

Towards a comprehensive approach to responding to the commercial sexual exploitation of children: a legislature's checklist.

Presented by the Renewal Forum

- Effective Enforcement

- Fully funded initiative
- Training for enforcement agencies
- Communication between agencies
- Communication between agencies and service providers
- Efficient documentation of problem and response
- Awareness for the public

- Comprehensive Prevention plan

- Programs aimed at throw-away and runaway children
- Systems that vulnerable children trust
- Effective reporting systems for absent children
- Training & awareness for all people with substantial contact with vulnerable children
- Health Clinics that ask the right questions
- Documentation of abusers
- Public awareness plans
- Demand reduction
- Mandated diversions for buyers of children

- Proactive protection and restoration

- Asset forfeiture to help cover cost of program
- Effective diversion for child prostitutes
- Restorative centers for victims
- Child protective services mandated to respond and take care of trafficked children
- Mandated comprehensive court restitution to restore the victim

- Court directed damage award for restoration
- A funded victim relief fund

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Effective Prosecution

- Provisions for both labor trafficking and sex trafficking crimes
- Sex trafficking of minors does not include a requirement of coercion.
- Coercion is a progressive definition.
- Victims are not punished.
- Current laws are used in order to effectively fight trafficking such as
 - RICO
 - Kidnapping
 - Child Abuse
 - Prostitution

Legislative checklist

Introduction

This toolbox is intended to give legislators the framework for properly considering what an individual state needs in order to address the sexual exploitation of children in the United States. It is arranged so that a legislature may take any section of it and use it in order to better respond to the commercial sexual exploitation of children (CSEC). It is often not possible for a legislature to change their entire systems, nor is it often practical. States already have in place laws and policies that are unique to its individual circumstances. With that in mind, this toolbox seeks to outline all of the components that need addressing in order to solve the problem of CSEC. Any one of the measures suggested should by itself help decrease CSEC in a state, but all of them are meant to function as a part of a coordinated effort.

The toolbox is split into four thematic parts. The first is ensuring enforcement. While many states have laws that criminalize human trafficking and CSEC, these laws mean little if they are not being enforced or if they lack the mandate and funds to actively pursue the laws. The second is prevention. Those who are exploited tend to come from communities and families where they are at risk for exploitation.¹ Addressing the issues that put children at risk cuts the number of victims by preventing them from becoming victims. The third theme is protection & restoration. It is important that once a child is taken out of the hands of his exploiter that child is placed in a system where the trafficker cannot reach them. Just as important, is to begin the healing process and give children a second chance at being children. The final theme is based on prosecution; states should have effective laws that respond to the needs of victims and keep traffickers out of business.

¹ The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children *Shared Hope International's Report on Child Sexual Slavery in America* <http://www.sharedhope.org/Resources/TheNationalReport.aspx> pg. 31

Additionally, states should work to use the nexus between the commercial sexual exploitation of children and other related crimes and services to decrease the population of exploiters.

Ensuring Enforcement

Any law or policy is only as good as its enforcement/implementation rate. If a policy is going to be on the books, but not enforced it undermines the rule of law and the confidence in the public justice system. Keeping that in mind, it is sometimes better for a state to have no formal policy than to adopt a policy that it is unwilling or unable to enforce. Effective enforcement requires that the resources for enforcement are available, that the enforcement actors are aware of their roles, and that communication is happening between the enforcement actors.

When a jurisdiction is serious about acting against CSEC, the jurisdiction must fund the initiative. If funding is not available then the enforcement actors end up competing against each other for funds, instead of working with each other to end injustice. Additionally, enforcement requires that those who are expected to do the enforcement are adequately trained. Without training, enforcement actors do not know the most effective way to ensure enforcement.

After funding and training, communication is the next most important aspect of effective enforcement. Enforcement actors include service providers, law enforcement, prosecutors, and local, state, and federal actors. Some states have set up taskforces that are mandated to meet monthly or quarterly, while others have set up initiatives that connect enforcement providers.² While it is possible that informal agreements may work for communicating between actors, these need to be done in an intentional manner. Government actors must reach out to civil society providers of local services to victims. Since the non-governmental organizations are often the ones who are in

² California, Colorado, Connecticut, Maine, Nebraska, New Mexico, and Washington are just some of the states that have set up taskforces to monitor and address trafficking. Washington actually has implemented two taskforces, one to oversee enforcement and one to monitor how to improve services for victims.

direct contact with both victims and exploiters, they often have the most insights about connecting with victims.

Reaching out to non-profits is also necessary to efficiently document the problem and the response that has been taken so far. It is very hard to determine whether a model is effective if a baseline has not been established before the model is initiated. It is also hard to determine where services are working if no one documents the services. Since non-profits are often also the service providers, governments should seek their data on the amount of service they are providing.

Documentation shows, in a measurable way, the effect a model is having. By communicating and involving all the enforcement actors, it is possible to determine which data points will be tracked beforehand and the most efficient way to do so.

Prevention

Commercial exploitation is a market enterprise and is affected by supply and demand. By focusing on prevention, it is possible to decrease supply and ensure that fewer children are exploited to begin with. Preventative measures and programs are often the first ones to be cut during times of lean budgets, as their outcomes are harder to measure. This should not be the case, because they provide critical benefits when implemented correctly, including crime prevention, cost savings within the criminal justice system, and helping ensure that at-risk youth become productive members of society. Numerous preventative measures can be taken, including programs aimed at at-risk youth, creating systems that children can reach out to, determining areas where children are at risk, and providing training for those that come into contact with these at-risk youth.

The first step in any preventative plan is to determine who the at-risk youth are. Those who have already been sexually exploited and those in poverty are more likely to be at risk than others, but they are not the only youth at risk. Each state has a unique perspective on where it can make an

impact on its youth, and this insight should be followed. Asking questions like, where are children vulnerable, and when do they intersect with public services, can provide a guide when determining the best ways to impact CSEC. It is not unusual for the same population of children to have many intersections with public services and identifying these children is one of the first steps in classifying the at-risk population.

At a minimum, the Renewal Forum recommends that programs are established to give children living on the street a place to go; a place where they can seek free help if they want to get off the streets. These programs must be places children trust so that they will come in voluntarily. Many similar programs are already in place, such as job vocational centers for youth, after school programs, and others. These programs can be strengthened and adapted with an eye toward keeping vulnerable children from being exploited.

At the same time, systems for reporting missing and run-away children must be improved. Health workers, school teachers, and others who have substantial contact with vulnerable children should be trained on how to identify sexual exploitation of children and should also be mandated to report it. Additionally, a state could pass a measure requiring reporting of all children who are absent beyond a period of time³. Along with the shelters, health clinics should be trained on identifying exploited children and taught proper reporting and rescue measures. Health clinics and abortion providers are often the only time that a child may be allowed by their pimp to spend time with another person unsupervised. As such, these facilities are a critical focal point for anti-CSEC efforts.

Raw data on the number of vulnerable and abused children must be collected, but along with that, individual cases of abuse should be documented and shared. Trafficking is not a new business and the models used to bring a child into the sex trade are well known. These methods should be

³ See Caylee's Law, and ["How Caylee's Law Can Help Fight the Sex Exploitation of Children"](#)

highlighted and communicated to the community, and individuals who have been identified as traffickers should be watched to ensure that they do not participate in this illegal trade anymore. Additionally, the general public should be informed about these methods and how to identify traffickers and children who are being exploited. States may also think about involving the local media in helping them with the public awareness component.

The commercial sex trade relies on both supply and demand, and prevention must focus on ensuring that the supply no longer exists. Demand can also be reduced by pursuing—and educating—those who buy sex from children. John schools are one model frequently used to teach those who buy sex that it is not acceptable to buy children, and also how to recognize and report a child in the sex trade.⁴ Increasing penalties for those who buy sex may also be a successful deterrent.

A review of child services and foster care needs to be done. This is a major undertaking and should not be done lightly, but it is very important. In some states, children are getting lost in the system, and may even be placed in situations where they are subject to exploitation.

Protection and Restoration

The primary concern of both enforcement and prevention is preventing victimization. Protection & restoration comes into play primarily after a person has been victimized and has become a CSEC survivor. These programs can be costly to a state, and are often avoided for that reason, but rehabilitating victims to become healthy members of society is worth the cost.

Protection addresses what should happen to a victim when they are rescued. It is imperative that victims are treated as victims, and not as criminals. This means that when children prostitutes

⁴ Further measures that could be taken: Comprehensive data analysis of where children get lost, why they get lost, where they go, and the model used to traffic them. Querying adult sex workers about who they would identify as a pimp, and who has a record of bringing in young girls. Drop-in centers for at-risk youth—where they are free to come and go, but encouraged to stay.

are arrested by the police, they are redirected from juvenile detention to shelters and restorative services. In some states this means re-writing the child protective services mandate so it covers instances of runaway and throw-away children who are no longer under the control of a parent or guardian. It has been suggested that the definition of child custodians could be broadened to include pimps, with the same duties and obligations to a child that a normal custodian would have. This would expand that ability to prosecute a pimp, but could be interpreted to imply that a pimp also has the rights of a custodian, which is definitely not the desired result. An alternative approach would be to re-writing child protective services' mandate as outlined above.⁵ Also, because of the nature of the trauma from their sexual exploitation, some children will need dedicated supervision until they have recovered. Each child must be handled as an individual, and state services should be structured to take this into account.

Restoration is something that is often overlooked⁶ but is necessary to restore and reintegrate traumatized persons back into society. The baseline for restorative measures is mandated court restitution for the damages done to the victim. This includes not only the cost of their labor, but also the cost of psychological and medical treatment, as well as any other relevant help.⁷ This can be paid for primarily through civil judgments against traffickers and mandatory asset forfeiture. One example is to expand asset forfeiture to include personal property, such as a car when an illegal sex

⁵ Another possible protective service is mandatory civil protective orders for victims against their trafficker, regardless of the final criminal judgment.

⁶ “Only nine out of 50 states offer state public benefits to trafficking victims. Eighteen permit victims to bring civil lawsuits in state court. Seven encourage law enforcement to provide the required accompanying documentation for T-visa applications. Eighteen have instituted mandatory restitution. Nine states require that victims’ names and/or locations be kept confidential.” *Trafficking in Persons Report 2010: United States*, U.S. State Dept. <http://www.state.gov/g/tip/rls/tiprpt/2010/>. During the reporting period, state legislators worked with NGOs to further develop state provided victim service and protection options.

⁷ Example of a good restoration law – Restitution for costs associated with: medical and psychological care, physical and occupational therapy, and rehab, required transportation, temporary housing and child care, , attorney’s fees, and advocate fees, as well as compensation for lost income, gross income of services or labor, emotional distress, pain and suffering, and any other losses suffered by the victim.

act takes place in the car.⁸ This expanded forfeiture makes it truly costly for a person to be involved in the purchasing a minor for sex. However, if the traffickers do not have the money, the state needs to have a fully funded victim's relief/compensation fund and a victim of trafficking needs to have access to it. Being the victim of sexual exploitation causes severe trauma that can never be fully erased. Victims should also retain the traditional civil damages against the trafficker for any damages done to them or their property arising out of the trafficker's actions. Monetary relief alone does not fully restore a person, but must be combined with other social, mental, and physical services.

Prosecution

Prosecution is currently the most widely enacted measure to combat the commercial sexual exploitation of children. Most states now have laws punishing human trafficking, commercial sexual exploitation, and other related crimes. The easiest way to improve most of these laws is to start enforcing and using them as outlined above. Additionally, most states have other laws that could be used to deter CSEC without any amendment if referenced and used appropriately.

The vast majority of the victims of CSEC are American citizens, who need to be protected and restored in similar ways to international victims.⁹ In particular, the majority of domestic CSEC victims are minors.¹⁰ When children are involved, there should be a presumption that children are not guilty for engaging in prostitution.¹¹ Additionally, states should expand the definition of coercion for both the crime of trafficking and for when used as an affirmative defense to crimes committed while the offender was a victim of human trafficking. The common law definition of

⁸Georgia Code § 16-6-13.2(c) provides that motor vehicles used for pimping are subject to asset forfeiture. We would recommend that not only pimps' cars be subject to forfeiture, but also cars in which the illegal sex act takes place (or possibly home even) if owned by the perpetrator.

⁹ 83% percent of victims in confirmed sex trafficking cases were US citizens. *Most Suspected Incidents of Human Trafficking Involved a Prostitution of an Adult of Child*. Department of Justice, Office of Justice Programs. Press release 4/28/2011 DOJ stas <http://www.ojp.usdoj.gov/newsroom/pressreleases/2011/BJ11093.htm>

¹⁰ Majority of ID US citizen were children in prostitution *Trafficking in Persons Report 2010: United States*, U.S. State Dept. <http://www.state.gov/g/tip/rls/tiprpt/2010/>

¹¹ This is known as a safe harbor law. New York has an decent example of this found at <http://www.gems-girls.org/Safe%20Harbor%20Facts%20and%20FAQs.pdf>

coercion/duress does not take into account the multiple methods that a trafficker uses in order to force a victim to do their bidding. Coercion should be extended to include threats to others, abuse of process, economic duress, and other related methods.¹²

Requiring coercion to invalidate consent only applies to adult victims in sexual exploitation cases. A minor cannot consent to a commercial sex act, and in cases dealing with minors, lack of consent or coercion should not be a required element, as a minor cannot legally consent to trading sex for anything of value or a promise of value

The criminalization of trafficking is normally broken into labor trafficking and trafficking for sexual exploitation. Since each state organizes its penal code differently, these should be taken as guidelines when writing legislation. The state should ensure though, that both of these forms of trafficking are addressed in its trafficking laws or in other laws, such as a ban on involuntary servitude. States should also ensure that not only those who are doing the trafficking are prosecutable, but also anyone who profits from the victimization of others.

Other laws may also be used to prosecute trafficking cases in order to make sure traffickers stay in prison longer. These crimes include racketeering, kidnapping, child abuse, and prostitution. Some states have a heightened crime for the commercial exploitation of children when the exploiter

¹²One progressive example is found in the Oklahoma trafficking law, which defines coercion to include compelling, forcing or intimidating a person to act by: a. threats of harm or physical restraint against any person, b. any act, scheme, plan, or pattern intended to cause a person to believe that performing, or failing to perform, an act would result in serious physical, financial, or emotional harm or distress to or physical restraint against any person, c. the abuse or threatened abuse of the law or legal process, d. knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport, labor or immigration document, or other government identification document, including but not limited to a driver license or birth certificate, of another person, e. facilitating or controlling a person's access to any addictive or controlled substance other than for legal medical purposes, f. blackmail, g. demanding or claiming money, goods, or any other thing of value from or on behalf of a prostituted person where such demand or claim arises from or is directly related to the act of prostitution, h. determining, dictating or setting the times at which another person will be available to engage in an act of prostitution with a third party, i. determining, dictating or setting the places at which another person will be available for solicitation of, or to engage in, an act of prostitution with a third party, or j. determining, dictating or setting the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party.

is a parent, guardian, or custodian. These crimes should be extended to pimps and traffickers as they should have the responsibilities (but not the rights) of the child's custodian.

Prostitution, in particular, should be re-examined and reviewed in light of that fact that the majority of U.S. citizens found to be trafficked for sex were children. Prostitution needs to be addressed in a way that deters both the sale and the buying of minors. This includes encouraging law enforcement to use their resources to arrest johns and to deter the buying of prostitution in the first place.

Conclusion

If a state is going to stop the commercial sexual exploitation of children within its borders, enacting any of the above suggestions would be helpful. What that looks like in a particular state is going to vary based on local circumstances and the availability of funds, providers, and other resources. Taking any step, however, is the right first step.

To see further examples of how other states are pursuing abolition, contact the Renewal Forum at kitterman@renewalforum.org. The Renewal Forum is available for consultation on how to improve both the law and public policy of a given state.