

NOTE

CHILD ABUSE BY ANOTHER NAME: WHY THE CHILD WELFARE SYSTEM IS THE BEST MECHANISM IN PLACE TO ADDRESS THE PROBLEM OF JUVENILE PROSTITUTION

*We're no longer talking about teen prostitutes, bad girls. We're talking about kids who are being bought and sold by adults.*¹

I. INTRODUCTION

Lucilia was thirteen years old the first time she was sold for sex.² After being physically and sexually abused at home and chancing that life on the streets could not be worse than life at home, Lucilia ran away.³ Ultimately, however, the streets dished up more of the same abuse and Lucilia was soon gang-raped at a party.⁴ Little did she know, but the man who intervened during her rape and promised to protect her from the rapists, her knight in shining armor, would quickly turn her back out onto the streets and sell her for sex.⁵ The United States is patently aware of the devastating tragedy of sexual slavery.⁶ Federal laws have been enacted to provide protection to sexually exploited youth when they are brought into the United States from abroad.⁷ Unfortunately for Lucilia, she was not from Russia or Thailand; Lucilia was from New York.⁸ As a result, when she was discovered prostituting

1. Rachel Lloyd, Executive Dir. of Girls Educ. and Mentoring Servs., in Cassi Feldman, *Report Finds 2,000 of State's Children Are Sexually Exploited, Many in New York City*, N.Y. TIMES, Apr. 24, 2007, at B6.

2. Jessica Lustig, *The 13-Year-Old Prostitute[:] Working Girl or Sex Slave?*, N.Y. MAG., Apr. 9, 2007, at 36.

3. *Id.* at 38.

4. *Id.*

5. *Id.* at 38-39.

6. See *infra* notes 56-61 and accompanying text.

7. See *infra* notes 57-69 and accompanying text.

8. See Lustig, *supra* note 2, at 38.

by law enforcement, she was charged as a criminal and served time in both adult and juvenile jails.⁹ Had she been a foreign national, Lucilia would have been rushed off to safe victim housing, been provided with medical and mental health treatment, and would have been immune to criminal prosecution.¹⁰ However, as a domestic national, Lucilia was charged with a criminal violation, booked, and locked in a cell.¹¹

The average age of entry into prostitution is between twelve and thirteen years old.¹² While accurate statistics are difficult, if not impossible, to determine, a recent study estimated that nearly 300,000 youth may be at risk for commercial sexual exploitation, including prostitution, within the United States each year.¹³ Many of these exploited youth have been abused at home and turn to life on the streets.¹⁴ After being lured in by false promises from pimps, these youth are sold for sex on street corners, in strip clubs, massage parlors,¹⁵ private homes, and suburban apartments.¹⁶ They are physically beaten, repeatedly raped, kidnapped, and subjected to other egregious forms of torture.¹⁷ Once discovered by law enforcement, these exploited youth are charged with criminal violations, sent to jail, and released back to their abuser.¹⁸ The adults buying and selling these children for sex, usually

9. *Id.* at 39-40.

10. *See infra* notes 65-73 and accompanying text.

11. *See* Lustig, *supra* note 2, at 39-40; *see also infra* notes 32-34 and accompanying text.

12. *See generally* Norma Hotaling et al., *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective*, 18 YALE J.L. & FEMINISM 181, 187 (2006) (noting that with the "average age of entry into prostitution being thirteen" issues of violence, sexual abuse, and rape are immediately raised); Aina Hunter, *The Children's Hour*, VILLAGE VOICE, May 2, 2006, available at <http://www.villagevoice.com/2006-04-25/news/the-children-s-hour/> (last visited Sept. 1, 2008) (noting that while the average age of entry into prostitution is twelve years old, some children begin as young as nine); *All Things Considered, Analysis: New York Could Become First State to Pass Law to Protect Teen Prostitutes* (National Public Radio broadcast July 22, 2005) (transcript on file with the Hofstra Law Review) (noting that, on average, American children enter prostitution at the age of twelve).

13. RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 144-48 (rev. ed. 2002), available at http://www.sp2.upenn.edu/~restes/CSEC_Files/Complete_CSEC_020220.pdf.

14. *See* Hotaling et al., *supra* note 12, at 182; *See, e.g.,* Lustig, *supra* note 2, at 38 (detailing Lucilia's abusive childhood).

15. Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 111 (2006); Feldman, *supra* note 1, at B6; Hotaling et al., *supra* note 12, at 186.

16. *See* Associated Press, *Teens Accused of Pimping Girls*, CNN.COM, Jan. 16, 2008, available at <http://www.cnn.com/2008/CRIME/01/16/teen.pimps.ap/index.html>.

17. *See* Farley, *supra* note 15, at 110-11; Susan Kay Hunter, *Prostitution Is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91, 92-94 (1993).

18. *See, e.g.,* Lustig, *supra* note 2, at 39 (Lucilia was "sent to Rikers[,] . . . processed as an adult[, and] . . . back out in a week.").

pimps and johns, frequently manage to avoid the criminal ramifications of their actions.¹⁹

Victims of juvenile prostitution are most aptly dealt with by the child welfare system rather than the criminal justice system.²⁰ While the recognition that prostituted juveniles are victims, not criminals, has received attention on a federal level in relation to foreign national juveniles,²¹ domestic juveniles are currently not afforded the same protections and services.²² Despite the fact that these domestic prostituted youth have been repeatedly abused and victimized at the hands of parents, pimps, and johns, and according to statutory rape provisions are unable to consent to sexual activity,²³ they are being prosecuted, locked up, and released back to the streets for more abuse.²⁴ There is no logic behind this inconsistency in treatment of foreign national and domestic prostituted juveniles. Domestic juveniles should be treated and viewed as victims of a horrific form of child abuse. The fact that a juvenile is prostituting is enough to establish a prima facie case of child abuse.²⁵ The juvenile's parents are guilty of failing to protect their child from harm and the pimp is liable for acts of child abuse or neglect as a person responsible for the welfare of the child.²⁶ Upon the recognition that these youth are children with special health needs, the child welfare system will be able to provide them with the specialized, therapeutic services they require and deserve.²⁷ However, getting these victimized youth into the child welfare system is only the first step. A complete solution can only be achieved through a cooperative effort from the legislature, law enforcement, prosecutorial offices, and social service agencies.²⁸

Part II of this Note begins with an exploration of the current treatment of prostituted juveniles, both domestic and foreign nationals.

19. See, e.g., Jane O. Hansen, *Special Report: Selling Atlanta's Children*, ATLANTA J. & CONST., Jan. 7, 2001, at 1A; Hunter, *supra* note 12.

20. See discussion *infra* Part IV.

21. See discussion *infra* Part II.B.

22. See discussion *infra* Part II.A.

23. See *infra* notes 115-21 and accompanying text.

24. See, e.g., Hansen, *supra* note 19, at 1A; Lustig, *supra* note 2, at 39; see generally Nesheba Kitling, *God Bless the Child: The United States' Response to Domestic Juvenile Prostitution*, 6 NEV. L.J. 913 (2006) (discussing the differences in treatment of foreign national prostituted juveniles and prostituted domestic juveniles).

25. See discussion *infra* Part III.

26. See discussion *infra* Part III.B.

27. See discussion *infra* Part V.A.

28. See Sara Elizabeth Dill, *Old Crimes in New Times: Human Trafficking and the Modern Justice System*, CRIM. JUST., Spring 2006, at 17-18.

The major differences in treatment of each class are highlighted. Part III establishes that the act of juvenile prostitution is an inherent form of child abuse. Additionally, statutes criminalizing juvenile prostitution are logically irreconcilable with statutory rape statutes declaring a minor below a specified age unable to consent to participate in sexual activity. Following the determination that a prostituted juvenile is a victim of child abuse, Part IV expounds upon how the child welfare system is the best mechanism currently in place to address the needs of these exploited youth. Part V acknowledges criticisms of the child welfare system and explains how recognition of these prostituted juveniles as children with special health needs allows for services to be tailored to their specific needs. However, getting these exploited youth into the child welfare system is only the beginning. Collaboration by all relevant agencies is imperative to truly viewing and treating these juveniles as victims.

II. CURRENT TREATMENT OF PROSTITUTED JUVENILES

When discussing the current treatment of prostituted juveniles within the United States, it must be recognized that there is a fundamental distinction drawn between foreign national and domestic youth which influences the treatment received by these youth at the hands of law enforcement, prosecution offices, and social service agencies.²⁹ Despite plentiful similarities—same age group, same types of sexual and physical abuse, same socioeconomic challenges, same repeated torture—foreign national youth brought into the United States and forced to prostitute are considered victims of sex trafficking,³⁰ while domestic youth forced to prostitute are considered criminal offenders.³¹ The following Part explores how a prostituted youth is treated under each of these distinct classifications and summarizes the major differences in treatment.

29. See Kittling, *supra* note 24, at 914; see also Lustig, *supra* note 2, at 38.

30. Lustig, *supra* note 2, at 38; see John Tanagho, Comment, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with Its Federal and State Counterparts*, 38 LOY. U. CHI. L.J. 895, 913-14 (2007).

31. Jennifer L. Cecil, *Enhanced Sentences for Child Prostitution: The Most Hidden Form of Child Abuse*, 36 MCGEORGE L. REV. 815, 815 (2005); Kittling, *supra* note 24, at 915.

A. *Prostituted Domestic Juveniles*

Juvenile domestic nationals found to be prostituting are treated as criminals.³² This is despite the statutory inconsistencies regarding a juvenile's ability to consent to sexual activity discussed in Part III.³³ These youth are subjected to all the inherent attributes of that classification—arrest, interrogation, prosecution, and incarceration.³⁴ Absent a strong national domestic trafficking policy,³⁵ juvenile prostitution is generally handled as an offense of an individual state's penal code.³⁶ Once discovered by law enforcement, these violations are handled by either the adult criminal justice system or the juvenile justice system.³⁷ While the juvenile justice system was traditionally designed for youth up to the age of eighteen, most states have a statutorily specified age at which original jurisdiction over the minor will automatically be removed from the juvenile justice system and placed directly in the adult criminal justice system.³⁸ Currently, the oldest age in which a juvenile may be handled by the juvenile justice system ranges

32. See Cecil, *supra* note 31, at 815; Kittling, *supra* note 24, at 915.

33. See *infra* note 115-16 and accompanying text.

34. Lustig, *supra* note 2, at 38.

35. The sole piece of federal legislation addressing domestic trafficking is the Mann Act. See 18 U.S.C. §§ 2421-27 (2000). This Act, passed in 1910, outlawed the transportation of an individual across state lines with the intent to engage in sexual activity that constitutes a criminal offense. *Id.*; see EVA J. KLAIN, PROSTITUTION OF CHILDREN AND CHILD-SEX TOURISM: AN ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES 19 (1999). Despite the gravity of the domestic juvenile prostitution problem, little has been done to address the issue since the enactment of the Mann Act. See Cheryl Hanna, *Somebody's Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1, 3 (2002); Kittling, *supra* note 24, at 918, 921. The Act does not specify whether the woman being transported is to be viewed as a criminal or a victim. See 18 U.S.C. §§ 2421-26. However, in *Gebardi v. United States*, 287 U.S. 112 (1932), the Supreme Court held that a woman could not be held criminally liable under the Mann Act since she was a member of the class the Act sought to protect. See *id.* at 121, 123. Essentially, because the legislation was enacted to protect women and children from sexual exploitation, the statute should not be used to prosecute the class of individuals it was designed to protect. Suzanne Meiners-Levy, *Challenging the Prosecution of Young "Sex Offenders": How Developmental Psychology and the Lessons of Roper Should Inform Daily Practice*, 79 TEMP. L. REV. 499, 509 (2006). Therefore, a woman crossing state lines to engage in prostitution cannot be prosecuted under federal law, regardless of whether she claims to have consented.

36. See *infra* note 115 and accompanying text.

37. See, e.g., Hanna, *supra* note 35, at 17-18; Lustig, *supra* note 2, at 39-40.

38. HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEPT. OF JUSTICE, NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 103 (2006). There is a strong movement toward revamping the juvenile justice system so as to move away from the current policies that tend to send many young juveniles to adult jails where the trauma and harm caused may far outweigh the benefits. See Editorial, *Raising Children Behind Bars*, N.Y. TIMES, Nov. 20, 2007, at A22.

from fifteen years old to seventeen years old,³⁹ with statutory exceptions for specifically alleged offenses⁴⁰ sending the youth to the adult system.⁴¹ The differing philosophical foundations of the juvenile justice and the adult criminal justice systems can result in vastly different outcomes for a prostituted juvenile.⁴² Youth who are treated by the juvenile justice system may have the local social services agency made aware of their presence in the community and further investigation into the youth's individual circumstances may take place.⁴³ The parties exploiting the youth, generally pimps or madams, are aware of this potential for increased attention to their operation and will coach their "girls"⁴⁴ to lie about their age to law enforcement and pretend to be older than they truly are, in an effort to ensure they are sent to the adult criminal justice system.⁴⁵ Once in the adult system, the youth are booked on relatively minor prostitution or disorderly conduct charges, released back to the streets and the hands of their abuser in short order.⁴⁶ Despite the theoretically rehabilitative perspective of the juvenile justice system, its practical effects are more appropriately classified as quasi-criminal rather than truly rehabilitative.⁴⁷

39. See SNYDER & SICKMUND, *supra* note 38, at 103.

40. The statutory offenses that will send a youth offender to the criminal justice system frequently include serious violent crimes, such as murder. See generally SNYDER & SICKMUND, *supra* note 38, at 106 (explaining situations where a prosecutor may bring charges directly in criminal court rather than through the juvenile justice system); Note, *For the Good of the Child, for the Good of Society: Using Scotland and Jamaica as Models to Reform U.S. Juvenile Justice Policy*, 115 HARV. L. REV. 1964, 1967, 1970 (2002) (discussing the procedures involved in trying a juvenile as an adult).

41. SNYDER & SICKMUND, *supra* note 38, at 103.

42. See Hanna, *supra* note 35, at 17-18.

43. *Id.*

44. While the majority of prostituted juveniles are female, a significant number of males are subjected to sexual exploitation. See ESTES & WEINER, *supra* note 13, at 75-76; David Finkelhor & Richard Ormrod, *Prostitution of Juveniles: Patterns from NIBRS*, JUVENILE JUSTICE BULLETIN (U.S. Dept. of Justice, Wash. D.C.), June 2004, at 1. The use of female pronouns throughout this Note is merely used for consistency and is by no means a trivialization of the extent of sexual exploitation of males. For an in-depth discussion of the issues facing sexually exploited males, see Ralph Lillywhite & Paula Skidmore, *Boys Are Not Sexually Exploited? A Challenge to Practitioners*, 15 CHILD ABUSE REV. 351, 353 (2006) (discussing findings regarding the exploitation of juvenile males in the United Kingdom).

45. Hunter, *supra* note 12; Lustig, *supra* note 2, at 39.

46. See Heidi Evans, *Desperate Bid to Save Kids Who Sell Sex*, DAILY NEWS, Jan. 25, 2004, at 22; Hanna, *supra* note 35, at 17; Lustig, *supra* note 2, at 39.

47. See Anthony R. Holtzman, Comment, *Juvenile Justice? The Increased Propensity for Juvenile Transfer to the Criminal Court System in Pennsylvania and the Need for a Revised Approach to Juvenile Offenders*, 109 PENN. ST. L. REV. 657, 666-69 (2004); Pantea Javidan, *Invisible Targets: Juvenile Prostitution, Crackdown Legislation, and the Example of California*, 9 CARDOZO WOMEN'S L.J. 237, 240 (2003).

Law enforcement acts as the agency of first response in a juvenile prostitution situation.⁴⁸ Given the underground nature of prostitution, the police are likely to be the first agency that would have reason to be aware that juvenile prostitution is occurring.⁴⁹ The Department of Justice's Office of Juvenile Justice and Delinquency Prevention acknowledges that police officers are more likely to characterize and treat juveniles involved in prostitution offenses as criminals rather than victims.⁵⁰ Uncomfortable making the decision on how an individual youth should be treated or generally inexperienced in dealing with juvenile offenders as a group, police officers may simply choose not to charge the youth to avoid dealing with the juvenile justice system or applicable social service agency.⁵¹ This tendency by law enforcement to allow this form of abuse to remain undetected aids pimps in their continued exploitation.

If the youth does remain in the juvenile justice system, she may spend time in a lockdown facility or be entered into the child protective system and placed in a foster home or group care facility.⁵² However, without comprehensive services actively addressing the complex needs of prostituted juveniles, these youth are extremely likely to run away from these placements.⁵³ The hold that the pimps and the street culture have over these youth is far too strong to be displaced by traditional social services.⁵⁴ Additionally, these youth are distrustful of police officers and social service agencies,⁵⁵ making it difficult for traditional service providers and law enforcement agencies to intervene between the youth and the culture that is exploiting her.

48. Joseph S. Bova Conti & Thomas P. O'Connor, *The Role of the First Responder in the Criminal Investigation Process*, in 2 MEDICAL, LEGAL, & SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION 603 (2005).

49. *Id.*

50. Finkelhor & Ormrod, *supra* note 44, at 2.

51. *Id.* at 3.

52. *See, e.g.*, Evans, *supra* note 46, at 22; Soma R. Kedia, *Creating an Adolescent Criminal Class: Juvenile Court Jurisdiction Over Status Offenses*, 5 CARDOZO PUB. L. POL'Y & ETHICS J. 543, 558 (2007); Lustig, *supra* note 2, at 39-40 (Lucilia was sent to both juvenile detention facilities and adult jails).

53. *See, e.g.*, Evans, *supra* note 46, at 22; Hanna, *supra* note 35, at 10; Lustig, *supra* note 2, at 40.

54. *See* Javidan, *supra* note 47, at 240.

55. Susan S. Kreston, *Prostituted Children: Not an Innocent Image*, PROSECUTOR, Nov.-Dec. 2000, at 37.

B. Prostituted Foreign National Juveniles

In recent years, the federal government has made remarkable headway in recognizing that prostituted juveniles trafficked into the United States from other countries are not criminal offenders but rather abused, exploited youth.⁵⁶ With the passage of the Federal Trafficking Victims Protection Act (“TVPA”) in 2000⁵⁷ and its subsequent reauthorizations in 2003 and 2005,⁵⁸ Congress publicly condemned the atrocity of human trafficking.⁵⁹ Recognizing that human trafficking affects a disproportionate number of women and children,⁶⁰ the legislation declared sex trafficking, including juvenile sex trafficking, to be a severe form of human trafficking that is subject to increased penalties for perpetrators.⁶¹ Implicitly acknowledging that a juvenile cannot consent to being trafficked, the statute protects victims of exploitation regardless of whether the trafficker employed tactics of force, fraud, or coercion against them.⁶² This eliminated a previous hurdle for prosecutors in establishing a valid case of trafficking.⁶³

A major accomplishment of this legislation is the inclusion of governmental protection and assistance services for trafficking victims.⁶⁴ The TVPA provides for extensive and fairly comprehensive services to foreign national victims of human trafficking.⁶⁵ Services of primary importance include appropriate victim housing,⁶⁶ medical care,⁶⁷

56. See Hanna, *supra* note 35, at 14; Kittling, *supra* note 24, at 914-15; Tanagho, *supra* note 30, at 913-14.

57. Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101-05 (2000).

58. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (amending scattered sections of the United States Code); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (amending scattered sections of the United States Code).

59. 22 U.S.C. § 7101(b)(23) (“[T]rafficking in persons involves grave violations of human rights and is a matter of pressing international concern.”); see also Tanagho, *supra* note 30, at 913 (“Former U.S. President Bill Clinton hailed the TVPA as a truly historic human rights measure.”).

60. 22 U.S.C. §§ 7101(a), 7101(b)(4).

61. See Kittling, *supra* note 24, at 915.

62. *Id.*; Hanna, *supra* note 35, at 14.

63. See generally Becki Young, Note, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 76 (1998) (discussing a previous definition of trafficking, which required a showing of coercion).

64. Tanagho, *supra* note 30, at 914.

65. See *id.*; CALIBER, AN ICF INT’L CO., EVALUATION OF COMPREHENSIVE SERVICES FOR VICTIMS OF HUMAN TRAFFICKING: KEY FINDINGS AND LESSONS LEARNED 24 (2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/218777.pdf>.

66. 22 U.S.C. § 7105(c)(1)(A) (2000).

67. *Id.* at § 7105(c)(1)(B).

protection from retribution,⁶⁸ and a special allowance to remain in the country regardless of immigration status.⁶⁹ Task force agencies have been created to ensure proper implementation and distribution of these services.⁷⁰ The special immigration allowance permitting a victim's "continued presence" in the United States has morphed into a T-visa, which grants victims temporary residency for three years with the possibility of being granted permanent residency.⁷¹ A statutory requisite for the granting of permanent residency is that the victim cooperates with any requests relating to prosecution of the traffickers.⁷² Victims need to be officially certified as a trafficking victim before becoming eligible for certain services, such as being granted a Social Security Number.⁷³ The certification process can be daunting, but there are legal service providers available to assist victims with the process.⁷⁴

A recent study funded by the Department of Justice evaluated the services being provided to victims of human trafficking.⁷⁵ The study evaluated services ranging from short-term and immediate services such as language assistance, secure emergency shelters, medical, dental and mental health services, food, clothing, and legal assistance, to long-term services such as life skills training, employment assistance, continued legal assistance, independent permanent housing, and ongoing mental health services.⁷⁶ Despite the occasional administrative barrier to accessing some services, most survivors contacted during the study were satisfied with the services they received through the service providers.⁷⁷

The TVPA has shed some long overdue light on this especially brutal form of exploitation. Since the passage of the TVPA, prosecutions

68. *Id.* at § 7105(c)(1)(C).

69. *Id.* at § 7105(c)(3).

70. *See* Kittling, *supra* note 24, at 915.

71. 8 U.S.C. § 1255(l) (2000); *see also* CALIBER, *supra* note 65, at 24; Tanagho, *supra* note 30, at 914-15.

72. 8 U.S.C. § 1255(l)(C)(i). This frequently means that the victim will be required to testify against her trafficker. This requirement may be theoretically sound; however, forcing a victim to face her exploiter, in practicality, serves as a continuation of the abuse. *See* Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 395 (2005) (criticizing Congress for failing "to recognize that many of the most traumatized victims might be physically and psychologically incapable of providing cooperation with law enforcement").

73. CALIBER, *supra* note 65, at 65.

74. *Id.* at 3.

75. *See generally id.* (evaluating the comprehensive services provided to victims of human trafficking).

76. *Id.* at 24.

77. *Id.* at 71.

of human trafficking offenses have increased more than threefold.⁷⁸ However, while the TVPA and related legislation has attempted to attack the artery of the international trafficking industry, and in doing so has recognized that any criminal liability should fall on the adults exploiting these youth and not on the youth themselves, this revelation has remained applicable only to foreign national juveniles.⁷⁹ The TVPA provides services and protection to victims of exploitation who are foreign nationals trafficked into the United States, but its protective reach does not extend to United States citizens subjected to the same types of exploitation.⁸⁰

C. *Same Abuse, Different Treatment*

The exploitation and abuses suffered by foreign national and domestic prostituted juveniles are the same. Regardless of whether they are domestic or foreign nationals, both classes of youth have been forced into prostitution through manipulation, coercion, and deception.⁸¹ Regardless of whether they are domestic or foreign nationals, both classes of youth are legally unable to consent to participating in sexual activity, rendering any sexual activity they may engage in a form of child abuse.⁸² Regardless of whether they are domestic or foreign nationals, both classes of youth have been repeatedly abused, exploited, and need the help and protection of law enforcement and social service agencies.

The similarities between the foreign national and domestic youth end when they are discovered by law enforcement. The treatment and services provided to these youth upon their discovery by the legal system fall at opposite ends of the spectrum: One is seen as a criminal who has broken the law⁸³ and the other as a tortured sex slave.⁸⁴ One is placed in safe victim housing,⁸⁵ while the other is locked up in a detention center.⁸⁶ One is given protection from retribution-based attacks

78. See Tanagho, *supra* note 30, at 915.

79. See Kittling, *supra* note 24, at 915-16, 918.

80. *Id.*

81. See Hotaling et al., *supra* note 12, at 185 (discussing coercive tactics employed by pimps on domestic youth); Young, *supra* note 63, at 79 (discussing the varieties of coercion employed to traffic foreign nationals).

82. See Kreston, *supra* note 55, at 38.

83. See Finkelhor & Ormrod, *supra* note 44, at 2.

84. See Hotaling et al., *supra* note 12, at 187.

85. 22 U.S.C. § 7105(c)(1)(A) (2000).

86. See Lustig, *supra* note 2, at 39-40.

from their exploiter,⁸⁷ while the other is released directly into the hands of their abuser.⁸⁸ One is recognized as immune from criminal sanctions for acts of prostitution,⁸⁹ while the other is prosecuted.⁹⁰

A complicated web of legal, social, and psychological factors contributes to the underlying reasons for the differences in treatment of foreign national and domestic youth. Foreign nationals, because of immigration and foreign policy concerns, are handled under federal law.⁹¹ This creates a greater likelihood of consistency in the treatment they receive and the services that are provided to them.⁹² Domestic nationals, however, are subject to the individual state laws of the jurisdiction in which they are discovered.⁹³ Consequently, they are handled by localized state agencies, which can result in a great disparity between the treatment provided by individual jurisdictions. Since each state has its own statutory scheme governing the maximum age to qualify for original jurisdiction in the juvenile justice system,⁹⁴ and its own provisions prohibiting prostitution, a domestic national arrested in one state may face an entirely different set of legal challenges than a youth arrested in a neighboring state.

The overall attitude and psychological disposition of the individual youth are additional factors contributing to the differing treatment between the classes of youth. Foreign national youth are initially afraid and skeptical of interacting with law enforcement for fear of deportation.⁹⁵ This fear is increased for youth trafficked from countries that brutally stigmatize prostitutes.⁹⁶ The enactment of the TVPA has eradicated some of these concerns.⁹⁷ Once they comprehend that they will not be deported or subjected to criminal prosecution, foreign national victims are usually much more willing to cooperate with

87. 22 U.S.C. § 7105(c)(1)(C)(i).

88. Lustig, *supra* note 2, at 39; Audio tape: Lori Iskowitz, Assoc. Corp. Counsel, Queens County, Panel Discussion: Teen Prostitutes: Victims or Defendants? (Oct. 17, 2007) (on file with author).

89. *See* Lustig, *supra* note 2, at 38.

90. *Id.*

91. *See supra* notes 56-59 and accompanying text.

92. *See generally* CALIBER, *supra* note 65 (studying the services provided to foreign victims of human trafficking).

93. *See* Laura K. Langley, *Giving Up On Youth: The Dangers of Recent Attempts to Federalize Juvenile Crime*, 25 J. JUV. L. 1, 14 (2005) (pointing out that there is a presumption of state jurisdiction for juvenile delinquency).

94. *See supra* notes 38-39 and accompanying text.

95. *See* Young, *supra* note 63, at 93.

96. *Id.* at 94.

97. *See* Tanagho, *supra* note 30, at 914-15.

authorities.⁹⁸ Many of the foreign nationals were seeking legal means of entry into the United States when they were siphoned into the brutal world of sexual exploitation.⁹⁹ Once assured that they will be legally protected, most foreign nationals are willing to testify against their exploiters and provide valuable information to authorities seeking to build cases against the traffickers.¹⁰⁰

Alternatively, domestic nationals tend to be hostile and resistant to law enforcement and social workers that may try to convince them to leave their pimp.¹⁰¹ The psychological attachment that these youth develop to their pimps has been likened to Stockholm syndrome¹⁰² and a form of psychological paralysis.¹⁰³ The youth becomes so psychologically ingrained in the street culture as a means of survival that they may be unable to leave, even if presented with the opportunity to do so.¹⁰⁴ Norma Hotaling, the executive director and founder of the Standing Against Global Exploitation Project (“SAGE”), reports that according to a 1994 study she conducted, eighty-eight percent of the prostitutes surveyed felt they would be unable to leave their pimp.¹⁰⁵ Prosecutors note that in dealing with foreign national prostituted juveniles they find a sense of cooperation and appreciation while the prostituted domestic juveniles may be hostile and pose a significant flight risk.¹⁰⁶ These intensely complicated psychological profiles further establish that traditional social service and legal remedies are insufficient to aid domestic youth from leaving the exploitive realm of their abusers. A distinct difference from their foreign national counterparts, this contrast in psychological profiles is insufficient to

98. See CALIBER, *supra* note 65, at 64 (One victim pointed out that the “[m]ain thing was to stay here . . . [the] worst thing was to be deported back to [our home country], so staying here, we can deal with anything.”).

99. See Dill, *supra* note 28, at 13; Shaheen P. Torgoley, Comment, *Trafficking and Forced Prostitution: A Manifestation of Modern Slavery*, 14 TUL. J. INT’L & COMP. L. 553, 562 (2006); see also *MSNBC Undercover: Sex Slaves in America* (MSNBC television broadcast Dec. 3, 2007).

100. Audio tape: Pamela Chen, Deputy of Pub. Integrity, Crim. Div., U.S. Attorney’s Office, E.D.N.Y., Panel Discussion: Teen Prostitutes: Victims or Defendants? (Oct. 17, 2007) (on file with author).

101. KLAIN, *supra* note 35, at 18; Kreston, *supra* note 55, at 37.

102. See Farley, *supra* note 15, at 125 (defining Stockholm syndrome as a condition where a hostage identifies with her captor as a means of survival).

103. Hotaling et al., *supra* note 12, at 186.

104. *Id.* (“[P]sychological paralysis causes victims to feel unable to escape prostitution, even when offered other opportunities.”).

105. *Id.* (citing Norma Hotaling et al., *Been There Done That: SAGE, a Peer Leadership Model Among Prostitution Survivors*, 2 J. TRAUMA PRAC. 255, 261 (2003)).

106. See Chen, *supra* note 100; Clyde Haberman, *Helping Girls As Victims, Not Culprits*, N.Y. TIMES, July 8, 2008, at B1.

warrant the polar opposite treatment currently being served. Acknowledging that there are some differences in the presenting psychological and social framework of these youth allows for flexibility in developing their individualized service plans. However, these relatively minor differences between foreign and domestic nationals form an inadequate basis for treating one group of sexually exploited youth as victims and the other group of sexual exploited youth as criminal defendants.

The gross inequality in treatment between foreign national and domestic juvenile prostitutes must be rectified. Equality, however, does not require an identical prescription of services for both classes of youth. It is logical that there are services that foreign national youth may need which would not be appropriate for United States citizens. Immigration, residency, and documentation issues, for example, would be unnecessary for the domestic youth who are already documented citizens. Translation and language services would likely also be unnecessary for domestic youth, yet of fundamental importance to the foreign nationals.¹⁰⁷ The three major discrepancies between the treatments of prostituted youth that must be equalized include providing the domestic youth with immunity from criminal prosecution, safe victim housing, and intensive mental health services. Fundamental to overcoming the inequality is the recognition that juvenile prostitution is child abuse¹⁰⁸ and that these youth, regardless of whether they are United States citizens or foreign nationals, have all been victimized, exploited, and abused. These youth need to be in protective housing, removed from the culture that has virtually incapacitated them.¹⁰⁹ These youth have developed severe mental health conditions, such as dissociation and psychological paralysis that allowed them to survive the horrendous torture they endured on a daily basis.¹¹⁰ Intensive mental health services are essential.¹¹¹ Sporadic or even traditional mental health treatment will be insufficient to undo the significant damage these youth have endured. Finally, prostituted domestic youth, like their foreign national counterparts, must not be prosecuted for prostitution. It must be recognized that they are exploited, abused youth who are incapable of

107. See CALIBER, *supra* note 65, at 51.

108. See Kreston, *supra* note 55, at 39-40.

109. *Id.* at 40.

110. Hotaling et al., *supra* note 12, at 186; See, e.g., NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, FEMALE JUVENILE PROSTITUTION: PROBLEM AND RESPONSE 16-17 (2d ed. 2002) [hereinafter FEMALE JUVENILE PROSTITUTION] (one survivor describes a disassociate multiple personality disorder as a "survival technique").

111. Hotaling et al., *supra* note 12, at 189.

consenting to the sexual activity they are engaging in. Thus, holding them criminally liable for acts that they were forced to engage in is fundamentally inappropriate. The light being cast upon the horrors of international human trafficking is well deserved; however, it is leaving the domestic victims alone in the dark.

III. PROSTITUTED JUVENILES ARE VICTIMS OF CHILD ABUSE

Juvenile prostitution is an exchange of money or something of value for the performance of sexual activity by a minor.¹¹² Despite the blatant similarities to criminal child abuse statutes recognizing the abused youth as a victim,¹¹³ these youth are frequently being prosecuted and criminally sanctioned for prostitution.¹¹⁴ The appropriate classification for prostituted juveniles is as victims of child abuse, not criminal defendants. The following sub-Parts discuss the multitude of reasons for recognizing prostituted juveniles as victims of child abuse. Preliminarily, the criminal justice system itself is confused as to how these youth should be treated, as evidenced by the legislative inconsistencies between juvenile prostitution and statutory rape statutes. Further, the sheer fact that a juvenile is engaged in prostitution is sufficient to substantiate a prima facie case of child abuse or neglect founded on the liability of the parental units or other person responsible for the welfare of the child for failing to protect her from harm.

A. Juvenile Prostitution and Statutory Rape Statutes Are Irreconcilable

The act of engaging in sexual conduct with a minor is the definition of statutory rape.¹¹⁵ The minor is considered a victim of a sexually based

112. See, e.g., COLO. REV. STAT. ANN. § 18-7-401(6) (West 2004) (defining prostitution by a child as a “child performing or offering or agreeing” to engage in a sexual act “in exchange for money or other thing of value”); HAW. REV. STAT. § 712-1200(1) (1993) (“A person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person for a fee.”); LA. REV. STAT. ANN. § 14:82(A)(1) (2004) (defining prostitution as “indiscriminate sexual intercourse with others for compensation”); see also Kreston, *supra* note 55, at 37 (“Child prostitution is defined as the act of engaging or offering the services of a child to perform sexual acts for money or other consideration.”).

113. 42 U.S.C. § 5106g(4)(A) (2000) (defining sexual abuse to include “the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in . . . any sexually explicit conduct”); see also CAL. PENAL CODE § 11165.1(c) (West 2008) (one who “employs, uses, persuades, induces, or coerces a child . . . to engage in, prostitution”); NEV. REV. STAT. ANN. § 432B.110 (2008) (defining sexual exploitation, a form of sexual abuse, as “forcing, allowing or encouraging a child . . . [t]o solicit for or engage in prostitution”).

114. Javidan, *supra* note 47, at 237-38.

115. See, e.g., ARIZ. REV. STAT. ANN. § 13-1405(A) (2007) (“A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual

offense and the overage individual is subject to prosecution and criminal sanctions.¹¹⁶ While the motivating theory behind statutory rape has evolved over time, the current operating theory behind these statutory offenses is that persons under a specified age are unable to consent to sexual activity.¹¹⁷ It has been widely recognized that a juvenile's cognitive development does not allow for the same caliber decision-making as adults.¹¹⁸ Characteristically, juveniles are impulsive, susceptible to outside pressures, and do not have the ability to fully appreciate the consequences of their actions.¹¹⁹ Therefore, when one partner in a sexual exchange is below the age that has been determined to be capable of cognizable consent and the other has reached this specified age, the parties are operating on inherently uneven playing fields.¹²⁰ Legally, the judicial and legislative systems opt to protect the juvenile who is incapable of consenting and impose criminal sanctions on the overage actor.¹²¹

Statutory rape provisions prohibiting a juvenile from consenting to sexual activity are logically irreconcilable with juvenile prostitution statutes criminalizing a juvenile for engaging in the very same sexual activity they are incapable of participating in consensually.¹²² This

contact with any person who is under eighteen years of age.”); CAL. PENAL CODE § 261.5(a) (West 2008) (“Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor” and defining a minor as “a person under the age of 18 years”); GA. CODE ANN. § 16-6-3(a) (2007) (“A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years”); IDAHO CODE ANN. § 18-6101 (2004) (defining rape as penetration with the perpetrator’s penis “[w]here the female is under the age of eighteen (18) years”); KY. REV. STAT. ANN. § 510.020(3)(a) (LexisNexis 1999) (deeming a person incapable of consenting to a sex act if he or she is less than sixteen years old).

116. See Michelle Oberman, *Turning Girls Into Women: Re-Evaluating Modern Statutory Rape Law*, 8 DEPAUL J. HEALTH CARE L. 109, 132-33 (2004).

117. See *id.* at 119-32 (discussing the historical evolution of statutory rape laws); Kay L. Levine, *The Intimacy Discount: Prosecutorial Discretion, Privacy, and Equality in the Statutory Rape Caseload*, 55 EMORY L.J. 691, 709-11 (2006) (discussing the evolution of statutory rape statutes in the last twenty years).

118. *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)) (“[A] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”); Meiners-Levy, *supra* note 35, at 507 (specifically noting the effects of prior sexual abuse on a juvenile’s ability to “realize the inappropriateness or illegality of their sexual behavior”).

119. *Roper*, 543 U.S. at 569 (“[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”); Meiners-Levy, *supra* note 35, at 507.

120. See Levine, *supra* note 117, at 710-11.

121. See *id.*

122. Libby Adler, *An Essay on the Production of Youth Prostitution*, 55 ME. L. REV. 192, 204 (2003); cf. *In re Meagan R.*, 49 Cal. Rptr. 2d 325, 330 (1996) (holding a fourteen-year-old girl not

blatantly inconsistent legislation essentially finds that a juvenile is incapable of consenting to sexual activity¹²³ while simultaneously holding the same juvenile criminally liable for participating in the same sexual activity in exchange for money.¹²⁴ The introduction of an exchange of something of value to the situation does not justify the imposition of criminal sanctions against a victimized youth.¹²⁵ Prostituted youth are being exploited purely for the benefit of their pimp; as a result, they are generally prohibited from keeping any of the money they may appear to be making.¹²⁶ Frequently cited as an obstacle to leaving a pimp, prostituted youth are forced to immediately hand over whatever money they make to their exploiter and are abused if they refuse.¹²⁷ Further, introducing money to the situation does not create an ability to consent in an otherwise incompetent person.¹²⁸ The act of engaging in sexual activity with a juvenile, whether something of value is exchanged or not, is an act of child abuse and should be treated as such.¹²⁹

*B. The Parents of a Juvenile Who Is Being Prostituted
Are Liable for Child Abuse or Neglect*

Parents have an affirmative responsibility to protect their child from harm.¹³⁰ Despite the traditional “no duty” rule, which imposes no legal duty on persons to rescue or protect others from harm,¹³¹ a duty to act attaches to a parent because of the inherently special nature of a parent-

liable for aiding and abetting her own statutory rape because she “was the protected victim under . . . a provision designed to criminalize the exploitation of children rather than to penalize the children themselves”).

123. See *supra* note 115 and accompanying text.

124. See *supra* note 112 and accompanying text.

125. See generally Viviana A. Zelizer, *Money, Power, and Sex*, 18 YALE J.L. & FEMINISM 303, 306-07 (2006) (arguing that the introduction of an economic transaction to an intimate relationship is actually beneficial).

126. Kreston, *supra* note 55, at 38; see also FEMALE JUVENILE PROSTITUTION, *supra* note 110, at 16.

127. Hotaling et al., *supra* note 12, at 185.

128. See generally Heidi Kitrosser, *Meaningful Consent: Toward A New Generation of Statutory Rape Laws*, 4 VA. J. SOC. POL'Y & L. 287, 306-08 (1997) (discussing definitions of consent and non-consent in relation to statutory rape laws).

129. See Kreston, *supra* note 55, at 38.

130. Jeanne A. Fugate, Note, *Who's Failing Whom? A Critical Look at Failure-To-Protect Laws*, 76 N.Y.U. L. REV. 272, 276-79 (2001); Angelita Martinez, Note, *Parents as Mandatory Reporters of Child Abuse and Neglect: Establishing an Explicit Duty to Protect*, 51 WAYNE L. REV. 467, 472-74 (2005).

131. Martinez, *supra* note 130, at 470.

child relationship.¹³² A parent's failure to protect their child from harm can result in criminal liability,¹³³ as well as having significant ramifications in the child welfare system.¹³⁴ Parents who fail to protect their child from abuse can be found liable for neglect and may have their parental rights terminated.¹³⁵ Findings of neglect based on a failure to act are most likely to be made when one parent either allows a child to be abused by the other parent or a domestic partner or fails to intervene when they know abuse is occurring.¹³⁶

Having established that the act of juvenile prostitution is in violation of criminal child abuse statutes, the parents of prostituted youth would be guilty of failing to protect their child from abuse if they knew or should have known that their child was prostituting. Juvenile

132. Fugate, *supra* note 130, at 276; Martinez, *supra* note 130, at 470-71.

133. Fugate, *supra* note 130, at 276-77; Martinez, *supra* note 130, at 471; *See, e.g.*, C.G. v. State, 841 So. 2d 281, 291 (Ala. Crim. App. 2001) (affirming mother's conviction of sexual abuse in the first degree for failing to act when the child's father sexually abused her); *People v. Peters*, 586 N.E.2d 469, 476 (Ill. App. Ct. 1991) ("A parent who knowingly fails to protect its child from abuse may be prosecuted under the accountability statute and, thereby, becomes legally accountable for the conduct of the abuser."); *State v. Williquette*, 385 N.W.2d 145, 147 (Wis. 1986) (affirming a mother's conviction for two counts of child abuse for leaving her child with the other parent whom she knew to be abusive).

134. Fugate, *supra* note 130, at 277-78; *See, e.g.*, *People ex rel. T.G.*, 578 N.W.2d 921, 922 (S.D. 1998) (affirming the termination of a mother's parental rights for repeatedly placing her daughters in the care of known sexual molesters); *In re A.I.G.*, 135 S.W.3d 687, 690, 694 (Tex. Ct. App. 2003) (affirming termination of mother's parental rights after she placed her children with "persons who engaged in conduct which endangered the physical or emotional well-being of the children").

135. *See* 42 U.S.C.A. § 5106g(2) (2000). The Federal Child Abuse and Prevention Treatment Act ("CAPTA") sets a minimum standard that states must adhere to when defining child abuse and neglect. It provides that "the term 'child abuse and neglect' means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in . . . sexual abuse or exploitation." *Id.*; *see also* Martinez, *supra* note 130, at 468; *See, e.g.*, IOWA CODE ANN. § 232.116(d) (2006) (grounds for termination of parental rights "after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents") (emphasis added); MICH. COMP. LAWS ANN. § 712A.19b(3)(b)(ii) (2002) (terminating parental rights because "[t]he parent who had the opportunity to prevent the . . . sexual abuse failed to do so"); OKLA. STAT. tit. 10, § 7006-1.1(A)(10)(c) (2007) (terminating parental rights because "the parent . . . failed to protect the child . . . from physical or sexual abuse"); S.D. CODIFIED LAWS § 26-8A-26.1(7) (2004) (terminating parental rights of a parent who has "demonstrated an inability to protect the child from substantial harm or the risk of substantial harm"); TEX. FAM. CODE ANN. § 161.001(1)(D) (Vernon 2002) (terminating parental rights when a parent "knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child").

136. *See* Fugate, *supra* note 130, at 279-80; *see also* Ricki Rhein, Note, *Assessing Criminal Liability for the Passive Parent: Why New York Should Hold the Passive Parent Criminally Liable*, 9 CARDOZO WOMEN'S L.J. 627, 650-52 (2003) (discussing the treatment of passive parent liability by New York's Family Court Act).

prostitution is a form of child abuse.¹³⁷ If the parents knew or should have known that their child was being abused they have a duty to intervene and protect their child from harm.¹³⁸ Failing to protect their child from harm makes them liable for child abuse.¹³⁹ This form of liability would be most applicable for youth who are being prostituted while living with one or both parents¹⁴⁰ since their parents would likely be in a position to know or have reason to know that this type of sexual abuse is occurring.¹⁴¹ For runaway youth, defined as youth who leave home without permission and stay away overnight,¹⁴² this form of parental liability will likely be inapplicable since the parents would not be in a position to know the abuse is occurring.¹⁴³ “Thrownaway” youth, defined as youth asked or told to leave their home by a parent or prevented from returning home by a parent,¹⁴⁴ may be able to substantiate an abuse or neglect claim brought by the applicable child protective agency founded in the specifics of their individual situation.¹⁴⁵ Therefore, because of the special nature of a parent-child relationship and the affirmative duty legally imposed on parents to protect their child from harm, parents who live with their child while she is being

137. See *supra* notes 112-14 and accompanying text.

138. See *supra* note 135 and accompanying text.

139. See *supra* note 135 and accompanying text.

140. ESTES & WEINER, *supra* note 13, at 69 (pointing out that “a remarkable number of children . . . become victims of sexual exploitation while living in their own homes”).

141. See generally Lisa Lockwood, Comment, *Where Are the Parents? Parental Criminal Responsibility for the Acts of Children*, 30 GOLDEN GATE U. L. REV. 497, 506-08, 524 (2000) (discussing parental liability for acts of their children because of the special nature of a parent-child relationship).

142. Heather Hammer, et al., *Runaway/Thrownaway Children: National Estimates and Characteristics*, in NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWNWAY CHILDREN 2 (U.S. Dep’t of Justice, Office Juvenile Justice & Delinquency Prevention, Wash. D.C.) (2002) [hereinafter NISMART]. This bulletin extracts pertinent aspects of the empirical data gathered during the Second National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (“NISMART-2”), which operated during the years of 1997 to 1999. *Id.* at 1-2. During this timeframe, it is estimated that there were over 1.6 million incidents of runaway or thrownaway children. *Id.* at 5.

143. See RESTATEMENT (SECOND) OF TORTS § 316 (1965). Parents are vicariously liable for acts of their children if the parent “knows or has reason to know that he has the ability to control his child, and . . . knows or should know of the necessity and opportunity for exercising such control.” *Id.* If the child has run away, the parent is clearly unable to exercise control over the child and it is unlikely for parental liability to attach for acts by the child.

144. NISMART, *supra* note 142, at 2.

145. See Gregory A. Loken, “Thrownaway” Children and Throwaway Parenthood, 68 TEMP. L. REV. 1715, 1736-38 (1995) (discussing the high proportion of past abuse found in thrownaway children and the familial breakdown that occurs before a child is thrown out). For example, a thrownaway child’s situation may provide the grounds for a child protective agency to secure a finding of abuse or neglect against the parent for failing to provide shelter or food. See *id.*

prostituted, thereby having reason to know that their child is being abused, are liable for child abuse or neglect for failing to protect their child from harm.

*C. The Pimps Are Liable for Child Abuse and Neglect as Persons
Responsible for the Welfare of the Child*

Parents are not the only parties liable for committing acts of child abuse and neglect.¹⁴⁶ While the majority of child abuse and neglect cases stem from abuse at the hands of parents,¹⁴⁷ nonparental perpetrators committed over ten percent of the child abuse and neglect cases reported in 2005.¹⁴⁸ Statutory definitions of nonparental persons liable for child abuse and neglect vary from state to state.¹⁴⁹ However, language frequently includes caregivers,¹⁵⁰ persons exercising control over the child,¹⁵¹ and adults residing within the child's home.¹⁵² There is a common appreciation that there are adults involved in a child's life who,

146. ADMIN. FOR CHILDREN AND FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2005, at 29-30 (2007 ed.).

147. *Id.*

148. *Id.*

149. *See, e.g.*, ALASKA STAT. § 47.17.290(12) (2007) (“[a] ‘person responsible for the child’s welfare’ means . . . a person responsible for the child’s care at the time of the alleged child abuse or neglect”); ARK. CODE ANN. § 12-12-503(3) (2003) (“‘Caretaker’ means . . . any person responsible for a child’s welfare”); DEL. CODE ANN. tit. 10, § 901(3) (West 2006) (defining a responsible party as “a person or persons in a position of trust, authority, supervision or control over a child”); IOWA CODE ANN. § 232.68(7)(b) (2006) (responsible person includes “[a] relative or any other person with whom the child resides and who assumes care or supervision of the child”); KY. REV. STAT. ANN. § 600.020(42) (LexisNexis 1999) (“‘Person exercising custodial control or supervision’ means a person . . . that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child”); MISS. CODE ANN. § 43-21-105(g) (West 2007) (“‘Custodian’ means any person having the present care or custody of a child whether such person be a parent or otherwise.”); MO. ANN. STAT. § 210.110(16) (West 2004) (responsible parties include “those exercising supervision over a child for any part of a twenty-four-hour day”); S.C. CODE ANN. § 20-7-490(3) (2007) (“‘A person responsible for a child’s welfare’ includes . . . an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child.”); WASH. REV. CODE ANN. § 26.44.020(12) (West 2005) (allowing for child abuse petitions against “any person under circumstances which cause harm to the child’s health, welfare, or safety” and neglect petitions against “a person responsible for or providing care to the child”); WIS. STAT. ANN. § 48.981(a)(7) (West 2008) (defining caregiver to include “[a]ny other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child”).

150. *See* FLA. STAT. ANN. § 39.01(10) (West 2003); 325 ILL. COMP. STAT. ANN. 5-3 (West 2002); S.C. CODE ANN. § 20-7-490(3).

151. *See* DEL. CODE ANN. tit. 10, § 901(3)(e); KY. REV. STAT. ANN. § 600.020(42); MO. ANN. STAT. § 210.110(16); WIS. STAT. ANN. § 48.981(a)(7); WYO. STAT. ANN. § 14-3-202(a)(i) (2007).

152. *See* HAW. REV. STAT. § 350-1 (1993); 325 ILL. COMP. STAT. ANN. 5-3; MONT. CODE ANN. § 41-3-102(2) (2007); OKLA. STAT. tit. 10, § 7102(B)(5) (2008); 23 PA. CONS. STAT. ANN. § 6303(a) (West 2002); VT. STAT. ANN. tit. 33, § 4912(5) (2007).

despite a lack of parental or legal status, may be in a position where a special relationship of trust and dependence exists, and therefore, the imposition of a legal duty of care is appropriate.¹⁵³

The majority of juveniles being prostituted are homeless youth¹⁵⁴ who eventually turn to prostitution as a means of survival on the streets.¹⁵⁵ Many of them are running from abusive situations at home¹⁵⁶ and are especially vulnerable to the manipulation tactics employed by pimps.¹⁵⁷ Pimps frequently use a combination of feigned affection and intimidation to lure these youth into prostitution.¹⁵⁸ First, the pimps identify the youth's specific vulnerability.¹⁵⁹ They then proceed to exploit this knowledge by seducing the youth with the exact thing they crave.¹⁶⁰ Homeless youth will be given promises of shelter,¹⁶¹ youth running from an abusive home will be showered with compassion and affection,¹⁶² and drug addicts will be given a fix.¹⁶³ Upon winning the youth's trust and fostering a relationship of dependence, the pimp will then withhold or threaten to withhold the affection, shelter, drugs, or whatever the youth has become dependant upon, unless she begins prostituting.¹⁶⁴ If the youth refuses, the pimp will utilize threats of blackmail¹⁶⁵ and physical and emotional violence to coerce the youth into prostituting.¹⁶⁶ During this recruitment process, the pimp will

153. See *Fugate*, *supra* note 130, at 282-84; see also *In re Yolanda D.*, 673 N.E.2d 1228, 1231 (N.Y. 1996) ("[The applicable N.Y. Family Court Act sections] embody legislative recognition of the reality that parenting functions are not always performed by a parent but may be discharged by other persons, including custodians, guardians and paramours, who perform caretaking duties commonly associated with parents.").

154. *Javidan*, *supra* note 47, at 240; see also *ESTES & WEINER*, *supra* note 13, at 68 (explaining the reasons runaway and throwaway youth are at high risk for sexual exploitation).

155. It is important to note that many juveniles do not identify themselves as prostitutes or the sexual activity they participate in as prostitution. The juveniles often are trading on the only thing they know to have value in order to survive. See *Hanna*, *supra* note 35, at 12-13; *Javidan*, *supra* note 47, at 241; *Kreston*, *supra* note 55, at 39.

156. *NISMART*, *supra* note 142, at 8; *Hanna*, *supra* note 35, at 22; *Javidan*, *supra* note 47, at 240-41.

157. *Hotaling et al.*, *supra* note 12, at 185.

158. *FEMALE JUVENILE PROSTITUTION*, *supra* note 110, at 1.

159. *Id.*; see also *Hanna*, *supra* note 35, at 21; *Kreston*, *supra* note 55, at 39.

160. *FEMALE JUVENILE PROSTITUTION*, *supra* note 110, at 1; *Hanna*, *supra* note 35, at 21; *Kreston*, *supra* note 55, at 39.

161. *FEMALE JUVENILE PROSTITUTION*, *supra* note 110, at 1.

162. *Id.*; *Hanna*, *supra* note 35, at 21; see *Hotaling et al.*, *supra* note 12, at 185.

163. See *Hanna*, *supra* note 35, at 20.

164. *Id.* at 21; see also *Hotaling et al.*, *supra* note 12, at 185.

165. *FEMALE JUVENILE PROSTITUTION*, *supra* note 110, at 6, 29; *Kreston*, *supra* note 55, at 39.

166. See *Hanna*, *supra* note 35, at 21; *Kreston*, *supra* note 55, at 39; see also *Hotaling et al.*, *supra* note 12, at 185.

completely isolate the youth from her family and friends.¹⁶⁷ The pimp then becomes the sole provider of basic necessities such as food, shelter, and money, as well as emotional support and affection.¹⁶⁸ These debilitating scare tactics have been likened to the strategies employed by torturers¹⁶⁹ and batterers.¹⁷⁰

Through their manipulative, isolating techniques, pimps ensure that the youth they are recruiting become utterly dependant upon them for their every need.¹⁷¹ Despite a lack of legal status, these pimps are clearly taking on the role of the provider, the caregiver, to these youth.¹⁷² The juveniles may depend exclusively on their pimp for money, clothing, food, and shelter.¹⁷³ The youth turn to the pimps for emotional support as well as personal validation.¹⁷⁴ They are dependent on the pimp for their most basic needs. With child protective statutes already recognizing liability for acts of child abuse and neglect for nonparental units,¹⁷⁵ these pimps still may be held accountable for their abusive behavior. If a parent were to engage in the type and extent of abuses regularly employed by pimps, they would be charged with child abuse and neglect and potentially have their parental rights terminated.¹⁷⁶ In fact, within the last few years, the news has been peppered with reports of parents being arrested for selling or attempting to sell their children for sex.¹⁷⁷

167. See Hanna, *supra* note 35, at 20; Hotaling et al., *supra* note 12, at 185; Kreston, *supra* note 55, at 39.

168. FEMALE JUVENILE PROSTITUTION, *supra* note 110, at 20; Kreston, *supra* note 55, at 39.

169. Farley, *supra* note 15, at 124.

170. Hotaling et al., *supra* note 12, at 185.

171. See FEMALE JUVENILE PROSTITUTION, *supra* note 110, at 20; see also Kreston, *supra* note 55, at 39.

172. See FEMALE JUVENILE PROSTITUTION, *supra* note 110, at 20; see also Kreston, *supra* note 55, at 39.

173. See FEMALE JUVENILE PROSTITUTION, *supra* note 110, at 20.

174. See Evans, *supra* note 46, at 22; see also Feldman, *supra* note 1, at B6.

175. See *supra* note 149 and accompanying text.

176. See 42 U.S.C. § 5106g(2) (2000); See, e.g., ALA. CODE § 26-14-1(1) (1992); ALASKA STAT. § 47.17.290(2) (2006); ARIZ. REV. STAT. ANN. § 8-201 (2007); FLA. STAT. ANN. § 39.01(31) (West 2003); HAW. REV. STAT. § 350-1(2) (1993); KY. REV. STAT. ANN. § 600.020(1) (LexisNexis 1999); MONT. CODE ANN. § 41-3-102 (2007); NEV. REV. STAT. § 432B.110 (West 2008); WASH. REV. CODE ANN. § 26.44.020(12) (West 2005).

177. Amber Hunt & Dan Cortez, *Mom Charged With Offering 7-year-old Daughter for Sex*, DETROIT FREE PRESS, Apr. 1, 2007, available at http://www.neorunner.com/archive/2007/04/01/Mom_Charged_With_Offering_7_Year_Old_Daughter_for_Sex_Child_Could_Be_Phographed_or_Molested_for_C.php (last visited Sept. 17, 2008); Kelli Phillips & Bruce Gerstman, *Martinez Mom Allegedly Offers Child Online for Sex*, CONTRA COSTA TIMES (CAL.), Nov. 12, 2005, at F4; Marshall Spence, *Cops: Mom Sold Teen Daughters for Sex*, ORLANDO SENTINEL, Mar. 25, 2004, at B1; News Release, John F. Wood, U.S. Attorney, Office of the U.S. Attorney, W.D. Mo., Former Blue Springs Man, Woman Indicted For Sex Trafficking of a Child: Child Sold As Sexual

While pimps are not parental units, they should be held responsible for acts of child abuse or neglect. In New York, an uncle who did not live with the child, but hosted the child for six or seven visits at his home over the course of a summer, was deemed the “functional equivalent of [a] parent[.]” and therefore responsible for the welfare of the child.¹⁷⁸ In Kansas, a married couple that lived in the multi-family home with the abused child and her parents was held criminally liable for failing to intervene when the child was severely abused by her parents.¹⁷⁹ Pimps who recruit these youth into a life of sexual exploitation are taking on a parental-type role in the youth’s life and should be held accountable for the acts of abuse and neglect they commit.

The individual circumstances of the juvenile and the governing laws of the jurisdiction will dictate which theory of child abuse liability will be applicable to the specific situation. However, the theories articulated above will be relevant in a majority of cases. The logical inconsistency of the statutory rape and juvenile prostitution legislation is applicable any time an act of juvenile prostitution occurs. The child abuse liability of the parents and the pimps will depend on the facts of the individual situation. However, it is clear that the act of juvenile prostitution is enough to establish a *prima facie* case of child abuse or neglect in most cases.

IV. GETTING PROSTITUTED DOMESTIC JUVENILES THE SERVICES AND PROTECTIONS THEY NEED

The child welfare system is the most appropriate mechanism currently in place to address the needs of prostituted domestic juveniles as victims of child abuse. Once it is recognized that prostituted domestic juveniles are victims, not criminal offenders, the issue then shifts to determining the best way to provide them with the protection and support that they need to break free from the chains of sexual exploitation.¹⁸⁰ The child welfare or child protective system is accustomed to handling the needs of abused and neglected youth.¹⁸¹ With some minor adjustments to the classification of prostituted

Dominatrix For Both Online, In-Person Sessions (May 12, 2008) *available at* <http://www.usdoj.gov/usao/mow/news2008/barkau.ind.htm>.

178. *In re Yolanda D.*, 673 N.E.2d 1228, 1231-32 (N.Y. 1996).

179. *State v. Wilson*, 987 P.2d 1060, 1065 (Kan. 1999).

180. *See* Iskowitz, *supra* note 88.

181. *See generally* Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, in *CHILD WELFARE FOR THE TWENTY-FIRST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS* 10-46 (Gerald P. Mallon & Peg McCartt Hess, eds., 2005).

domestic juveniles, the child welfare system can provide these exploited youth with much needed services and protections.

A. *The Child Welfare System*

Children have been maltreated by those charged with their care since before the colonial days.¹⁸² In response to this longstanding concern, the child welfare system has been a slowly evolving mechanism attempting to deal with children whose parents, for whatever reason, are unable to adequately care for them.¹⁸³ With its humble beginnings as an unorganized collection of independent orphanages in the early 1900s¹⁸⁴ to the creation of foster homes in the mid-1900s, the current child welfare system began to take shape upon the enactment of CAPTA by the federal government in 1974.¹⁸⁵ Amended six times since its enactment, CAPTA was most recently amended and reauthorized by the Keeping Children and Families Safe Act of 2003.¹⁸⁶ The current legislative framework requires compliance with a national clearinghouse for information regarding child abuse,¹⁸⁷ provides federal money to states for child abuse research,¹⁸⁸ prevention, and treatment programs,¹⁸⁹ and for the investigation and prosecution of child abuse.¹⁹⁰

Essentially, the government uses its *parens patriae* authority to intervene within a family and aid in the protection of maltreated children.¹⁹¹ The goal, upon government intervention within a familial unit, is to provide “child protective services” that will aid in the protection of an abused or neglected child and to remediate the family situation so that it is safe for the child in the home.¹⁹² These services can range from family preservation services aimed at keeping the family unit intact (for example, family counseling and parenting classes) to support and removal services if the child needs to be placed outside the family

182. *See id.* (providing a comprehensive discussion of the history of the child welfare system).

183. *Id.* at 10.

184. *Id.* at 13.

185. 42 U.S.C. §§ 5101-19 (2000); Donald N. Duquette, *Looking Ahead: A Personal Vision of the Future of Child Welfare Law*, 41 U. MICH. J.L. REFORM 317, 319 (2007).

186. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., ABOUT CAPTA: A LEGISLATIVE HISTORY 1 (2004), available at <http://www.childwelfare.gov/pubs/factsheets/about.pdf>.

187. 42 U.S.C. § 5104.

188. *Id.* § 5105.

189. *Id.* § 5105(b).

190. *Id.* § 5106c.

191. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 642 (2006).

192. *See id.* at 642; Lois A. Weithorn, *Envisioning Second-Order Change in America’s Responses to Troubled and Troublesome Youth*, 33 HOFSTRA L. REV. 1305, 1344 (2005).

home (for example, foster care, individual counseling, parental, and sibling visitation).¹⁹³

The child welfare system continually struggles with balancing the tension between competing parental rights and a child's individual rights.¹⁹⁴ Parents have a constitutionally protected right to raise their children as they see fit.¹⁹⁵ However, the Supreme Court has repeatedly spoken about when the government is constitutionally permitted to intervene.¹⁹⁶ While CAPTA establishes minimum child welfare standards that are tied to federal funding, the actual child welfare systems are state entities, organized and administered by each state's governing statutory provisions.¹⁹⁷ Therefore, each state has specifically defined situations where intervention is permitted.¹⁹⁸ Variations occur from state to state, but the primary situation allowing for government intervention is after the filing of a report of suspected child abuse or neglect.¹⁹⁹ Individuals obligated by law, such as doctors and teachers, or individuals who are simply in a position of having knowledge that abuse

193. Weithorn, *supra* note 192, at 1344.

194. *See, e.g.*, JILL GOLDMAN ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., A COORDINATED RESPONSE TO CHILD ABUSE AND NEGLECT: THE FOUNDATION FOR PRACTICE 51-52 (2003); Huntington, *supra* note 191, at 643 ("A central tension in the current system is whether to give greater primacy to parents' rights or a strain of children's rights.")

195. GOLDMAN ET AL., *supra* note 194, at 51.

196. *Id.* at 52; *see, e.g.*, Prince v. Massachusetts, 321 U.S. 158, 168-70 (1944) (the government is permitted to intervene in cases of child labor); Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925) (parents have a right to choose to send their child to a private, secular school and the government cannot mandate that a child attend public school); Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (parents are allowed to make reasonable choices regarding their child's education, free from government intervention).

197. *See* GOLDMAN ET AL., *supra* note 194, at 55; Weithorn, *supra* note 192, at 1323.

198. *See, e.g.*, ALA. CODE § 26-14-3 (1992) (allowing for intervention after a report of suspected child abuse or neglect); ARIZ. REV. STAT. ANN. § 8-532 (2007) (establishing jurisdiction over any cases involving the termination of parental rights); COLO. REV. STAT. ANN. § 19-1-104 (West 2005) (establishing jurisdiction for cases involving neglected children and petitions for termination of parental rights); FLA. STAT. ANN. § 39.013(2) (West 2003) (providing jurisdiction over dependant children); IDAHO CODE ANN. § 16-1603(1) (2007) (establishing jurisdiction over neglected, abused, or homeless children); IND. CODE ANN. § 31-30-1-1 (West 1999) (detailing a variety of situations where the juvenile court may establish original jurisdiction, including cases of delinquent children and children in need of services); MISS. CODE ANN. § 43-21-151(1) (West 2007) ("The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child . . ."); MONT. CODE ANN. § 41-3-103 (2007) (providing original jurisdiction over abused and neglected children); NEV. REV. STAT. § 432B.330 (West 2008) (holding a child to be "in need of protection" and therefore under the jurisdiction of the court if she has been abandoned or subjected to abuse or neglect); TENN. CODE ANN. § 37-1-103 (2005) (providing original jurisdiction in cases of delinquent, abused, or neglected children, in addition to cases where a parent or guardian has violated his or her parental responsibilities).

199. GOLDMAN ET AL., *supra* note 194, at 55.

may be occurring can make these reports.²⁰⁰ After a report is made, child protective workers will initiate an investigation into the claims of abuse or neglect and determine whether it is safe for the child to remain in the family home or if removal is necessary.²⁰¹ After the investigation, the caseworker will make a recommendation for specific services based on his or her findings.²⁰²

Child welfare systems are designed to serve the specific needs and meet the individualized goals of each child that comes before them. A young child who is removed from the home after a remedial allegation, such as educational neglect (where a parent fails to ensure that his or her child attend a mandatory number of school days), may have the goal of returning home as soon as possible. Therefore, family reunification services would be ordered and the child's case plan would reflect this goal. Older youth who have been in foster care for several years, or youth who suffered egregious abuses, may feel reunification is inappropriate and instead strive to live independently and become self-supporting. Youth with special needs, such as physical or mental impairments, can be placed in therapeutic foster homes where the adults are skilled in dealing with special needs youth.²⁰³ Female youth who are pregnant at the time of investigation or who become pregnant while in foster care can be placed in maternity homes and provided with appropriate pre- and post-natal care.²⁰⁴ Fundamentally, the goals for each child and the services provided are determined by and tailored to the specific needs of the individual child.

200. Mandatory reporters frequently include doctors, teachers, social workers, and childcare providers. *See, e.g.*, ALA. CODE § 26-14-3(a) (1992); ARIZ. REV. STAT. ANN. § 13-3620(A) (2007); IOWA CODE ANN. § 232.69 (2006); MICH. COMP. LAWS ANN. § 722.623 (2002). Some states require all citizens to report suspected child abuse. *See* DEL. CODE ANN. tit. 16, § 903 (West 2006); FLA. STAT. ANN. § 39.201(1)(a) (West 2003); IND. CODE ANN. § 31-33-5-1 (West 1999); KY. REV. STAT. ANN. § 620.030(1) (LexisNexis 1999); MD. CODE ANN., FAM. LAW § 5-705 (LexisNexis 2006). Permissible, but not mandated, reporters include individuals having reasonable cause to believe a child is being abused or neglected. *See, e.g.*, ALA. CODE § 26-14-4 (1992); ARIZ. REV. STAT. ANN. § 13-3620(C); MICH. COMP. LAWS ANN. § 722.624; MINN. STAT. ANN. § 626.556(3)(b) (2003).

201. For a detailed explanation of the child protective process, see GOLDMAN ET AL., *supra* note 194, at 59-72.

202. *See id.* at 70.

203. Weithorn, *supra* note 192, at 1499-1500.

204. For an in-depth discussion of the rights of pregnant youth in foster care and the myriad of laws covering the issue, see generally Eve Stotland & Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. FLA. J.L. & PUB. POL'Y 1 (2006).

*B. Establishing Jurisdiction for the
Child Welfare System to Provide Services*

As mentioned previously, child welfare systems are state entities.²⁰⁵ Therefore, the specific jurisdictional requirements will vary depending on the governing statutory provisions. However, there are three common theories that will generally be applicable to establishing proper jurisdiction for the child welfare system to intervene on behalf of a prostituted domestic youth. Remembering that the aim is to obtain jurisdiction to provide services and support to the prostituted youth, these theories are best viewed simply as vehicles for placing the youth within the protective reach of the child welfare system.

1. The Parents

Acts or omissions by a parental unit amounting to abuse or neglect establish jurisdiction for the child welfare system.²⁰⁶ As discussed in Part III, parents have an affirmative duty to protect their child from harm.²⁰⁷ If they fail to do so, the state has the authority to intervene on behalf of the abused or neglected child.²⁰⁸ Once a report of suspected child abuse or neglect is made, the investigative agency has the authority, and obligation, to determine whether the allegations can be substantiated.²⁰⁹ During the course of the investigation, the child protective worker makes findings regarding the child's safety and has the authority to remove the child from the home at that point.²¹⁰ Regardless of whether the child is removed from the home or not, services may be ordered for the child.²¹¹

As noted previously, this theory of liability will likely only be applicable for youth being prostituted while living with their parents.²¹² Runaway or throwaway youth may be discovered by the child protective system in a different state from that of the parents' residence. While most runaway or throwaway youth stay within a fifty-mile radius of their home, many do cross state lines.²¹³ As state agencies, proper jurisdiction would only be obtainable for the parents that are

205. See *supra* notes 197-98 and accompanying text.

206. GOLDMAN ET AL., *supra* note 194, at 55.

207. See discussion *supra* Part III.B.

208. GOLDMAN ET AL., *supra* note 194, at 55.

209. *Id.* at 55, 66.

210. *Id.* at 66.

211. *Id.*

212. See *supra* notes 138-41 and accompanying text.

213. See NISMART, *supra* note 142, at 6-7.

within the territory of that state.²¹⁴ The child welfare system is founded on the understanding that parents are the primary parties responsible for the health and safety of their child; therefore, a report of abuse or neglect by a parent is the most logical theory for establishing jurisdiction.

2. The Pimps

Each state's child welfare statutory framework includes the right to assert jurisdiction over a person other than a parent for acts or omissions constituting child abuse or neglect.²¹⁵ As discussed in Part III, the requirements for finding a sufficient relationship exists to justify the imposition of a duty to protect the child from harm vary from state to state.²¹⁶ However, for runaway and throwaway youth who have been sufficiently separated from their parents to frustrate the establishment of jurisdiction under a theory of parental liability, this theory is especially important.

The CAPTA definition of child abuse and neglect includes acts or omissions of caretakers, not just parents.²¹⁷ The largest obstacle in establishing jurisdiction for the child welfare system via the prostituted juvenile's exploiter will be showing that the exploiter in fact assumed a caretaking role. Jurisdictional requirements for establishing a caretaker relationship will undoubtedly vary; however, the traditional primary caretaker principle as applied in child custody cases utilizes some distinct indicators that an individual has undertaken a caretaking role.²¹⁸ Generally, an individual who is responsible for providing meals and clothing, aiding in personal hygiene, arranging transportation, and medical care is designated the primary caretaker.²¹⁹ This standard, however, is most frequently applied in determining which of two parents assumes the primary child-rearing role, so it is a far higher standard than the requirements for establishing that an exploiter has taken on a parental-type role. If it can be shown that the pimp has taken on some of the duties of a primary caretaker, he will likely meet the lower statutory requirements for child abuse and neglect liability.

214. See HON. WILLIAM G. JONES, U.S. DEP'T OF HEALTH & HUMAN SERVS., WORKING WITH THE COURTS IN CHILD PROTECTION 7 (2006).

215. See *supra* note 149-53 and accompanying text.

216. See *supra* notes 149-53 and accompanying text.

217. 42 U.S.C. § 5106g(2) (2000).

218. See Kathryn L. Mercer, *A Content Analysis of Judicial Decision-Making—How Judges Use the Primary Caretaker Standard to Make a Custody Determination*, 5 WM. & MARY J. WOMEN & L. 1, 5 (1998).

219. *Id.*

A concern in utilizing the pimp as a means for establishing jurisdiction is the philosophical perspective of the child welfare system. As a system created to aid families by providing services frequently geared toward rehabilitation and family reunification, pimps will likely be bad candidates for services. Given the severity of child sexual exploitation, it is far more appropriate to deal with the pimps through the criminal justice system. However, this does not prevent the child welfare system from ordering services for the exploited youth. Further, in cases of abuse, the child welfare system may issue an order of protection against the abuser; this order essentially serves as the “service” provided to the abuser.²²⁰ The issuance of an order of protection would be absolutely appropriate in cases of prostituted juveniles and would allow for the ordering of services for the victimized youth.

3. The Prostituted Youth

Lying in the overlap between the child welfare and the juvenile justice systems remains a final theory for achieving jurisdiction over prostituted domestic youth: status offenses. Status offenses are classifications under juvenile delinquency law that would not amount to a violation of the penal code if committed by an adult.²²¹ Running away, truancy, curfew violations, and alcohol possession are common status offenses.²²² Some state statutes also include broad definitional offenses such as a juvenile being “ungovernable”²²³ or displaying inappropriate, unruly, or disobedient behavior.²²⁴ With many offenses falling within the scope of status offenses, terminology has developed to describe the class of status offenses and the juvenile status offenders as a whole. States frequently employ terms like “person in need of supervision” (“PINS”) and “children in need of services” (“CHINS”) to describe the class of status offenses.²²⁵ Essentially, any person with reasonable knowledge of the youth’s behavior, such as a parent, teacher, or police officer, can file

220. See, e.g., Theo Leibmann, *Family Court and the Unique Needs of Children and Families Who Lack Immigration Status*, 40 COLUM. J.L. & SOC. PROBL. 583, 595-96 (2007) (detailing a child abuse case where an order of protection was issued against a domestic violence perpetrator).

221. Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN’S L.J. 165, 166 (2004); Kedia, *supra* note 52, at 543.

222. Humphrey, *supra* note 221, at 166.

223. See, e.g., FLA. STAT. ANN. § 984.226(6) (West 2006); N.Y. JUD. CT. ACTS LAW § 712(a) (McKinney 1999).

224. Humphrey, *supra* note 221, at 167; Kedia, *supra* note 52, at 543.

225. Humphrey, *supra* note 221, at 168; Kedia, *supra* note 52, at 544-45.

a status offense petition against the child.²²⁶ The child is brought before the court and jurisdiction of the juvenile justice and child welfare system is established.²²⁷ Once the petition has been initiated, the child's progression through the state's PINS or CHINS procedure will vary based on a number of factors, including the alleged offense and family situation.²²⁸ The youth may be sent directly to a social service agency that would place her in a shelter, group home, or foster care, while other youth are returned home.²²⁹

The detention of status offenders and the judicial tendency to "bootstrap" the status offense into a juvenile delinquency violation is a heated topic, heavily debated by juvenile justice scholars.²³⁰ For the purpose of the prostituted youth, the PINS or CHINS process provides an opportunity for the child welfare system to achieve jurisdiction over the endangered youth and order the services needed to aid the youth in breaking free from the grasp of exploitation. New York's recently enacted Safe Harbor for Exploited Children Act, discussed in further detail in Part V, utilizes the PINS process to establish jurisdiction over prostituted domestic juveniles.²³¹ A prominent concern among legal professionals is that classifying the juvenile as a status offender still stigmatizes the youth as having done something wrong, an incorrect approach to dealing with the victim of a sex crime.²³²

Another concern raised by placing prostituted youth under a PINS umbrella is the lack of secure housing.²³³ The Juvenile Justice and Delinquency Prevention Act ("JJDPA") enacted by Congress in 1974,²³⁴ prohibits states from institutionalizing status offenders in juvenile detention facilities.²³⁵ Though heavily criticized by legal scholars and practitioners alike, the JJDPA, through its subsequent reauthorizations,

226. See Matthew Kogan, Note, *The Problems and Benefits of Adopting Family Group Conferences for PINS (CHINS) Children*, 39 FAM. CT. REV. 207, 210 (2001).

227. See *id.*

228. Kedia, *supra* note 52, at 557-58.

229. *Id.* at 558.

230. See Humphrey, *supra* note 221, at 170; Jonathan C. Juliano, *Detention of Persons in Need of Supervision: The Dilemma in Grounding the Flight of the Fleet-Footed Status Offender*, 13 J. SUFFOLK ACAD. L. 95, 99 (1999); Kedia, *supra* note 52, at 559.

231. See B. A10296, 2008 Leg., Reg. Sess. (N.Y. 2008); B. S06747, 2008 Leg., Reg. Sess. (N.Y. 2008); see also Haberman, *supra* note 106.

232. See Valerie Bauman, *NY Considers Help to Victims of Child Prostitution*, ASSOCIATED PRESS, July 2, 2008; Editorial, *Help For Exploited Children*, N.Y. TIMES, June 20, 2008, at A20.

233. Editorial, *supra* note 232; Haberman, *supra* note 106.

234. 42 U.S.C. § 5601 (2000).

235. Kedia, *supra* note 52, at 556.

remains in effect today.²³⁶ Status offenders may be placed in group homes or medium security facilities,²³⁷ but exploited youth with deep ties to their street communities are likely to run away. The concerns about secure detention and status offender stigmatization are valid. Instituting a status offender petition against a prostituted youth is far from a perfect solution. However, for a prostituted youth suffering abuse, exploitation, and brutalization, the status offender process establishes jurisdiction and acts as a first step toward getting the support and services so desperately needed.

V. SOLVING THE SERVICES PROBLEM FOR THESE SPECIAL YOUTH

The child welfare system is not without flaws. There are upwards of half a million children in the nation's foster care system at any given moment.²³⁸ Currently, approximately half of the children in foster care spend at least two years in the system, with the average child moved between at least three different residential placements.²³⁹ Youth placed in foster care are aging out of the system without the fundamental skills needed to succeed in life, such as getting an apartment, keeping a job, or going to college.²⁴⁰ The sad fact is that one out of every four foster youth will be incarcerated within the first two years of leaving the system.²⁴¹ Further, a system designed to prevent reoccurring abuses, youth generally do not come into contact with the child welfare system until after being abused or neglected.²⁴² With devastatingly sensational cases like the 2006 killing of Nixzmary Brown,²⁴³ the news media is quick to

236. *Id.*; see also 42 U.S.C. § 5601.

237. Kedia, *supra* note 52, at 556.

238. Miriam Aroni Krinsky, *A Case For Reform of the Child Welfare System*, 45 FAM. CT. REV. 541, 541-42 (2007).

239. *Id.* at 542.

240. *See id.*

241. *Id.*

242. See Weinthorn, *supra* note 192, at 1344. A recent report of commercially sexually exploited youth in New York indicates that an overwhelming majority of victims (eighty-five percent) had involvement with the child welfare system prior to being exploited. FRANCES GRAGG ET AL., N.Y. STATE OFFICE OF CHILDREN AND FAMILY SERVS., NEW YORK PREVALENCE STUDY OF COMMERCIALY SEXUALLY EXPLOITED CHILDREN 42 (2007).

243.

On January 12, seven-year-old Nixzmary Brown was found beaten to death in her home. [Administration for Children's Services ("ACS")] had investigated Nixzmary's situation twice in the past, but nevertheless, she had remained in the home. Her death marked the fourth time in a two-month period that a child that was previously known to ACS died in the custody of a parent. This poor track-record of New York child welfare agencies, coupled with the particularly troubling facts of Nixzmary's death, swept the media and the public into an uproar. The mayor called for investigations of ACS policy, and for

report on the public failings of the child welfare system.²⁴⁴ In the case of prostituted juveniles, many of these youth have already been through the child welfare system and it has failed them.²⁴⁵ While it is outside the scope of this Note to attempt to reform the child welfare system, it is possible to tailor the current system to provide the necessary services for this special class of youth.

A. *These Are Special Needs Youth*

Sexual exploitation and prostitution are not victimless crimes. They leave indelible scars on the youth being bought and sold for the benefit of another. Sexual victimization is frequently coupled with any combination of physical and mental abuses. Victims are likely to be repeatedly raped (both vaginally and anally) and beaten,²⁴⁶ leading to an increase in the likelihood of contracting sexual transmitted diseases, hepatitis, and HIV, in addition to suffering broken bones and other physical traumas.²⁴⁷ Statistics indicate that female prostitutes are raped by their male customers on average thirty-one times each year.²⁴⁸ Reports of sexual torture, including being burned, gagged, bound, hung, and physically mutilated are not uncommon.²⁴⁹ Psychologically, prostituted youth are at an increased risk for depression, suicide, Post-Traumatic Stress Disorder, and a variety of neuroses.²⁵⁰ Many “victims speak of a trauma so deep that [they] are unable to enter or return to a normal way of life.”²⁵¹ Employing dissociation techniques to separate themselves from daily trauma can lead to permanent mental health

weeks newspapers ran articles discussing the political fallout and heightened scrutiny of ACS.

Robert May, Note, *Derivative Neglect in New York State: Vague Standards and Over-Enforcement*, 40 COLUM. J.L. & SOC. PROBS. 605, 620 (2007).

244. See, e.g., Charlie Cooper, *State Must Reform System to Ensure Kids Have Safe Home*, BALTIMORE SUN, Jan. 15, 2008, at A11; Leslie Kaufman, *Foster Children at Risk, and an Opportunity Lost*, N.Y. TIMES, Nov. 5, 2007, at A1.

245. See, e.g., Evans, *supra* note 46, at 22; Lustig, *supra* note 2, at 38 (Lucilia spent her first five years in foster homes.).

246. See, e.g., ESTES & WEINER, *supra* note 13, at 55.

247. See *id.* at 51.

248. Mia Spangenberg, ECPAT-USA, *Prostituted Youth in New York City: An Overview*, 2001, at 10, available at <http://www.ecpatusa.org/pdfs/prostitutedyouthinnyc.pdf>.

249. See Hunter, *supra* note 17, at 93-94.

250. Mary P. Alexander et al., *Community and Mental Health Support of Juvenile Victims of Prostitution*, in 1 MEDICAL, LEGAL, & SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION 397, 398 (2005).

251. Sheila Jeffreys, *Challenging the Child/Adult Distinction in Theory and Practice on Prostitution*, 2 INT'L FEMINIST J. POL. 359, 365 (2000) (quoting THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA 177 (Lin Lean Lim, ed. 1998)).

problems.²⁵² These youth have suffered significant, lasting damage resulting from continued sexual exploitation.

The term “special needs” encompasses a variety of physical and mental health issues affecting a child.²⁵³ Common physical conditions falling under the special needs category include asthma, respiratory problems, epilepsy, and skin diseases such as eczema.²⁵⁴ Frequent nonphysical conditions include learning disabilities, emotional disturbances, or speech impairments.²⁵⁵ The Federal Maternal and Child Health Bureau’s Division of Services for Children With Special Health Care Needs has defined children with “special health care needs” as children “who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.”²⁵⁶ Factors involved in determining whether a child is at an increased risk for developing a chronic condition include exposure to child abuse, extreme poverty, and an absence of social support.²⁵⁷ Importantly, this definition recognizes that preventive services are key for children with an increased risk and includes children who have not yet been diagnosed with a special needs condition.²⁵⁸

This broad definition allows for the incorporation of youth in the special health needs classification based solely on a determination that the youth is at an increased risk for developing a special needs condition. When prostituted juveniles are discovered by law enforcement and come before the child welfare system, it is highly unlikely they will have been diagnosed as having special needs. In analyzing whether a prostituted juvenile is at an increased risk for developing a special health needs condition, the juvenile’s situation must be viewed through a multi-dimensional lens. First, this is a child that has been physically abused. Scientific research shows that the physical abuse of a child has tangible

252. See generally Jennifer S. Nam, Note, *The Case of the Missing Case: Examining the Civil Right Action for Human Trafficking Victims*, 107 COLUM. L. REV. 1655, 1684 (2007) (discussing the inability of some trafficking victims to aid in the prosecution of their exploiters due to lasting mental trauma as a result of employing dissociation techniques).

253. NAT’L SURVEY OF CHILD & ADOLESCENT WELL-BEING, RESEARCH BRIEF NO. 7: SPECIAL HEALTH CARE NEEDS AMONG CHILDREN IN CHILD WELFARE 2, available at http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/special_health/special_health.pdf [hereinafter RESEARCH BRIEF].

254. *Id.*

255. *Id.*

256. Merle McPherson et al., *A New Definition of Children With Special Health Care Needs*, 102 PEDIATRICS 137, 138 (1998).

257. *Id.*

258. *Id.* at 139.

effects on the child's neurological development and increases the likelihood that the child will develop crippling mental health disorders later in life.²⁵⁹ Secondly, this is a child who has been prostituted. Prostitutes, as a group, are at high-risk for contracting chronic sexually transmitted diseases, such as HIV.²⁶⁰ Additionally, they are at a great risk for serious bodily injury as a result of rape, torture, and kidnapping,²⁶¹ as well as the plethora of mental conditions that may develop as a result of the trauma. Finally, this is a child who has been commercially sexually exploited. Commercially sexually exploited children have essentially been enslaved and therefore, are much more likely to develop serious mood, anxiety, and substance abuse disorders.²⁶² Depression, Post-Traumatic Stress Disorder, and social or simple phobias are common in adult survivors of commercial sexual exploitation.²⁶³ Prostituted juveniles are subjected to a mixed cocktail of physical, emotional, and sexual abuse that substantially increases their likelihood of developing a physical or mental health condition that requires special services. Therefore, they must be classified as youth with special health needs.

B. Providing Specialized Services for Special Needs Youth

An ongoing governmental study of the well-being of children and adolescents acknowledges that children living with special health care needs require extensive health and social services.²⁶⁴ Each state has its own statutory provisions relating to the distribution of these services; however, a common theme is that an individual child's case plan should be crafted in the best interest of the child, including a sensitivity to any special needs.²⁶⁵ A 2006 study of commercially sexually exploited children in New York asked social service and law enforcement agencies that come into contact with sexually exploited youth what type of

259. See Debra Niehoff, *Invisible Scars: The Neurobiological Consequences of Child Abuse*, 56 DEPAUL L. REV. 847, 874-75 (2007).

260. See David J. Carter & Rochelle L. Dalla, *Transactional Analysis Case Report: Street-Level Prostituted Women as Mental Health Care Clients*, 13 SEXUAL ADDICTION & COMPULSIVITY 95, 99 (2006).

261. *Id.*

262. ESTES & WEINER, *supra* note 13, at 54.

263. *Id.*

264. RESEARCH BRIEF, *supra* note 253, at 1.

265. See, e.g., DEL. CODE ANN. tit. 29, § 9003(4) (West 2006); GA. CODE ANN. § 15-11-58(c)(2) (2005); IND. CODE ANN. § 31-34-15-4(2) (West 1999); MICH. COMP. LAWS ANN. § 712A.18f(3) (2002); MINN. STAT. ANN. § 260C.212 (West 2007); TEX. FAM. CODE ANN. § 263.102(a) (Vernon 2002).

specialized services these youth need.²⁶⁶ Mental health counseling and medical care were the two most frequently listed specialized services, followed by crisis shelters, legal advocacy, residential services, and case management.²⁶⁷ Additionally, the lack of housing for commercially sexually exploited youth was raised as a significant concern for service providers.²⁶⁸

Given the shocking prevalence of sexually exploited youth across the country and the understanding that traditional services will not be sufficient to properly aid these special needs youth,²⁶⁹ therapeutic safe houses will provide the most efficient solution to the services problem. Ideally, these therapeutic safe houses would be geographically removed from the pervasive street culture that has a hold over the youth. The locations would be highly confidential, akin to domestic violence shelters, so that the youth could be assured of privacy. Staffed primarily by specially trained social workers, mental health professionals, and peer counselors, the therapeutic safe houses would provide around-the-clock support for youth struggling to break free from the chains of exploitation. Legal advocates and medical professionals would come to the safe house during the day to provide services directly to the youth at the residence. Once a youth has been empowered to recognize that she was exploited and that she has the power to exert control over her own life, services may shift toward providing skills for success in the real world. Renowned service provider, Girls Educational and Mentoring Services (“GEMS”), reports success with their peer leadership program where survivors of sexual exploitation are given the opportunity to reach out directly to others currently being exploited.²⁷⁰

Establishing a safe house where all services can be tailored to sexually exploited youth is the most efficient way to provide the breadth of services these youth require. It will solve the housing problem complained of by many service providers.²⁷¹ Further, it will be easier to provide the intensive mental health counseling these youth need with

266. GRAGG ET AL., *supra* note 242, at 66.

267. *Id.* at 68.

268. *Id.* at 73.

269. AL HOFSTEDE ET AL., THE HOFSTEDE COMMITTEE REPORT: JUVENILE PROSTITUTION IN MINNESOTA 2 (1999), available at [www.heart-intl.net/HEART/080105/Juvenile ProstitutionMinn.pdf](http://www.heart-intl.net/HEART/080105/Juvenile%20ProstitutionMinn.pdf).

270. *Voices of Our World: Empowering the Working Girls* (Maryknoll radio broadcast Oct. 8, 2006), available at <http://www.voicesofourworld.org/current.cfm?showID=293> (interview with Rachel Lloyd, founder of GEMS, discussing the direct services they provide to sexually exploited youth).

271. See *supra* notes 268-69 and accompanying text.

mental health professionals staffing the residence twenty-four hours a day. The legislature and child welfare system may initially balk at the recommendation on the basis that therapeutic safe houses are too expensive. However, a simple cost-benefit analysis performed by the appropriate local legislative agency should put this concern to rest. If the money currently allotted for an abused child for residential placement (including any subsidies provided to foster parents), mental health counseling, medical services, educational resources, and any special needs services is rolled into one lump sum and multiplied by the number of sexually exploited youth, it seems clear that establishing therapeutic safe houses is the most cost-efficient way to provide the services these youth so desperately need. This determination would need to be made based on the individual budget allocations of each state. However, the long-term investment in a permanent therapeutic facility is likely to be the most cost-efficient solution.

VI. CONCLUSION

While there have been excellent strides by the federal government to recognize that juvenile prostitution is child abuse, more needs to be done to protect our prostituted domestic youth. The child welfare system is the best system currently in place to address the needs of domestic prostituted juveniles; however, this is only the first step. Collaboration between all relevant agencies is crucial.²⁷² In order to adequately support these youth and help steer them toward the track of lifelong recovery and success, awareness by all players is necessary.

State legislators must acknowledge that commercial sexual exploitation is not a problem that is isolated to large metropolitan areas and that youth in their own jurisdictional backyard are being exploited.²⁷³ The problem is widespread and it affects youth from all geographic and socioeconomic backgrounds.²⁷⁴ The legislature must enact laws that protect their exploited youth from prosecution and provide services for these abused youth. New York, for example, has

272. See, e.g., Jenny Pearce, *Who Needs to be Involved in Safeguarding Sexually Exploited Young People?*, 15 CHILD ABUSE REV. 326, 339 (2006) (discussing the need for analogous multi-agency response to exploited youth in the United Kingdom).

273. See, e.g., HOFSTEDE ET AL., *supra* note 269 (studying the prevalence of prostituted juveniles in Minnesota); Tim Potter, *Prostitution Rings Snare Wichita Kids*, WICHITA EAGLE, Sept. 16, 2007 at A1 (Seven juvenile prostitution rings were recently uncovered in Wichita, Kansas.); see also Kittling, *supra* note 24, at 921.

274. See, e.g., HOFSTEDE ET AL., *supra* note 269 (“Juvenile prostitution can and does exist in Minnesota, and the targets are virtually anyone’s child.”).

made groundbreaking headway by passing a legislative package that protects prostituted youth from being charged with prostitution.²⁷⁵ The Safe Harbor Act ensures that youth below the age of consent engaging in sexual activity in exchange for money would no longer be charged with prostitution and instead, they would be provided with counseling, medical care, and long-term housing.²⁷⁶ Each state's legislature has the power to speak out against commercial sexual exploitation and affect immediate change for victims.

As the agency of first response, law enforcement must be educated about commercial sexual exploitation. When they encounter a prostituted youth, they must be required to investigate further into the child's situation. They must find out who is caring for her, who is collecting her earnings, and who is ultimately responsible for selling this child for sex. Taking the youth at her word that she is over the statutory age for establishing jurisdiction in the criminal justice system is not acceptable. Further, law enforcement agencies must be in contact with the local task force and social service agency so that an open line of communication is established, ensuring all proper officials are alerted when prostituted juveniles are discovered. Additionally, local prosecution offices need to recognize that sending a young person to jail for a crime she was not capable of consenting to is the wrong approach. Individual prosecutors should evaluate all circumstances presented before pressing forward with prostitution charges against a young person. On a larger scale, district attorneys should institute office-wide policies for dealing with cases of prostituted young people. Several prosecution offices, such as the Kings County and Queens County District Attorney offices in New York, have instituted creative programs

275. Assemblyman Sheldon Silver, Speaker, N.Y. State Assembly, Press Release, Assembly Passes 'Safe Harbor' Legislation, June 19, 2008, available at <http://assembly.state.ny.us/Press/20080619/>.

276. See *id.*; Bauman, *supra* note 232; Haberman, *supra* note 106. New York is one of only three states to consider enacting laws designed to protect sexually exploited youth. Bauman, *supra* note 232. The Safe Harbor Act was passed by the New York legislature in June 2008 and sent to the Governor for his approval. Bauman, *supra* note 232; Haberman, *supra* note 106. Concerns were raised that the governor would not approve the Act due to the fiscal impact of the legislation have been raised. Editorial, *Sign the Safe Harbor Law*, NEWSDAY, July 7, 2008, at A26. However, on September 26, 2008, Governor Paterson signed the Act into law, thereby creating a shield of protection for this class of exploited youth. Nicholas Confessore, *New Law Shields Children From Prostitution Charges*, N.Y. TIMES, Sept. 27, 2008 at B2; Press Release, Governor Paterson Signs Law to Protect Sexually Exploited Youth, (Sept. 26, 2008), available at http://www.ny.gov/governor/press/press_0926082.html.

for rehabilitating first-time prostitution offenders.²⁷⁷ However, most district attorney offices continue to treat these young people as criminal defendants rather than victims.²⁷⁸ Criminal prosecution should not even be a consideration when confronted with these exploited youth.

As discussed throughout this Note, prostituted juveniles are in need of a wide array of specialized services. Social service agencies are in the best position to assure that these services are provided to sexually exploited youth. Social service agencies need to work closely with law enforcement to ensure that each suspected case of sexual exploitation is given proper attention and resources. Social service agencies are the most appropriate parties to develop and implement street-level task forces to reach out to juveniles currently being exploited.

As a nation, our view of these youth must shift from seeing them as criminals who need to be locked up, to understanding that, fundamentally, these are children who have been abused. They have been subjected to repeated abuses and they deserve to be treated with the care due a victim. Our nation knows how victims of sexual exploitation need to be treated, as evidenced by our strong federal policy regarding the treatment of foreign national prostituted juveniles. Once we fully appreciate that these domestic youth are victims of sexual exploitation and not criminal defendants, the protections and services traditionally provided for victims of abuse must follow.

*Kate Brittle**

277. Diane Cardwell, *Offering Young Prostitutes Chance to Stay Out of Jail*, N.Y. TIMES, July 7, 2004, at B4 (detailing the launch of the Saving Teens At Risk (“S.T.A.R.”) program, which allows young adults found prostituting the chance to partake in services rather than spend time behind bars); Herbert Lowe, *Fighting Teen Prostitution: Federal Program Aims to Help Runaways and Sexually Exploited Young Women Reunite With Their Families*, NEWSDAY, Apr. 23, 2006, at A8 (discussing the Operation Guardian program implemented by the Queens County District Attorney); Lee Romney, *Bill Would Fight Child Prostitution*, L.A. TIMES, Sept. 5, 2004, at B4 (discussion of the advocacy by San Francisco District Attorney Kamala Harris to pass protective legislation for prostituted youth and her efforts to open the city’s first safe house for underage prostitutes).

278. Joan Ryan, *Sex with Kids Wrong Even if It’s Solicited*, S.F. CHRON., May 23, 2004, at B1.

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