

November 2013

Precedent or Problem?: Alameda County's Diversion Problem Policy for Youth Charged with Prostitution and the Case for a Policy of Immunity

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PRECEDENT OR PROBLEM?: ALAMEDA COUNTY'S
DIVERSION POLICY FOR YOUTH CHARGED WITH
PROSTITUTION AND THE CASE FOR A POLICY OF
IMMUNITY

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INTRODUCTION

When Tasha was only thirteen, her mother died of a drug overdose. With no other relatives and nowhere to go, Tasha moved in with a family friend. Although she had a home, the situation soon turned abusive. Struggling with the trauma of her mother's death and her abusive home life, Tasha was desperate for stability. When she began dating an older man, Tasha thought she had finally found the love and support she so badly needed. After a few months, however, Tasha's boyfriend told her that if she wanted the relationship to continue, she would need to do her part to contribute. If they could save up enough money, he said, they could buy a nice house and start a family together. Although she was too young to hold a job, the man explained, she could easily make a few hundred dollars per night working as a prostitute. He knew a number of places to easily recruit her plenty of customers.

Soon enough, Tasha realized that she was trapped. Despite her boyfriend's promise to start a family together, he kept all of the money she earned working the streets. No longer attending school, Tasha had nowhere to turn and no one to ask for help. Leaving was not an option. She had no money, and she feared that if she tried to exit prostitution, her boyfriend would kill her.¹ If she went to the police, she would face criminal charges for prostitution.²

Unfortunately, Tasha's situation is not uncommon. Commercial sexual exploitation³ of minors is a rapidly growing phenomenon.⁴ In

1. Leaving a pimp can be dangerous for commercially sexually exploited children, referred to in this Note as "CSEC youth." See Jeannine Amber, *Black Girls for Sale*, ESSENCE MAG., Oct. 2010, at 164, 168, <http://www.jeannineamber.com/uploads/stories/black%20girls%20for%20sale%20.pdf> (quoting an officer of the Oakland Police Department (OPD) in Alameda County who explains that he has seen "skull fractures, broken bones, girls who've been stabbed, shot, whipped, chopped into pieces, their bodies stuffed in garbage pails" at the hands of pimps).

2. This vignette is a composite of real stories based on the writer's previous work with CSEC youth in Alameda County, California and Essex County, New Jersey. Unfortunately, this story is representative of the experiences of many CSEC youth. The youths' names and the identifying features of their stories have been changed in order to protect their privacy.

3. For the purposes of this discussion, the prostitution of minors under eighteen is referred to as "commercial sexual exploitation" or "CSEC exploitation" in the "CSEC market." Some sources use this term to refer only to situations in which a youth is exploited by a "pimp," but not to refer to youth who choose to sell themselves independently. This Note uses

2005, Congress updated the Trafficking Victims Protection Act (TVPA) to explicitly provide youth like Tasha with immunity from criminal charges for prostitution.⁵ Recently, a number of states have begun to adopt similar policies, often called “safe harbor” laws, limiting the prosecution of such youth.⁶ Nonetheless, only two states have provided these youth complete immunity from prosecution,⁷ and many states have yet to create any safe harbor policy at all.⁸

California has one of the largest populations of commercially sexually exploited children (CSEC).⁹ In the United States as a whole, an estimated 150,000 to 300,000 youth are involved in prostitution per year.¹⁰ Due to lack of reporting, officials have not yet compiled solid estimates for the state of California.¹¹ The

this term to refer to all youth involved in prostitution, regardless of involvement with a pimp, in recognition that prostitution is a commercial transaction that inherently exploits any youth involved in it.

4. Admin. for Children & Families, *What Is Human Trafficking?*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Aug. 16, 2012), <http://www.acf.hhs.gov/programs/orr/resource/about-human-trafficking>. The problem is specifically growing in Alameda County. See Amber, *supra* note 1, at 169.

5. 22 U.S.C. §§ 7101-7102 (2006); see Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 101 (2008) (“The legislators in favor of TVPA did not just intend to punish the victims less severely—they desired to move away from a model of punishment for victims entirely.”).

6. See, e.g., CONN. GEN. STAT. § 53a-82 (2012); Illinois Safe Children Act, 720 ILL. COMP. STAT. 5/11-14(d) (2012); TENN. CODE ANN. § 39-13-513(d) (2012); Melissa Golke, Note, *The Age of Consent: How Minnesota's Safe Harbor for Sexually Exploited Youth Act of 2011 Falls Short of Fully Addressing Domestic Child Sex Trafficking*, 33 HAMLIN J. PUB. L. & POL'Y 201, 202 (2012).

7. 720 ILL. COMP. STAT. 5/11-14(d); TENN. CODE ANN. § 39-13-513(d).

8. See NAT'L DIST. ATTORNEYS ASS'N, STATUTORY FRAMEWORKS USED TO CHARGE CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION & ALTERNATIVES TO PROSECUTION (2012), available at http://www.ndaa.org/pdf/Statutory%20Frameworks%20Used%20to%20Charge%20Children%20for%20CSEC%20&%20Alternatives%20to%20Prosecution_3.1.12.pdf (listing all states' policies, or lack thereof, regarding the prosecution of minors for criminal charges of prostitution).

9. Other sources may refer to such youth as “sexually exploited minors,” “commercially sexually exploited minors,” or “juveniles involved in prostitution.” Because “CSEC” also refers to the market for the “commercial sexual exploitation of children,” this Note refers to “CSEC youth” as children who are victims of “CSEC prostitution,” “CSEC exploitation,” or the “CSEC market.”

10. *Domestic Minor Sex Trafficking: Hearing on H.R. 5575 Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H. Comm. on the Judiciary*, 111th Cong. 17 (2010).

11. See Carolyn Liu, Community-Based Services for Youth Involved in Prostitution: A Grant Proposal Project 1 (May 2009) (M.S.W. thesis, California State University, Long Beach), available at <http://gradworks.umi.com/1466116.pdf>; Manev Tanneeru, *The Challenges of*

Federal Bureau of Investigation (FBI) considers the metropolitan areas of Los Angeles, San Diego, and San Francisco to be some of the largest CSEC markets in the United States.¹² Within the San Francisco metropolitan area, the problem is especially acute in Alameda County. For example, in Oakland, the largest city in Alameda County, police estimate that about 100 CSEC youth are involved in prostitution on any given night.¹³

Despite its large CSEC market,¹⁴ California lacks a safe harbor policy. In 2008, California implemented a pilot program in Alameda County, allowing minors arrested on charges of prostitution to enter a diversion program in which they receive rehabilitative services and counseling, rather than accepting a conviction for prostitution.¹⁵ Many government and law enforcement officials support the pilot program, claiming it is the only effective method of physically breaking youth away from pimps and their former lifestyles to provide them with the services they need in order to successfully leave prostitution.¹⁶ Furthermore, many officials hope to see the

Counting a 'Hidden Population', CNN FREEDOM PROJECT (Mar. 9, 2011), <http://thecnnfreedomproject.blogs.cnn.com/2011/03/09/slavery-numbers/>.

12. OFFICE OF THE INSPECTOR GEN., U.S. DEPT OF JUSTICE, THE FEDERAL BUREAU OF INVESTIGATION'S EFFORTS TO COMBAT CRIMES AGAINST CHILDREN 21 (2009), *available at* <http://www.justice.gov/oig/reports/FBI/a0908/final.pdf>.

13. Barbara Grady, *Youth Trafficking in Oakland: Big Business Despite Government, Police Efforts*, OAKLAND LOC. (May 12, 2010), <http://live.oaklandlocal.com/article/youth-trafficking-part-1> (quoting OPD officers).

14. Kimberly J. Mitchell et al., *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18, 20 (2010) (citing a study that found that Los Angeles and San Francisco had the two highest arrest rates of youth on charges of prostitution in the entire country); *Child Prostitution Growth in Alameda County Outpaces Police Efforts*, CBS S.F. (Aug. 9, 2011) [hereinafter *Child Prostitution Growth*], <http://sanfrancisco.cbslocal.com/2011/08/09/police-struggling-to-keep-pace-with-growing-child-prostitution-problem-in-alameda-county/> (stating that in 2009, 426 of the 893 youth prostitution arrests reported to the FBI occurred in California, 69 of those arrests occurred in Los Angeles, and 76 occurred in Oakland).

15. CAL. WELF. & INST. CODE § 18259 (West 2012).

16. See Mary K. Flynn, *As More Oakland Youth Join the Sex Trade, Law Enforcement Explores Alternatives to Incarceration*, OAKLAND N. (March 13, 2010 10:02 AM), <http://oaklandnorth.net/2010/03/13/as-more-oakland-youth-join-the-sex-trade-law-enforcement-explores-alternatives-to-incarceration/> (quoting Alameda County Deputy District Attorney).

pilot program adopted as the official statewide policy.¹⁷ Many would like to see the program replicated in other parts of the country.¹⁸

Leaders of various community organizations providing services to these youth, however, support an alternative policy, which would grant youth under eighteen immunity from prosecution.¹⁹ Unlike diversion, immunity would not subject youth to detention by law enforcement, court proceedings, or mandatory rehabilitative programs.²⁰ Rather, CSEC youth would face no criminal charges, and they would be free to pursue voluntary rehabilitative services.²¹

This Note argues that Alameda County should replace its current diversion program with a policy of immunity. Part One describes Alameda County's current policy of diversion and outlines alternative programs used in other states. Part Two presents various legal arguments as to why immunity is the most appropriate policy for combating CSEC exploitation in Alameda County, given the context of California state laws. Part Three presents various policy arguments as to why immunity is the most appropriate approach in this part of the country, given the distinct manner in which CSEC exploitation occurs in Alameda County. Finally, Part Four considers and responds to concerns that critics have voiced regarding immunity.

Various scholarly articles have analyzed many of the possible benefits and drawbacks that accompany alternative policies regarding CSEC exploitation. Much of this work is theoretical and considers the issue in a general context.²² This Note is unique in

17. California has considered expanding Alameda County's diversion policy to the rest of the state. WELF. & INST. § 18259.1. It is already in the process of implementing a similar diversion policy in Los Angeles County. *Id.* § 18259.7.

18. *See, e.g.*, Amber, *supra* note 1, at 169 (quoting the Executive Director of End Child Prostitution and Trafficking, USA).

19. Flynn, *supra* note 16 (quoting the Executive Director of MISSEY, an organization serving CSEC youth in Alameda County).

20. *Id.*

21. *Id.*

22. For examples of pieces providing a theoretical, rather than applied, analysis of legal approaches to CSEC, see generally Adelson, *supra* note 5 (explaining why CSEC youth are properly viewed as victims); Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POLY REV. 1 (2011) (discussing issues of consent and comparing the legal theories contained in various state safe harbor laws); Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055 (2011) (assessing prostitution laws in

that it considers how advantages and disadvantages of certain policies unfold specifically in Alameda County. This Note focuses on Alameda County because it is the epicenter of the CSEC market within the United States, and other jurisdictions are looking to Alameda County for an answer.²³ By adopting a policy of immunity, as advocated by this Note, Alameda County would implement a policy that fits appropriately within state laws and the nature of the local CSEC market. In doing so, it may persuade other policymakers to consider similar factors when deciding upon a policy appropriate for their own jurisdictions.

I. CURRENT LEGAL RESPONSES TO CSEC EXPLOITATION

A. Current Policies in Alameda County and California

Because CSEC exploitation has become a growing problem in Alameda County and the rest of California, government and law enforcement officials have begun to take steps to combat this issue.

light of the status of CSEC youth as criminals and noting that the advantages of Alameda County's pilot diversion program have not yet been assessed as applied with data-based analysis); Susan Crile, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors*, 61 AM. U. L. REV. 1783 (2012) (discussing how the Supremacy Clause, statutory interpretation, and legislative intent of TVPA preempt state laws that criminalize the actions of CSEC youth); Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523 (2000) (assessing legal theories in light of labor rights and issues of victimization that arise in prostitution). Some recent scholarship focuses on the appropriateness of safe harbor laws as applied to the context of a particular state, but no authors have focused on California. For an example of work on state-specific safe harbor laws, see generally Angela L. Bergman, *For Their Own Good? Exploring Legislative Responses to the Commercial Sexual Exploitation of Children and the Illinois Safe Children Act*, 65 VAND. L. REV. 1361, 1366 (2012) (assessing how Illinois's safe harbor law has, in practice, presented issues involving police discretion and the return of youth to their abusers); Cheryl Nelson Butler, *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Minors?*, 45 AKRON L. REV. 843, 847 (2012) (assessing Texas's safe harbor law in the context of state antiprostitution laws and providing child labor statistics in various industries throughout the state); Golke, *supra* note 6, at 202 (assessing Minnesota's safe harbor law against state laws regarding juvenile criminal records, local barriers to data collection, and state funding).

23. See Amber, *supra* note 1, at 169 (quoting the Executive Director of End Child Prostitution and Trafficking, USA); Heather Gilligan, *Oakland Confronting Child Prostitution, Sex Trafficking*, CALIF. WATCH (Oct. 17, 2011), <http://californiawatch.org/daily-report/oakland-confronting-child-prostitution-sex-trafficking-13097> (quoting author Julian Sher).

Various police departments, for instance, have created task forces specifically dedicated to curtailing exploitation. In 2004 and 2005, the United States Department of Justice provided grants to fund six regional task forces in California, led by local police departments and nongovernmental organizations, to focus on human trafficking.²⁴ Today, there are nine such task forces throughout the state, in the East Bay, Los Angeles, San Francisco, Orange County, San Diego, San Jose, Riverside, Sacramento, and Fresno.²⁵ The East Bay regional task force, led by the Oakland Police Department (OPD), received a federal grant in 2006 to focus on human trafficking, including CSEC exploitation.²⁶ In addition, Assembly Bill 499, passed in 2008 and renewed by Assembly Bill 799 in 2011, implemented a diversion program in Alameda County for CSEC youth arrested on charges of prostitution.²⁷

Under the pilot program, if Tasha was arrested in Alameda County on suspicion of prostitution and deemed to be involved in or at risk of exploitation by a pimp, she would be temporarily detained. During this time, she would be housed with other girls who had been arrested on other violent and nonviolent charges.²⁸ In some ways, Tasha's experience as a CSEC youth arrested for prostitution would differ from that of youth arrested on other charges. For example, before her court hearing, Tasha would receive an advocate from Bay Area Women Against Rape who would support her during interrogation.²⁹ She would also receive services from local nonprofit groups.³⁰

In other ways, though, Tasha's experience would be much the same as that of youth arrested on other charges. During the two week period pending her court hearings, Tasha would be housed in

24. Office of the Att'y Gen., *Fighting Human Trafficking*, STATE OF CALIF. DEPT OF JUSTICE, <http://oag.ca.gov/human-trafficking/fighting> (last visited Oct. 17, 2013).

25. *Id.*

26. *Id.*; *So Young: Underage Prostitution, By the Numbers*, ALAMEDA PATCH (Aug. 16, 2011), <http://alameda.patch.com/articles/so-young-underage-prostitution-by-the-numbers>.

27. Assembly Bill 499 is codified as CAL. WELF. & INST. CODE § 18259 (West 2012), and Assembly Bill 799 is codified as CAL. WELF. & INST. CODE 18259.1 (2012).

28. WELF. & INST. § 18259; *Alameda County Grapples with Best Way to Rescue Teen Prostitutes*, CBS S.F. (Aug. 11, 2011) [hereinafter *County Grapples*], <http://sanfrancisco.cbslocal.com/2011/08/11/alameda-county-grapples-with-best-way-to-rescue-teen-prostitutes/>.

29. Flynn, *supra* note 16.

30. *County Grapples*, *supra* note 28.

“cinderblock cells containing only [her] clothes, a sink, and two platform beds.”³¹ The cells are part of larger units, each of which has “several cells arranged on two floors surrounding an open common area with fixed tables.”³² Like all other youth in juvenile detention, Tasha would have to wear the clothing given to her by the detention center, and she would not be allowed to move about freely.³³ When walking down the hall, Tasha would be required to clasp her hands behind her back, like “invisible handcuffs,” and “[v]isitors ... [would have to] stand against the wall until [she] pass[ed].”³⁴ Later, once the initial stages of the proceedings against Tasha had commenced, the court could release her to the community and drop prostitution charges, as long as she agreed to enter a “diversion program.”³⁵

Unfortunately, many CSEC youth like Tasha are ineligible for diversion, and they are instead prosecuted for prostitution. For example, girls who have had multiple arrests and who have endured years of commercial sexual exploitation may be ineligible for diversion. Likewise, girls who are less willing to cooperate with the courts may not be allowed the option of diversion. Instead, the prosecutor will generally charge them with a misdemeanor, often involving a sentence of ninety days in detention.³⁶

B. Policies in Other States

Alameda County’s diversion policy can be categorized as “conditional diversion,” in which “youth may be criminalized depending on their ‘compliance’ and in which only certain youth qualify for diversion based upon [specified] factors.”³⁷ Currently, both Washington and Minnesota have similar conditional diversion programs for CSEC youth. In Washington, all minors under eighteen charged with their first offense of prostitution are

31. *Id.*

32. *Id.*

33. Sarah Terry-Cobo, *Oakland’s Sexually Trafficked Youth: Arrest or Treat These Victims?*, OAKLAND LOCAL (May 7, 2010), <http://live.oaklandlocal.com/article/youth-trafficking-part-6>.

34. *Id.*

35. CAL. WELF. & INST. CODE § 18259 (West 2012); *County Grapples*, *supra* note 28.

36. Flynn, *supra* note 16.

37. Anitto, *supra* note 22, at 62 n.336.

mandatorily diverted out of juvenile court.³⁸ For a minor facing repeat offenses, however, eligibility for diversion is uncertain. In these cases, the prosecutor must exercise his discretion to allow diversion. Additionally, the court must find that the county in which the youth committed the offense provides sufficient diversion services.³⁹ According to the safe harbor law in Minnesota, youth facing charges of prostitution⁴⁰ will be diverted from juvenile court on the condition that they accept and comply with the diversion program.⁴¹ Youth with previous charges of prostitution, however, will be deemed ineligible.⁴²

Other states take a different approach, in which the court will drop prostitution charges if the court finds that a CSEC youth committed the alleged offense simply because another person forced her to do so. Some of these states place the burden of proof on the child to show that she was indeed coerced.⁴³ Connecticut law, however, presumes coercion, placing the burden on the prosecution to prove otherwise.⁴⁴

For youth under age sixteen, Connecticut provides even greater protection by allowing them immunity from prosecution.⁴⁵ Recently, a few other states have passed similar laws providing immunity to CSEC youth of certain ages. In Minnesota, for instance, minors up to age fifteen are immune from prosecution for prostitution.⁴⁶ Tennessee has extended immunity from prosecution for prostitution to minors up to age seventeen.⁴⁷ Under Tennessee's safe harbor statute, police are authorized to detain youth for a reasonable amount of time. Nevertheless, once officers determine that the

38. WASH. REV. CODE § 13.40.070 (2012).

39. *See id.* § 13.40.070, 40.213.

40. Under the Minnesota Safe Harbor for Sexually Exploited Youth Act, youth under age sixteen are immune from being prosecuted for prostitution. Golke, *supra* note 6, at 203; *see also* ECPAT-USA, HIGHLIGHTS OF MINNESOTA'S SAFE HARBOR FOR SEXUALLY EXPLOITED CHILDREN LAW 1 (2011) (on file with author).

41. ECPAT-USA, *supra* note 40, at 2; Golke, *supra* note 6, at 233 n.98.

42. *See* ECPAT-USA, *supra* note 40, at 2.

43. *See, e.g.*, IOWA CODE § 710A.3 (2012); MO. REV. STAT. § 566.223(2) (2012); OKLA. STAT. tit. 21, § 748(D) (2012); OR. REV. STAT. § 163.269 (2012); R.I. GEN. LAWS § 11-34.1-2(d) (2012).

44. CONN. GEN. STAT. § 53a-82 (2012).

45. *Id.*

46. ECPAT-USA, *supra* note 40, at 1; Golke, *supra* note 6, at 203. The same is true for youth up to age fifteen in Connecticut. CONN. GEN. STAT. § 53a-82(a) (2012).

47. TENN. CODE ANN. § 39-13-513(d) (2012).

youth is under age eighteen, they must release the minor and provide her with the phone number of the national human trafficking resource center hotline.⁴⁸

Similar to Tennessee, the Safe Children Act of Illinois extends immunity from prosecution for prostitution to minors up to age seventeen, but it provides further details regarding police interaction with the youth.⁴⁹ Under this safe harbor law, police officers may detain a youth for a reasonable period of time in order to investigate the situation.⁵⁰ However, once police determine that a detained youth is under age eighteen, they can no longer detain her in a detention facility or jail. Nonetheless, if the police suspect that the youth is involved in human trafficking,⁵¹ she could still be subject to temporary protective custody in the child welfare system such as in a hospital, medical facility, foster home, or other licensed facility.⁵²

II. LEGAL SUPPORT FOR A POLICY OF IMMUNITY IN ALAMEDA COUNTY

Alameda County could adopt any of the policy models currently used by other states. Given the specific legal context in which a safe harbor policy would be implemented in California, however, immunity for youth under age eighteen is the policy most appropriate for Alameda County.

A. Statutory Rape Laws in California

First, immunity for youth under eighteen would resolve tension with California's statutory rape laws. Currently, California law states that an adult who engages in sexual intercourse with a minor under eighteen commits statutory rape, in effect holding that minors under that age cannot legally consent to sex with an adult.⁵³ Alameda County's diversion policy, however, continues to hold children legally accountable for engaging in sexual intercourse with

48. *Id.*

49. 720 ILL. COMP. STAT. 5/11-14(d) (2012).

50. *Id.*

51. *Id.*

52. 705 ILL. COMP. STAT. 405/2-5 to 2-7(2012).

53. See CAL. PENAL CODE § 261.5 (West 2012).

an adult in the context of prostitution. Such policies thus create a paradox—a child like Tasha is legally considered a criminal for committing the same act for which she is also considered a victim of statutory rape.⁵⁴ In other words, Tasha would be held criminally culpable for the same activity to which she is legally incapable of consenting.⁵⁵ One police officer has explained this irony by saying,

If a 45-year-old man had sex with a 14-year-old girl and no money changed hands, she was likely to get counseling, and he was likely to get jail time for statutory rape.... If the same man left \$80 on the table after having sex with her, she would probably be locked up for prostitution and he would probably go home with a fine as a john.⁵⁶

A policy of immunity for youth under age eighteen would resolve this contradiction by recognizing that minors like Tasha are victims of crime in both situations.

In many other states, statutory rape laws apply only when a youth is under fifteen or sixteen, and/or only when the adult is more than a certain number of years older than the youth involved.⁵⁷ In these states, prosecution of older teens involved in prostitution would create less tension with statutory rape laws. Statutory rape laws in California, however, are very strict, criminalizing intercourse between an adult and a minor regardless of whether the

54. For a discussion on the paradox between the way in which minors are treated under statutory rape laws and prostitution laws, see *In re B.W.*, 313 S.W.3d 818, 821-22 (Tex. 2010) (“It is difficult to reconcile the Legislature’s recognition of the special vulnerability of children, and its passage of laws for their protection, with an intent to find that children under fourteen understand the nature and consequences of their conduct when they agree to commit a sex act for money, or to consider children quasi-criminal offenders guilty of an act that necessarily involves their own sexual exploitation.”). *But see In re Nicolette R.*, 779 N.Y.S.2d 487, 487 (N.Y. App. Div. 2004).

55. Annitto argues that children may be less capable of consenting to commercial exchanges of sexual intercourse for money than to sexual intercourse in other contexts, saying that one can “distinguish a minor’s inability to ‘consent’ in the context of sexual exploitation from other areas of decision making that rely on cognitive, rather than psychosocial, capacities.” Annitto, *supra* note 22, at 24.

56. Ian Urbina, *For Runaways on the Street, Sex Buys Survival*, N.Y. TIMES (Oct. 27, 2009), <http://www.nytimes.com/2009/10/27/us/27runaways.html?pagewanted=all> (quoting an officer of the Dallas Police Department).

57. *See generally* AM. UNIV. WASH. COLL. OF LAW, 50 STATE SURVEY OF SEXUAL OFFENSES AGAINST CHILDREN (STATUTORY RAPE) (2006) [hereinafter 50 STATE SURVEY], <http://static.nicic.gov/Library/021769.pdf>.

minor is an older teen and regardless of the age difference between them.⁵⁸ Any safe harbor policy adopted by Alameda County should account for the unique statutory rape laws in California. A policy of immunity for youth under eighteen would do just that.

B. Prostitution Laws in California

Immunity for youth under age eighteen in Alameda County also would resolve tension with state laws that prohibit the buying and selling of minors for prostitution. Under the California Penal Code, customers who solicit sex from underage prostitutes face harsher penalties than those who solicit sex from adult prostitutes.⁵⁹ Similarly, pimps who sell minors under age eighteen face harsher penalties than those who sell adults.⁶⁰ By distinguishing the buying and selling of a minor under eighteen from the buying and selling of an adult, the law recognizes that minors like Tasha are victims in the context of commercial sexual exploitation.⁶¹ Like the state's statutory rape laws, these statutes against the solicitation and trafficking of minors contradict alternative policies such as diversion, which consider CSEC youth victims to also be criminals.

In contrast to California, many other states impose harsher penalties for buying and selling only younger teens, such as those under age sixteen or fourteen.⁶² For these states, prosecution of older teens involved in prostitution creates less tension with laws against solicitation and trafficking. California, however, recently

58. CAL. PENAL CODE § 261.5 (West 2012).

59. *Id.* § 261.9.

60. *Id.* § 236.1.

61. Indeed, in analyzing Assembly Bill 12, later codified as CAL. PENAL CODE § 261.9, the California Senate Committee on Public Safety found that the bill demonstrated "legislative intent to recast the state's laws relating to human trafficking and child sex slavery to treat the trafficked children as victims, rather than prostitutes." *Bill Analysis of Assembly Bill 12*, CAL. S. COMM. ON PUB. SAFETY (2011), available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ab_12_cfa_20110614_111030_sen_comm.html. CAL. PENAL CODE § 261.9 raises fines on customers who buy sexual services from minors under eighteen in order to "fund programs and services for commercially sexually exploited minors." CAL. PENAL CODE § 261.9. The Bill Analysis of Assembly Bill 17, later codified as CAL. PENAL CODE § 236.1, also explicitly identified these youth as "victims" of a crime. *Bill Analysis of Assembly Bill 17*, S. RULES COMM. 1 (2009), available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/ab_17_cfa_20090826_121925_sen_floor.html.

62. See generally 50 STATE SURVEY, *supra* note 57.

decided to impose harsher penalties for trafficking and soliciting youth specifically under the age of eighteen.⁶³ A policy of immunity therefore would make great sense in Alameda County, because it would align with the state's intent to identify all CSEC youth under eighteen as victims of a crime.

C. The Federal Trafficking Victims Protection Act

Finally, a policy of immunity for youth under eighteen resolves tension with the federal TVPA law. TVPA considers all minors under eighteen involved in prostitution to be "severe[ly]" trafficked persons requiring protection rather than prosecution, with no additional requirement that they show "force, fraud, or coercion."⁶⁴ Under policies such as diversion, Tasha would be identified as a criminal, even though TVPA considers her to be a "severe[ly]" trafficked person who should not be prosecuted for prostitution. Only a policy of immunity for youth under eighteen would align with federal TVPA law.

III. POLICY ARGUMENTS IN SUPPORT OF IMMUNITY

In addition to the legal rationales supporting immunity for youth under eighteen in Alameda County, numerous policy rationales exist as well. Namely, these policy rationales include: (1) protection from wrongful prosecution, (2) preventing harm to CSEC youth, and (3) ending CSEC exploitation.

A. Protecting CSEC Youth from Wrongful Prosecution

1. Protecting All Youth Who Are True Victims

Critics of immunity commonly argue that this policy fails to hold accountable those youth who voluntarily choose to become prostitutes rather than being forced into prostitution by a pimp.⁶⁵ This concern may be more persuasive in other parts of the country, given

63. See *supra* note 59 and accompanying text.

64. 22 U.S.C. § 7102(8)(A) (2012).

65. See Mitchell et al., *supra* note 14, at 29 (finding that CSEC youth who are sold by a pimp are six times more likely to be treated as a victim than those who sell themselves).

that, nationally, about one-fourth of CSEC youth sell themselves without going through a broker.⁶⁶ This rationale is less persuasive in Alameda County, however, where nearly all CSEC youth are under the control of adult male pimps.⁶⁷

In Oakland, for example, police estimate that nearly all CSEC youth work for a pimp.⁶⁸ Pimp control of International Boulevard, the main track,⁶⁹ is broken down into an intricate system, in which girls of different ages are sold on different blocks according to their level of experience.⁷⁰ This particular track stretches over forty blocks.⁷¹ It is further connected to customers in cities throughout the state ranging from Stockton, Sacramento, and San Diego, and even out of state into Reno, Las Vegas, and Phoenix.⁷² Pimps control these streets in a manner similar to that often associated with gangs and drug dealers,⁷³ as they exert nearly total control over a well-organized CSEC market.⁷⁴ If a minor female did attempt to sell herself on her own in Alameda County without going through a

66. RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 60 (2001), http://www.sp2.upenn.edu/restes/CSEC_Files/Complete_CSEC_020220.pdf.

67. *See Child Prostitution Growth*, *supra* note 14 (quoting an OPD officer).

68. *Id.*

69. *See id.* (describing International Boulevard in Oakland as “the Track”). For the purposes of this note, “track” refers to a network of any level, whether it is one street, one city, or a connection of various cities, along which pimps regularly market CSEC youth to customers. *See* ESTES & WEINER, *supra* note 66, at 13.

70. *See Child Prostitution Growth*, *supra* note 14.

71. *See id.*

72. Amber, *supra* note 1 (quoting a former CSEC youth who describes how her pimp trafficked her between Oakland and Stockton); *California Lawmakers Creating Policy to Target Pimps*, CBS S.F. (Aug. 10, 2011) [hereinafter *Lawmakers Creating Policy*], <http://sanfrancisco.cbslocal.com/2011/08/10/california-lawmakers-creating-policy-to-target-child-prostitution/> (quoting police officers describing how pimps bring girls to the Marine Corps base in San Diego, as well as to Las Vegas, Phoenix, and cities hosting sporting events to pimp them out); Youth Radio, *Trafficked Teen Girls Describe Life in ‘The Game’*, NAT’L PUB. RADIO NEWS (Dec. 6, 2010), <http://www.npr.org/2010/12/06/131757019/youth-radio-trafficked-teen-girls-describe-life-in-the-game> (quoting a former CSEC youth who describes being pimped out in Oakland and Sacramento).

73. *See* Amber, *supra* note 1, at 167; Memorandum from Los Angeles Dep’t of Children & Family Servs., Response to January 10, 2012 Board Motion Item #2, Motion by Supervisor Don Knabe: Human Trafficking 2 (Feb. 24, 2012) [hereinafter LADCFS], <http://file.lacounty.gov/bos/supdocs/70403.pdf>.

74. *Child Prostitution Growth*, *supra* note 14.

pimp, police estimate that she would last only two to three days before being recruited by one.⁷⁵

Consequently, in Alameda County, a policy of immunity rarely protects youth from prosecution who have, by their own will, chosen to enter into prostitution. Nearly all CSEC youth in Alameda County are under the control of a pimp. As a result, the risk in Alameda County is not that independent CSEC youth will unfairly escape prosecution, but rather that truly victimized youth like Tasha will be unjustly prosecuted.

2. Protecting Youth Regardless of Age

Some critics believe that although teens such as Tasha are, to some extent, coerced into prostitution, sixteen and seventeen year old CSEC youth are old enough that the law should nonetheless hold them legally accountable.⁷⁶ Although this argument may be more compelling in certain parts of the country, it is less persuasive in Alameda County. As noted above, CSEC youth in Alameda County enter and remain in prostitution primarily as a result of coercion by pimps, rather than as a result of empowered individual choice.⁷⁷ Such coercion applies equally to both younger and older teens, and many older teens in Alameda County even have certain characteristics that *increase* their vulnerability to exploitation by pimps.⁷⁸

Pimps primarily target vulnerable youth like Tasha who have grown up lacking stable families and housing.⁷⁹ Unfortunately,

75. *Id.*

76. *See, e.g.*, CONN. GEN. STAT. § 53a-82(a) (2012); Golke, *supra* note 6, at 203.

77. *See supra* notes 68-75 and accompanying text.

78. *See infra* notes 89-93 and accompanying text.

79. *See* HEATHER J. CLAWSON ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 10 (2009), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/#domestic> (noting that in various studies, one factor increasing vulnerability of domestic female juveniles to commercial sexual exploitation was “a profound sense of being alone without resources,” given histories of housing and family instability); ESTES & WEINER, *supra* note 66, at 2 (listing provision of “subsistence needs” as the factor most frequently fueling CSEC exploitation); Grady, *supra* note 13 (noting that pimps provide the shelter, food, and clothing that the youth need to survive, as explained by CSEC youth in Oakland).

given its high rate of child poverty,⁸⁰ Alameda County provides pimps with an “endless victim base” of vulnerable youth in situations similar to Tasha’s.⁸¹ Because these youth seek love and support, pimps can often trick these children into believing that they are in a romantic relationship.⁸² Then, the pimp traps the girl in the relationship by breaking off other sources of support⁸³ and by using physical force and intimidation.⁸⁴ At that point, the pimp can coerce her to work for him as a prostitute.⁸⁵ Data shows that CSEC youth in Alameda County disproportionately come from backgrounds that increase vulnerability to such coercion. Studies of CSEC youth in Oakland have found that 53 percent had been placed in a group home at some point in their lives,⁸⁶ 83 percent had run away,⁸⁷ and 64 percent had been raped prior to entering prostitution.⁸⁸

80. Thirty-three percent of all children in Oakland live below the poverty line, placing Oakland, the largest city within Alameda County, within the top 25 worst cities in the country for child poverty. Press Release, Nat’l Ctr. for Children in Poverty, Researchers: Detroit, Cleveland, Cincinnati, Buffalo, Milwaukee Lead Nation in Child Poverty (Oct. 31, 2011), http://www.nccp.org/media/releases/pdf/release_136.pdf.

81. *Child Prostitution Growth*, *supra* note 14 (quoting an OPD officer); *see also* Flynn, *supra* note 16.

82. *See, e.g.*, Amber, *supra* note 1, at 168 (quoting a CSEC youth in Oakland who was first subjected to commercial sexual exploitation when her “boyfriend” asked her to contribute); Youth Radio, *supra* note 72 (quoting a former CSEC youth who explained that she was first subjected to such exploitation when her “boyfriend” informed her that she needed to contribute to their household); *see also* Youngbee Dale, *California: No Justice for Trafficked Children*, WASH. TIMES (Feb. 25, 2012), <http://communities.washingtontimes.com/neighborhood/rights-so-divine/2012/feb/25/california-no-justice-trafficked-children/> (quoting a former CSEC youth in California who explained how her pimp filled an emotional void she felt due to a lack of family stability growing up).

83. *See* POLARIS PROJECT, DOMESTIC SEX TRAFFICKING: THE CRIMINAL OPERATIONS OF THE AMERICAN PIMP 5 (2006), http://www.dejs.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.pdf; *Child Prostitution Growth*, *supra* note 14, at 3.

84. *See Child Prostitution Growth*, *supra* note 14, at 2 (explaining that pimps use physical and psychological abuse to control girls); Youth Radio, *supra* note 72 (quoting a former CSEC youth in Oakland about the rape, gang rape, and beatings she endured at the hands of her pimp, and quoting members of the community who said it is common to see pimps beating the girls they control).

85. *See* Amber, *supra* note 1, at 168-69; *Child Prostitution Growth*, *supra* note 14.

86. MISSEY[sic] *Data Report*, MISSSEY (June 2009), http://www.missey.org/documents/data_report_final.pdf. Pimps may even specifically target group homes to recruit youth. LINDA A. SMITH ET AL., SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING 31, 58 (2009).

87. MISSEY *Data Report*, *supra* note 86.

88. *Id.* at 5.

These basic factors of vulnerability exist in CSEC youth of all ages. Had Tasha been fifteen when she first came under the control of a pimp, for example, it would make little sense to no longer consider her a victim once she turned sixteen and remained trapped in that relationship. Even at age sixteen, Tasha's situation as a CSEC youth would still have resulted from an adult exploiting her vulnerabilities by recruiting her into prostitution.

Many older CSEC youth may be even more vulnerable to pimp coercion than younger CSEC youth because they have young children of their own.⁸⁹ This concern is particularly relevant in Alameda County, where nearly 20 percent of CSEC teens are mothers.⁹⁰ In these cases, the pimp can use a girl's baby as another source of leverage over her.⁹¹ For example, he may manipulate her by threatening to hurt the child or by threatening to withdraw his financial support if she were to leave prostitution.⁹² Additionally, threats to turn the girl over to the police may carry extra weight when it means that she will be separated from her baby.⁹³ Because older teens may be more likely to have a child at this point in their lives, in this respect they may actually be *more* vulnerable than younger teens. Consequently, there is a compelling argument for providing immunity to CSEC youth in Alameda County regardless of their age.

3. Protecting Youth Regardless of Their Cooperation with the Court

Immunity would also resolve the danger of prosecuting youth who, for various reasons resulting from their exploitation, are unable to cooperate with the court. Alameda County's diversion policy requires a CSEC youth like Tasha to provide information sufficient to demonstrate that she was coerced into prostitution.⁹⁴ Many youth, however, are unwilling to provide this information,

89. *Frequently Asked Questions*, CHILDREN OF THE NIGHT (Nov. 18, 2012, 6:30 PM), <http://www.childrenofthenight.org/faq.html>.

90. See *MISSEY Data Report*, *supra* note 86.

91. *Frequently Asked Questions*, *supra* note 89.

92. See *id.*

93. See Amber, *supra* note 1, at 166; Golke, *supra* note 6, at 209.

94. See *supra* notes 27-36 and accompanying text.

instead choosing to accept a conviction.⁹⁵ Some refrain from sharing this information in order to protect their pimps. Such a desire may result from trauma bonding that many CSEC youth experience with their exploiter.⁹⁶ Other youth refuse to provide this information because they distrust authority figures, such as police officers and court officials.⁹⁷ This distrust is common among CSEC youth in Alameda County, given that so many come from unstable family and home environments.⁹⁸ Still, other youth may refuse to provide information because they fear retaliation from their pimp. This problem is especially common in Alameda County, where pimps have infiltrated juvenile justice facilities,⁹⁹ sometimes even coming to court while posing as a relative.¹⁰⁰

Even if a youth provides the information required to make her eligible for diversion, the same barriers may still prevent her from complying with the even greater level of cooperation required to complete the entire program. A youth who may be willing to provide basic information regarding her exploitation may not be interested in attending therapy that will ask her for more in-depth information. Additionally, youth who begin diversion may later

95. Terry-Cobo, *supra* note 33.

96. Flynn, *supra* note 16 (discussing how, according to an OPD officer, “young sex workers often do not want to cooperate because ‘they basically come out brainwashed’ to protect their pimps”); *Child Prostitution Growth*, *supra* note 14 (quoting an OPD officer who explained that the CSEC youth she encounters are “both terrified of and attached to their pimps”). For further reading on trauma bonding in CSEC youth, see Annitto, *supra* note 22, at 15.

97. See RIC CURTIS ET AL., U.S. DEP’T OF JUSTICE, THE CSEC POPULATION IN NEW YORK CITY: SIZE, CHARACTERISTICS, AND NEEDS 16 (2008); POLARIS PROJECT, *supra* note 83, at 5; Annitto, *supra* note 22, at 60; *County Grapples*, *supra* note 28; Flynn, *supra* note 16 (quoting an OPD officer who explains, “Every single one of [these CSEC youth] had been victims of sexual assault at the hands of someone they trusted”); *Lawmakers Creating Policy*, *supra* note 72 (discussing the observations of the Alameda County Deputy District Attorney that one of the toughest challenges police officers face is getting girls to cooperate with the police and the court).

98. See *supra* notes 79-93 and accompanying text.

99. See, e.g., HUMAN SMUGGLING & TRAFFICKING CTR., U.S. DEP’T OF STATE, DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE 14-15 (2008), <http://www.state.gov/documents/organization/113612.pdf> (explaining how pimps exercise control over the girls even once they are arrested, such as giving girls fake birth certificates to lie about their age and identity, and quoting a former CSEC youth who explained her intense fear of being subjected to physical violence by her pimp); *County Grapples*, *supra* note 28.

100. *County Grapples*, *supra* note 28.

choose to return to their pimp without successfully completing the diversion program.¹⁰¹

CSEC youth victims of exploitation by a pimp are arguably the youth least deserving of criminal punishment. For the various reasons explained above, however, such youth are often unlikely to cooperate with the court. By requiring such cooperation as a prerequisite to diversion, Alameda County's current policy effectively criminalizes and denies protection to those who need it most. Because nearly all CSEC youth in Alameda County are working for a pimp,¹⁰² this issue will necessarily arise in almost every case in which a youth is denied eligibility for diversion due to noncooperation. This issue could be entirely avoided, on the other hand, by a policy of immunity.

4. Protecting Youth Trapped in Exploitation

Unlike alternative policies such as diversion, immunity would protect CSEC youth facing repeat charges of prostitution. This issue is especially relevant in Alameda County, where around 60 percent of CSEC youth arrested for prostitution are facing repeat charges.¹⁰³ Other policies like diversion become unavailable once a youth has appeared in court on charges of prostitution a certain number of times.¹⁰⁴ Some who support such policies believe that although a girl may deserve an initial chance to be seen as a victim, she should be held criminally responsible if she later chooses to remain involved in prostitution.¹⁰⁵ In reality, however, many barriers prevent a CSEC youth in Alameda County from exiting prostitution, even after completing diversion.

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

102. *Child Prostitution Growth*, *supra* note 14 (“Nearly all the girls on the streets are controlled by pimps who claim their earnings.”).

103. See *County Grapples*, *supra* note 28 (quoting the Chief Probation Officer of Alameda County); MISSSEY, *Framing the Issue of the Commercial Sexual Exploitation of Children* 1 (2009), http://www.misssey.org/documents/framing_the_issue.pdf.

104. See, e.g., WASH. REV. CODE § 13.40.070(7) (2012); Flynn, *supra* note 16.

105. See HUMAN SMUGGLING & TRAFFICKING CTR., *supra* note 99, at 10; Melissa Farley & Vanessa Kelly, *Prostitution: A Critical Review of the Medical and Social Sciences Literature*, 11 WOMEN & CRIM. JUST. 29, PROSTITUTIONRESEARCH.COM, http://www.prostitutionresearch.com/pdfs/Farley_Kelly.pdf, 27 (2007) (last visited Oct. 17, 2013).

One such barrier is the fact that upon release from juvenile hall, a girl continues to face many of the factors that led her into the sex industry in the first place, such as a lack of financial resources, mental health issues, and a lack of stable family relationships or housing.¹⁰⁶ Data shows that these barriers are especially prevalent for CSEC youth in Alameda County, as they display high rates of housing instability, family instability,¹⁰⁷ psychiatric problems,¹⁰⁸ trauma from sexual assault,¹⁰⁹ parenthood,¹¹⁰ dropping out of school, and leaving alternative employment.¹¹¹ Detention may even exacerbate some of these factors by disrupting a youth's involvement in education programs or by severing positive social relationships she may have formed before detention.¹¹²

In addition to these practical barriers, a CSEC youth often faces enormous psychological barriers that may prevent her from successfully leaving prostitution. After being released from her arrest, the CSEC youth likely will face continued coercion from her pimp.¹¹³ Most CSEC youth in Oakland are victims of domestic violence.¹¹⁴ Studies confirm that leaving such relationships is typically a slow, gradual process involving relapse, rather than a sudden, clean break.¹¹⁵ As a result, a girl's recidivism, though unfortunate, may be natural.

Because many barriers prevent CSEC youth from escaping exploitation even after initial arrests, recidivism upon release from detention is not a failure for which they should be held criminally culpable. Rather, CSEC youth in this situation are simply victims

106. See *supra* notes 79-84 and accompanying text.

107. See *supra* notes 79-81.

108. See *infra* note 120 and accompanying text.

109. See *supra* note 88 and accompanying text.

110. One study in Oakland found that about twenty percent of CSEC youth were mothers. *MISSEY Data Report*, *supra* note 86.

111. One-third of CSEC youth in Oakland reported that they had dropped out of school and one-third had left previous employment. See *MISSEY Data Report*, *supra* note 86.

112. FRANCINE T. SHERMAN, ANNIE E. CASEY FOUND., PATHWAYS TO JUVENILE DETENTION REFORM: DETENTION REFORM AND GIRLS—CHALLENGES AND SOLUTIONS 19 (2005), http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf.

113. See Flynn, *supra* note 16.

114. *MISSEY Data Report*, *supra* note 86.

115. See Victoria L. Banyard et al., *Sexual Violence Prevention: The Role of Stages of Change*, 25 J. INTERPERSONAL VIOLENCE 111, 114 (2010); Therese Zink et al., *Medical Management of Intimate Partner Violence Considering the Stages of Change: Precontemplation and Contemplation*, 2 ANNALS OF FAM. MED. 231, 232 (2004).

of continued criminal exploitation. The law should treat them as such by providing them immunity from prosecution.

B. Preventing Harm to CSEC Youth

In addition to protecting youth from wrongful prosecution, a policy of immunity in Alameda County would also protect youth from the harm they experience under diversion.

1. Harm Caused by Criminal Detention

One of the most important goals promoted by immunity is the protection and rehabilitation of CSEC youth from physical and psychological harm.¹¹⁶ Under other policies such as diversion, CSEC youth like Tasha are detained prior to, and sometimes after, a court hearing. Studies have found that the experience of detention negatively affects the psychological health of minor females in unique ways. For instance, the isolation of detention leads to higher rates of trauma and greater damage to positive self-image for female youth detainees than it does for male youth detainees.¹¹⁷ This harm to female detainees is especially relevant in Alameda County, as nearly all CSEC youth are female.¹¹⁸

CSEC youth who are coping with mental health issues and histories of sexual abuse are especially vulnerable to the psychological harm caused by detention. This issue is particularly problematic in Alameda County, where a high percentage of CSEC youth report histories of sexual abuse¹¹⁹ and an extremely high percentage experience severe mental health issues.¹²⁰ Notably, one study of CSEC youth in Alameda County found that 25 percent had clinical depression, 24 percent had attempted suicide, 49 percent had been

116. See, e.g., *Bill Analysis of Assembly Bill 12*, *supra* note 61; *Bill Analysis of Assembly Bill 17*, *supra* note 61.

117. See SHERMAN, *supra* note 112, at 19.

118. *MISSEY Data Report*, *supra* note 86. These percentages exceed the national average, as an estimated 76 percent of CSEC youth in the entire United States are female, whereas 24 percent are male. See CHARLES PUZZANCHERA, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE ARRESTS 2008 3 (2009), <https://www.ncjrs.gov/pdffiles1/ojjdp/228479.pdf>.

119. *MISSEY Data Report*, *supra* note 86.

120. *Id.*

hospitalized at some point, and 29 percent had been hospitalized for psychiatric reasons.¹²¹ Indeed, even the director of an organization working with CSEC youth at Alameda County juvenile hall acknowledged the trauma that girls experience during their arrest, detention, and court proceedings.¹²² Detention has further been found to harm girls' outside relationships, such as a relationship with a child.¹²³ This issue is especially problematic in Alameda County, where many CSEC youth are mothers.¹²⁴ A policy of immunity would most effectively protect CSEC youth from these negative consequences of diversion.

2. Indirect Harms

In addition to protecting CSEC youth from the various harms of detention, immunity also may protect CSEC youth from other, more indirect harms. For example, under policies such as diversion, the possibility of arrest may deter CSEC youth like Tasha from seeking the assistance of police to break away from a pimp.¹²⁵ Girls may also be less likely to seek medical treatment, public health services for sexually transmitted diseases, or psychological counseling from a school, for fear that doing so will lead to criminal charges of prostitution.¹²⁶ This issue is especially troubling in Alameda County, where girls involved in prostitution display high rates of mental health problems¹²⁷ and sexually transmitted disease infections.¹²⁸ Furthermore, pimps in Alameda County commonly use the possibility of arrest as another scare tactic to threaten girls in order to keep them trapped in prostitution.¹²⁹ A policy of immunity for youth under eighteen would remove these barriers that prevent girls from seeking help or from trying to leave their pimp.

121. *Id.*

122. *County Grapples*, *supra* note 28 (quoting the Executive Director of MISSEY, who said, "Putting girls through the criminal justice system further traumatizes them").

123. See SHERMAN *supra* note 112, at 38; Terry-Cobo, *supra* note 33.

124. *MISSEY Data Report*, *supra* note 86.

125. See Annitto, *supra* note 22, at 28; Golke, *supra* note 6, at 209; Law, *supra* note 22, at 584-85 (noting a finding by the San Francisco Task Force on Prostitution that "prostitutes are afraid to call the police ... for fear of being arrested themselves").

126. See Annitto, *supra* note 22, at 28.

127. *MISSEY Data Report*, *supra* note 86, at 5.

128. *County Grapples*, *supra* note 28.

129. See Amber, *supra* note 1, at 166; Golke, *supra* note 6, at 209.

C. Eliminating CSEC Prosecution

Finally, proponents of immunity in Alameda County have a strong argument that this policy would more effectively further the ultimate goal of ending CSEC exploitation altogether.

1. Freeing Police Resources

By granting CSEC youth immunity from criminal prosecution, police forces could devote more resources towards apprehending pimps who run the CSEC market. Doing so would allow local and state governments to combat the true criminals in this industry.¹³⁰ Currently, the Oakland Police Department (OPD) arrests youth involved in prostitution at much higher rates than it does pimps. In 2009 alone, for example, 76 youth in Oakland were arrested on charges of prostitution.¹³¹ In contrast, over the course of four years, from 2006 to 2010, only 148 pimps appeared before the court in Alameda County, and only 110 received felony convictions.¹³² If time and resources were no longer wasted arresting and prosecuting youth, they could instead be spent arresting pimps and customers. One OPD officer explained this by saying, “If we had more resources, we would do more sweeps. We’d have decoys. You need decoys to catch johns [customers] and you need more [undercover police officers] to catch pimps.”¹³³ Indeed, before OPD suffered a budget cut in 2008, it used to catch a significantly higher number of pimps and customers per night.¹³⁴ Another OPD officer likewise explained that the unit could do more undercover stings to arrest pimps if it received a bigger overtime budget, as stings generally

130. See, e.g., *Bill Analysis of Assembly Bill 12*, supra note 61; *Bill Analysis of Assembly Bill 17*, supra note 61.

131. *Child Prostitution Growth*, supra note 14 (citing statistics reported to the FBI in 2008).

132. Barbara Grady & Sarah Terry-Cobo, *Alameda County DA’s Office: Crusade to Rescue Youth, Prosecute Pimps*, OAKLAND LOC. (May 6, 2010), <http://live.oaklandlocal.com/article/youth-trafficking-part-5>.

133. Barbara Grady, *Fighting Youth Trafficking: Recession, Weak Laws Make It Hard*, OAKLAND LOC. (May 5, 2010), <http://live.oaklandlocal.com/article/youth-trafficking-part-3> (quoting an OPD officer).

134. *Id.*; see also *Child Prostitution Growth*, supra note 14.

require work during both the day and night.¹³⁵ The department could also arrest more pimps if it could afford better equipment, such as undercover cars, which cannot be used repeatedly in stings because pimps will begin to recognize them.¹³⁶

Resources diverted away from arresting and prosecuting youth additionally could be used to fund educational programs for customers who solicit prostitution. These programs help buyers understand their role in perpetuating the CSEC market.¹³⁷ The Director of the SAGE Project, an educational program for customers in San Francisco, explains that such measures to reduce demand may help eliminate commercial sexual exploitation more effectively than measures aimed at reducing supply, such as arresting youth.¹³⁸ In fact, a federally funded study in 2007 found that 95 percent of customers who completed the SAGE Project program faced no subsequent charges of soliciting prostitution.¹³⁹

Funding that is no longer needed to arrest and detain youth charged with prostitution could likewise be used to fund a statewide task force to help police departments share knowledge and information to more effectively combat the pimps who run the prostitution industry. Such a task force would be especially effective in California, where pimps run prostitution “tracks” not only within specific cities or counties but often between multiple areas throughout the entire state.¹⁴⁰

2. Obtaining Youth Cooperation with Law Enforcement

In addition to freeing up resources, immunity could support law enforcement efforts to combat pimps and customers by facilitating greater cooperation from CSEC youth. Under the current diversion policy, CSEC youth like Tasha are still largely treated as criminals, as they are arrested, detained in juvenile hall, and judged in

135. *Child Prostitution Growth*, *supra* note 14.

136. *Id.*

137. *See, e.g.*, Sarah Terry-Cobo, *Solving Youth Trafficking: Educating “Johns” Curbs Demand*, OAKLAND LOC. (May 6, 2010), <http://live.oaklandlocal.com/article/youth-trafficking-part-4>.

138. *Id.*

139. *Id.*

140. *See supra* note 69 and accompanying text.

court.¹⁴¹ In these situations, girls receive mixed messages from law enforcement and the judicial system. On the one hand, they are told that they are victims deserving protection, but at the same time, they are treated as criminals.¹⁴² Law enforcement and the courts may seem as controlling and untrustworthy as a pimp. As a result, girls often refuse to cooperate.¹⁴³ If CSEC youth saw police and the courts as figures who could assist them in escaping prostitution, rather than as figures who could arrest, detain, and convict them, they might be more willing to work with law enforcement to catch their pimps.¹⁴⁴

IV. COUNTERARGUMENTS

Critics of immunity often express concern that this policy will fail to hold accountable certain youth who are not actually coerced into prostitution, such as older teens, youth who sell themselves without a pimp, and repeat offenders. As previously explained, however, such concerns are ill founded in Alameda County, given the nature of the CSEC market there. Nonetheless, many critics worry because—even in Alameda County—the main argument against immunity is that, unlike diversion, it provides CSEC youth with no pathway out of prostitution. Nonetheless, data regarding the actual situation in Alameda County shows that this concern, too, may be misplaced.

First, although the current diversion program technically provides a pathway out of prostitution, its overall effect may actually harm CSEC youth more than it helps them, defeating the point of the policy. As previously explained, in the current diversion program youth are subjected to psychological harm when they are treated as criminals during arrest, detention, and possible sentencing.¹⁴⁵ The possibility of such criminal treatment often encourages CSEC youth to remain in prostitution.¹⁴⁶ A pimp can even use this

141. *See supra* notes 28-36 and accompanying text.

142. *See supra* notes 28-36 and accompanying text.

143. *See* Grady & Terry-Cobo, *supra* note 132; *supra* notes 94-100 and accompanying text.

144. *See* Annitto, *supra* note 22, at 28.

145. *See supra* notes 28-36 and accompanying text.

146. *See supra* note 125 and accompanying text.

fear of criminal prosecution as leverage to increase his control over the youth.¹⁴⁷

Just as the current diversion policy presents great risk of harm to CSEC youth, it provides little opportunity to actually help them successfully leave prostitution. Diversion programs fail to eliminate many of the issues that render youth vulnerable to coercion from a pimp in the first place.¹⁴⁸ For example, many CSEC youth who complete a diversion program are still poor, have few familial or social bonds, and generally lack housing.¹⁴⁹

Even if a diversion program is able to offer appropriate opportunities for empowerment that could eliminate some of a youth's risk factors, the effectiveness of the program would remain limited by its mandatory and short-term nature. Studies have shown that such rehabilitation programs are most effective when youth enter them voluntarily, as they are more invested in the process.¹⁵⁰ Programs also are more effective when youth have control over and a voice in the services they receive, as this allows for the program to be tailored to a youth's individual needs.¹⁵¹ Finally, programs are most effective when they provide long-term support and accommodate periods of recidivism.¹⁵² Diversion policies lack these key features of successful rehabilitation programs.

A policy of immunity, on the other hand, could facilitate the entrance of CSEC youth into effective voluntary rehabilitation programs. As explained in Part III, CSEC youth might be more willing to seek out help if they did not have to fear the risk of criminal prosecution.¹⁵³ Unlike diversion programs, which can last no longer than the maximum conviction's sentence for a prostitution offense, voluntary programs could provide long-term support for

147. *See supra* note 129 and accompanying text.

148. *See supra* notes 82-93 and accompanying text.

149. Flynn, *supra* note 16 (quoting the Director of MISSEY's explanation that "even with a diversion program, eventually young women will return to a community where violence and prostitution are prevalent. The conditions that created the vulnerabilities still exist.... They're not having their basic needs met.... [I]t essentially becomes a revolving door: arrest, detention, back on the street, repeat").

150. HEATHER J. CLAWSON & LISA GOLDBLATT GRACE, FINDING A PATH TO RECOVERY: RESIDENTIAL FACILITIES FOR MINOR VICTIMS OF DOMESTIC SEX TRAFFICKING 4 (2007), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/ResFac/ib.htm>.

151. *See* SHERMAN, *supra* note 112, at 47; CLAWSON & GRACE, *supra* note 150, at 6.

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

153. *See supra* Part III.B.1.

youth and increase their likelihood of success. Voluntary programs also would contain a number of other effective features lacking in the diversion model, such as voluntary participation, accommodation of recidivism, and individually tailored support. Of course, the main challenge under the immunity policy, then, would be for the state of California and various nonprofit agencies to summon the resources needed to expand upon the current network of voluntary CSEC rehabilitation programs.

Given the high risk of harm and low chance of success inherent in the diversion model, it should come as no surprise that Alameda County's diversion program does little to help CSEC youth and even less to combat the sex industry. As previously explained, an estimated 60 percent of CSEC youth facing charges in Alameda County are repeat offenders¹⁵⁴ for whom the diversion policy clearly has not provided an effective pathway out of prostitution. Furthermore, the diversion policy fails CSEC youth in Alameda County on a larger scale. Not only does the policy divert police resources away from arresting pimps,¹⁵⁵ but it also discourages CSEC youth from assisting police efforts to do so.¹⁵⁶ In contrast, a policy of immunity avoids many of the problems created by the diversion program by protecting exploited youth from unjustified prosecution. Immunity also facilitates more effective policing against pimps and ultimately promotes the elimination of CSEC exploitation.

154. *County Grapples*, *supra* note 28.

155. *See supra* notes 133-39 and accompanying text.

156. *See supra* note 144 and accompanying text.

CONCLUSION

Because Alameda County is an epicenter of the underage sex trade, the policies it pursues will likely influence state and federal legislators looking for a model to follow. A policy of immunity for youth under eighteen, supported by many local advocates for CSEC youth, would benefit Alameda County in ways that the current diversion policy does not. Primarily, a policy of immunity for youth under age eighteen would resolve tension with California laws regarding statutory rape, buying sex from a minor, and selling a minor for sex, as well as tension with federal TVPA law. Additionally, a policy of immunity for youth under eighteen would properly recognize CSEC youth as victims even in the event of recidivism, even when they reach the ages of sixteen and seventeen, and even when they are justifiably unable to cooperate with law enforcement and court officials. What is more, immunity would more effectively pursue the ultimate goal of eliminating CSEC exploitation by freeing up police resources to focus on pimps and customers, by facilitating the cooperation of CSEC youth with police efforts, and by eliminating barriers that prevent CSEC youth from seeking help.

When deciding upon a policy to combat CSEC exploitation, jurisdictions should consider the context of the policy within state laws and the nature of the local CSEC market. In some places like Alameda County, a policy of immunity for youth under eighteen may be most appropriate. In other places, alternative policies may be preferable. Either way, Alameda County can provide an appropriate precedent for others to follow by conscientiously choosing a policy appropriately tailored to its unique situation: namely, immunity for youth under eighteen.

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