

Commercially Sexually Exploited Youthⁱ & “Safe Harbor” Legislation

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What is “Safe Harbor” Legislation?

“Safe Harbor” laws are developed by states to rectify the inconsistencies between state laws on prostitution and statutory rape laws and human trafficking laws. Sen. Greenleaf has introduced Safe Harbor legislation in the form of SB 851ⁱⁱ. It effectively decriminalizes sex work for youth in the trade - however in its current form SB 851 reinforces and formalizes the relationship between the child welfare system, youth engaged in the sex trade, and the criminal justice system. By mandating youth to receive DHS services, this legislation will serve to re-cycle sexually exploited youth through the very systems which have already failed to protect them and meet their needs.

- There is a lack of research around many elements of “Safe Harbor” laws, including the effects of connecting youth to DHS services.ⁱⁱⁱ Thus, it has not been proven that mandating sexually exploited youth be connected to DHS is effective or beneficial in any way for these youth.
- “Safe Harbor” laws blur the line between social services and the criminal justice system via the arguably unethical tactic of using arrests to forcibly engage youth in services.
- While “Safe Harbor” laws provide immense benefit in the form of prosecutorial immunity from prostitution-related charges for sexually exploited youth, these laws do not provide immunity for offenses not directly related to prostitution, despite the well-documented facts that sexually exploited youth are more often arrested on charges unrelated to prostitution and are frequently harassed and targeted by law enforcement for a myriad of reasons.^{iv}

The Child Welfare & Criminal Justice Systems

Child welfare and criminal justice systems too often fail in their purported mission of providing vulnerable youth with support, safety, and critical services, such as stable housing, education, food security, health care, and protection. For many youth, this failure contributes to entry into survival sex work and makes youth more vulnerable to future exploitation. It is thus illogical, unethical, and counterproductive to force youth to receive DHS services in connection with a prostitution-related arrest. Furthermore, youths’ experience of sexual exploitation within the criminal justice system and by law enforcement officers indicate that legislation making law enforcement personnel responsible for sexually exploited youths’ protection and safety will prove ineffective in serving these youth.

- 85% of youth in the sex trade are estimated to have prior involvement with the child welfare system.^v This indicates that the child welfare system has already failed to provide many sexually exploited youth with economic stability and a safe living environment.
- Youth who have involvement with the child welfare system disproportionately experience the following (as compared to the general population): mental health problems as children and adults; physical health problems as adults; poor educational and employment outcomes; homelessness; engagement in sex work; and contact with the criminal justice system.^{vi}
- Many youth, particularly LGBTQ youth and youth of color, experience violence, exploitation, and harassment from the child welfare and criminal justice systems.^{vii}
- Sexually exploited youth commonly report suffering sexual exploitation at the hands of law enforcement officers, including being forced to perform sex acts on officers and officers ignoring or accusing of lying youth who report sexual exploitation.^{viii}
- Sexually exploited boys and young men are more likely than sexually exploited girls and young women to face criminal charges when arrested on prostitution-related charges.^{ix}
- The criminal justice system often portrays sexually exploited young women and girls as victims^x rather than recognizing their resilience in their given environment, which disempowers these youth, reinforces their vulnerability, and makes them more susceptible to further exploitation.

Recommendations to Respond to the Sexual Exploitation of Youth in PA:

Safe Harbor Legislation:

- Pass “Safe Harbor” legislation which provides prosecutorial immunity from prostitution-related crimes for sexually exploited youth but does not mandate child welfare intervention
- Expand prosecutorial immunity in “Safe Harbor” legislation to include other crimes with which youth in the sex trade are routinely charged
- Include a non-discrimination clause targeted at service providers that will help ensure LGBTQ youth not only have access to critical services, but that those services are safe, welcoming, and tailored to meet the needs of all youth.
- Employ youth with experience in the sex trade to help develop and present law-enforcement training
- Restrict use of funding to meet the material needs of youth, as determined by empirical research, data collection, and youths’ reports of what their experiences and needs are
- Clarify and specify what “reasonable detention” means when youth arrested on prostitution-related charges are in police custody

Beyond SB851:

- Address the institutionalized violence in the child welfare and criminal justice systems, namely the disproportionate representation of families of color and low-income families; as well as the lack of appropriate services for queer and transgender youth.
- Fund voluntary, trauma-informed group therapy interventions for sexually exploited youth
- Provide funding for programs and homeless shelters specifically for LGBTQ youth
- Provide funding for programs which work with youth and their families to prevent foster care placement
- Employ people with experience in the sex trade as youth to develop and implement programming.
- Fund peer-education programming, developed and led by youth with experience in the sex trade
- Support peer-led outreach in communities where sex work takes place
- Involve youth who engage(d) in the sex trade in policy discussions
- Youth-led trainings for peers and service providers
- Compensate youth for their role in the above recommendations

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ⁱ “Commercially sexually exploited youth” refers to youth who trade sex by choice, circumstance, or coercion (i.e., human or sex trafficking) and is used interchangeably with “youth in the sex trade” by authors of this document.

ⁱⁱ More can be found at <http://tinyurl.com/z8qfhqn>

ⁱⁱⁱ Shields, R. T. & Letourneau, E. J. (2015). Commercial sexual exploitation of children and the emergence of Safe Harbor legislation: Implication for policy and practice. *Curr Psychiatry Rep* 17(11).

^{iv} Dank, M. et al. (2015). Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex.

^v Gragg, F. et al. (2007). New York prevalence study of commercially sexually exploited children. New York: New York State Office of Children and Family Services.

^{vi} Wildeman, C., & Waldfogel, J. (2014). Somebody’s Children or Nobody’s Children? How the Sociological Perspective Could Enliven Research on Foster Care. *Annual Review of Sociology*, 40, 599–618. <http://doi.org/10.1146/annurev-soc-071913-043358>

^{vii} Young Women’s Empowerment Project. (2011). *Girls do what they have to do to survive: Illuminating methods used by girls in the sex trade and street economy to fight back and heal.*

Young Women’s Empowerment Project. (2012). *Denied help! How youth in the sex trade & street economy are turned away from systems meant to help us & what we are doing to fight back.*

^{viii} Berlatsky, N. (2016). “Child Sex Workers’ Biggest Threat: The Police.” New Republic.

^{ix} Finkelhor, D., & Ormrod, R. (2004). *Child pornography: Patterns from NIBRS*. US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.