

CALIFORNIA CHILD WELFARE COUNCIL

CSEC Work Group



Legislation related to Commercial Sexual Exploitation

As human trafficking has become a more recognized and visible problem throughout the world, political leaders and legislators have responded with new laws, initiatives and conventions to define human trafficking, enhance awareness, provide supports and services, criminalize traffickers, and track progress.

California Law & Efforts

California passed the California Trafficking Victims Protection Act (TVPA), which took effect in January of 2006. The TVPA:

- Makes human trafficking a felony.
- Provides victim assistance.
- Creates a civil cause of action allowing victims to recover damages from their trafficker.
- Requires the Attorney General to prioritize this issue.
- Establishes a statewide taskforce to research and report on the problem within the state.

Other bills target the property and proceeds of exploiters, allow taxpayer contribution into a child victim fund, allow for expungement of juvenile prostitution records, and increase criminal penalties.

Recently California voters passed the California Against Slavery and Exploitation (CASE) Act, or Prop 35, by an overwhelming majority. The CASE Act heightens criminal penalties associated with sexual exploitation, and provides some victim protections such as disallowing evidence of sexual history and past victimization to attack the credibility or character of a victim in court proceedings. Disagreement among advocates still remains on whether the CASE Act decriminalizes child prostitution.

The California Attorney General's Office's recently released a report that provides recommendations on identifying the scope of the problem, holding traffickers accountable, providing a victim-centered approach, and educating the public as a means of prevention. The Attorney General's leadership has been integral to bringing awareness to this issue, and highlighting the lack of housing, specialized services, screening and identification mechanisms, and uniform data collection across systems for CSEC.

Victim-Centered Laws

Rather than focusing on prosecution and punishment of perpetrators, victim-centered laws aim to protect victims and provide support services. Safe Harbor Laws usually focus on decriminalization, diversion, or some combination of the two.



- **New York's** Safe Harbor Act mandates that sex trafficking victims be treated as Persons In Need of Supervision (PINS), i.e., status offenders rather than delinquents. Once certified as a PINS, a child may not be detained, and instead may receive services through the Department of Social Services.
- In **Washington**, youth under eighteen arrested for prostitution or prostitution loitering are presumed to meet the criteria for certification as victims of a severe form of trafficking under the federal definition. The Department of Social and Health Services must connect diverted CSE youth to services for sexually assaulted youth if funding allows. The Department of Social and Health Services may file a "Child In Need of Services" petition, to hold the youth for up to fifteen days in a secure or semi-secure crisis residential center without charges.
- **Massachusetts** goes a step further and creates a rebuttable presumption to file a "care and protection petition" to handle the matter in the child welfare system, and holds a hearing to determine whether a youth will be diverted or placed in the juvenile justice system.

Child Welfare Focused Laws

Many advocates share the view that the juvenile justice system is ill-equipped to support CSEC, which is one reason states began decriminalizing and diverting youth away from it. Connecticut, Florida, and Illinois have gone a step further and have passed legislation to provide services and supports for CSEC through the state child welfare agency. All three have included sexual exploitation or sex trafficking as a reportable offense under the mandated reporting guidelines. Connecticut also passed a law to trigger automatic referral to the Department of Children and Families hotline when law enforcement identifies a youth who may be a victim of commercial sexual exploitation.

Treating CSEC as victims of a **form of child abuse** enables state child welfare agencies to provide support services to this uniquely vulnerable population.

Federal

The Obama Administration has recommitted the United States to the fight against human trafficking through laws and initiatives such as the Interagency Task Force to Monitor and Combat Human Trafficking, chaired by the Secretary of State. This past September, the President announced new initiatives to combat trafficking that will train and guide federal and state law enforcement to better identify trafficking, provide victim assistance, and develop partnerships with the business and technology communities.

The seminal piece of federal legislation on sexual exploitation is the Trafficking Victims' Protection Act (TVPA) of 2000. The TVPA creates tools to prosecute traffickers, and makes victims of trafficking eligible for state and federal benefits. It was reauthorized in 2003, 2005, and 2008, and is currently awaiting reauthorization. The TVPA focuses on the three Ps—prevention, protection, and prosecution, but has more recently integrated a fourth P—partnership.

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act increases criminal penalties for repeat child abuse offenders, makes commercial sex with anyone under 18 illicit sexual conduct, and strengthens the prohibition on forms of virtual child pornography and any obscene materials that depict children. It also increased support for the National Center for Missing and Exploited Children (NCMEC) to improve investigations and create a cyber tip line to report child pornography, online enticement of children for sexual acts and child prostitution.

Representative Karen Bass of California plans to reintroduce the "Strengthening the Child Welfare Response to Human Trafficking Act," which would give the Secretary of Health and Human Services authority to design guidelines and training for state child welfare agencies and court employees to identify children at risk for exploitation or those who are victims of human trafficking.

Kate Walker
Attorney & Equal Justice Works Fellow
National Center for Youth Law

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