercion of the sex trafficking victim in order to establish the crime of sex trafficking in victims over the age of 18. Minnesota's unique definition of sex trafficking reflects the inherently coercive nature of the most common form of prostitution.

CLASSIFICATION OF SEX TRAFFICKED PERSONS AS CRIME VICTIMS

International standards emphasize that a victim should be treated with humanity, compassion, and respect for their dignity.⁷⁰ This principle implies that a victim should not be subject to prosecution for an offense of which they are a victim. Indeed, the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents explicitly calls upon states to “[e]nsure that child victims [defined as anyone under 18 years] of sexual exploitation are not criminalized or punished for their acts directly related to their exploitation, but are given the status of victim and are treated accordingly.”⁷¹

⁶⁸ MN Stat. 609.324, subd. 1 (2012). A person who commits this offense with someone: under 13 years of age may be sentenced to imprisonment for up to 20 years and/or a maximum fine of \$40,000; under 16 years of age may be sentenced to imprisonment for up to 10 years and/or a maximum fine of \$20,000; under 18 years of age may be sentenced to imprisonment for up to 5 years and/or a maximum fine of \$10,000.

⁶⁹ MN Stat. 609.324, subd. 1a (2012).

⁷⁰ Para. 10, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*; Para. 4, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*; para. 8(a), *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*; para. 45, *Guidelines for Action on Children in the Criminal Justice System*.

⁷¹ Rio de Janeiro *Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*, III World Congress against Sexual Exploitation of Children and Adolescents, Nov. 25-28, 2008, Rio de Janeiro, para. 31.

In general, children are defined by international law as those under 18 years of age, unless the state sets a lower age.⁷² This standard is set by the Convention on the Rights of the Child, which the United States has not ratified and to which it is not legally bound. The United States has, however, ratified treaties that do set the age of a child as under 18 years. The International Labour Organisation's Worst Forms of Child Labour Convention states that a "child" is a person under the age of 18 years.⁷³ This age definition is specifically applicable to children used for prostitution. It defines the worst forms of child labour as the "use, procuring or offering of a child for prostitution."⁷⁴ The Trafficking Protocol also defines a child as any person under 18 years of age.⁷⁵ The United States has ratified both ILO No. 182 and the Trafficking Protocol and is therefore legally bound to the provisions set forth in them.⁷⁶

Furthermore, international norms also recognize anyone under 18 as a "child victim" when they are a victim of crime. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime classifies children and adolescents under the age of 18 who are crime victims as "child victims" "*regardless of their role in the offence*" [emphasis added].⁷⁷ Even when states are establishing age of culpability, international policy recognizes the need to set an age high enough to account for youth development and maturity levels. The Beijing Rules explains that the starting age of criminal responsibility shall not be set at "too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."⁷⁸ In other words, international standards recognize that children are persons under 18; that they should be treated as victims rather than delinquents; and that they should not subject to adjudication for prostitution-related offenses.

⁷² Art. 1, Convention on the Rights of the Child.

⁷³ Art. 2, ILO No. 182.

⁷⁴ Art. 3(b), (d), ILO No. 182. The worst forms of labor also include "as well as "work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children." Id.

⁷⁵ Art. 3(d), Trafficking Protocol.

⁷⁶ The United States ratified ILO No. 182 on December 2, 1999 and the Trafficking Protocol on November 3, 2005.

⁷⁷ Para. 9(a), Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁷⁸ Art. 4.1, U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

Minnesota fails to meet human rights standards. Although Minnesota’s criminal code does treat both the sex trafficking of a child and engaging in prostitution with a minor a felony, Safe Harbor 2011 fails to recognize all trafficked persons under 18 as child victims. Sixteen and seventeen-year-old children still face either mandatory diversion, if qualified, or juvenile delinquency adjudication.

How Minnesota Compares

DIVERSION

International guidelines suggest that states adopt special strategies for child victims who are vulnerable to recurring victimization or offending; these strategies should take into account the nature of the victimization, including sexual exploitation and trafficking.⁷⁹

Minnesota fails to meet human rights standards. While changes made by Minnesota’s 2011 Safe Harbor law create a diversion program, set to go into effect in 2014 for youth ages 16 and 17, this diversion program fails to meet international standards recognizing children as victims of sex trafficking or their vulnerability to reentry into exploitation. The 2011 Safe Harbor diversion scheme fails to take into account, as directed by international guidelines, both sexually exploited juveniles’ status as crime victims and their vulnerability to reentry into sexual exploitation. Under the 2011 Safe Harbor diversion scheme, qualifying sex trafficking victims ages 16 and 17 will be subject to mandatory diversion for their first prostitution offense but thereafter may be adjudicated delinquent. If the child fails to complete or fully comply with the diversion program, they may be referred back to juvenile court for delinquency adjudication.⁸⁰

How Minnesota Compares

Many victims, however, are ineligible for diversion in the first place. Ineligible victims include: those who have prior delinquency adjudications for prostitution offenses; victims who have participated in or previously completed a diversion program for engaging in prostitution; victims who have previously been placed on probation without an adjudication or received a continuance under section 260B.198, subdivision 7, for engaging in prostitution; and victims who have previously been found to be a child in need of protection or services for engaging in

⁷⁹ Para. 38-39, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

⁸⁰ MN Stat. 609.093 (effective date Aug. 1, 2014).

prostitution or have been found to be a sexually exploited youth as defined in section 260C.007, subdivision 31, clause (1). This scheme not only fails to meet human rights standards, it undermines the goals of the Safe Harbor legislation itself.

ACCESS TO SERVICES FOR SEXUALLY EXPLOITED CHILDREN

International law envisions several forms of assistance to be provided to a child victim defined as a person under 18 years of age.⁸¹ Broadly, international standards recognize a child victim's right to effective assistance to address the child's needs.⁸² The Guidelines for Action on Children in the Criminal Justice System (Guidelines) call for states to ensure that child victims be provided with appropriate access to justice and fair treatment, restitution, compensation, and social assistance.⁸³ These guidelines also state that child victims should have access to assistance such as advocacy, protection, financial assistance, counseling, health and social services, social reintegration, and physical and psychological recovery services.⁸⁴ "Appropriate support services" should be available through the duration of legal proceedings.⁸⁵ For child victims in particular, this means reducing excessive interventions through the coordination of support services.⁸⁶

International standards envision a range of direct assistance for minor victims of sex trafficking. They include medical and psychological assistance,⁸⁷ including counseling, as well as physical and psychological recovery services.⁸⁸ In addition, victims should be afforded various forms of assistance, including: appropriate housing;⁸⁹ employment;⁹⁰ free education, vocational, and

⁸¹ Trafficking Protocol; Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.

⁸² Para. 22, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁸³ Para. 43.

⁸⁴ Para. 46.

⁸⁵ Art. 8(1)(d), OP-CRC-SC.

⁸⁶ Para. 23, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁸⁷ Art. 6(3)(c), Trafficking Protocol.

⁸⁸ Para. 22, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁸⁹ Art. 6(3)(a), Trafficking Protocol.

⁹⁰ Art. 6(3)(d), Trafficking Protocol.

training opportunities;⁹¹ and legal assistance.⁹² Finally, victims should be given material or financial assistance.⁹³

Compensation and a mechanism to obtain compensation for damage suffered is also an important part of redress for victims.⁹⁴ The Guidelines state that access to fair and adequate compensation should be granted to child victims of human rights violations, “specifically torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention.”⁹⁵ Any procedures for reparations should be both accessible and child-sensitive.⁹⁶ Funds may come from victim compensation programs by the state, damages from civil proceedings,⁹⁷ as well as restitution from the offender.⁹⁸ Victims should be guaranteed legal representation to litigate such a cause of action.⁹⁹ Importantly, international guidelines give consideration to promoting security and confidentiality for trafficking victims. States should take measures to protect the physical safety of trafficked persons¹⁰⁰ and protect the privacy and identity of child victims of trafficking.¹⁰¹ Finally, states should protect trafficking victims from revictimization.¹⁰²

⁹¹ Art. (2)(c), ILO No. 182; Art. 6(3)(d), Trafficking Protocol.; Para. 22, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁹² Para. 22, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁹³ Art. 6(3)(c), Trafficking Protocol; Para. 22, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁹⁴ Art. 6(6), Trafficking Protocol.

⁹⁵ Para. 48.

⁹⁶ Para. 35, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁹⁷ Para. 37, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁹⁸ Para. 37, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

⁹⁹ Para. 48, Guidelines for Action on Children in the Criminal Justice System.

¹⁰⁰ Art. 6(5), Trafficking Protocol.

¹⁰¹ Para. 26, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

¹⁰² Art. 9(1)(b), Trafficking Protocol.; Art. 6(1), Trafficking Protocol.

With sufficient funding, Minnesota will meet human rights standards. While Minnesota’s Safe Harbor 2011 did not outline specific services for sex trafficked children, it did direct the state of Minnesota to engage stakeholders in creating a model for the law’s implementation, including identifying needed services. The No Wrong Door model, which resulted from Minnesota’s year-long stakeholder engagement process, identified the housing, supportive services, and staffing needed for child sex trafficking victims and those at risk of trafficking. Although the No Wrong Door model leaves many issues, such as provisions regarding confidentiality, to future implementation, it does lay the groundwork for meeting Minnesota’s obligation to provide access to services for trafficked children.

TRAINING

ILO Recommendation No. 190, which provides guidelines for action on children in the criminal justice system, specifically calls for training of officials, including legal, psychological, social service, and law enforcement officials.¹⁰³ The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes outlines specific issues that training for professionals who work with child victims should include: 1) human rights norms and standards, including the rights of the child; 2) principles and ethical duties; 3) signs indicating crimes against children; 4) crisis assessment skills and techniques particularly for referral purposes; 5) impact and physical-psychological effects, and trauma of crimes against children; 6) specific techniques to assist child victims in the justice system; 7) cross-cultural, age, linguistic, religious, social and gender issues; 8) appropriate adult-child communication skills; 9) child interviewing and assessment techniques that minimize trauma and maximize information gathering; 10) skills to promote sensitivity, understanding, and constructiveness when dealing with child victims; 11) ways to protect and present evidence and question child victims; and 12) roles of and methods used by professionals who work with child victims.¹⁰⁴ Professionals working with child victims should strive for cross-cooperation and understand the various services available to victims, as well as periodically review and assess their roles in protecting the rights of the child.¹⁰⁵

¹⁰³ Art. 8(4), OP-CRC-SC; Art. 15(c), ILO Rec. No. 190; para. 44, Guidelines for Action on Children in the Criminal Justice System; Art. 16, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. See also The Riyadh Guidelines, stating that law enforcement and other personnel should be treated to respond to the special needs of youth, as well as referrals and programs for diversion (para. 58).

¹⁰⁴ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, para. 42.

¹⁰⁵ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, para. 43, 46.

With continued funding and prioritizing, Minnesota will meet human rights standards.

Minnesota's law directs money from assessments toward trainings for law enforcement and prosecution. Minnesota Statute 609.3241(c)(1) allocates 40% of assessments collected for violations of 609.322 or 609.324 to the political body that employs the arresting officer. This money is to be used for enforcement, training and education.¹⁰⁶ Twenty percent of the assessment is to be distributed to the prosecuting body that handled that case for use in training and education to combat sexual exploitation of youth.¹⁰⁷ The recommendations contained in the No Wrong Door model also address training, establishing a program to provide grant funds to trainers from an array of disciplines.

Minnesota is to be commended for directing that funds from these cases go toward training and education, but it should ensure that regular funding is available for prosecuting and law enforcement agencies statewide regardless of whether they have made arrests or prosecuted sex trafficking cases. Training also should be available to professionals beyond law enforcement, including the wide array of service providers, educators, first responders, and others who work with sexually exploited youth or youth at risk of sexual exploitation to ensure effective identification, referral, and services for victims.

The No Wrong Door model recognizes training as the foundation of effective implementation of Minnesota's Safe Harbor laws, including it as a core value:

“sexual exploitation of youth is pervasive in Minnesota and affects youth from across the state. Youth who are sexually exploited and victims of trafficking often don't identify as such. Therefore, those who come into contact with youth should be **trained to identify sexual exploitation**. This training will provide Minnesota youth with no wrong door to receiving services and support.”¹⁰⁸

¹⁰⁶ MN Stat. 609.3241(c)(1). Where the officer is a state employee, the 40% portion will go to the commissioner of public safety for deposit in the safe harbor for youth account. Id.

¹⁰⁷ MN Stat. 609.3241(c)(2).

¹⁰⁸ Minnesota Department of Public Safety, Office of Justice Programs, *No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota's Sexually Exploited Youth*, Jan. 2013, p. 8.

CONCLUSION

Safe Harbor 2011 represents one step on Minnesota's path to redefine the state's response to sex trafficking of children. It builds on a legal framework that holds perpetrators accountable for sex trafficking crimes and on new approaches to law enforcement that target traffickers and the commercial sex abusers who pay for sex with children. It also builds on a strong base of victim services, including nationally recognized programs serving trafficked women and girls as well as the broader movement to end violence. While the work is not yet complete, with proper support from state government, ongoing training, and strong leadership, a comprehensive victim-centered model of housing and services that protects all sex trafficked Minnesota children is within sight.

APPENDIX A: DEFINITIONS AND LEGAL PROHIBITIONS - GLOBALLY, NATIONALLY, AND IN MINNESOTA

There are multiple legal definitions of human trafficking. Despite different technical formulations, all seek to address profiting from the exploitation of others. Most definitions contain three parts: an explanation; the means of; and the purpose of the act. This report focuses on the following three sources of definitions: The United Nations Trafficking Protocol; the United States federal law; and the Minnesota state law. Other states may have their own definition of human trafficking.

UNITED NATIONS TRAFFICKING PROTOCOL

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, is a supplement to the United Nations Convention against Transnational Organized Crime. In Article 3 (a), the protocol broadly defines trafficking in persons as:

“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 the 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁰⁹

¹⁰⁹ Art. 3(a) U.N. Trafficking Protocol.

United Nations Trafficking Protocol - Definition of Human Trafficking

Trafficking is the...	By means of...	For the purpose of exploitation...
<ul style="list-style-type: none"> • Recruitment • Transportation • Transfer • Harboring <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Receipt <p>(Or attempt to do so)</p>	<ul style="list-style-type: none"> • Threat OR • Force OR • Other forms of Coercion • Abduction • Fraud • Deception • Abuse of power or of a position of vulnerability • Giving or receiving of payments or benefits to achieve the consent of a person having control over another person 	<p>Exploitation shall include, at minimum,</p> <ul style="list-style-type: none"> • The prostitution of others or other forms of sexual exploitation • Forced labor or services • Slavery or practices similar to slavery • Servitude or • The removal of organs
<p>...of a person</p>		

FEDERAL LAW

The Federal Trafficking Victims Protection Act (“TVPA”) was passed on October 28, 2000.¹¹⁰ The purpose of the TVPA was to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹¹¹

Definition

The TVPA created a two-tiered definition of trafficking which includes “sex trafficking” and “severe forms of trafficking in persons.” The federal definition of “sex trafficking” is “the

¹¹⁰ Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended in sections 8 and 22 U.S.C.).

¹¹¹ 22 U.S.C. 7101(a) (2012).

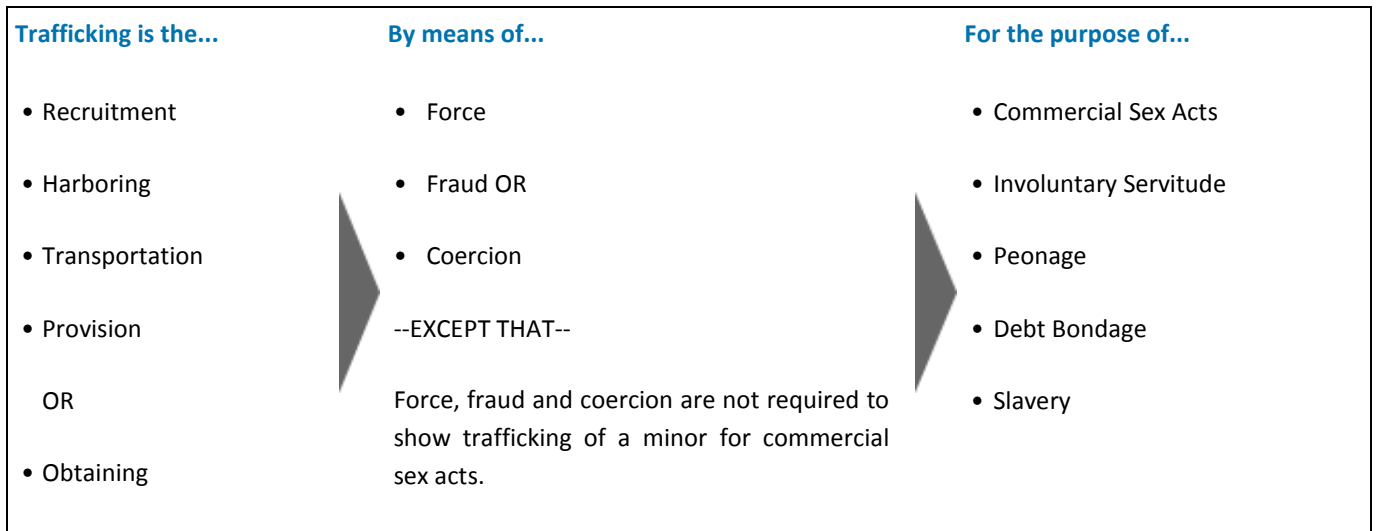
recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act.”¹¹² In turn, the TVPA defines the term “severe forms of trafficking in persons” as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹¹³

The term “commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person.”¹¹⁴

Federal Trafficking Victims Protection Act (“TVPA”) – Definition of Human Trafficking



¹¹² 22 U.S.C. 7102(9) (2012).

¹¹³ 22 U.S.C. 7102(8) (2012).

¹¹⁴ 22 U.S.C. 7102(3) (2012); 18 U.S.C. 1591(e)(3) (2012).

Penalties

Federal penalties for sex trafficking are set forth in Title 18 U.S.C. § 1591 – “Sex trafficking of children or by force, fraud, or coercion.”¹¹⁵ Federal law establishes the following criminal penalties for “severe forms of trafficking in persons:”

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

Thus, for the purposes of prosecution, the federal definition of a “severe form” of sex trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force,

¹¹⁵ 18 U.S.C. § 1591 (2012).

fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.¹¹⁶

MINNESOTA LAW

Minnesota passed its law against sex trafficking in 2005. The law was amended in 2009 to increase the penalties and to further protect victims. In Minnesota, sex trafficking is defined within the prostitution statute and is defined as a type of promotion of prostitution. This placement reflects an understanding of sex trafficking as a crime closely linked to prostitution. Sex trafficking is prostitution that is controlled by a pimp or trafficker.

Definition

Under Minnesota law “sex trafficking” is defined as:

- (1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or
 - (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1) [sex trafficking].¹¹⁷
- (Emphasis added.)

The term “prostitution” is defined as “engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact.”¹¹⁸

¹¹⁶ 22 U.S.C. § 7102; 8 CFR § 214.11(a) (2012).

¹¹⁷ MN Stat. 609.321, subd. 7(a) (2012).

¹¹⁸ MN Stat. 609.321, subd. 9 (2012).

Minnesota Definition of Sex Trafficking

Trafficking means knowingly...

- Receiving
- Recruiting
- Enticing
- Harboring
- Providing OR
- Obtaining

By means of...

- By any means

For the purpose of...

- To aid in the prostitution of the individual
- OR--
- Receiving profit or anything of value, knowing or having reason to know it is derived from [sex trafficking]

Minnesota law does not require the use of “force, fraud, or coercion” by traffickers to establish the crime of sex trafficking.

Penalties

Statutory Penalties

The statutory penalties for sex trafficking under Minnesota law are set forth in Minn. Stat. § 609.322 – “Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking.” These penalties were significantly increased in 2009 and currently allow for maximum statutory penalties of years for an adult victim;¹¹⁹ 20 years for a victim who is under 18;¹²⁰ and 25 years where an aggravating factor is involved.¹²¹

¹¹⁹ MN Stat. 609.322, subd. 1a(4) (2012).

¹²⁰ MN Stat. 609.322, subd. 1(a)(4) (2012).

¹²¹ MN Stat. 609.322, subd. 1(b)(1)-(4) (2012).

APPENDIX B: SAFE HARBORS STATE COMPARISON

Safe harbor laws in the United States generally strive to rescue, protect, and assist minor victims of sex trafficking. States have enacted laws that seek to accomplish this in a number of ways. First, states' legislation seeks to shield the victim from prosecution and juvenile delinquency proceedings. They can do this either through decriminalization of prostitution or through diversion from delinquency proceedings. Second, laws explicitly redefine a prostituted minor as a victim or a sexually exploited child. It should be noted, however, that this classification is not always adequate to protect the minor from prosecution. Third, states' laws provide services to victims whether through existing services which assist children or through the creation of new specialized services for trafficked minors. Finally, safe harbor laws can also include other provisions that are critical to ensuring their effective implementation and promoting the laws' purpose of protecting minor victims of sex trafficking. These provisions may include trainings for first responders, funding, investigations, and vacating of records.

While many states have laws to address sex trafficking, only 11 states have safe harbor laws.¹²² Existing safe harbor laws vary considerably, as states have chosen to address different aspects and adopt different means in their laws regarding prostituted minors. New York was the first state to adopt a safe harbor law in 2008, and efforts are already underway to amend that law to ensure that prostituted minors are classified and treated as sex trafficking victims. In 2010, Washington and Illinois also passed safe harbor laws. One attorney described the various disparities among states:

“[T]he laws in Illinois and Tennessee ended the prosecution of all minors under 18 for prostitution outright, but most other laws limit how and when children will be protected from prosecution. And Florida's law, passed in 2012, is named a “safe harbor” but does not protect minors from prosecution at all. In some states, like Vermont and Georgia, minors must prove that they are “trafficking victims” even though federal law presumes by definition that a minor who is sold for sex is a victim of a severe form of trafficking. And in Washington, one previous arrest for prostitution will bar a minor from protection from

¹²² States with Safe Harbor laws include Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Tennessee, Vermont, and Washington. See 2012 State Ratings Map, Polaris Project (2012), at 3-4.

prosecution; additionally, in Massachusetts, protection applies only if the prosecutor consents.”¹²³

The following section provides a comparison of Minnesota’s Safe Harbor law with three other states and a brief discussion of these laws from the perspective of a safe harbor law’s main goals, as mentioned above.

PROTECTING MINORS FROM PROSECUTION AND JUVENILE DELINQUENCY ADJUDICATION

States employ decriminalization, diversion, or both of these mechanisms to shield minor victims from the criminal justice or juvenile delinquency system. Both New York and Washington use diversion, and they have not decriminalized prostitution for any age group. Of note, diversion is not always mandatory. New York allows judicial discretion and Washington allows prosecutorial discretion in making the decision whether to divert. Granting such discretion has created barriers to diverting the minor out of juvenile delinquency proceedings. In New York’s case, family judges can look to certain factors, including the minor’s record and cooperation with specialized services, to determine whether the child should not be diverted as a Person In Need of Supervision (PINS) into services.¹²⁴ As discussed below, a loophole in New York’s Family Court Act means that children ages 16 and 17 are often processed by the criminal justice system rather than the family court.¹²⁵ Washington’s diversion law more closely mirrors Minnesota’s Safe Harbor law in that diversion is mandatory for the first offense, but thereafter, the prosecutor has discretion to choose whether to divert the minor.¹²⁶ Under both states’ diversion laws, a minor could still face prostitution charges.

¹²³ Anitto, Megan, “Emerging State Safe Harbor Responses to Sex Trafficking and Prostitution of Minors,” Juvenile Justice Information Exchange, Sept. 19, 2012.

¹²⁴ See A5258C Sec. 2; New York Fam. Ct. Act. Sec. 311.4(3). For example, previous adjudication for prostitution, a prior PINS certification and placement, and non-cooperation with specialized services are all factors that can result in denial of diversion through PINs. See Geist, Darren, “Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors,” *Legislation and Policy Brief 4*, no. 2 (2012): 68-127, 97.

¹²⁵ “New York State Policy Project,” ECPAT-USA, last visited Jan. 11, 2012. <http://ecpatusa.org/what-we-do/helping-children-in-america/ny-state-policy-project/>. Anitto, Megan. “Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors.” *Yale L. & Pol’y Rev.* 30 (2011): 49, not 261.

¹²⁶ RCW 13.40.070(7) and (8); see also RCW 13.40.87 and RCW 13.40.213. Section 6 describes that the program must provide: “a) Safe and stable housing; b) Comprehensive on-site case management; c) Integrated mental

Illinois, like Minnesota, uses both decriminalization and diversion. Illinois' Safe Children Act grants immunity to all children under 18 from prosecution for prostitution.¹²⁷ This immunity is triggered once the age of a person charged with prostitution is discovered during an investigative detention. Illinois' law states:

Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Section 2-5 and 2-6 of the Juvenile Court Act of 1987.¹²⁸

Importantly, immunity is not left to the discretion of the authorities, but rather is automatic upon identification of a prostituted minor under 18.¹²⁹

REDEFINING A PROSTITUTED MINOR AS A VICTIM OR SEXUALLY EXPLOITED CHILD

Many states' safe harbor laws have redefined prostituted youth as victims. While inclusion in this definition can be a gateway to victim services, it is important to note it does not necessarily preclude prosecution. Even if a state defines a prostituted minor as a victim, states' experiences have shown that this classification may not be sufficient to prevent prosecution of that minor for prostitution offenses. Even when the law sets a bright line age of 18 for a child victim, discretion in diversion states can still expose youth under 18 to prosecution. For example, Washington's law defines a "sexually exploited child" as a person under 18 who is a victim of

health and chemical dependency services, including specialized trauma recovery services; d) Education and employment training delivered on-site; and e) Referrals to off-site specialized services, as appropriate."

¹²⁷ IL Compiled Statutes 720 ILC 5/11-14(d) . *See also* Introduction to Illinois' Safe Children Act, Polaris Project, 2010.

<http://www.enddemandillinois.org/sites/default/files/IL%safe%Chilren%Act%Summary%Nov%20%2010%FINAL.pdf>.

¹²⁸ IL Compiled Statutes 720 ILC 5/11-14(d) (2012).

¹²⁹ Geist, Darren. "Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors," *Legislation and Policy Brief 4*, no. 2 (2012): 68-127, 103.

commercial sex abuse.¹³⁰ A sexually exploited child is included within the definition of a Child In Need of Services (CHINS) and may thus be held in a secure Crisis Residential Center (CRC) for up to 15 days.¹³¹ But because diversion is mandatory only for the first prostitution offense, a sexually exploited child in Washington may still be charged with prostitution upon a repeat offense.¹³²

New York makes a legal presumption that a minor under 18 years of age arrested for prostitution is a “victim of a severe form of trafficking” as in the federal definition.¹³³ Trafficked children are considered “status offenders” eligible for PINS certification. New York’s Family Court Act, however, grants the family court jurisdiction over children younger than 16; youth older than 16 years of age are processed in criminal court.¹³⁴ Thus, although any person under 18 can be considered a severely trafficked victim, in practice, New York’s safe harbor law does not protect 16 and 17 year-olds from the criminal justice system.¹³⁵

Other states bring sex trafficking into its child protection laws by ensuring that provisions on abuse or neglect include sex trafficking and sexual exploitation.¹³⁶ For example, Illinois’ definition of an “abused child” is a child whose parent, immediate family member, parent’s intimate partner, co-habitant, or person who is in charge of their welfare commits or allows

¹³⁰ RCW 13.32A.030(17) (2012). Specifically, a sexually exploited child is a victim of commercial sex abuse of a minor, promotion of commercial sex abuse of a minor, or promotion of travel for commercial sex abuse of a minor.

¹³¹ See generally “Domestic Minor Sex Trafficking: Child Sex Slavery in Washington,” Shared Hope International, June 2011, p. 38.

¹³² Geist, Darren. “Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors.” *Legislation and Policy Brief 4*, no. 2 (2012): 68-127, 98-99. The prosecutor also has discretion to divert the youth into services. “Domestic Minor Sex Trafficking: Child Sex Slavery in Washington,” Shared Hope International, June 2011, p. 17.

¹³³ New York Fam. Ct. Act. Sec. 311.4(3).

¹³⁴ New York Fam. Ct. Act. Sec. 712(a); Annitto, Megan. “Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors.” *Yale L. & Pol’y Rev.* 30 (2011): 49, FN 261.

¹³⁵ “New York State Policy Project,” ECPAT-USA, <http://ecpatusa.org/what-we-do/helping-children-in-america/ny-state-policy-project/>, accessed Jan. 14, 2013.

¹³⁶ “The Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation’s Children,” Shared Hope International, 2012, p. 90-91.

“involuntary sexual servitude of a minor” to be perpetrated.¹³⁷ An abused child is a minor under 18 years of age who is persuaded or compelled to “commit any act of prostitution.”¹³⁸ Illinois’ law contains a rebuttable presumption that a child under 18 who has “engaged in prostitution is abused or neglected within the meaning of Section 2-3 of the Juvenile Court Act of 1987.”¹³⁹

SERVICES FOR VICTIMS OF CHILD SEX TRAFFICKING

One difference among state services is whether safe harbor laws designate specialized or existing services for trafficking victims. Providing specialized services or ensuring that existing services are retrofitted to address the trauma experienced by sex trafficking victims is important.¹⁴⁰

Washington uses existing services for child or sexual abuse victims for prostituted minors.¹⁴¹ Washington’s safe harbor law authorizes placement of prostituted minors (upon a CHINS designation) to a secure Crisis Residential Center, which must have access to a person trained on the needs of sexually exploited children.¹⁴² Minors can also reach services for child victims of sexual assault or sexual abuse through the diversion process in Washington.¹⁴³

Illinois also uses existing services,¹⁴⁴ but Chicago Alliance against Sexual Exploitation (CAASE) notes that existing services lack adequate funding and are not sufficiently comprehensive to fully meet the needs of all victims and provide the support necessary to help them escape

¹³⁷ Ill. Comp. Stat. Ann. Sec. 705 ILCS 405/2-3(2)(vi); Ill. Comp. Stat. Ann. Sec. 325 ILCS 5/3(h).

¹³⁸ Ill. Comp. Stat. Ann. Sec. 705 ILCS 405/2-3(2)(vii).

¹³⁹ H.B. 6462 Sec. 15(d), 2010 Leg., Gen. Ass. (Ill. 2010).

¹⁴⁰ Geist, Darren. “Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors.” *Legislation and Policy Brief 4*, no. 2 (2012): 68-127, 89.

¹⁴¹ S.B. 6476 Sec. 1(d), 3, 7(3).

¹⁴² RCW 74.15.255 (2012).

¹⁴³ Wash. Rev. Code Sec. 13.40.087; “The Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation’s Children,” Shared Hope International, 2012, p. 89.

¹⁴⁴ H.B. 6462 Sec. 15(d).

sexual exploitation.¹⁴⁵ In 2012, End Demand Illinois, a campaign of CAASE, proposed a model for specialized services for victims of sex trafficking based on interviews with victims and service providers.¹⁴⁶ The model centers around secure housing that provides trauma specific services, including: basic necessities; counseling; mentoring and support groups facilitated by survivors; outreach; health services; transportation and legal assistance.¹⁴⁷ A drop-in community center would offer job and education resources, as well as referrals.¹⁴⁸

New York mandates that all local social services districts are to plan for the service needs of sexually exploited children to ensure there are temporary safe houses and crisis programs available.¹⁴⁹ Existing services may be used if the staff has received “appropriate training” on sexually exploited children and the existing services offer a “safe, secure and appropriate environment” for them.¹⁵⁰ Upon a PINS application, the judge may direct the sexually exploited child to a safe house instead of detention.¹⁵¹ The safe house is to be managed by an “authorized agency,” such as groups serving runaway youth or assist sexually exploited children.¹⁵² In such housing, basic necessities such as food and clothing, as well as health care, counseling, and crisis intervention are to be made available to the children.¹⁵³

¹⁴⁵ End Demand Illinois, “Proposal: a Statewide System of Specialized Services for Survivors of Prostitution and Sex Trafficking,” May 2012, p. 15, available from Chicago Alliance against Sexual Exploitation, accessed Jan. 14, 2013.

¹⁴⁶ “EDI Releases Proposal for Statewide System of Support for Survivors,” End Demand Illinois, on the Chicago Alliance against Sexual Exploitation website, <http://www.enddemandillinois.org/newsitems/edi-releases-proposals-statewide-system>, accessed Jan. 14, 2013.

¹⁴⁷ “Illinois Needs a Statewide System of Specialized Supportive Services for Prostituted and Trafficked People,” End Demand Illinois, 2012, available from Chicago Alliance against Sexual Exploitation, accessed Jan. 14, 2013.

¹⁴⁸ “Illinois Needs a Statewide System of Specialized Supportive Services for Prostituted and Trafficked People,” End Demand Illinois, 2012, available from Chicago Alliance against Sexual Exploitation, accessed Jan. 14, 2013.

¹⁴⁹ New York Soc. Serv. Law Sec. 447-b(1).

¹⁵⁰ New York Soc. Serv. Law Sec. 447-b(1).

¹⁵¹ New York Fam. Ct. Act Sec. 739(a), 311.4(3).

¹⁵² New York Soc. Serv. Law Sec. 447-a(2), (4). See also “The Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection of the Nation’s Children,” Shared Hope International, 2012, p. 88.

¹⁵³ New York Soc. Serv. Law Sec. 447-a(2), (4). See also “The Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection of the Nation’s Children,” Shared Hope International, 2012, p. 88.

Many of these laws envision comprehensive and relevant services, but funding is a critical part of their effective implementation. Unless the statute designates funding for these services, challenges can arise in the effective implementation and delivery of victim programs. For example, New York’s legislation does not specifically allocate funding for these services despite mandating local social services to respond to sexually exploited children.¹⁵⁴ New York’s mandate for local social services to provide specialized services for sexually exploited children is qualified “to the extent that funds are available.”¹⁵⁵ The lack of funding has impacted the availability of programs, such as housing. A 2012 report by the New York Women’s Foundation found that secure, long-term housing for trafficked children was the greatest challenge.¹⁵⁶

Other states have drawn from fines and other penalties to raise these funds. Washington’s legislation does provide for funding and channels the money from fines for johns and pimps into services for sexually exploited children and prostitution prevention and intervention programs.¹⁵⁷ In addition, Washington passed a law in 2012 that allocates revenue from the fees assessed for trafficking offenses into “local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.”¹⁵⁸ At least 50% of this revenue is to be spent on prevention and rehabilitation programs.¹⁵⁹ The specific amount remains undefined and may fall short of what is needed, but it is a “starting point.”¹⁶⁰

Some states have also used fees from the impoundment of vehicles to raise funds for programming and services. Washington’s law also mandates the impounding of vehicles used to commit commercial sex abuse of a minor if owned or rented by the defendant, and raises the fee to release the car from \$500 to \$2,500, which will be deposited into the Prostitution

¹⁵⁴ New York Soc. Serv. Law Sec. 447-b(1).

¹⁵⁵ New York Soc. Serv. Law Sec. 447-b(1), (4).

¹⁵⁶ Elizabeth G. Hines and Joan Hochman, “Sex Trafficking of Minors in New York,” The New York Women’s Foundation, July 2012, p. 14.

¹⁵⁷ S.B. 6476, Sec. 15, 18.

¹⁵⁸ H.B. 1983, Sec. 9A.40.100(3), 62nd Leg., Reg. Sess. (Wash. 2012).

¹⁵⁹ H.B. 1983, Sec. 9A.40.100(3)(c)(i), 62nd Leg., Reg. Sess. (Wash. 2012).

¹⁶⁰ Annitto, Megan. “Consent, Coercion, and Compassion: Emerging Legal Responses to Commercial Sexual Exploitation of Minors,” Yale L. & Pol’y Rev. 30 (2011): 54.

Prevention and Intervention Account.¹⁶¹ Similarly, Illinois permits impoundment and seizure of the vehicles of convicted pimps.¹⁶² The fee to recover a car increased from \$200 to \$1,000, and upon conviction, 50% of the fee will be deposited in the Violent Crime Victims Assistance Fund to be used by the Department of Human Services to provide grants to organizations serving survivors of human trafficking and/or prostitution.¹⁶³

In addition to funding, connecting the minor with these services is also critically important. Some states do so by mandating temporary protective custody of the sexually exploited minor. Illinois mandates that prostituted minors are to be placed in temporary protective custody under the Juvenile Court Act, which may include shelter through a medical facility.¹⁶⁴ Designation of a child as abused or neglected triggers the placement of that child in protective custody.¹⁶⁵ Importantly, this provision is not an arrest but rather is aimed at protecting the minor through secure custody;¹⁶⁶ notably, the law states that a jail or other detention facility for offenders is not to be used as temporary protective custody.¹⁶⁷ Washington allows for discretionary placement for up to 15 days in a secure crisis residential center, where there is access to a person trained on assisting sexually exploited children, following identification as a minor and Child in Need of Services designation.¹⁶⁸

ACCOUNTABILITY FOR TRAFFICKERS

Many states' laws increase penalties and promote aggressive prosecution policies for pimps and johns, thus deterring further exploitation and hindering pimps' access to the victims.

¹⁶¹ Wash. Rev. Code Ann. Sec. 43.63A.740 (West 2012).

¹⁶² 720 ILCS 5/36.5-5 (2012).

¹⁶³ 720 ILCS 5/36.5-5 (2012).

¹⁶⁴ H.B. 6462, 2010 Leg., Reg. Sess. (Ill. 2010); Ill. Comp. Stat. Ann. Sec. 5/3(3) (West 2010); 720 Ill. Comp. Stat. Ann. Sec. 5/11-14(d) (West 2010).

¹⁶⁵ H.B. 6462 Sec. 15(d), 2010 Leg., Gen. Ass. (Ill. 2010).

¹⁶⁶ 705 Ill. Comp. Stat. Ann. Sec. 405/2-5(2), (3).

¹⁶⁷ 705 Ill. Comp. Stat. Ann. Sec. 405/2-7.

¹⁶⁸ S. B. 6476. *See also* "Domestic Minor Sex Trafficking: Child Sex Slavery in Washington," Shared Hope International, June 2011, p. 21.

Although safe harbor laws generally focus on victim services and protection, Minnesota should continue to revisit its accountability measures and assess whether its criminal penalties appropriate given the seriousness of the crime of trafficking.

INVESTIGATIONS

Illinois also provides for an investigation for child abuse or neglect once a prostituted minor under 18 is identified. Upon identification, the officer must notify the Illinois Department of Children and Family Services State Central Register, which must initiate the investigation within 24 hours.¹⁶⁹

SEALING OR EXPUNGEMENT OF RECORDS

Some states provide for the expungement or sealing of records for prostitution offenses once a sexually exploited child turns 18. In Washington, when a person reaches 18 years of age, she may file an application to seal juvenile records if there are no other offenses on her record for two years.¹⁷⁰

TRAINING OF LAW ENFORCEMENT AND SOCIAL SERVICES

In Washington, law enforcement is required to develop a model policy on procedures relating to a victim of domestic minor sex trafficking by December 1, 2010, and training on the model policy must be developed by January 1, 2011.¹⁷¹

New York's law calls for law enforcement training on identification and victim services. Again, such training is subject to the availability of funds:

¹⁶⁹ 325 ILCS 5/7.4 et seq.

¹⁷⁰ "Rapid Assessment of Domestic Minor Sex Trafficking: Washington," Shared Hope International, June 2011, p. 42.

¹⁷¹ S.B. 6479, 61st Leg., Reg. Sess. (Wash. 2010) (Note that this section was not codified in the Washington Revised Code).

The local social services commissioner may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The office of children and family services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and/or the office of juvenile justice and delinquency prevention.¹⁷²

VICTIM COMPENSATION

In Washington, a prostituted minor is considered a victim for the purpose of receiving benefits under the Victim Compensation Benefits Program, even if charged with prostitution. This prevents potential ineligibility for crime victims' funds due to involvement in the crime for which they are claiming injury.¹⁷³

¹⁷² New York Soc. Serv. Law Sec. 447-b(6).

¹⁷³ Wash. Rev. Code Ann. Sec. 43.63A.740 (West 2012).

APPENDIX C: SAFE HARBOR 2011

The Safe Harbor legislation that passed in 2011 introduced five major legislative changes to Minnesota's response to juvenile trafficking victims.

Change #1: Excludes sexually exploited children under 16 from the definition of delinquent child at **Minn. Stat. 260B.007**:

"The term delinquent child does not include a child under the age of 16 years alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct."

Also changes definition of juvenile petty offender to exclude sexually exploited children.

Effective Date: August 1, 2014

Change #2: Created **Minn. Stat. 609.093** – Juvenile Prostitutes; Diversion or Child Protection Proceedings

Subd. 1: (a) This section applies to a 16 or 17 year old child alleged to have engaged in prostitution as defined in section 609.321, subd. 9, who:

- (1) has not been previously adjudicated delinquent for engaging in prostitution...
- (2) has not previously participated in or completed a diversion program for engaging in prostitution...
- (3) has not previously been placed on probation without an adjudication or received a continuance under section 260B.198, subd. 7, for engaging in prostitution;
- (4) has not previously been found to be a child in need of protection or services for engaging in prostitution as defined in section 609.321, subd. 9, or because the child is a sexually exploited youth as defined in section 260C.007, subdivision 31, clause (1); and
- (5) agrees to successfully complete a diversion program under section 388.24 or fully comply with a disposition order under section 260C.201.

(b) The prosecutor shall refer a child described in paragraph (a) to a diversion program under section 388.24 or file a petition under section 260C.41 alleging the child to be in need of protection or services.

Subd. 2: If a child fails to successfully complete diversion or fails to fully comply with a disposition order under section 260C.201, the child may be referred back to the court for further proceedings under chapter 260B.

Subd. 3: This court shall dismiss the charge against the child if any of the following apply:

- (1) the prosecutor referred the child to diversion program and the prosecutor notifies the court that the child successfully completed the program;
- (2) the prosecutor filed a petition under section 260C.141 and the court does not find that the child is in need of protection or services; or
- (3) the prosecutor filed a petition under section 260C.141, the court entered an order under section 260C.201, and the child fully complied with the order.

Effective Date: August 1, 2014

Change #3: Amended Minn. Stat. 260C.007 to include definition of "sexually exploited youth"

Subd. 31. Sexually exploited youth. "Sexually exploited youth" means an individual who:

- (1) is alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct;
- (2) is a victim of a crime described in section 609.342, 609.343, 609.345, 609.3451, 609.3453, 609.352, 617.246, or 617.247;
- (3) is a victim of a crime described in United States Code, title 18, section 2260; 2421; 2422; 2423; 2425; 2425A; or 2256; or (4) is a sex trafficking victim as defined in section 609.321, subdivision 7b.

Effective Date: August 1, 2011

Change #4: Amends 609.3241 Penalty Assessments

(a) When a court sentences an adult convicted of violating section 609.322 or 609.324, while acting other than as a prostitute, the court shall impose an assessment of not less than \$500 and not more than \$750 for a violation of section 609.324, subdivision 2, or a misdemeanor violation of section 690.324, subdivision 3; otherwise the court shall impose an assessment of not less than \$750 and not more than \$1000. The assessment shall be distributed as provided in paragraph (c) and is in addition to the surcharge required by section 357.021, subdivision 6.

(b) The court may not waive payment of the minimum assessment required by this section. If the defendant [is indigent], the court may reduce the amount of the minimum assessment to not less than \$100.

(c) The assessment collected under paragraph (a) must be distributed as follows:

(1) 40 percent of the assessment shall be forwarded to the political subdivision that employs the arresting officer for use in enforcement, training, and education activities related to combating sexual exploitation of youth...

(2) 20 percent of the assessment shall be forwarded to the prosecuting agency...

(3) 40 percent of the assessment must be forwarded to the commissioner of public safety to be deposited in the safe harbor for youth account in the special revenue fund and are appropriated to the commissioner for distribution to crime victims services organizations that provide services to sexually exploited youth, as defined in section 260C.007, subdivision 31.

Effective Date: August 1, 2011

Change #5: Directs the commissioner of public safety to work with stakeholders to create a victim-centered response to **sexually exploited youth and **youth at risk of sexual exploitation****

(a) If sufficient funding from outside sources is donated, the commissioner of public safety shall develop a statewide model as provided in this section. By June 30, 2012, the commissioner of public safety, in consultation with the commissioners of health and of human services, shall develop a victim services model to address the needs of sexually exploited youth and youth at risk of sexual exploitation. The commissioner shall take into consideration the findings and recommendations as reported to the legislature on the results of the safe harbor for sexually exploited youth pilot project authorized by Laws 2006, chapter 282, article 13, section 4, paragraph (b). In addition, the commissioner shall seek

recommendations from prosecutors, public safety officials, public health professionals, child protection workers, and service providers.

(b) By January 15, 2013, the commissioner of public safety shall report to the chairs and ranking minority members of the senate and house of representatives divisions having jurisdiction over health and human services and criminal justice funding and policy on the development of the statewide model, including recommendations for additional legislation or funding for services for sexually exploited youth or youth at risk of sexual exploitation.

(c) As used in the section, “sexually exploited youth” has the meaning given in section 260C.007, subdivision 31.

Effective date: August 1, 2011

As noted by the effective dates of the above listed changes, some of the changes went into effect in August 2011. The greatest changes, however, are set to go into effect in August of 2014. This delay was strategically planned to allow time for Minnesota to create the Minnesota Safe Harbor Model that incorporated the much needed changes to the system’s response to trafficked juveniles. Delayed implementation gives Minnesota time to recommend necessary changes to the system.

APPENDIX D: 2013 SAFE HARBOR LEGISLATIVE PROPOSALS

SAFE HARBOR 2013: PROVIDING SAFE HARBOR TO ALL SEXUALLY EXPLOITED CHILDREN IN MINNESOTA

The Safe Harbor for Sexually Exploited Youth Act of 2011 changed Minnesota’s approach to meeting the needs of sexually exploited children. Safe Harbor defined prostituted children as the victims of sexual exploitation, ended reliance upon delinquency proceedings as the sole systems response to meeting the needs of these crime victims, and called for creation of a framework for implementation of these changes, which become effective on August 1, 2014.

The Problem: Safe Harbor 2011 conflicts with Minnesota’s trafficking laws by failing to protect all children under 18 from delinquency adjudication. Minnesota treats the prostitution of children ages 16 and 17 as a serious felony, but it continues to treat the victims of that crime as delinquents. Only young children – those under 16 – are excluded from delinquency.

The Solution: Safe Harbor 2013 ensures that no sexually exploited child will be adjudicated delinquent for being forced to engage in prostitution by amending Minnesota Statutes 260B.007 and repealing Minnesota Statutes 609.093.

Treating trafficked children as crime victims is the right thing to do:

- **Trafficked children are victims of crimes, not criminals, but Minnesota law contradicts itself.** Children ages 16 and 17 who “engage in prostitution” are defined simultaneously as victims of sex trafficking, children in need of protection and services, maltreated minors, *and juvenile delinquents*.
- **Treating trafficked children as victims of crime is proven to build trust and set them on a path to recovery.** Criminalizing the victim not only causes them further harm; it offers a weak and ineffective counter-offensive to traffickers’ manipulative and sophisticated grooming and control.
- **A victim-centered response, rather than delinquency adjudication, saves taxpayer money.** A 2012 cost-benefit study conducted by researchers from the universities of

Minnesota and Indiana shows a savings of \$34 tax dollars for every \$1 invested in models like No Wrong Door.

- **This is not a matter of the “age of consent.”** Trafficking in children under 18 or buying sex from children under 18 is a felony. Sex trafficking is a violent and predatory crime against children to which children can never consent.
- **Sex trafficking of children in Minnesota is all too common.** Traffickers prey upon those they perceive to be vulnerable, including the young. The average age a child enters prostitution is between 12-14 years of age – 6th and 7th graders. In 2003, the FBI identified Minneapolis as a U.S. city with a high concentration of criminal enterprises exploiting children through prostitution.

2013 No Wrong Door Implementation Legislation

On July 20, 2011, the Safe Harbor for Sexually Exploited Youth Act was signed into law by Governor Dayton. Minnesota is the fifth state in the nation to redefine sex-trafficked children as victims of crime in need of support and services.

This historic legislation goes into effect in 2014. The law charged the state departments of Public Safety, Human Services, and Health with the task of convening diverse experts, including law enforcement personnel, prosecutors, public defenders, service providers, advocates, survivors of sex trafficking and others to create a comprehensive prevention and intervention model to successfully implement the Safe Harbor Act.

After 18 months of intensive work, and with financial support from the Women's Foundation of Minnesota, the No Wrong Door model was delivered to the state Legislature on January 15, 2013.

No Wrong Door includes the following key recommendations and associated expenditures:

- Construction, renovation and operation of Safe Harbor Shelter and Housing for sex-trafficked youth. (\$8.5 million)
- Establishment of a Safe Harbor Supportive Services Fund to provide therapeutic, culturally specific services for sex-trafficked children. (\$2 million)
- Creation of a Statewide Safe Harbor Director, six grant-funded Regional Navigator positions, and 14 grant-funded Youth Street Outreach positions. (\$2 million)
- Creation of a Safe Harbor Training Fund to ensure that law enforcement and other front-line personnel have the training they need to identify child sex trafficking victims and to aggressively investigate and prosecute traffickers. (\$750,000).

Why should legislators make full funding of the No Wrong Door model a priority?

Child sex trafficking is a reality in Minnesota. The nation is watching what we will do. In 2003, the FBI identified Minneapolis as a US city with a high concentration of criminal enterprises exploiting children through prostitution. State and national leaders, including President Obama, have made ending child sex trafficking a priority. And as we have done for other critical social movements, such as domestic violence and indoor smoking, Minnesota again has emerged as a leader the rest of the nation is watching.

It's a sound investment. A 2012 cost-benefit study conducted by researchers from the universities of Minnesota and Indiana shows a savings of 34 tax dollars for every \$1 invested in models like No Wrong Door.

Minnesotans overwhelmingly support it. Statewide polling conducted by The Mellman Group (August 2011) found that over 90% of Minnesotans support a public investment to protect our children from sex trafficking. Minnesotans want action on this issue and they expect a solution.



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