

NOTES

For Their Own Good? Exploring Legislative Responses to the Commercial Sexual Exploitation of Children and the Illinois Safe Children Act

I.	WHERE HAVE ALL THE GOOD GIRLS GONE? COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE UNITED STATES AND ILLINOIS	1362
II.	FAST AND FURIOUS: A LOOK AT EXISTING AND RAPIDLY CHANGING JUVENILE PROSTITUTION LAW	1367
A.	<i>Criminalization of Juvenile Prostitution</i>	1368
B.	<i>Safe Harbor Laws</i>	1369
1.	New York Safe Harbor Act	1370
2.	Connecticut Safe Harbor for Exploited Children	1371
C.	<i>Federal Commercial Sexual Exploitation Statutes</i>	1372
D.	<i>Canadian Response</i>	1374
E.	<i>The Illinois Safe Children Act</i>	1376
III.	ON THE GROUND IN ILLINOIS: PROCESS AND APPLICATION OF THE NEW LAW	1378
A.	<i>Entry into the System</i>	1378
B.	<i>Abuse Designation or Criminal Adjudication</i>	1381
C.	<i>Postadjudication Processes</i>	1382
IV.	THERE AND BACK AGAIN: BENEFITS AND SHORTFALLS OF THE NEW LEGISLATION	1384
A.	<i>Benefits of a Bright-Line Rule</i>	1384
1.	Statutory and Conceptual Consistency	1384
2.	Reality of Harm and Necessity of Social Services	1387
B.	<i>Practical Shortfalls of the Safe Children Act</i>	1389

1.	Quantifying the Problem and Studying the Process.....	1389
2.	Identification and Classification of Victims	1390
3.	Recidivism and Return to Abusers	1394
V.	ALL HANDS ON DECK: FILLING THE GAPS IN THE ILLINOIS LEGISLATIVE SCHEME COMBATING COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN.....	1395
A.	<i>More Robust Identification Procedures for All First-Contact Actors</i>	1396
B.	<i>Protective-Care Options for All Child Victims</i>	1397
C.	<i>Statutory Language That Covers All Victims</i>	1399
VI.	CONCLUSION	1399

For too long, exploited children have been treated as criminals while the adults who stole their innocence go free. Illinois does not tolerate exploitation of our children. Today, we give important new tools to aid law enforcement in this fight and help our victimized children to heal.

—Illinois Governor Pat Quinn¹

I. WHERE HAVE ALL THE GOOD GIRLS GONE? COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE UNITED STATES AND ILLINOIS

Illinois has long struggled to contain what is the perfect storm for exploitation—a large city with consistent conventions, attractions with many tourists,² significant amounts of population movement and immigration,³ access to major airports and interstates,⁴ and

1. Governor Quinn, *08/20/10: Governor Quinn Signs Law to Protect Children from Sexual Exploitation*, YOUTUBE (Aug. 23, 2010), http://www.youtube.com/watch?v=LhjSuCjej_U (recording of signing statement of the Illinois Safe Children Act by Illinois Governor Quinn).

2. CLAUDINE O'LEARY & OLIVIA HOWARD, CTR. FOR IMPACT RESEARCH, *THE PROSTITUTION OF WOMEN AND GIRLS IN METROPOLITAN CHICAGO: A PRELIMINARY PREVALENCE REPORT 22* (2001), available at <http://www.impactresearch.org/documents/prostitutionreport.pdf> (finding that participants who work with women and girls involved in prostitution believe that “a great deal of prostitution occurs through connections at clubs, bars and sporting or business events such as conventions”).

3. Audrey Singer, Susan W. Hardwick & Caroline B. Brettell, *Twenty-First Century Gateways: Immigrants in Suburban America*, MIGRATION INFO. SOURCE, <http://www.migrationinformation.org/Feature/display.cfm?ID=680> (Apr. 2008) (finding that Chicago is a “long-established” immigration destination and continues to receive “large numbers of the foreign born”).

4. O'LEARY & HOWARD, *supra* note 2, at 15 (“Throughout the Chicago metropolitan area, outreach workers report that truck stops along the Interstate highways are also known to have five to six women engaged in prostitution at each stop.”).

“entrenched gangs with an entrepreneurial bent.”⁵ These factors make Chicago in particular an appealing destination for runaways⁶ and throwaways⁷ across the Midwest. In 2001, a study conservatively estimated that 16,000 to 25,000 women and girls are victims of commercial sexual exploitation in Chicago each year.⁸ By 2004, the *New York Times* had named Chicago a “hub” for sex trafficking.⁹ When Illinois was at the top of the list of states from which calls were made to the National Human Trafficking Resource Center for the second time in 2009, legislators insisted that something be done.¹⁰ Anita Alvarez, then Illinois State Attorney, initiated the Human Trafficking Initiative and began drafting the Illinois Safe Children Act.¹¹ Deciding that treatment and social services were a better alternative than juvenile adjudication, the Act made all individuals under eighteen immune from prostitution-related charges and transferred authority over such children, who would now be considered “abused and neglected,” to the Department of Children and Family Services (“DCFS”).¹²

Though the solution in Illinois is novel, the problem of commercial sexual exploitation of children (“CSEC”) is not limited to Illinois.¹³ According to an oft-cited study, over 300,000 children are at

5. Daniel P. Smith, *Punishing the Perps: Sex Trafficking in Chicago*, TODAY'S CHI. WOMAN, Apr. 2, 2012, <http://www.tevmag.com/punishing-the-perps-sex-trafficking-in-chicago>.

6. “Runaway” youth are persons under eighteen years of age who absent themselves from their home or place of residence without the permission of parents or legal guardians. RICHARD J. ESTES & NEIL ALAN WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U. S., CANADA AND MEXICO: EXECUTIVE SUMMARY 29 (2001) [hereinafter ESTES & WEINER, EXECUTIVE SUMMARY], available at http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf.

7. “Throwaway” youth are persons under eighteen years of age who either are abandoned or are forced to leave their homes by parents or guardians and are not permitted to return. *Id.*

8. See O'LEARY & HOWARD, *supra* note 2, at 30 (“[O]ur total estimate is at least 16,000 women and girls involved in prostitution activities in the Chicago metropolitan area during any given year, and most likely substantially greater.”).

9. Meribah Knight, *Campaign Against Sex Trafficking Is Gaining*, N.Y. TIMES, Aug. 13, 2011, at A21 (“Chicago's historic role as a transportation center has also made it a hub of the nation's sex trade.”); Peter Landesman, *The Girls Next Door*, N.Y. TIMES MAG., Jan. 25, 2004, at 30 (describing activities in “major sex-trafficking hubs” such as New York, Los Angeles, Atlanta and Chicago).

10. *Hotline Statistics*, POLARIS PROJECT, <http://www.polarisproject.org/resources/hotline-statistics> (last visited June 26, 2012) (finding that Illinois ranks the fifth among all states for number of calls made to the National Human Trafficking Resource Center).

11. Press Release, Cook Cnty. State's Attorney's Office, State's Attorney Announces New Initiatives Targeting Child Sex Trafficking (June 23, 2010), available at http://www.statesattorney.org/index2/press_sextrafficking03.html.

12. 2010 Ill. Legis. Serv. P.A. 96-1464 (West) (codified at 720 ILL. COMP. STAT. 5/11-14 (West Supp. 2012)).

13. According to the U.S. Department of Justice, CSEC can involve many different crimes committed against individuals under the age of eighteen primarily or entirely for financial or

risk of sexual exploitation in the United States alone.¹⁴ Legislators have become increasingly aware of this threat, of the methods used by those who exploit children, and of the vulnerability of juveniles to manipulation, which has led to a rapid development of laws regarding the involvement of minors in prostitution-related activities.¹⁵ With the growing body of scholarship regarding human trafficking, it is worth taking a moment to clarify the scope of this Note. Federal law, under the Victims of Trafficking and Violence Protection Act of 2000, defines “severe forms of trafficking in persons” as:

[S]ex 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

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.¹⁶

Thus, human trafficking includes adult and child actors who are exploited or coerced into a wide range of activities—from sexual exploitation through debt bondage and labor. Further, the country of origin for an exploited or trafficked victim is not relevant to the crime of human trafficking. Neither does the law require that the person actually be moved across borders or state lines. With the Safe Children Act, the Illinois legislature built on the foundation laid by federal legislation and attempted to create a comprehensive and compassionate response to the enigmatic problem of CSEC. In this way, the Safe Children Act brings Illinois more into compliance with

other economic reasons and can involve physical abuse, pornography, the sale of children, and the smuggling of children. See JAY ALBANESE, U.S. DEP'T OF JUSTICE, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: WHAT DO WE KNOW AND WHAT DO WE DO ABOUT IT? 1 (2007). More generally, the federal government tends to use the term “domestic sex trafficking of minors.” See *generally Domestic Sex Trafficking of Minors*, U.S. DEPARTMENT OF JUSTICE (2009), <http://www.justice.gov/criminal/ceos/subjectareas/prostitution.html>. The term “child prostitute” will not be used in this Note because of the pejorative and inaccurate connotation of the phrase. These actions will generally be referred to as CSEC despite the fact that many states continue to use “child prostitute.” This Note primarily focuses on the prostitution of minors, which for the purposes of this Note, will be defined as persons under the age of eighteen who engage in sexual acts or conduct in exchange for money or anything of value.

14. See RICHARD J. ESTES & NEIL ALAN WEINER, CTR. FOR THE STUDY OF YOUTH POLICY, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 144 (2001), available at http://www.sp2.upenn.edu/restes/CSEC_Files/Complete_CSEC_020220.pdf (estimating that between 244,000 and 325,000 American children may be at risk of commercial sexual exploitation).

15. *Pending State and Federal Legislation*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/pending-legislation> (last visited June 26, 2012) (compiling bills regarding human trafficking currently pending across the United States).

16. Pub. L. No. 106-386, § 103(8), 114 Stat. 1470 (codified at 22 U.S.C. § 7102 (2006)).

federal law and serves as a model for states that currently criminally charge minors for prostitution-related offenses.¹⁷

The law in Illinois is far more consistent with the reality of coercion faced by most victims. Minors involved in commercial sexual exploitation often come from the most vulnerable populations.¹⁸ The risk factors for exploitation are many: domestic violence, parental neglect, sexual abuse, parental drug use, homelessness, poverty, a lack of safe and affordable housing, and experience as a runaway all increase susceptibility to exploitation.¹⁹ Runaways make up the largest percentage of prostituted juveniles; some studies show that up to seventy-five percent of juveniles involved in prostitution have run away from home.²⁰ National studies have shown that runaway and homeless youth are often forced to have sex in exchange for money, food, a place to stay, or other necessities.²¹ These studies reported that twenty-eight percent of youth on the street have participated in such “survival sex.”²² Exploitation starts early for many; in Illinois, the average age of entry into prostitution is around twelve for females.²³

Traffickers, exploiters, and pimps use various methods to coerce and control their victims. Often older males, these exploiters use force, violence, drugs, emotional tactics, and financial methods to control victims.²⁴ Sometimes using promises of love and marriage, girls may see pimps as offering protection, affection, shelter, and

17. While coercion is a necessary element of human trafficking crimes for adults under federal law, such coercion is often assumed when minors are involved. 22 U.S.C. § 7102(8)(A). Therefore, a child who is a victim of commercial sexual exploitation is necessarily a victim of human trafficking, but the opposite is not always true. For ease of reference, this Note refers primarily to CSEC with the understanding that this fits within the overall framework of sex-trafficking law. The ISCA is more compliant with this federal framework as it presumes coercion in all cases of sexual exploitation of minors.

18. JESSICA ASHLEY, ILL. CRIM. JUSTICE INFO. AUTH., *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND YOUTH IN ILLINOIS 7* (2008), available at <http://www.icjia.state.il.us/public/pdf/researchreports/csec%202008%20icjia%20report.pdf>.

19. *Id.*

20. MARCIA I. COHEN, NAT'L ASS'N OF CNTYS. AND THE UNIV. OF OKLA. NAT'L RES. CTR. FOR YOUTH SERVS., *IDENTIFYING AND COMBATING JUVENILE PROSTITUTION: A MANUAL FOR ACTION 2* (2006).

21. Jody M. Greene, Susan T. Ennett & Christopher L. Ringwalt, *Prevalence and Correlates of Survival Sex Among Runaway and Homeless Youth*, 89 AM. J. PUB. HEALTH 1406, 1408 (1999).

22. *Id.*

23. ASHLEY, *supra* note 18, at 27.

24. Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FBI L. ENFORCEMENT BULL., Mar. 2011, at 1, 3–4 (documenting the many and various ways that exploiters lure and coerce their victims, including the use of gang rape, promises of marriage, false debts, and physical violence).

clothing.²⁵ Once in their grip, exploiters use tactics of power and control to ensure compliance, much like how an abuser controls a battered woman.²⁶ Youth, once in “the life” of exploitation, have very few methods of exiting without risking their lives or safety.²⁷ With this complicated set of forces at play, the Illinois Safe Children Act attempts to better identify victims, provide them with appropriate services, and prevent revictimization. Yet, evidence suggests that there are serious gaps in the current scheme that leave victims vulnerable.

This Note describes how the Illinois Safe Children Act is an improvement over the majority approach but argues that its current application is still far from perfect. By comparing alternative legislative enactments and analyzing the law as applied, this Note suggests that the Act makes significant progress in treating child victims of exploitation appropriately. However, it still fails to adequately address several classes of juveniles. Specifically, the Illinois Safe Children Act fails to address both the problems with police discretion in the identification of victims and the high rate of return to abusers.²⁸

Part II of this Note looks at the various legislative responses to this problem. It explores state, federal, and international legislation aimed at CSEC. Part III then explores the application of the Illinois Safe Children Act. That Part steps away from the legislation as written and explores the law as applied by police and social service actors. Part IV builds on this analysis by exploring the positive changes and continuing gaps in the legislation as applied. That Part draws on existing studies to identify certain classes of exploited children that the legislation, as written, may continue to miss. Finally, Part V suggests several procedural and legislative reforms that will help close these gaps.

25. COHEN, *supra* note 20, at 11.

26. Scholars have likened juveniles seeking the love and protection of pimps and exploiters to battered women syndrome. See Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1084 (2011) (generally discussing the similarity between the responses of coercion and violence used against youth to battered women syndrome).

27. JODY RAPHAEL & DEBORAH L. SHAPIRO, CTR. FOR IMPACT RESEARCH, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 8 (2002), available at <http://www.impactresearch.org/documents/sisterspeakout.pdf>.

28. See discussion *infra* Sections III.A–B.

II. FAST AND FURIOUS: A LOOK AT EXISTING AND RAPIDLY CHANGING JUVENILE PROSTITUTION LAW

The rapid increase in public awareness of human trafficking has had many effects—one being the hurried development of laws regarding CSEC nationwide. Statutory schemes affecting sex and children have undergone an incredible evolution in the last five to ten years as legislative conceptions of consent, coercion, and reconciliation have changed dramatically. While the Illinois Safe Children Act has been described as a model law in the area of CSEC, it is far from the only legislative response to this problem. States have generally taken a multifaceted approach to ending CSEC.²⁹ A complete statutory scheme may criminalize not only the behavior of patrons of prostituted children, but also the behavior of those who act as recruiters and pimps or otherwise profit from the prostitution of children. In addition, states must ultimately address the juveniles themselves.

Approaches to CSEC range from full criminalization to complete shelter from the law.³⁰ States with full criminalization generally import the definition and statutory prohibition on prostitution directly from the adult system and make no provisions for the age of the child involved.³¹ These states vary in their practical application of the law to juveniles, but all maintain an official position of criminalization for those juveniles that are arrested for prostitution. In more of a middle ground, several states have carved out “safe harbors” for juveniles engaged in prostitution in certain situations. These safe harbor laws often do not apply to victims with previous arrests or those who are “unwilling” to cooperate with the court.³² These states still may criminalize juvenile prostitution that is deemed to be “voluntary.” Finally, at the opposite end of the spectrum, several states have decriminalized juvenile prostitution either by raising the

29. *See, e.g.*, POLARIS PROJECT, NEW YORK STATE REPORT: STATE RATINGS 2011 (2011), available at <http://www.polarisproject.org/what-we-do/policy-advocacy/current-laws/2011-state-ratings> (follow “New York” hyperlink) (describing New York laws relating to human trafficking, including a sex trafficking statute and a labor trafficking statute that afford services to exploited children, establish a human trafficking task force, define a ‘safe harbor’ for exploited children, and allow judgments to be vacated under certain circumstances).

30. *Compare* ARK. CODE ANN. § 5-70-102 (2012) (defining no age range for the criminalization of prostitution), *with* 720 ILL. COMP. STAT. 5/11-14(d) (West Supp. 2012) (“[I]f it is determined . . . that a person suspected of or charged with [prostitution] is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense . . .”).

31. *E.g.*, ARK. CODE ANN. § 5-70-102.

32. *E.g.*, N.Y. FAM. CT. ACT § 311.4 (McKinney 2012).

age of criminal responsibility for the crime of prostitution³³ or by providing immunity to minors arrested for prostitution-related offenses.³⁴ This Part will explore these different approaches and give an overview of their benefits and shortfalls in application.

A. Criminalization of Juvenile Prostitution

At one end of the spectrum, many states continue to criminalize juveniles who engage in prostitution as adults. This practice has a long history. As early as the 1920s, Mabel Fernald found that about fifty percent of delinquent women in New York were charged with “offenses against chastity.”³⁵ At that time, criminalization of the sexual conduct of women included far more than prostitution, reflecting a societal judgment on immoral sexual behavior.³⁶ Many states continue to view children involved in prostitution-related activities as willing participants in an illegal trade and an objectionable activity.³⁷

The legal systems in these states purport to treat them as both victims and willing participants. Statutory rape laws do not allow juveniles under a certain age to consent to sex, but the state may criminalize sex in exchange for money or drugs. A typical example is Arkansas.³⁸ There, the age of consent for sex ranges from thirteen to sixteen, depending on the age of the other participant,³⁹ but juveniles of any age may be “found guilty”⁴⁰ by the juvenile court for

33. MICH. COMP. LAWS § 750.448 (2004) (“A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime . . .”).

34. 720 ILL. COMP. STAT. 5/11-14(d).

35. MABEL RUTH FERNALD ET AL., A STUDY OF WOMEN DELINQUENTS IN NEW YORK STATE 119 (1920).

36. *Id.* at 385 (studying the various sexual offenses of delinquent women including prostitution, sexual promiscuity, living with unrelated men or women, and illicit sexual intercourse).

37. Birekhead, *supra* note 26, at 1083–87 (discussing generally the rationales used by states to continue criminalization of prostitution-related activities for those under the age of eighteen).

38. See generally PROTECTED INNOCENCE INITIATIVE, ANALYSIS AND RECOMMENDATIONS: ARKANSAS (2012), available at http://www.sharedhope.org/Portals/0/Documents/AR-PDF/Arkansas%20AR_FINAL.pdf (evaluating the legal structure of Arkansas regarding human trafficking generally and juvenile sexual exploitation specifically).

39. ARK. CODE ANN. § 9-27-303(51) (2009).

40. Technically these juveniles would be “petitioned delinquent,” which is a typical juvenile court term for a guilty verdict. This and other terms used in the juvenile court will be discussed *infra* Section III.B.

prostitution.⁴¹ There is no immunity from prosecution for minors under the prostitution offense as applied by the juvenile courts.⁴² Thus, in Arkansas and states with similar laws, children who are exploited may face juvenile delinquency proceedings and detention for their participation in an activity that by law they cannot consent to.

Currently, criminalization of prostitution-related activities, even for those under the age of eighteen, is the norm. There are forty-three states that continue to allow prosecution of juveniles, but this number is shrinking.⁴³ Legislation is pending in many “criminalization states” that would limit prosecution for certain classes of juveniles, eliminate the offenses altogether, or provide diversionary social service options for juveniles accused of prostitution-related crimes.⁴⁴ The various legal mechanisms used to do so will be discussed below.

B. Safe Harbor Laws

Between full criminalization and blanket immunity lays the complicated world of safe harbor laws. These laws generally carve out certain protections for victims of human trafficking when there is a finding of some sort of coercion or manipulation. They may reserve space for prosecution of individuals when the act was deemed voluntary according to an enumerated set of standards or a judicial finding. This approach attempts to strike a balance between the view that some juveniles may still choose to participate in prostitution and the view that human trafficking and coercion may negate some or all criminal responsibility. Approaches under this umbrella vary widely in their scope and application. This Section will analyze two typical examples of safe harbor laws—the New York Safe Harbor Act and the Connecticut Safe Harbor for Exploited Children.

41. ARK. CODE ANN. § 9-27-303(15)(A).

42. ARK. CODE ANN. § 5-70-102(a) (2005).

43. *Pending State Legislation*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/state-policy/pending-legislation> (last visited Sept. 16, 2012) (updated daily).

44. *See, e.g.*, H.B. 50-2687, 1st Sess. (Ariz. 2011) (amending ARIZ. REV. STAT. ANN. §§ 8-821, 13-3208, 13-3211, 13-3212, 13-3214, and 13-3559, all relating to prostitution criminalization and an effort to not include minors for prosecution and seeking to provide temporary protective custody to those children believed to be involved in prostitution); H.B. 535, Reg. Sess. (Fla. 2010) (cited as the “Florida Safe Harbor Act,” this act seeks to require children who have been or are alleged to have been sexually exploited to be placed in a facility that offers treatment, requires assessment of certain children for placement in a facility that treats sexually exploited children, and provides victim compensation for sexually exploited children, among other provisions).

1. New York Safe Harbor Act

The New York Safe Harbor Act (“SHA”) was passed and signed into law on September 28, 2008.⁴⁵ The law officially took effect on April 1, 2010.⁴⁶ This delay allowed time for social service employees and police to be trained and equipped for its mandates. The law itself has three primary components: First, it redefines “sexually exploited child” expansively to include most children involved in prostitution or sexually exploitive activities.⁴⁷ Second, it creates several social service options for those children that are designated as sexually exploited.⁴⁸ Finally, it converts delinquency petitions for juveniles charged with misdemeanor prostitution into Persons in Need of Supervision (“PINS”) proceedings.⁴⁹ These proceedings are authorized by the New York Family Court Act and allow judges to order social services for juveniles without a finding of guilt.⁵⁰ The provision was traditionally used for status offenders such as truants or disobedient children.⁵¹

The SHA has not been without criticism.⁵² While some have noted that the law goes too far and is an unfunded mandate to localities, others argue that the law does not go far enough.⁵³ The problems with this scheme generally arise from the discretion given to judges. Under the SHA, judges have the authority to convert a PINS proceeding back into a delinquency proceeding if the victim: (1) is a repeat “offender,” (2) is not a victim of “severe trafficking,” (3) is already subject to a PINS petition, or (4) is unwilling to cooperate with treatment.⁵⁴ This discretion indicates that the legislature did not intend to designate all juvenile prostitution as coerced. Only where a juvenile meets certain criteria will the judge grant a PINS proceeding and access to social services.

Such general language in the statute and broad discretion given to judges raises the possibility that courts will use inappropriate factors in determining the voluntariness of prostitution-related

45. 2008 N.Y. Sess. Laws 569 (McKinney).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *See* N.Y. FAM. CT. ACT §§ 711–717 (McKinney 2012).

51. *See* Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235, 263–64 (2008) (adding that the provision was also used for juveniles found in possession of small amounts of marijuana).

52. *Id.* at 237 (exploring the framework and application of the New York law).

53. *Id.*

54. *See* N.Y. SOC. SERV. LAW § 447-a (McKinney 2012).

behavior. Specifically, several lower court opinions have solidified the fear that the court will use a victim's youth and bond to abusers against him or her.⁵⁵ In *In re Bobby P.*, the lower court refused to substitute the delinquency proceeding for a PINS petition for a fifteen-year-old girl.⁵⁶ Noting that the SHA was "not intended to provide automatic and complete immunity from prosecution," the court expressed doubt "as to respondent's current willingness to accept and cooperate with specialized services for sexually exploited youth."⁵⁷ The court then went on to note her dependence on her pimp, repeated return to her abuser, and unwillingness to cooperate with the District Attorney in the prosecution of her pimp as reasons for denying the petition.⁵⁸ Simply stated, the court used behaviors indicative of abuse to find the child unfit for protection under the safe harbor scheme.

2. Connecticut Safe Harbor for Exploited Children

Connecticut recently passed the Safe Harbor for Exploited Children Act.⁵⁹ Akin to the safe harbor law in New York, the Connecticut Act decriminalizes certain acts of prostitution. Prior to passage of the law, there was no minimum age for the prosecution of prostitution in Connecticut.⁶⁰ The law created a two-tier system for juveniles accused of prostitution-related offenses. First, it added language to the existing statute to require that a person be over the age of sixteen to be guilty of prostitution charges, effectively decriminalizing the act for those fifteen and under.⁶¹ Next, in a prosecution for prostitution against anyone either sixteen or seventeen years of age, it created a rebuttable presumption that the actor was coerced into committing the offense by another person.⁶² Finally, the Connecticut Act increased penalties for those found guilty of exploiting

55. Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 48 (2011) (analyzing the application of the SHA in *In re Bobby P.*, 907 N.Y.S.2d 540 (N.Y. Fam. Ct. 2010), and finding that the court used the very reason that she was involved in prostitution, that she was coerced, to prosecute her for prostitution).

56. *In re Bobby P.*, 907 N.Y.S.2d at 548–49.

57. *Id.* at 547.

58. *Id.* at 548–49.

59. CARI CARSON & ANNEMARIE HILLMAN, CONN. VOICES FOR CHILDREN, CONNECTICUT'S 2010 SAFE HARBOR LAW: PROTECTING CHILD VICTIMS OF SEX TRAFFICKING IN CONNECTICUT 1–4 (2011), available at <http://www.ctvoices.org/publications/connecticuts-2010-safe-harbor-law-protecting-child-victims-sex-trafficking-connecticut> (listing sources for legislative history and development of the Connecticut law).

60. *Id.*

61. CONN. GEN. STAT. § 53a-82(a) (West Supp. 2012).

62. *Id.* § 53a-82(c).

juveniles and specifically excluded the defense that those being exploited were not committing a crime (by way of the new statute).⁶³ Commentators have noted that this comports with Connecticut's existing statutory provisions in which the age of consent is sixteen.⁶⁴

This approach is generally more consistent with the age of consent in Connecticut and with the reality of coercion for those under the age of eighteen.⁶⁵ Unfortunately, there is neither much case law nor other analysis of how the presumption of coercion will be applied under the new law.⁶⁶ It is unclear what factors the courts in Connecticut will use to determine the "voluntariness" of prostitution-related activities. If they use factors similar to those used in New York, the presumption may be of little use where courts construe evidence of coercion as consent.

C. Federal Commercial Sexual Exploitation Statutes

The primary source of federal commercial sexual exploitation law comes from the Victims of Trafficking and Violence Protection Act of 2000 ("TVPA"), which was the first piece of federal legislation since the Mann Act in 1910 to address human trafficking.⁶⁷ The law seeks to combat human trafficking through three primary mechanisms. First, it aims to prevent human trafficking through public-awareness programs and a regime of monitoring and sanctions regime operated by the Department of State.⁶⁸ Second, it seeks to protect potential victims by offering visas and services for foreign-born victims.⁶⁹ Finally, it encourages prosecution of perpetrators through a comprehensive set of new federal crimes.⁷⁰ The TVPA was substantially bolstered by the PROTECT Act, passed in 2003, which

63. CONN. GEN. STAT. §§ 53a-87(b), 53a-86.

64. CARSON & HILLMAN, *supra* note 59, at 1 (finding that the Act is in line with Connecticut's laws, which criminalize sexual contact with a child under sixteen, regardless of consent).

65. CONN. GEN. STAT. § 53a-71 (defining sexual assault in the second degree as a Class B felony where the victim is under the age of sixteen).

66. Anitto, *supra* note 55, at 55.

67. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (2006)).

68. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 22 U.S.C.).

69. *See* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 22 U.S.C.).

70. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 22 U.S.C.).

seeks to specifically combat the sexual exploitation of minors.⁷¹ The PROTECT Act imposes mandatory sentences for sex offenders, makes it a crime to travel abroad to engage in sexual conduct with minors, and creates minimum standards for Amber Alert systems for missing children.⁷²

Federal law also attempts to provide financial assistance to individuals identified as victims of human trafficking. The TVPA provides that adult victims of human trafficking shall be assisted by the Department of Health and Human Services (“HHS”) once they have been “certified” by HHS, which generally requires that they participate fully with the investigation and prosecution of their abusers.⁷³ Technically, victims under the age of eighteen do not need to be certified in order to be eligible for HHS services.⁷⁴ Benefits for victims can include housing assistance, education, health care, job training, and immigration assistance.⁷⁵ There is anecdotal evidence, however, that despite fitting the technical definition of a “victim of human trafficking,” domestic minor victims of exploitation are often not afforded benefits.⁷⁶ It is unclear if state prosecution of minors for prostitution-related activities affects this trend. Further, because identifying human trafficking victims can be incredibly difficult, grants of federal relief are quite rare.⁷⁷ Federal law is much more likely to support foreign-born victims and prioritize the prosecution of

71. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650 (codified as amended in scattered sections of 18 U.S.C.).

72. *Id.*

73. 22 U.S.C. § 7105(b)(1) (2006) (noting that a “victim of a severe form of trafficking in persons” must be subject to certification by the Secretary of Health and Human Services, after consultation with the Attorney General and the Secretary of Homeland Security, that the person “is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma” and “has made a bona fide application for a visa under section 1101(a)(15)(T) of Title 8, as added by subsection (e) of this section, that has not been denied” or “is a person whose continued presence in the United States the Attorney General and the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons”).

74. *Id.*

75. *Id.*

76. SARA A. FRIEDMAN, ECPAT-USA INC., WHO IS THERE TO HELP US? HOW THE SYSTEM FAILS SEXUALLY EXPLOITED GIRLS IN THE UNITED STATES: EXAMPLES FROM FOUR AMERICAN CITIES 18 (2005), available at <http://ecpatusa.org/wp-content/uploads/2010/11/Who-Is-There-to-Help-Us.3.pdf> (finding that in fact, the TVPA functionally results in a lack of services for domestic victims and that these laws do not protect prostituted girls).

77. *Id.*

international traffickers than it is to protect minors from domestic exploitation.⁷⁸

There is clear tension between federal law and state application of criminal statutes, especially for children.⁷⁹ The TVPA designates any juvenile who prostitutes under a pimp to be a victim of trafficking.⁸⁰ While states have generally viewed prostitution as voluntary and criminally sanctioned, trafficking laws presume nonconsent.⁸¹ With limited exceptions, states have outlawed prostitution, and most continue to criminalize prostitution even for minors. Most states continue to presume voluntariness for minors who engage in prostitution-related activities. The TVPA creates a legal incongruity between this “voluntary” prostitution and “coercive” forms of human trafficking.⁸² The increased involvement of the federal government in anti-trafficking efforts has only exacerbated this tension.⁸³ Though federal agents have significantly increased their assistance to states in human trafficking investigation and enforcement, state and federal laws continue to be at odds, and juveniles may be stuck in the middle.

D. Canadian Response

The United States is not alone in its battle against juvenile sexual exploitation. Faced with a growing crisis involving drug use and prostitution among youth, the past decade has seen significant changes in the laws regarding juvenile prostitution in Canada. Since 2000, several provinces have introduced legislation that allows for the temporary, involuntary, secure confinement of juveniles involved in prostitution.⁸⁴ Alberta was the first province in Canada to pass a

78. *Id.*

79. Moira Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 429 (2009) (noting that despite prioritization of protection under federal law, states continue to criminalize persons involved in prostitution).

80. 18 U.S.C. § 1591 (2006) (the name of the subsection is “Sex trafficking of children *or* by force, fraud, or coercion”) (emphasis added).

81. Heiges, *supra* note 79, at 432.

82. *Id.* at 433.

83. *Id.*

84. *See, e.g.*, Protection of Sexually Exploited Children Act, R.S.A. 2000, c. P-30.3 (Alberta) (providing for involuntary detention of youth involved in prostitution); Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act, S.S. 2002, c. E-8.2 (Saskatchewan) (authorizing a child-protection officer, peace officer, or prescribed person to apply *ex parte* to a justice of the peace for an emergency protective intervention order); Rescuing Children from Sexual Exploitation Act, S.O. 2002, c. 5 (Ontario) (not yet in force) (providing that a child may be detained involuntarily if police or child-welfare workers have reasonable grounds to believe that

secure confinement law.⁸⁵ Saskatchewan, Ontario, and British Columbia followed quickly after with very similar provisions.⁸⁶ These laws included largely the same procedure. First, they allow a police officer or the Director of Protection of Children Involved in Prostitution to petition the court for an order authorizing the police or the Director to apprehend the child. They can then return him or her to a parent or detain the child in a safe house for up to five days for assessment and counseling.⁸⁷ Further, if the police believe that the child is in imminent danger related to his or her exploitation, he or she may be detained without a court order. After five days, the Director may petition for up to two more periods of twenty-one-day confinement for the juvenile.⁸⁸ Full legal process, including the right to a lawyer, applies to all of these hearings.⁸⁹

These laws reflect the coercive nature of juvenile prostitution, the difficulty that most juveniles experience in leaving their pimps, and the protective role of the state. By treating prostitution more like substance abuse and less like criminal behavior, the Canadian laws recognize that these children are often so manipulated by their abusers that they cannot escape these activities without serious intervention. Forcible detention allows for a period of separation from abusers that can break these bonds, and provides services that might otherwise be refused.

This methodology has received significant criticism.⁹⁰ Even after the implementation of procedural protections for children subject to secure confinement, critics have voiced concern that this approach represents an overextension of state power and ignores the larger social constructs that provide the breeding ground for exploitation.⁹¹ Scholars have suggested that a secure-confinement strategy shifts responsibility for crime control onto the individual victims and

the child is being sexually exploited or is at risk of sexual exploitation for commercial purposes); Secure Care Act, S.B.C. 2000, c. 28 (British Columbia) (not yet in force) (allowing parents, guardians, or secure care directors to make an application to have a child apprehended into secure care for up to thirty days if the child is at-risk and unable or unwilling to help itself).

85. Protection of Sexually Exploited Children Act, R.S.A. 2000, c. P-30.3 (Alberta).

86. See e.g., Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act, S.S. 2002, c. E-8.2 (Saskatchewan); Rescuing Children from Sexual Exploitation Act, S.O. 2002, c. 5 (Ontario) (not yet in force); Secure Care Act, S.B.C. 2000, c. 28 (British Columbia) (not yet in force).

87. See Protection of Sexually Exploited Children Act, R.S.A. 2000, c. P-30.3, c. 2(1) (Alberta) (authorizing a child protection officer to detain juveniles for up to five days).

88. *Id.* at 3(2).

89. *Id.* at 2(1).

90. Steven Bittle, *When Protection is Punishment: Neo-liberalism and Secure Care Approaches to Youth Prostitution*, 44 CANADIAN J. CRIMINOLOGY 317, 318–20 (2002).

91. *Id.* at 331.

communities who must “take responsibility for avoiding ‘dangerous situations.’ ”⁹² Further, some have criticized secure confinement as removing criminalization in name only, finding that it has “simply repackaged the concept of punishment under the guise of protection.”⁹³

E. The Illinois Safe Children Act

In 2010, Illinois became the first state to make all under the age of eighteen immune from prosecution for prostitution. The Illinois Safe Children Act (“ISCA”) was largely a product of the effort of the Cook County State’s Attorney’s Office, including State’s Attorney Anita Alvarez.⁹⁴ The passage of the ISCA was the culmination of the Human Trafficking Initiative, started by Alvarez in early 2010.⁹⁵ At signing, Governor Pat Quinn noted that “[f]or too long, exploited children have been treated as criminals Today, we give important new tools to aid law enforcement in this fight and help our victimized children to heal.”⁹⁶ The law, which goes beyond similar legislation in New York and Connecticut, was cosponsored by Senator Jacqueline Collins (D-Chicago) and Representative Will Burns (D-Chicago) and supported by several local anti-trafficking groups.⁹⁷

The ISCA takes a multifaceted approach toward the reduction of juvenile commercial exploitation. It was the first state law in the nation to decriminalize prostitution offenses for those under the age of eighteen. Rather than importing the crime from the adult system or creating criteria for determining whether certain individuals were “coerced” or “trafficked persons,” the ISCA simply provides blanket immunity for prostitution charges for minors.⁹⁸ As the law is written,

92. *Id.* at 341 (quoting David Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, 36 BRIT. J. CRIMINOLOGY 445, 448 (1996)).

93. *Id.* at 342.

94. Press Release, Cook Cnty. State's Attorney's Office, Alvarez Applauds Governor's Signature of Illinois Safe Children's Act (Aug. 20, 2010), available at http://www.statesattorney.org/index2/press_safechildrensact01.html.

95. *The Offices' Two Leaders Talk About Their Goals, Inspiration*, CHI. LAW. MAG, Oct. 1, 2011, <http://www.chicagolawyer magazine.com/Archives/2011/10/twoofficesstory-10-2011.aspx>.

96. Press Release, Ill. Governor's Office, Governor Quinn Signs Law to Protect Children from Sexual Exploitation (Aug. 20, 2010), available at <http://www.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=3&RecNum=8790>http://www.youtube.com/watch?v=LhjSuCje_j_U.

97. Art Golab, *No Prostitution Charges for Kids*, CHI. SUN-TIMES, Aug. 21, 2010, at 16.

98. 720 ILL. COMP. STAT. 5/11-14(d) (West Supp. 2012) (“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 Sections 2-5 and 2-6 of the Juvenile Court Act of 1987.”).

the immunity applies after the juvenile is “suspected of or charged with” prostitution and allows for a “reasonable detention” for investigative purposes to that end.⁹⁹ The legislature recognized the inherent exploitation involved in juvenile prostitution.¹⁰⁰ Finding that juveniles are often manipulated and coerced into such actions, the legislature concluded that it was more appropriate to provide social services than criminal charges for exploited children.¹⁰¹

The ISCA designates children involved in prostitution to be “abused” under the Juvenile Code.¹⁰² It creates a presumption of neglect that allows police officers to take the juvenile into protective custody.¹⁰³ This action triggers various responsibilities for the detaining officer, including notification of the DCFS, which is required to start an investigation into the abuse within twenty-four hours.¹⁰⁴ The law, by reference to the Juvenile Court Act of 1987, designates protective custody as “custody within a hospital or other medical facility or a place previously designated for such custody by the DCFS subject to review by the court, including a licensed foster home, group home, or other institution.”¹⁰⁵ Temporary protective custody is specifically differentiated from arrest and will not appear on any criminal record.¹⁰⁶

The law has several additional provisions that aid in the investigation of these crimes, punishment for offenders, and funding of anti-trafficking efforts. In line with findings that juveniles are coerced into the acts, legislative history indicates that the law was intended to bolster investigative capacities for crimes that juveniles would be unlikely or unable to report.¹⁰⁷ It also allows for streamlined wiretapping capabilities for the police, easing the investigation and prosecution of pimps.¹⁰⁸ Further, it increases penalties for those who

99. *Id.*

100. H.R. Transcript, 96th Gen. Assemb., 275 (Ill. 2010), available at <http://www.ilga.gov/house/transcripts/htrans96/09600120.pdf>.

101. *Id.* at 275–76.

102. 325 ILL. COMP. STAT. 5/3 (West Supp. 2012) (redefining neglected or abused minor in expanded temporary protective custody provisions of the Juvenile Court Act of 1987).

103. *Id.*

104. *Id.*

105. 705 ILL. COMP. STAT. 405/2-7(1) (2007).

106. *Id.*

107. H.R. Transcript, 96th Gen. Assemb., 276 (Ill. 2010), available at <http://www.ilga.gov/house/transcripts/htrans96/09600120.pdf> (remarks of Congressman Burns: “[T]he amount of money that’s involved in juvenile prostitution is huge, and because of the age of the prostitutes, and they’re juveniles and they’ve been confused, they’ve been manipulated, they’ve been pimped, it’s hard to get them to work against their... the pimps.”).

108. 720 ILL. COMP. STAT. 5/14-3 (West Supp. 2012).

exploit juveniles by making the crime a felony and by mandating prison time for conviction.¹⁰⁹ By increasing the penalty for exploitation of juveniles, the legislature shifted punishment from the victims to the perpetrators.

Finally, the law created several mechanisms to fund ongoing anti-trafficking efforts, including the impoundment and seizure of the vehicles of convicted pimps.¹¹⁰ After conviction, funds are directed to the DHS State Projects Fund, which makes grants to nongovernmental organizations to provide services for prostituted persons or other victims of human trafficking.¹¹¹ The ISCA was signed and put into force on August 20, 2010. Part III will detail the law as it has been practically applied over the past year.

III. ON THE GROUND IN ILLINOIS: PROCESS AND APPLICATION OF THE NEW LAW

Anecdotal evidence suggests that application of the ISCA has left gaps for several classes of exploited juveniles. This Part uses existing empirical research on CSEC to gain better insight into the processes through which these victims might move in both juvenile court and the DCFS. First, this Part evaluates how a juvenile might move through the system after entering at various points. Second, it explores the steps taken by the police and social service actors after a child has first contact with the system (abuse designation, adjudication, and release). Finally, it looks critically at the postcontact process with a focus on the availability or effectiveness of detention, protective care, or release. This Part introduces these gaps, while the next Part explores them in more detail, alongside the benefits of the new legislative scheme.

A. Entry into the System

Under the ISCA, there are three primary paths of entry into the system. First, a juvenile may self-identify as a victim of exploitation to police or other authorities, which would initiate an investigation of abuse—this is a rare, but not unheard-of occurrence.¹¹² More often, victims are tethered to their abusers by

109. *Id.*

110. 720 ILL. COMP. STAT. 5/11-14 (West Supp. 2012).

111. 720 ILL. COMP. STAT. 5/36.5-5 (2012).

112. Matthew Walberg & Annie Sweeney, *Woman Charged with Human Trafficking*, CHI. TRIB., Nov. 24, 2010, http://articles.chicagotribune.com/2010-11-24/news/ct-met-underage-prostitution-20101124_1_human-trafficking-task-force-underage-girls-prostitution (describing

threats of violence and promises of love.¹¹³ Studies have shown that child victims of sex trafficking often do not even self-identify as minors or victims—these children are often coached and manipulated by abusers into stating that they are eighteen or older.¹¹⁴ Victims are unlikely to report their abuse, as their families are often threatened with direct harm or they are told that they should not trust law enforcement or other authorities.¹¹⁵ At the very end of the spectrum, some juveniles may even exhibit symptoms of Stockholm Syndrome.¹¹⁶ By decriminalizing prostitution-related acts for these victims, the ISCA limits victims' fears of prosecution and may increase the incidences of self-reporting. However, the overwhelming forces that continue to bind victims to their exploiters are probably not so easily overcome.

A second means of entry is to be identified by the police as a victim of sexual exploitation. The ISCA states that persons suspected of or charged with prostitution shall be subject to “reasonable detention” by the police for investigative purposes.¹¹⁷ If they are found to be less than eighteen years old and suspected of a prostitution offense, the detaining officer must report the allegation of the violation to DCFS, which is in turn required to commence an initial investigation within twenty-four hours.¹¹⁸ The law thus rests heavily on the ability and willingness of police officers to identify children as victims of abuse.

However, the ability of police to identify victims may be hampered significantly by a lack of awareness of either the actual age of the child or their status as victims. As stated previously, victims are

the first prosecution for human trafficking under the new law, where rescue was initiated when an exploited girl called an anonymous tip-line and informed Chicago police about a brothel in the Little Village neighborhood of Chicago).

113. Rummana Hussain & Mitch Dudek, *Sex-Trafficking Bust: 9 Arrested After Dozens of Women, Girls as Young as 12 Forced into Prostitution*, CHI. SUN-TIMES, Aug. 25, 2011, at 6 (quoting an alleged pimp as stating, “You gotta beat on them hos man. . . . Just f--- em all up and they gonna stay in love.”).

114. CTR. FOR THE HUMAN RIGHTS OF CHILDREN, BUILDING A CHILD WELFARE RESPONSE TO CHILD TRAFFICKING 30 (2011) [hereinafter BUILDING A CHILD WELFARE RESPONSE], available at http://www.iofa.org/images/Building_Child_Welfare_Response_to_Child_Trafficking-FINAL.pdf.

115. Robert Moosy, *Sex Trafficking: Identifying Cases and Victims*, NAT'L INST. JUSTICE, Mar. 2009, at 2, 4–6.

116. BUILDING A CHILD WELFARE RESPONSE, *supra* note 114, at 30 (stating that victims may believe that their traffickers “love” them and are deserving of protection). Stockholm syndrome generally describes a psychological phenomenon whereby certain hostages, when threatened with death by a captor who is also kind in some ways, develop a deep fondness for their captor and an antipathy toward authorities working for their release.

117. 720 ILL. COMP. STAT.5/11-14(d) (West Supp. 2012).

118. *Id.*

often coached into stating that they are over eighteen and often possess IDs that say the same.¹¹⁹ Additionally, there is anecdotal evidence that police may use what are called “masking crimes” for juveniles suspected of prostitution-related offenses instead of directly charging them with solicitation.¹²⁰ Police may use status offenses such as being a runaway, being out past curfew, or even different criminal offenses such as drug possession to prevent labeling the child as a prostitute.¹²¹ Such misidentification can have a significant impact on the treatment, detention, and social services available to the juvenile and can affect the punishment given to exploiters.¹²² If juveniles are misidentified by the police, the system will incorrectly process them. They may end up in the juvenile court facing masking-crime charges instead of receiving services at DCFS. Finally, the custodial requirement for reporting by police may leave a gap for those victims who are released to guardians without investigation by police. These children who are released back to their guardians are easy for exploiters to recapture and may be back on the streets in short order. This creates a critical gap in the ISCA, as comprehensive identification of victims depends largely on police knowledge of the realities of human trafficking.

Lastly, victims may be identified as abused children directly by DCFS. The ISCA redefines an “abused child” in the Abused and Neglected Child Reporting Act to include children who are the victims of sexual offenses or sexual servitude.¹²³ It also amends the Juvenile Court Act to include those children who are encouraged, allowed, or required to commit any act of prostitution by a parent, paramour of the parent, guardian, immediate relative, or other adult living in the

119. Petula Dvorak, *Many Prostitutes Still Juveniles, Police Say; Enforcement Unit Stepped Up Arrests in Past Year, but Lack of Clear IDs Hampers Officers*, WASH. POST, Jan. 2, 2003, at T04.

120. RAPHAEL & SHAPIRO, *supra* note 27, at 28 (finding that sixty-three percent of women studied in Chicago were first charged with offenses other than prostitution).

121. LINDA STRUBLE, SHARED HOPE INT’L, DOMESTIC MINOR SEX TRAFFICKING: SAN ANTONIO, TEXAS 2–3 (2008), *available at* http://www.sharedhope.org/Portals/0/Documents/SanAntonio_PrinterFriendly.pdf; *see also* MELISSA SNOW, SHARED HOPE INT’L, DOMESTIC MINOR SEX TRAFFICKING: SALT LAKE CITY, UTAH 55 (2008), *available at* http://www.sharedhope.org/Portals/0/Documents/SaltLakeCity_PrinterFriendly.pdf (noting that the Juvenile Receiving Center staff interacts with minors who are not being admitted to the JRC on charges of prostitution or prostitution-related charges); Natalie M. McClain & Stacy E. Garrity, *Sex Trafficking and the Exploitation of Adolescents*, 40 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 243, 247 (2010).

122. LINDA SMITH, SAMANTHA VARDAMAN & MELISSA A. SNOW, SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 13 (2009), *available at* http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf.

123. 325 ILL. COMP. STAT. 5/3(h) (West Supp. 2012).

home.¹²⁴ This significantly expands the jurisdiction of DCFS and allows for the provision of social services for victims. The actual processes of DCFS were largely unchanged by the new law.

B. Abuse Designation or Criminal Adjudication

Both DCFS and the juvenile court have formal and informal proceedings that could apply to the child victim once he or she enters the system by the above processes.¹²⁵ As a quick overview, the juvenile court system in Illinois uses different language than most practitioners use in adult criminal practice.¹²⁶ A charging instrument in juvenile court is called a “petition.”¹²⁷ After a hearing, instead of finding a child guilty or not guilty, the juvenile court determines whether or not the child is “a minor requiring authoritative intervention.”¹²⁸ This finding is called “adjudication.”¹²⁹ Finally, the equivalent of sentencing in juvenile court is generally called “disposition.”¹³⁰

Under juvenile court procedure, if police have identified the child as a juvenile offender, he or she will be subject to the process of the juvenile court.¹³¹ There, the child will either be diverted out of the court into a probationary or community service program, be officially “petitioned” and “adjudicated” by the court, or be released to his or her guardian after getting the petition dismissed.¹³² If a child is petitioned and adjudicated by the juvenile court for an offense other than prostitution, the court will disposition the child according to his or her best interests.¹³³ This could range from community service to secure detention.¹³⁴ The ISCA has no impact on juveniles who have been accused of offenses unrelated to prostitution in the juvenile court.

124. 705 ILL. COMP. STAT. 405/2-3(2)(vi)–(vii) (West Supp. 2012).

125. *See generally* 705 ILL. COMP. STAT. 405/1 et seq. (noting that the purpose of the Act is “to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental and physical welfare of the minor and the best interests of the community”).

126. *Id.*

127. 705 ILL. COMP. STAT. 405/3-15 (defining a petition as the functional equivalent of a charging instrument in adult court).

128. 705 ILL. COMP. STAT. 405/3-22.

129. *Id.*

130. 705 ILL. COMP. STAT. 405/3-23.

131. 705 ILL. COMP. STAT. 405/3-8 (defining the allowable actions by a police officer when he or she has detained or arrested a juvenile accused of a crime, including delivery to the court).

132. Juvenile court tends to use different language than the adult system.

133. 705 ILL. COMP. STAT. 405/3-23.

134. 705 ILL. COMP. STAT. 405/3-24 (defining the types of dispositional orders that the court has authority to impose).

Those victims charged with “masking crimes” will most likely be processed through the juvenile court and may end up in secure detention or may be required to perform community service. These children will not be receiving the proper treatment for victims of commercial sexual exploitation.

For DCFS, the ISCA streamlined a finding of abuse for exploited children.¹³⁵ Under the law, a parent, custodian, or guardian of a minor who allows a child to perform, offer, or agree to any sex act for anything of value is prima facie evidence of abuse or neglect.¹³⁶ An allegation of abuse is found to be “indicated” when there is credible evidence that the child has been abused or neglected.¹³⁷ If DCFS concludes that the child has been abused or neglected, they may place the child in temporary or permanent protective custody.¹³⁸ The ISCA specifically states that the child may not be placed in a criminal-detention facility or jail.¹³⁹ If the child is not found to be in need of protective custody, he or she may be released into the custody of his or her parents.¹⁴⁰ The statutory language used in the ISCA may continue to miss certain juveniles. While procedures may be streamlined, if the child is not adequately identified as a victim of commercial sexual exploitation, he or she will not be afforded the proper treatment options or protective custody that may be required. This can create a gap primarily for those who are not abused by the traditional actors noted in the statute—parents, guardians, or custodians.¹⁴¹

C. Postadjudication Processes

Finally, there is some federal and state relief available for children who are victims of sex trafficking, but there is also evidence that many victims will never be able to receive it.¹⁴² Those who are not identified as victims clearly will not have relief available, but there is also evidence that even those who are properly identified may quickly find themselves back in their exploiter’s arms instead of in protective

135. 705 ILL. COMP. STAT. 405/2-18.

136. *Id.*

137. *Id.*

138. REPORTS OF CHILD ABUSE AND NEGLECT, Procedures 300, § 300.80, available at http://www.state.il.us/dcf/docs/ocfp/procedure/Procedures_300.pdf.

139. 325 ILL. COMP. STAT. 5/3 (West Supp. 2012).

140. REPORTS OF CHILD ABUSE AND NEGLECT, *supra* note 138, § 300.80.

141. 325 ILL. COMP. STAT. 5/3; 2010 Ill. Legis. Serv. P.A. 96-1464 (West).

142. See discussion *supra* Section II.C for provisions on federal relief.

custody or with their parents and guardians.¹⁴³ Protective-custody options available to DCFS may be limited and may not be entirely secure.¹⁴⁴ This leaves a critical gap when identified victims of commercial sexual exploitation may return to or be recaptured by their exploiters.

In addition, the stigma of previous convictions may critically limit victims in the remaking of their lives. At the state level, the Illinois legislature is currently considering an expungement bill that would provide relief for victims of sex trafficking.¹⁴⁵ Under the text of the bill currently being considered in the state's senate, an individual could seek relief from a judgment in which the arresting charge was prostitution, or first-offender felony prostitution under the Criminal Code of 1961 or a similar local ordinance, where the defendant's participation in the offense was a result of having been a victim of a severe form of human trafficking.¹⁴⁶ It is unclear at the moment what type of proof will be required for such relief.¹⁴⁷

As with the above social service and restitution requirements, garnering "proof" of victimization is often a difficult, if not impossible task, especially for child victims.¹⁴⁸ Evaluation of victim credibility and the identification of exploiters can be particularly elusive where victims are afraid they have committed a crime, may expect police corruption, may be suffering from years of brutality, and may lie directly to police.¹⁴⁹ If victims are not believed and if proof cannot be gathered early in the process, expungement may not be a valid option for certain victims, leaving them further stigmatized. A lack of adequate postadjudication procedure is a significant gap that may

143. U.S. DEPT OF JUSTICE, NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION: A REPORT TO CONGRESS 35 (2010), *available at* www.projectsafefchildhood.gov/docs/natstrategyreport.pdf [hereinafter NATIONAL STRATEGY].

144. REPORTS OF CHILD ABUSE AND NEGLECT, *supra* note 138, § 300.80.

145. S.B. 2191, 97th Gen. Assemb., Reg. Sess. (Ill. 2011).

146. *Id.*

147. An Illinois Senate Amendment changes a presumption of victimization into the following:

'[O]fficial documentation' sufficient to support a petition[] requires that a petition include specific factual allegations to support these elements: (i) meritorious claim, (ii) due diligence in presenting the claim, and (iii) due diligence in filing the petition; and requires that if the court grants the petition that the judgment must be vacated and the accusatory instrument dismissed.

S. Comm. Amendment No. 1, S.B. 2191, 97th Gen. Assemb. (Ill. 2011), *available at* <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2191&GAID=11&DocTypeID=SB&LegId=58390&SessionID=84&GA=97>. It is unclear if this amendment would effectively gut the availability of the expungement for many, if not most, charged with prostitution.

148. *See* discussion *supra* Section II.C.

149. Moosy, *supra* note 115, at 4–6.

leave victims vulnerable. The next Part explores how the ISCA impacts these deficiencies.

IV. THERE AND BACK AGAIN: BENEFITS AND SHORTFALLS OF THE NEW LEGISLATION

The ISCA takes serious steps to protect children who have been exploited, but this Part takes a critical look at the application of the law in Illinois and identifies the successes and gaps in the process as it exists today. First, the development of a bright-line rule has done much to synthesize and rationalize existing legislation. It is much more in line with modern conceptions of consent and coercion. This Part explains the positive outcomes that come from this change. Second, this Part explores the gaps that still remain. Unfortunately, the ISCA does not reach all affected children. Children continue to fall through the gaps most frequently at the identification stage, when both the police and social service actors fail, and also in the long run, when children often return to their abusers.

A. Benefits of a Bright-Line Rule

The passage of the ISCA was a significant step forward in building a cohesive and compassionate response to human trafficking and sexual exploitation. Decriminalization of prostitution offenses for minors provides several substantial benefits: (1) it brings state legislation in line with federal law and other statutory provisions regarding the sexual behavior of children; (2) it is consistent with modern understandings of coercion, particularly in the context of sex trafficking; and (3) it prevents the revictimization of children who have been exploited, largely by facilitating social service intervention.

1. Statutory and Conceptual Consistency

The ISCA, and decriminalization of prostitution offenses for a child generally, is more consistent with modern understandings of the inherent coercion involved in sex trafficking than previous measures were. Youth are often targeted by their abusers for their vulnerability, groomed in a manner very similar to victims of pedophilia, and then trapped in the life by violence, deception, and abduction.¹⁵⁰ Scholars have documented the coercion found in CSEC, noting that in some

150. U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 25 (2010), available at <http://www.state.gov/documents/organization/142979.pdf>.

cases it is almost indistinguishable from Stockholm Syndrome.¹⁵¹ Young people, promised protection or a better life, become bonded with their abusers, making it difficult or impossible to separate themselves from the person responsible for their exploitation.¹⁵² Experts across fields have identified patterns of manipulation and abuse that “lure young people into a life that they did not contemplate.”¹⁵³ In addition, the relative sophistication and power of the criminal enterprises that are involved in exploitation tip the power scale in favor of the abusers.¹⁵⁴ By designating the legal status of children as victims rather than offenders, the ISCA recognizes the inherently coercive nature of exploitation. The ISCA refuses to punish a child or label him or her with the pejorative term “child prostitute” when he or she is truly the victim.

The ISCA is also more consistent with state laws regarding sexual exploitation and the abuse of children. Scholars have noted that the ISCA is a model law in that it is “the most comprehensive legislation to address the prosecution of young victims of commercial sexual exploitation.”¹⁵⁵ As a practical matter, prosecution of juveniles for prostitution-related offenses is in direct conflict with “statutory rape” laws as they exist in many states. These laws generally exist in order to protect minors from exploitative or predatory sexual relationships.¹⁵⁶ Most states have taken a two-tier approach to adult sex with a minor.¹⁵⁷ These states distinguish sex between a very young child and an adult from sex between a child and an older teen, as long as the child at least gave factual consent.¹⁵⁸

151. See Annitto, *supra* note 55, at 12–17 (reviewing research on the inherent coercive nature of CSEC).

152. *Id.* at 14.

153. *Id.* at 16 n.63 (listing expert opinions).

154. *Id.* at 15.

155. *Id.* at 52.

156. U.S. DEP'T OF JUSTICE, STATE LEGISLATOR'S HANDBOOK FOR STATUTORY RAPE ISSUES 5 (2000), available at <http://www.ojp.usdoj.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf> [hereinafter HANDBOOK]. It has also been noted that these laws historically protected “chastity” and the moral purity of girls. See Michelle Olberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFF. L. REV. 703, 754–55 (2000) (noting that statutory rape laws, at their inception, “reflected an effort to protect a father’s interest in his daughter’s chastity”).

157. Annitto, *supra* note 55, at 30 (noting that only twelve states have laws that define a uniform age of consent to sex).

158. HANDBOOK, *supra* note 156, at 5. Factual consent is a term used most often in conjunction with “legal consent.” Whereas a child may not legally be able to give consent to a sexual act under a certain age, the laws in a state may recognize that a child or teen of a certain age may have nonetheless “factually” consented to the activity through verbal or other expression.

Illinois, unlike these states, has a uniform age of consent of seventeen.¹⁵⁹ The ISCA, however, raises the age of consent to eighteen where the offender is in a position of authority over the child.¹⁶⁰ This provision immunizes all under eighteen from prosecution for prostitution-related offenses (sexual conduct to which they could not consent to under the law).¹⁶¹ The ISCA similarly recognizes in its “authority” exception that even those who are over the technical age of consent, but under eighteen, can be subject to coercion.¹⁶²

The ISCA is also consistent with federal law, which purports to treat commercially exploited children as victims.¹⁶³ States have been slow to recognize domestically born, exploited children as trafficking victims.¹⁶⁴ While legislation regarding foreign-born women and children was largely considered a nonpartisan issue, state legislatures were hesitant to address domestically born, exploited children.¹⁶⁵ In 2005, the Trafficking Victims Protection Reauthorization Act ultimately acknowledged the need to help children born in the United States who are victims of commercial sexual exploitation.¹⁶⁶ While domestic youth have always been included in the official definition of severely trafficked persons, this reauthorization officially designated funds and established programs to assist these vulnerable youth.¹⁶⁷ The ISCA reconciled the conflict between federal and state definitions of victims and offenders. The law, like federal trafficking legislation, also recognizes the need for protection and social services for victims. Further, it eases cooperation between state and federal agents—they can now work together when combating domestic and international human trafficking rings.

159. See, e.g., 720 ILL. COMP. STAT. 5/11-6 (West Supp. 2012) (defining a “child” as a person under the age of seventeen for indecent solicitation); 720 ILL. COMP. STAT. 5/11-1.70(b) (creating a defense for several sex crimes when the accused reasonably believed the person to be seventeen years of age or over).

160. 325 ILL. COMP. STAT. 5/3 (West Supp. 2012).

161. *Id.*

162. *Id.*

163. 8 U.S.C. § 1101(a)(15)(T) (2006).

164. Annitto, *supra* note 55, at 38 n.195 (documenting the slow legislative incorporation of domestically born exploitation victims).

165. *Id.* at 37.

166. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) (codified in various titles in the U.S.C.).

167. For example, the ISCA created the Lost Innocence National Initiative, which by 2010 had recovered over 1,250 children and has resulted in the conviction of over 600 exploiters. Michael Martinez, *Federal Crackdown on Child Prostitution Results in 884 Arrests*, CNN (Nov. 8, 2010), http://articles.cnn.com/2010-11-08/justice/us.child.prostitution_1_child-prostitution-operation-cross-country-pimps?_s=PM:CRIME.

2. Reality of Harm and Necessity of Social Services

By prioritizing social services intervention over punishment, the ISCA eases the pathway for state and federal assistance and seeks to prevent the revictimization of juveniles who have been exploited. Illinois has made a deliberate choice to avoid the mechanism of the juvenile court in favor of the DCFS. This choice also recognizes that while the juvenile court is intended to “serve the safety and moral, emotional, mental, and physical welfare of the minor,” it is also the primary mechanism for punishment of juveniles.¹⁶⁸ By preventing prosecution of juveniles for prostitution offenses, Illinois has rejected the proposition that adjudication is the proper response to the problem of child exploitation.

This new approach was opposed by several groups in the legislature. During debate, a number of legislators expressed concern that the ISCA would reduce the discretionary power of prosecutors and judges by restricting the available options in juvenile court.¹⁶⁹ They further suggested that the singular path to social services, rather than detention, for juveniles is a “mistake” because it is granted “regardless of whether or not it does not serve them well.”¹⁷⁰ These comments reflect the views of many states that continue to prosecute juveniles.¹⁷¹ Typically, proponents of prosecution indicate that paramount over agency concerns are the high rates of return to abusers,¹⁷² the difficulty of garnering information for prosecution of pimps,¹⁷³ and the need for the use of the full coercive force of the state to “protect children” by detaining them.¹⁷⁴ However, scholars have systematically rejected these arguments, finding that decriminalization for minors is far more consistent with our understanding of the coercive nature of exploitation, the need to build relationships of trust between victims and law enforcement, and the

168. 705 ILL. COMP. STAT. 405/1-2 (2007).

169. S. Transcript, 96th Gen. Assemb., Reg. Sess. 159 (Ill. May 4, 2010), available at <http://www.ilga.gov/senate/transcripts/strans96/09600119.pdf>.

170. *Id.* at 160.

171. See State’s Response to Petition for Review at 6–8, *In re B.W.*, 313 S.W.3d 818 (Tex. 2010) (No. 01-07-00274-cv) (arguing that prosecution is the only way to provide “victims” with “assistance”).

172. Annitto, *supra* note 55, at 26.

173. See State’s Response to Petition for Review, *supra* note 171, at 7 (arguing that prosecution is necessary because such children are in need of protection).

174. See Annitto, *supra* note 55, at 25 (citing State’s Response to Petition for Review, *supra* note 171, at 7).

realities of harm that can result from detention rather than social service intervention.¹⁷⁵

The ISCA eases social service intervention by identifying victims and providing aid to those who need it. It transfers jurisdiction over these children to the DCFS under the Abused and Neglected Child Reporting Act.¹⁷⁶ While there still may be classes of children, as described below, who the authorities fail to identify, those children who do “enter the system” in Illinois for prostitution-related acts have a much higher likelihood of receiving services than they would have before the law was passed.

In addition, the law increases visibility of exploited children by increasing the investigative capacity of law enforcement and prosecutors.¹⁷⁷ Garnering information, especially from victims, is a notoriously difficult task.¹⁷⁸ By eliminating penalties for victims, the ISCA has lowered barriers to reporting and made this task less difficult. In fact, the first human trafficking prosecution under the new law was a result of a tip from an underage girl who was being prostituted, after her exploiter promised her legitimate work in the Little Village area of Chicago.¹⁷⁹ Further, the new law enforcement capabilities envisioned by the ISCA, including expanded wiretapping, enabled “Operation Little Girl Lost”—an eighteen-month undercover investigation.¹⁸⁰ That operation resulted in the arrest, prosecution, and conviction of nine individuals for sex trafficking violations and for the exploitation of girls as young as twelve years of age.¹⁸¹ The new legislation allowed law enforcement to overhear conversations stating that a girl who reported to the police would be “kidnapped, murdered and her body dumped in the river,” confirming the difficulty of getting victims to cooperate with law enforcement.¹⁸² Victims rescued in this operation have received counseling and some have even graduated from high school, prompting Assistant State’s Attorney Lou

175. See Annitto, *supra* note 55, at 26–28 (listing sources and rebuttals for arguments in favor of prosecution and detention).

176. Abused and Neglected Child Reporting Act, 2010 Ill. Legis. Serv. P.A. 96-1464 (West).

177. 720 ILL. COMP. STAT. 5/14-3 (West Supp. 2012) (amended by Ill. Public Act 96-1464 to allow wiretapping of individuals suspected of exploiting or abusing children).

178. Walker-Rodriguez & Hill, *supra* note 24, at 4 (noting that the abusive techniques used by pimps and traffickers make it difficult for law enforcement to gain information from victims).

179. Walberg & Sweeney, *supra* note 112 (describing a rescue which was initiated when an exploited girl called an anonymous tip-line and informed Chicago police about a brothel in the Little Village neighborhood of Chicago).

180. Hussain & Dudek, *supra* note 113, at 6 (announcing charges for nine individuals as the culmination of the “Little Girl Lost” initiative).

181. *Id.*

182. *Id.*

Longhitano to deem these victims the “success stories” of the ISCA.¹⁸³ Despite these significant gains, a critical look at the application of the ISCA suggests that several classes of juveniles continue to be exploited under the new scheme.

B. Practical Shortfalls of the Safe Children Act

The ISCA attempts to synthesize several bodies of law conceptually and practically in order to provide a comprehensive and compassionate response to CSEC in Illinois. While it may be an improvement over the laws that exist in states that continue to fully criminalize this behavior,¹⁸⁴ there are places where it continues to fall short. This Section looks at specific gaps in the legislation itself and its practical application. First, general knowledge about the population of exploited children is difficult to come by, creating an information gap for all actors, including police, social service providers, and private welfare agencies.¹⁸⁵ Second, identification of victims remains difficult, with both police and social service actors failing to adequately identify victims at first contact.¹⁸⁶ Finally, inadequate use of protective custody by police and social service actors may lead to a high rate of return of exploited children to abusers.¹⁸⁷

1. Quantifying the Problem and Studying the Process

Quantifying the problem of CSEC has been notoriously difficult.¹⁸⁸ State and national organizations continuously struggle to find good information regarding commercial exploitation, often relying on a few oft-cited studies. Before the enactment of the ISCA, Illinois commissioned several studies about sexual exploitation, human trafficking, and prostitution.¹⁸⁹ These studies were extremely helpful

183. *Id.*

184. *See supra* Section IV.A.

185. Chris Swecker, Assistant Dir., Criminal Investigative Div., Address to the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission): Exploiting Americans on American Soil: Domestic Trafficking Exposed (June 7, 2005), *available at* <http://www.fbi.gov/news/testimony/exploiting-americans-on-american-soil-domestic-trafficking-exposed> (stating that “[a]ccurately quantifying the existing problem of victimized children (as opposed to ‘at risk’) is difficult for a variety of reasons”).

186. BUILDING A CHILD WELFARE RESPONSE, *supra* note 114, at 13.

187. NATIONAL STRATEGY, *supra* note 143, at 35 (finding that abusers will often try to reclaim children who have been rescued by police or social services).

188. *Id.*

189. ASHLEY, *supra* note 18; O’LEARY & HOWARD, *supra* note 2; JODY RAPHAEL & JESSICA ASHLEY, ILL. CRIMINAL JUSTICE INFO. AUTH., DOMESTIC SEX TRAFFICKING OF WOMEN AND GIRLS IN CHICAGO (2008), *available at* http://www.sapromise.org/pdfs/dom_trafficking08.pdf; EMILY M.

in quantifying the problem of commercial sexual exploitation before passage of the law and in clarifying preexisting practices of law enforcement and social service actors. However, there have been few studies performed about the actual implementation and impact of the ISCA after it went into effect.¹⁹⁰ This Note analyzes benefits and shortfalls of the ISCA by applying known behaviors and processes in law enforcement and social services to the new law. While this may not be as helpful as an on-the-ground study of postenactment processes, it is a useful exercise in identifying gaps in application of the law. In order to fully quantify the problem, these gaps would also require institutional study.

2. Identification and Classification of Victims

Proper identification of victims is essential to the correct application of the law and the appropriate provision of services.¹⁹¹ While the ISCA theoretically eases social service intervention for victims, it does not provide appropriate services if they are identified as criminals, runaways, or mentally disturbed, or if they are ignored altogether. Misidentification of victims of sexual exploitation by both law enforcement and state child-welfare agencies is common and adverse to proper application of the ISCA.¹⁹²

Official statistics indicate that very few juveniles are arrested for prostitution or “commercialized vice” nationally—some 1,500 in 2008, the most recent year for which statistics are available.¹⁹³ Studies estimate that actual contact with police by prostituted minors is in fact much higher.¹⁹⁴ In Illinois, misidentification or a lack of identification by police creates a gap of child victims who do not receive proper assistance under the ISCA. There are four primary reasons for this gap.

SWEET, CITY OF CHI. MAYOR'S OFFICE ON DOMESTIC VIOLENCE, THE INTERSYSTEM ASSESSMENT ON PROSTITUTION IN CHICAGO (2006), available at http://www.enddemandillinois.org/sites/default/files/IntersysAssmt_dec06.pdf.

190. A report on the ongoing “Building a Child Welfare Response to Child Trafficking” project in Illinois represents one of the few examples. BUILDING A CHILD WELFARE RESPONSE, *supra* note 114, at 30.

191. *Id.* at 13.

192. *Id.*

193. *Easy Access to FBI Arrest Statistics: 1994-2009*, OFF. JUV. JUST. & DELINQUENT PREVENTION, http://ojjdp.gov/ojstatbb/ezaucr/asp/ucr_display.asp (last visited Sept. 5, 2012).

194. See O'LEARY & HOWARD, *supra* note 2, at 30 (noting that arrest data does not include the number of girls who are station-adjusted, or not formally charged, which may account for the discrepancy). The inability or unwillingness of police to identify juveniles as exploited and coerced individuals rather than criminals is largely seen as the driving force of this discrepancy and continues to be a problem despite the changes made in the law.

First, law enforcement personnel continue to exercise significant discretion in deciding how to handle juveniles: they can offer social services, release them into the custody of guardians, or arrest them.¹⁹⁵ Officers report difficulty in coordinating with DCFS, noting that they “never” work with social services.¹⁹⁶ While they know that victims will often run away and return to their pimps and abusers, they argue that “[y]ou can’t force somebody to change their lifestyle if [the person doesn’t] want to.”¹⁹⁷ This attitude indicates that police, even if they do not arrest the individual, still view the activities and exploitation of the child as a “choice.”

Second, prostituted children are often provided with false IDs that distort their age, which leads to them being processed erroneously as adults.¹⁹⁸ Police interviews indicate that determining the age of victims at the scene is a difficult process.¹⁹⁹ While recognizing that the consequences for such a mistake can be significant, police note that erroneous identification and processing through the adult system is common.²⁰⁰

Third, police may instead charge minors with status offenses or other related charges such as drug possession.²⁰¹ Anecdotal evidence suggests that up to fifty percent of minors who are identified by police for prostitution-related offenses will end up in juvenile court for offenses such as theft, drug- and alcohol-related charges, curfew violations, and other “collateral” or “status” offenses.²⁰² This practice not only skews official statistics regarding offender status but also ensures that victims are not treated appropriately by social service providers.

Finally, many prostituted juveniles will never be identified because of the generally secretive and indoor nature of the acts.²⁰³ As noted, the ISCA makes a significant attempt to close this gap by

195. ASHLEY, *supra* note 18, at 42.

196. *Id.*

197. *Id.* at 45.

198. *Id.* at 5.

199. *Id.* at 40.

200. *Id.* (“[Those engaged in prostitution] lie about their age, don’t carry formal ID that tell you if they are 18 or 16, . . . They are ‘taught to always give an alias name and date of birth. At first arrest they are put into the system as an adult.’”).

201. FRIEDMAN, *supra* note 76, at 22 (finding that law enforcement personnel reported that over fifty percent of juveniles that end up in juvenile court are arrested for theft, drug and alcohol related charges, curfew violations, and other “collateral” or “status” offenses). Further, since these offenses and first-offense prostitution charges are often misdemeanors, public surveys and official data probably do not accurately reflect reality.

202. *Id.*

203. ASHLEY, *supra* note 18, at 5.

increasing surveillance and investigative powers of the police and prosecutor.²⁰⁴ The elusive nature of child exploitation results in difficulty in determining to what extent these new powers actually accomplish the purported goal.

Social service agencies in Illinois are also ill equipped to recognize and respond to CSEC.²⁰⁵ Just as misidentification of abused or exploited children by police can have vast impacts on their treatment by the juvenile justice system, misidentification of abused or exploited children by social service actors can be devastating.²⁰⁶ Children who are not adequately identified as victims can end up back in the juvenile justice system, referred to immigration officials and deported when they are foreign-born, or left entirely without the support needed to protect them from their abusers.²⁰⁷

Further, human trafficking is difficult to fit into the traditional social services categories of maltreatment: physical abuse, neglect, sexual abuse, and emotional abuse.²⁰⁸ Social service agencies can be severely hampered by something as simple as a lack of an appropriate category in existing forms that accurately describes the situation of a child as a human trafficking victim rather than a victim of some other form of maltreatment.²⁰⁹ For example, the designation of a child victim of sex trafficking as “sexually abused” or “neglected” (rather than “trafficked”) can label that child for the duration of treatment, leading to the loss of state and federal protections and services for victims of human trafficking.²¹⁰ Therefore, despite the increased involvement of DCFS under the ISCA, certain classes of children will not receive appropriate treatment due to inadequate identification procedures.

Lastly, while the ISCA expanded the statutory definition of an “abused child,” and thereby expanded the jurisdiction of DCFS, the new definition continues to miss many potential child trafficking scenarios. As such, certain classes of exploited children will not be recognized even under the expanded scope. A recent study identified three major scenarios that would not fit under the current statutory definition of an “abused child” or “abused minor”: (1) where the child is a domestic minor, living with his or her parents and being prostituted

204. See discussion *supra* Section IV.A.2.

205. BUILDING A CHILD WELFARE RESPONSE, *supra* note 114, at 13 (noting that “most state child protection professionals do not have the training, protocols or procedures to identify and respond appropriately to child trafficking cases”).

206. *Id.*

207. *Id.*

208. *Id.* at 101.

209. *Id.* at 102.

210. *Id.* at 102–03.

by a third-party peer or “boyfriend”;²¹¹ (2) where a foreign-born minor is sent to the United States by his or her parents and forced to pay off a smuggling debt through long hours at “regular” employers;²¹² and (3) where a foreign-born minor orphan is smuggled into the country and forced to live and work for a family in forced servitude.²¹³

In all of these situations, the child, while certainly abused by colloquial definition, may not fit within the existing statutory scheme because the alleged abuser is not within the statutory scope.²¹⁴ Sexual exploitation and abuse is often perpetrated by “non-qualifying caretakers,”²¹⁵ and in these situations, DCFS would be extremely limited in its jurisdictional scope.²¹⁶ Returning the child to parental guardians or other family would at best return the child to the situation that enabled the abuse. Further, many of these exploited children effectively have no family.²¹⁷ Targeted easily by exploiters, runaways and throwaways are easy victims and DCFS does not have adequate protocols or policies to address this population.²¹⁸ Even if DCFS can become the de facto guardian of these children, placement in foster homes is a challenge for older adolescent children. These children thus face a high risk of being re trafficked or returned to abusers on their own because of the nonsecure nature of placement facilities.²¹⁹

Despite this state of affairs, significant change has been underway in the DCFS. In 2007, before passage of the ISCA, the International Organization for Adolescents launched the “Building a Child Welfare Response to Child Trafficking” project.²²⁰ The project sought to build the capacities of child-welfare agencies to identify, manage, and provide legal and social services to child victims of

211. *Id.* at 107.

212. *Id.*

213. *Id.* While this Note is primarily concerned with the first class of juveniles, who are being sexually exploited by a third party, all three gaps are relevant to the protection of children from exploitation and abuse generally.

214. The ISCA describes the “abuser” as a “parent or immediate family member, or any person responsible for the minor’s welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor’s parent.” 705 ILL. COMP. STAT. 405/2-3 (2007).

215. See discussion *supra* notes 18–27 and accompanying text.

216. BUILDING A CHILD WELFARE RESPONSE, *supra* note 114, at 115 (noting that exploiters are often employers, extended family members, strangers, intimate partners, pimps, gang members, organized crime participants, community members, or family associates).

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.* at 14.

human trafficking.²²¹ It involved training agency employees in the identification of victims, creating checklists and “red flag” lists for initial interviews, and compiling federal and state laws in an understandable manner.²²² The project does not yet have any quantifiable results, but it is a crucial step forward and serves as a model for building the capacity of public social services in light of DCFS’s new responsibility under the ISCA. The legislative and other gaps noted above, however, must still be addressed.

3. Recidivism and Return to Abusers

Finally, there is a critical gap in the law for those that are identified by police or social service agencies as abused or exploited but who return quickly to their abusers due to a lack of protective-detention options. Again, there is very limited empirical data about this phenomenon.²²³ The general lack of national data on juvenile offenses together with the propensity of law enforcement to arrest or charge juveniles with offenses other than prostitution make it extremely difficult to perform studies on general recidivism or the return rate to prostitution.²²⁴ Nonetheless, anecdotal evidence both nationally and in Illinois suggests that exploited children often have few options other than returning to the streets and to their abusers, even after contact with law enforcement or social services.²²⁵

221. *Id.*

222. *Id.* at 14.

223. Kimberly J. Mitchell, David Finkelhor & Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18, 19 (2010), available at <http://www.unh.edu/ccrc/pdf/Mitchell%202010%20conceptualizing.pdf> (noting that research on the changing dynamics of juvenile prostitution is sparse).

224. See, e.g., Green et al., *A Descriptive Study on Sexually Exploited Children in Residential Treatment*, 39 CHILD & YOUTH CARE F. 187, 195 (2010) (noting that in a recidivism case study of twenty-two adolescent girls involved in prostitution, five of the participants committed status offenses, but the researchers could not ascertain if the status offenses were associated with ‘prostitution related behaviors’); HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 234–35 (2006), available at <http://www.ojdp.gov/ojstatbb/nr2006/downloads/nr2006.pdf> (“There is no national recidivism rate for juveniles. Such a rate would not have much meaning since juvenile justice systems vary so much across states.”).

225. BUILDING A CHILD WELFARE RESPONSE, *supra* note 114, at 13 (finding that “[b]oth foreign and U.S.-citizen victims are often left without critical support, are subsequently re-trafficked, and remain vulnerable to further exploitation and abuse”); Joe Markman, *Girls Rescued from Sex Trade Have Few Options to Get Help*, BOS. GLOBE, Dec. 9, 2009, at A16 (quoting a service provider as stating that exploited children “are dumped back in the dysfunctional home, ill-equipped group home, or foster care, and [often] disappear back into the underground of prostitution with no voice”).

With the limited options available to exploited children—namely, return to parents or guardians, temporary protective care, or foster home placement—there is a serious risk that they will continue to be exploited. Offenders often try to “reclaim” children who have been identified and “rescued” by police or social service providers.²²⁶ Traffickers have even been known to recruit children in or near foster homes or recovery centers, sometimes walking right in and forcibly taking children back to the life.²²⁷ Abusers are more likely to regain control over children who participate in short-term or nonsecure placement, such as recovery programs under eighteen months, short-term detention, or group homes.²²⁸ While the ISCA theoretically eases intervention with appropriate placement by DCFS, specialized care is needed to prevent the child’s return to abuse and exploitation. This danger is particularly acute when children are not properly identified and end up in placement, such as foster homes, that may be easily accessible to abusers.²²⁹ Gaps, therefore, are not necessarily discrete cracks where a child may fall out of the system; instead, gaps may compound and, in combination, increase the possibility of future abuse.

V. ALL HANDS ON DECK: FILLING THE GAPS IN THE ILLINOIS LEGISLATIVE SCHEME COMBATING COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

Confronting the problem of prostituted children has been an ad hoc endeavor for many states. Others have entirely avoided it. Illinois has made significant strides for the adequate recognition and treatment of child victims of commercial sexual exploitation. Creating a comprehensive system of care, however, will require additional changes to the attitudes and mandates of service providers, legislators, and judicial actors. The legislation and procedures currently in place continue to leave gaps where exploited children will continue to fall out of the system of protection.²³⁰ This Part suggests several areas for improvement. First, identification and classification of victims should be prioritized by all first-contact actors—primarily the police and social service actors. Second, increased availability of specialized protective custody for victims of sexual exploitation can

226. NATIONAL STRATEGY, *supra* note 143, at 35.

227. *Id.*

228. *Id.*

229. *Id.*

230. *See* discussion *supra* Section IV.B.

reduce the risk of return to abusers and provide victims with a way out of the life. Finally, the Illinois legislature should make an amendment to the current statutory scheme so that all victims are covered by the ISCA.

A. More Robust Identification Procedures for All First-Contact Actors

Identification of victims and proper classification in various criminal and social services processes is critical to the effective treatment of child victims of commercial sexual exploitation. Due to the generally hidden nature of child exploitation, police and social service providers may have limited opportunities to find and assist these children, making first contact a critical moment. Identification procedures, checklists, and “red flag” lists created by the Building a Child Welfare Response project are steps in the right direction for social services.²³¹ A similar project should be undertaken for law enforcement. Continuing attitudes that classify child victims as offenders and that fail to provide appropriate care are antithetical to the spirit of the ISCA. Additionally, police and those who provide social services must improve their cooperation. With the jurisdictional shift to DCFS, law enforcement must clearly understand the procedures and protections inherent in a case involving child victims of sexual exploitation.

Identification and classification of victims are also areas that would significantly benefit from further empirical study. Illinois should recognize that while there were several broad studies that helped pave the way for comprehensive action on commercial sexual exploitation, the work should not stop simply because the legislature has taken some significant action. This moment can be an opportunity for taking stock, looking critically, and ensuring that the legislature’s actions thus far are as all-inclusive as hoped. Empirical studies on the behavior of identifying actors (including the police, public social service agencies, and nonprofit actors in the field) would be a welcome development. Such studies would help identify the specific triggers that influence where children may fall through the gaps of the protection scheme. They also may assist in ongoing training efforts for involved actors.

231. See discussion *supra* Section IV.B.2.

B. Protective-Care Options for All Child Victims

Further, there must be continued investment in victim-identification programming for DCFS. While the Building a Child Welfare Response project is a significant step forward, DCFS should become aware of critical gaps in the protection of children once identified. First, agency procedures should be clarified so that children are protected for the critical period immediately after their rescue. Specifically, agency procedures currently have a preference for return to parents or guardians, which may return child victims to manipulative abusers or lead to forcible recapture by abusers. The frequent experience of violence reported by victims of sexual exploitation indicates that a true safe haven is required for these victims to exit the life safely and permanently.²³² A period of protective custody is preferential to immediate return to guardians, foster homes, or other unprotected custody.

Protective custody takes into account the vulnerability of exploited youth long after their initial escape or rescue. However, the availability of programs and safe housing for child victims of commercial sexual exploitation is extremely limited—in 2010 there were only fifty beds available in the United States that were dedicated to victims of child prostitution.²³³ Not only should the DCFS develop procedures that take into account the special needs of these children, but it should make efforts to develop safe and secure housing for victims who are likely targets for future abuse. However, this does not mean that the government of Illinois needs to work alone. Increased cooperation with existing private social service agencies and the federal government could help fill many gaps within the current legislative structure.

In part because of the increasing awareness of human trafficking in Illinois, nonprofit and private social service involvement in the response to CSEC has grown significantly over the past ten years.²³⁴ Recognizing the need for a multidisciplinary response to human trafficking, the Illinois Rescue and Restore Coalition was launched in June 2005 as a partnership between state agencies, the

232. RAPHAEL & SHAPIRO, *supra* note 27, at 28.

233. NATIONAL STRATEGY, *supra* note 143, at n.68.

234. CHARLES HOUNMENOU, JANE ADDAMS CTR. FOR SOC. POLICY & RESEARCH, EXPLORING A STATEWIDE COALITION INVOLVED IN HUMAN TRAFFICKING POLICY IMPLEMENTATION 1 (2010), *available at* http://www.uic.edu/jaddams/college/research_public_service/files/ExploringAstatewideCoalitioninvolved.pdf (finding that over ninety-six non-profit organizations have joined the Illinois Rescue and Restore Coalition since its inception in June 2005).

federal government, and local nonprofit actors.²³⁵ The goal of the Coalition was to raise awareness about human trafficking and to better identify and serve victims in Illinois.²³⁶ By 2008, the Coalition included over 115 member organizations, including ninety-six nonprofit and private social service agencies, seventeen public agencies, and two for-profit organizations.²³⁷ Despite a wide variety of actors in the Coalition and a robust mandate, recent studies have shown that coordination and cooperation between government actors and nonprofit organizations have been extremely low.²³⁸ Studies have indicated that “lack of vision” and “lack of visibility” of the Coalition’s leadership continue to be serious problems in the Coalition’s effectiveness.²³⁹

These studies suggest that while there is wide participation in initiatives to bring awareness to human trafficking and a desire to respond to these issues in Illinois, existing efforts have failed to coordinate and streamline solutions. The Coalition should increase efforts to train organizations in the proper identification and treatment of victims. Harnessing the willingness of these organizations to assist in proper identification of victims could significantly decrease the number of exploited children who fall through the cracks. Although social service and police actors alone do not provide sufficient monitoring,²⁴⁰ they could work together with private actors to increase the chance that victims will get the services and help that they need. Furthermore, studies indicate that it is not a lack of resources, but a lack of coordination that is primarily responsible for limited involvement.²⁴¹ The Coalition should make resource problems, such as a lack of secure housing, clear to existing partners. While the state may not have the ability to provide for all the specialized needs of victims, it should take full advantage of those actors able and willing to help. The large numbers of actors involved in the Coalition have a much broader scope than the public agencies working alone and could provide assistance where the state currently falls short. It would significantly reduce the size of the gaps identified

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.* at 2 (finding that forty percent of organizations found that there was limited interagency coordination and over seventy-five percent of the organizations reported doing *no work* related to handling human trafficking cases).

239. *Id.*

240. See discussion *supra* Section IV.B.2.

241. HOUNMENO, *supra* note 234, at 3.

above to achieve coordination in the areas of monitoring policy implementation, identifying victims, and providing treatment.

C. Statutory Language That Covers All Victims

Finally, the Illinois legislature should amend the ISCA to cover all forms of exploitation. Certain classes of children may be abused or exploited in ways not currently covered by the legislative scheme.²⁴² Specifically, third-party abusers are not considered in the definition of an “abused child.”²⁴³ If the DCFS is to truly provide assistance to these children, it should have a jurisdictional scope that includes the vast majority of victims.²⁴⁴ The definition currently limits the application of an abused-child designation to one abused by a “parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent.”²⁴⁵ The legislature should amend this definition to include children who are subjected to commercial sexual exploitation *regardless* of the identity of the abuser. Such a definition, allowing designation based on the type of abuse rather than the identity of the abuser, would allow social service providers to intervene to protect the child when they are being exploited by actors such as boyfriends, illegal employers, pimps, and others. A definition that more accurately identifies the type of abuse that is occurring would increase the possibility that children will be properly identified at first contact and will subsequently receive adequate treatment.

VI. CONCLUSION

As a comprehensive and compassionate response to the commercial sexual exploitation of children, the Illinois Safe Children Act serves as a model for other states. While many states have continued to criminalize this behavior, the ISCA recognizes that these children are the victims of a violent and extensive form of coercion. However, despite its lofty aims, the ISCA’s application continues to leave classes of children without the services and treatment that they

242. See discussion *supra* Section IV.B.3.

243. 325 ILL. COMP. STAT. 5/3 (West Supp. 2012) (defining an “abused child” as one abused by a “parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent”).

244. Kaethe M. Hoffer, *A Response to Sex Trafficking Chicago-Style: Follow the Sisters, Speak Out*, 158 U. PA. L. REV. 1831, 1840–41 (2010) (noting that third-party control of women and girls involved in prostitution is significant).

245. 325 ILL. COMP. STAT. 5/3.

badly need.²⁴⁶ Police and social service officers continue to overlook a significant number of child victims who are exploited, failing in the first chance at identification.²⁴⁷ A lack of identification or misclassification by these actors can significantly affect the services and treatments available to victims, decreasing their chances at both recovery and rescue and increasing the chance of continued victimization and exploitation.²⁴⁸ Which outcome a child moves toward continues to be dependent on highly discretionary interactions with law enforcement or initial interviewers at the DCFS.²⁴⁹ Further, the placement options available to DCFS continue to be limited and insufficient to prevent future exploitation of child victims.²⁵⁰ If no changes are made, both the processes used in the DCFS and the current placement options could increase the number of victims that return to their abusers.

Finally, the legislation as written does not adequately cover all children who are victims of commercial sexual exploitation.²⁵¹ Specifically, third-party abusers are not considered by the legislation as written, and this may limit the ability of the DCFS to provide adequate services and protection to victims.²⁵²

The ISCA is a significant and historic step forward in the protection of child victims of commercial sexual exploitation. Nonetheless, legislators, police, social service actors, and advocates in Illinois must realize that the job is not yet finished. Prioritizing identification, protection, and restoration will recognize the dignity of all these young lives and will not leave the most invisible behind to suffer. Addressing all child victims of commercial sexual exploitation is a delicate task—but where young lives hang in the balance, the full force of the state must not be made to wound, but instead to heal.

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246. See discussion *supra* Section IV.B.

247. See discussion *supra* Section IV.B.1.

248. SMITH, VARDAMAN & SNOW, *supra* note 122, at 13.

249. See discussion *supra* Section IV.B.1.

250. See discussion *supra* Section IV.B.2.

251. 705 ILL. COMP. STAT. 405/2-3 (2007).

252. See discussion *supra* Section IV.B.3.

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