Voting to End Vulnerability: Understanding the Recent Proliferation of State-Level Child Sex Trafficking Legislation

Kate Price

Keith Gunnar Bentele

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VOTING TO END VULNERABILITY: UNDERSTANDING THE RECENT PROLIFERATION OF STATE-LEVEL CHILD SEX TRAFFICKING LEGISLATION

KATE PRICE* & KEITH GUNNAR BENTELE**

INTRODUCTION
I. HISTORY OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN LEGISLATION IN THE UNITED STATES
II. MEASURING PROGRESS IN COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN STATE LEGISLATION
   A. Dependent Variable
   B. Independent Variables
III. FACTORS ASSOCIATED WITH COMPREHENSIVE CHILD SEX TRAFFICKING STATE LEGISLATION
   A. Results
IV. IMPLICATIONS
CONCLUSION

INTRODUCTION

Every year, upwards of 300,000 children (anyone under the age of eighteen) are at risk for being commercially sexually exploited (CSEC) in the United States. According to End Child Prostitution, Child Pornography and Trafficking of Children (ECPAT-USA), “(CSEC) in its primary forms is prostitution, pornography, sex tourism, sex trafficking and sexual performance, in which a commercial transaction is involved.” The Trafficking Victims Protection Act of 2000 (TVPA) asserts all commercially sexually exploited persons under the age of eighteen are victims of human trafficking. All fifty states have also passed anti–human trafficking laws; however, CSEC-specific state statutes vary widely in both content and number.

* Kate Price, MA, University of Massachusetts Boston.
** Keith Gunnar Bentele, PhD, University of Massachusetts Boston.
Examining CSEC legislation at the state level is essential because local law enforcement, social workers, and other first responders are usually the first to come in contact with CSEC victims and exploiters. Furthermore, even though federal laws such as the TVPA articulate that all persons under the age of eighteen who are commercially sexually exploited are not criminals, the law has limited effects. Lack of federal resources and difficulty of prosecuting federal CSEC cases are often cited as the primary shortcomings in enforcing this federal statute. Consequently, the specific character of state legislation in regards to CSEC heavily impacts the experience of victims upon contact with the state, determining, for example, whether victims experience increased contact with the criminal justice system or social service agencies.

This study aims to understand which state-level factors are associated with states passing more comprehensive anti-CSEC laws. A groundswell of CSEC-related legislation has passed in recent years; however, little research has been done about what specific influences may be driving this increase in legislative activity. This analysis provides a thorough investigation of these patterns of associations to better understand how strong CSEC legislation is passed. Additionally, this research is survivor-led, which heeds the growing call for survivors' perspectives to be central in shaping CSEC policy and practice.

This Article first focuses on the history of CSEC legislation in the United States by contextualizing the history of state anti-trafficking laws within the larger anti-trafficking policy framework of federal U.S. statutes and United Nations' (U.N.) protocols. The second and third sections address the variables, statistical model, and results of our data analysis. The fourth section discusses the implications of these findings. The Article concludes with practical considerations for future CSEC legislative efforts on the state level.

6. See Butler, supra note 4, at 1301–02.
7. Id. at 1303.
8. See id. at 1310–13.
9. See id. at 1310.
Social theorist Emile Durkheim posited that laws are a reflection of a society’s value system. Thus, the drafting and passage of legislation can be viewed as a state’s public declaration of its position and intentions toward addressing CSEC. This theoretical framework is particularly important to consider when examining variation within each state’s anti-trafficking legislation. State laws vary widely on how specific aspects of CSEC are addressed, such as retaining the right to arrest a victim if the child does not comply with law enforcement, or prohibiting a sex buyer who is being prosecuted from utilizing a defense that a child consented. These specific statutes hold real-life consequences for commercially sexually exploited children’s overall well-being and quality of life, especially if children are incarcerated for prostitution and denied much needed CSEC-specific support and health services.

I. HISTORY OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN LEGISLATION IN THE UNITED STATES

Despite recent increased awareness of CSEC, the United States first addressed the commercial sexual exploitation of children legislatively in 1910 by implementing the Mann Act. Also known as the White Slave Traffic Act, this federal legislation outlawed the interstate or international transportation of women and girls, particularly immigrants brought to America, for forced prostitution. This law was adopted after the 1904 League of Nations International Agreement for Suppression of the White Slave Traffic. It addressed increased concerns over a growing “white slave” market after prostitution was legalized in Europe and white women and girls were being kidnapped and then transported across countries to work in brothels. We must note the racist origins of anti-trafficking legislation, which only considered the commercial sexual exploitation and immorality of white women and girls. This prioritization is consistent with a

12. See id. at 73, 81.
15. Butler, supra note 4, at 1300.
18. Id.
19. Id. at 759–60, 760 n.48.
historical legacy in America of people of color, particularly women and girls, being viewed as hypersexual and “rapeable.”

Additionally, the 1949 United Nations Protocol Amending the International Agreement for the Suppression of the White Slave Traffic and the International Convention for the Suppression of the White Slave Traffic were particularly important to U.S. CSEC legislation. These laws introduced the terminology of “force, fraud, or coercion” to describe lack of consent as the means by which human beings could be identified as human trafficking victims, which expanded the previous kidnapping definition. In the TVPA of 2000, authors of the bill utilized the same “force, fraud, or coercion” language to define lack of consent for human trafficking victims. Although importantly the TVPA states that for children (persons under the age of eighteen), proof of “force, fraud, or coercion” need not be demonstrated for youth to receive protections and services.

The passage of the TVPA in 2000, however, was not a blanket solution for addressing CSEC in the U.S. It was the view of many anti-CSEC advocates that in practice the enforcement of TVPA focused more on protecting foreign-born trafficking victims than U.S.-born victims, who were still being treated as criminals. In 2005, the Trafficking Victims Protection Reauthorization Act (TVPA) acknowledged these concerns by including new provisions to raise awareness about U.S.-born CSEC victims such as expanding victims’ services, identifying American homeless and runaway youth as having increased risk for CSEC, and mandating additional CSEC training for law enforcement. Further federal CSEC protections were enacted with the Justice for Victims Trafficking Act (JVTA) of 2015 which expanded numerous anti-CSEC initiatives such as
increased victim services funding, further protective legal statutes, and additional resources for online CSEC investigations.27

In 2004, the Department of Justice (DOJ) suggested model legislation (Model Law) for states to adopt.28 The Model Law mirrored many aspects of the TVPA, particularly the “three p’s”: prevention, protection, and prosecution.29 The Model Law addressed CSEC by including a “Sexual Servitude of a Minor” section, which articulated that persons under the age of eighteen are not required to provide proof of force, fraud, or coercion to be considered human trafficking victims.30 Yet, despite these DOJ recommendations, most state anti-trafficking legislation chose to retain the right to criminalize persons under the age of eighteen for prostitution.31 The two primary arguments against decriminalization are ongoing debates about age of consent to sex for minors, and jailing CSEC victims as a way to keep them safe from exploiters.32

A primary strategy for opposing such criminalization of minors for prostitution is the passage of state “Safe Harbor” laws, which focus on protecting CSEC victims.33 While there is little consensus amongst advocates and non-governmental organizations (NGOs) who support Safe Harbor laws about which specific provisions to include in the legislation, the two key policy areas of interest are protecting CSEC victims from criminal and juvenile prosecution, and diverting CSEC victims from juvenile justice programs to child welfare agencies and CSEC-specific service providers.34 As of July 2016, thirty-four states have enacted Safe Harbor laws, however, these state statutes vary significantly.35 For instance, ten states fully decriminalize CSEC for persons under eighteen, two states limit the age of decriminalization to sixteen, and the remaining states retain the right to arrest minors for prostitution.36

28. Barnhart, supra note 5, at 101 n.96.
29. See id. at 101–02, 106–10.
33. See Barnert, supra note 31, at 249–50.
34. Butler, supra note 4, at 1304–05.
36. See END CHILD PROSTITUTION, CHILD PORNOGRAPHY AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES, Steps to Safety: A Guide to Drafting Safe Harbor Legislation to
II. MEASURING PROGRESS IN COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN STATE LEGISLATION

A. Dependent Variable

The dependent variable in the following analyses is a score based on Shared Hope International’s annual State Report Card series. Shared Hope is an anti-CSEC NGO founded by former U.S. and Washington State Congresswomen Linda Smith. The annual Report Card series, which was first published in 2011, creates a framework to track states’ annual legislative progress in addressing CSEC statutes. To calculate the annual Shared Hope score each state receives 2.5 points for every one of forty-one provisions Shared Hope deems necessary to comprehensively address CSEC at the state level (102.5 is the maximum score each state can receive). States are given credit only for statutory changes passed by state legislatures: executive orders or regulatory changes are not counted. Provisions were chosen based on interviews with approximately 300 advocates and service providers throughout the United States about “limitations placed on their ability to implement effective trafficking responses due to inadequate state laws.” Shared Hope scores are a subjective evaluation of the impact of CSEC-specific state statutes that address all aspects of CSEC, including: decriminalization of CSEC victims, CSEC victim protection and service provision, and trafficker, facilitator, and buyer prosecution. Therefore, Shared Hope scores reflect states’ ability to respond to the needs of CSEC victims in multiple areas; scores are not simply a count of bills passed each year. For instance, states that fully decriminalize CSEC have a higher Shared Hope score than states that do not. Shared Hope’s annual Report Card series is widely regarded within the anti-trafficking movement as a reliable tool to track progress of state CSEC legislation.

38. Id. at 21.
39. See id. at 9.
40. Id. at 27.
41. Id. at 9.
42. See id. at 9.
43. See 2015 REPORT CARDS, supra note 37, at 10–14.
44. See 2014 REPORT CARDS, supra note 40, at 1.
Figure 1 displays the change in Shared Hope scores from 2011–2015 for all states, and illustrates the dramatic increase in CSEC-related legislative activity in recent years. Figure 2 provides the geographic distribution of Shared Hope Score in 2015. Despite the national trend of convergence upon higher average scores, states continue to exhibit substantial variation in the extent of their anti-CSEC policies. This figure indicates that southern states have been more aggressive in pursuing anti-CSEC legislation, on average, and northeastern states less so. Figure 3 contains a scatter plot displaying state Shared Hope scores in 2011 against a state’s change in their score between 2011 and 2015. The strong negative association indicates a “catch up” effect in which states with lower scores in 2011 have seen the largest increases in their scores between 2011 and 2015. It appears that in the context of rapidly changing norms in regards to anti-CSEC legislation, many states with less comprehensive anti-CSEC policies in 2011 have made significant policy changes in an effort to keep up. Simultaneously, the continuing passage of legislative improvements (from the perspective of advocates at Shared Hope) by states that already had high scores has continued to raise the upper limit. In the analyses below we seek to better understand both this variation in scores across states and why some states have experienced more accelerated increases in the comprehensiveness of their CSEC legislation over this period.
Figure 2. Shared Hope Scores in 2015

Alaska and Hawaii had scores of 72 & 62.5 respectively.

Figure 3. Change in Shared Hope Score 2011-2015 by Score in 2011
B. Independent Variables

There are very few quantitative analyses of state-level CSEC legislation, and the following analyses are the first effort to explain variation in a comprehensive measure of overall CSEC policies (to our knowledge). As such, there is little existing empirical work in this specific policy area to guide the selection of independent variables. Instead, we have relied on our more general knowledge of the state policymaking process as well as experience as an on-the-ground advocate for anti-CSEC legislation, respectively.

State Government Institutional Responses to CSEC: State-level human trafficking task forces have become increasingly common in recent years, with forty-six states having a task force in 2015, up from twenty-nine in 2011. Some state anti-trafficking legislation mandated the creation of a statewide human trafficking task force, while other states voluntarily created human trafficking task forces to address growing concerns about this issue. Task forces provide an institutional point of focus for anti-trafficking, anti-CSEC advocates, and NGOs, as well as an additional venue for the diffusion of state legislation. Given that a major function of a state human trafficking task force would be to encourage the passage of anti-trafficking legislation, we expect states with task forces to have higher Shared Hope scores on average. In addition, many states have passed Safe Harbor laws that decriminalize the experiences of CSEC victims to varying degrees and provide CSEC-specific services to victims. As Safe Harbor laws signal a strong state position on the treatment of victims of CSEC, we expect states with Safe Harbor laws to have higher Shared Hope scores.

Partisan and Gender Composition of State Legislatures: In the context of deep partisan polarization, in recent years it has become increasingly difficult to find policies that are genuinely bipartisan.

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47. Crile, supra note 32, at 1792.
48. Given that the Shared Hope scores provide a comprehensive assessment of state anti-CSEC polices, the character of state Safe Harbor legislation is incorporated into state scores in some years. See 2015 REPORT CARDS, supra note 37, at 16–19. In order to avoid any forced correlation between the Safe Harbor variable and the Shared Hope outcome, we have modified the Shared Hope scores to remove any points attributable to state Safe Harbor laws.
Anti-CSEC legislation might be an exception. The national trend of increasing Shared Hope scores nationwide suggests that essentially all states regardless of partisan control have been passing legislation. In order to examine whether there is a partisan dynamic to this trend we examine whether a state having a larger percentage of Republican state legislators impacts their scores.

A large body of research exists examining the extent to which the representation of women in governing bodies impacts policy outcomes and, specifically, the extent to which this presence results in policies that support women. We are not attempting here to characterize CSEC as a women’s issue; rather we are simply exploring whether a larger presence of female legislators, measured here simply as the percentage of women legislators, impacts state Shared Hope scores. We should state at the outset that there are multiple reasons to suspect this factor will not be influential. For one, there is substantial debate, and skepticism, as to whether numerical representation in governing bodies actually corresponds with real influence on legislative processes. Second, the most comprehensive research on the voting patterns of women in U.S. state legislatures to date finds that when women vote they primarily do so as partisans and rarely cross party lines.

**Interest Groups:** The presence of social movements is known to be significantly associated with progressive social policy change. Anti-CSEC NGOs are an integral part of the anti-trafficking movement through awareness-raising campaigns, collaborating with political champions to pass effective legislation, and coalition-building with...
other community stakeholders. To measure the potential impact of NGOs on the passage of comprehensive CSEC legislation, we estimated the average annual count of anti-CSEC NGOs in each state during the years 2011–2014. Data was gathered utilizing three online tools: GuideStar, an online database of non-profit organizations; state-specific resource guides produced by Polaris Project and Girls Education and Mentoring Services (GEMS), two leading anti-CSEC NGOs; and a general search of popular search engines. A limitation of this data collection method is the subjective nature of online queries; however, we did ensure that saturation was reached for each state’s list of NGOs. This count variable was highly skewed and enters all models in a logged form. We anticipate that states with more anti-CSEC NGOs will have higher Shared Hope scores.

**Religious Composition:** Faith-based organizations are highly present within the anti-trafficking movement.\(^{57}\) For many years the issue of trafficking of children has been of major concern to members of Evangelical congregations and political organizations.\(^{58}\) The impact of Evangelical organizations and faith-based activists on the passage of state level CSEC legislation likely operates through multiple avenues including lobbying, the relative electoral success of Republican politicians, and public opinion.\(^{59}\) As a rough proxy for these various mechanisms we examine whether the percentage of Evangelical residents in a state is associated with their Shared Hope score. We obtained these data from the 2010 wave of the *Religious Congregations & Membership in the United States* survey.\(^{60}\) This survey provides the best available estimates of religious adherence, broken down by religious tradition, at the state level.\(^{61}\) A widely known limitation of this survey is that it suffers from significant undercounts of particular denominations.\(^{62}\) Given that historically African-American denominations are particularly likely to be underrepresented in this survey, we regard our measure of Evangelical state residents as a measure of white Evangelical adherents.\(^{63}\)

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58. See id. at 81.
59. See id. at 68–69.
62. See id. at 5–6.
63. Id. at 15.
Proxy measure for children vulnerable to CSEC: Living in poverty is one of the top risk factors for CSEC. Lack of economic, educational, and safe housing options can leave children vulnerable to manipulative adults who groom neglected youth for sexual exploitation with false promises of stability and security. As an approximate gauge of this risk factor we explore whether the average per capita number of children living below the federal poverty line from 2011–2014 in a state is associated with their Shared Hope score. Data was obtained from the Kids Count Data Center at the Annie E. Casey Foundation, a private charitable children’s rights organization in the United States, which compiles U.S. Census Bureau data.

Proxy measure of state prevalence of CSEC: Understanding the scope of CSEC within each state is essential to measure motivations for passing comprehensive state-level legislation. We utilized the average annual per capita number of sex trafficking–specific calls and texts to the National Human Trafficking Resource Center (NHTRC) hotline over the years 2011–2014 as a rough estimate to determine the magnitude of sex trafficking in each state. The NHTRC hotline is a toll-free, twenty-four-seven confidential communication center that connects human trafficking victims to services, and accepts tips of suspected human trafficking activity. The NHTRC was founded by the NGO Polaris Project and is currently funded by the U.S. Department of Health and Human Services and private donations. We recognize that there are multiple potential issues with this measure, but we consider this variable one of the better amongst many flawed options for capturing differences in CSEC prevalence across states. We expect that states with more CSEC may be more likely to pursue anti-CSEC legislative efforts.

Controls: As was evident in Figure 1 there is a very strong trend of increasing passage of anti-CSEC legislation over time as more and more states substantially increase their Shared Hope scores. This issue area has clearly increased in prominence as a political issue and has diffused widely across state parties and legislatures.

68. Id.
69. Id.
70. See 2014 REPORT CARDS, supra note 40, at 29.
We control for the trend driven by these relatively intangible dynamics with series of dichotomous variables for each year except 2011. Last, a handful of state legislatures are on a biannual schedule holding legislative sessions every other year. We control for these states’ inability to change scores in years without a legislative session with a dichotomous indicator of no legislative session.

Statistical Model: The Shared Hope scores are available for all states for the years 2011–2015. In order to identify the state level factors associated with higher or lower scores we use a cross-sectional time-series approach. Two states, Louisiana and Wyoming, were identified as unduly influential outliers and were dropped from all analyses. Consequently, all models examine a set of 240 state-year observations. A Lagrangian multiplier test confirmed the expected presence of random effects, significant differences across states, and supporting the use of a random effects modeling approach. In addition, in order to test whether an important assumption required for this modeling approach was met, a Hausman test was performed and indicated a preference for a random effects model. Last, a modified Wald test indicated the presence of heteroskedasticity. Given this we use heteroskedasticity-robust standard errors in all models.

III. FACTORS ASSOCIATED WITH COMPREHENSIVE CHILD SEX TRAFFICKING STATE LEGISLATION

A. Results

Table 1 contains the results of six models examining the extent to which various factors are associated with state Shared Hope scores. Models 1–4 include a series of dichotomous year variables to control for the strong trend of increasing Shared Hope scores nationwide. These dummy variables are highly significant and indicate that roughly three quarters of the variance explained by these models is attributable to this nationwide trend of increased activity in regards to anti-CSEC legislation. (Figure 3 illustrates the change in each state’s Shared Hope scores between 2011–2015.) In addition to being one of the primary explanatory forces identified in these analyses, it is important to emphasize that the strength of this trend impacts our interpretation of the other factors in this model substantially. For

example, the positive impact of the percentage of state GOP legislators indicates that after controlling for the nationwide positive trend in Shared Hope scores in which all states are experiencing rising scores (on average), states with more Republican legislators have higher scores than those with fewer GOP legislators. However, it does not mean that legislatures controlled by Democrats have not increased their scores. They have, but legislatures with more Republicans have done so to a more substantial degree.

Table 1. Random Effects Analysis of State Shared Hope Scores: 2011-2015

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<tr>
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<th>Model 2</th>
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<td>(1.03)</td>
<td>(1.04)</td>
<td>(1.05)</td>
<td>(1.04)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>17.2***</td>
<td>17.3***</td>
<td>17.1***</td>
<td>17.1***</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>(1.06)</td>
<td>(1.04)</td>
<td>(1.05)</td>
<td>(1.04)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>42.6***</td>
<td>19.3*</td>
<td>22.3*</td>
<td>21.1*</td>
<td>29.2*</td>
<td>23.3*</td>
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<tr>
<td></td>
<td>(7.91)</td>
<td>(10.9)</td>
<td>(10.6)</td>
<td>(10.5)</td>
<td>(11.8)</td>
<td>(11.9)</td>
</tr>
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<td>Overall R²</td>
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<td>0.396</td>
<td>0.456</td>
<td>0.471</td>
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</table>

*p < .1 **p < .05 ***p < .01 ****p < .001
Beyond this temporal trend, the results of Model 3 indicate that four factors are significantly associated with state differences in Shared Hope scores: the presence of a Safe Harbor law, the proportion of GOP state legislators, the proportion of state legislators that are women, and the percentage of white Evangelical residents. The interpretation of the coefficients in cross-sectional time-series analysis is slightly complicated as they capture both the effects of variation across states and within states over time. In the case of a dichotomous variable, such as the variable indicating whether a state has passed a Safe Harbor law, the interpretation is more straightforward. For example, in our Model 3, which contains all factors examined, this model suggests that states and “state-years” in which a state has a Safe Harbor law exhibit a Shared Hope score which is roughly three points higher on average than is the case in “state-years” without a Safe Harbor law. In other words, these coefficients capture both the impact of a state having a law or not continuously (between-state differences in Shared Hope scores on average) as well as the impact of a state passing a law (the within-state difference as a state’s score changes over time).

The interpretation of our continuous independent variables is only slightly more complex. These factors, such as the percentage of GOP state legislators, capture the average effect of a one-unit change in the independent variable over time and between states. As such an interpretation is not intuitive, we illustrate the impact on Shared Hope scores of different state characteristics in Figure 4. Figure 4 demonstrates the contribution of various significant factors in Model 3 to the predicted Shared Hope scores of states at various levels of these factors. “High” and “low” in this figure are defined as one standard deviation above the mean and one standard deviation below the mean respectively. Beginning with partisan control of state legislatures, controlling for all other factors, a state with a proportion of GOP legislators one standard deviation above the mean would be expected to have a Shared Hope score roughly seven points higher than a state with a percentage of GOP legislators one standard deviation below the mean, but otherwise with identical characteristics. Similarly, a state with a “high” proportion of women state legislators would have a score six points higher than a state with a “low” percentage of female legislators (on average, controlling for all other factors). Last, a state with a “high” proportion of white Evangelical residents would be predicted to have a score roughly seven points higher than a state with a “low” percentage of Evangelicals.
While it is difficult to reconnect these differences in state scores with on-the-ground impact of these policy choices, it should be noted that these are rather large impacts on state scores. In 2015, the difference between the maximum and minimum score was thirty-seven points. In the context of this type of range in actual scores, a seven-point difference represents nearly one-fifth of this maximum difference between states in scores.

At this point, it is also worth emphasizing the factors that are not significant. The number of Polaris phone calls, the child poverty rate, the number of foster children, and the number of reported cases of abuse are insignificant in full models (the latter two tested in models not shown).\textsuperscript{72} Our best attempts to find proxy measures

\textsuperscript{72} In addition to child poverty we explored whether a number of potential proxy measures of child vulnerability to CSEC were associated with state policies. A history of child sexual abuse and/or neglect and living in foster care are widely recognized as two additional leading CSEC risk factors. See, e.g., Silbert & Pines, supra note 64, at 408 (connecting history of child sexual abuse as a top risk factor for sexual exploitation); Kimberly J. Mitchell et al., Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study, 15 CHILD MALTREATMENT 18, 19 (2009) (citing presence of child sexual abuse with sexually exploited children).

We selected the per capita number of children with confirmed cases of physical and sexual abuse and/or neglect in each state and the per capita number of children living in each state’s foster care system as additional proxies for children vulnerable to CSEC. See, e.g., U.S. DEPT OF HEALTH & HUMAN SERVICES, CHILD MALTREATMENT 2014, 21 (Jan. 25, 2016), http://www.acf.hhs.gov/sites/default/files/cb/cm2014.pdf (discussing confirmed cases of abuse and/or neglect); U.S. DEPT OF HEALTH & HUMAN SERVICES, Children in Public Foster Care on September 30th of Each Year Who Are Waiting to Be Adopted FY 2005–FY 2014 (2015), http://www.acf.hhs.gov/sites/default/files/cb/children_waiting.pdf (listing the number of children in each state’s foster care system). Inconsistent reporting and lack of mandatory reporting protocols are limitations of both measures. See, e.g., Mitchell et al. Furthermore, incidence of under-reporting in child sexual abuse
that capture the severity of the CSEC problem in a state, or a least
the size of the vulnerable population, all appear to be unrelated to
legislative activity concerned with CSEC. The child poverty rate
is significant in reduced models but this disappears when one con-
trols for the size of the white Evangelical population. These two factors
are highly correlated (.65), but full model results consistently sug-
that the correlation between child poverty and higher Shared
Hope scores is spurious and is in fact a product of the larger white
Evangelical communities in the states with more poor children. Last,
we were surprised to see that the number of human trafficking NGOs
in a state is unrelated to the level of legislative activity. In separate
analyses (not shown) we examined the state-level factors associated
with the passage of Safe Harbor laws. The only significant predictor
in those analyses was the measure of state anti-trafficking NGOs.
As a result, it is very likely that some of the impact of NGOs on
state scores is captured by the Safe Harbor law variable.

Given that partisan control is important to the passage of legis-
lation generally, and the fact that we find partisan differences here
in regards to the passage of CSEC legislation, we examined whether
the activity of these legislatures is enhanced in different contexts.
Through a series of interaction effects, we tested whether Republican-
controlled legislatures were more or less active in the context of more
NGOs, more white Evangelical residents, more female legislators (or
more female Republican state legislators), or in the context of states
with higher child poverty rates. Only one of these interactions was
significant, shown in Model 4, indicating that states with more GOP
legislators and more poor children have been particularly likely to
have higher Shared Hope scores. Figure 5, using the definitions of
“high” and “low” described above, demonstrates the dynamic cap-
tured by this interaction effect, and suggests this is a rather sub-
stantial moderated relationship. In the context of two states with
identical above average GOP control (1SD above the mean), a state
with an above average child poverty rate would be predicted to have
a Shared Hope score over seven points higher than the state with
lower child poverty. It appears the extent of child poverty does impact
the behavior of legislators around this issue, but there is a partisan
cast to this responsiveness.

cases is an additional limitation that must be considered. Regardless, neither factor was
associated with state Shared Hope scores in any analysis.

73. We did not examine crime statistics as a measure of the CSEC problem. Under-
reporting and inconsistent definitions of CSEC on a state level make this data highly
problematic.
Last, it was noted above that the time trend variables capture the largest share of the variance in Shared Hope scores over these years. In order to examine whether the variance captured by these variables obscures other relationships we provide Model 5 which presents the full Model 3 without the dichotomous year variables. The primary impacts of dropping the trend controls are a large increase in the coefficient of the Safe Harbor law variable as well as a very large and significant effect of the presence of a state anti-human trafficking task force. It is very likely that these two factors are major drivers of the observed nation trend in activity with anti-CSEC legislation. Once this trend is also controlled for (by including the dichotomous year variables), the magnitude and/or statistical significance of these factors are reduced considerably. These analyses suggest that the presence of a statewide anti-human trafficking task force is one of the most influential single factors in these analyses. “State-years” in which states have a task force have Shared Hope scores roughly eight points higher than those without a task force. Given that it is easy to imagine multiple scenarios in which the presence of a task force might enhance the impact of other factors, we explored a number of interaction effects. Are task forces more influential in the context of GOP majorities, more Evangelicals, more female legislators, or higher child poverty rates? In all cases, the impact of task forces did not appear to be significantly moderated by other state factors. However, one significant interaction effect, shown in Model 6, indicated that the impact of task forces was influenced by the presence of anti-trafficking NGOs. Displayed in Figure 6, this
interaction interestingly suggests that the presence of more NGOs in states with task forces has little impact on legislative activity. However, in states that lack task forces, the presence of more NGOs is associated with substantially higher Shared Hope scores. Based on the estimates here, a state having an above average number of NGOs can nearly compensate for the absence of an anti-trafficking task force.

These results are all based on trends in the overall score which is comprised of scores in six major categories of state legislation identified by Shared Hope International: Criminalization of Domestic Minor Sex Trafficking, Criminal Provisions Addressing Demand, Criminal Provisions for Traffickers, Criminal Provisions for Facilitators, Protective Provisions for the Child Victim, and Criminal Justice Tools for Investigation and Prosecution.74 It is possible that states are doing more work in one area over another which could give us a different picture of the types of approaches states are taking to address CSEC. Of particular interest is the relative extent to which state approaches emphasize criminalization and prosecution of perpetrators as opposed to support and protection for victims of CSEC. In order to examine whether the picture changes when we focus in on different types of responses to CSEC we run two models (presented in Table 2), which examine state factors associated with state

74. 2015 REPORT CARDS, supra note 37, at 23.
scores in the “Protective Provisions for the Child Victim” category and the sum of state scores in the “Criminal Provisions” categories for addressing demand, traffickers, and facilitators. The maximum score in the Protective Provisions category is 27.5 and comprises roughly the same proportion of the total index score. The three Criminal Provision categories sum to a maximum score of fifty.

Table 2 contains three models. Model 1 is the full Model 3 from Table 1 provided for purposes of comparison. Model 2 examines state level factors associated with higher scores on the Criminal Provisions

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<thead>
<tr>
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<tbody>
<tr>
<td>Model 1</td>
<td>Model 2</td>
<td>Model 3</td>
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<tr>
<td>-------------------------------</td>
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<tr>
<td><strong>Institutional Responses to CSEC</strong></td>
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</tr>
<tr>
<td>Anti-Human Trafficking Taskforce</td>
<td>-0.22</td>
<td>-0.72</td>
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<tr>
<td></td>
<td>(1.23)</td>
<td>(0.69)</td>
<td>(0.68)</td>
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<tr>
<td><strong>State has passed Safe Harbor Law</strong></td>
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</tr>
<tr>
<td></td>
<td>3.13*</td>
<td>0.46</td>
<td>0.66</td>
</tr>
<tr>
<td></td>
<td>(1.42)</td>
<td>(1.02)</td>
<td>(0.74)</td>
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<tr>
<td><strong>Partisan &amp; Gender Composition</strong></td>
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<td></td>
<td></td>
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<tr>
<td>% GOP State Legislators</td>
<td>0.29**</td>
<td>0.11**</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>(0.06)</td>
<td>(0.04)</td>
<td>(0.03)</td>
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<tr>
<td>% Female State Legislators</td>
<td>0.42*</td>
<td>0.18</td>
<td>0.25**</td>
</tr>
<tr>
<td></td>
<td>(0.19)</td>
<td>(0.12)</td>
<td>(0.08)</td>
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<td>Count of Anti-Trafficking NGOs (Logged)</td>
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<td>0.81*</td>
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<td>(1.40)</td>
<td>(0.93)</td>
<td>(0.37)</td>
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<td>0.13**</td>
</tr>
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<td></td>
<td>(0.17)</td>
<td>(0.10)</td>
<td>(0.05)</td>
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<tr>
<td>Per Capita Number of Police Calls (logged)</td>
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<td>2.80</td>
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<tr>
<td></td>
<td>(3.50)</td>
<td>(1.83)</td>
<td>(0.92)</td>
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<td>Child Poverty Rate</td>
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<tr>
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<td>(0.35)</td>
<td>(0.21)</td>
<td>(0.09)</td>
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<td><strong>Control Variables</strong></td>
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<tr>
<td>No Legislative Session</td>
<td>-3.74*</td>
<td>-0.54</td>
<td>-2.49*</td>
</tr>
<tr>
<td></td>
<td>(2.18)</td>
<td>(0.67)</td>
<td>(1.02)</td>
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<td><strong>Time Trend</strong></td>
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<td></td>
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</tr>
<tr>
<td>2012</td>
<td>4.96***</td>
<td>2.07**</td>
<td>0.82**</td>
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<tr>
<td></td>
<td>(0.96)</td>
<td>(0.65)</td>
<td>(0.29)</td>
</tr>
<tr>
<td>2013</td>
<td>11.9***</td>
<td>6.93***</td>
<td>1.13***</td>
</tr>
<tr>
<td></td>
<td>(0.79)</td>
<td>(0.29)</td>
<td>(0.37)</td>
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<tr>
<td>2014</td>
<td>14.5***</td>
<td>7.6***</td>
<td>2.16***</td>
</tr>
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<td></td>
<td>(1.05)</td>
<td>(0.66)</td>
<td>(0.42)</td>
</tr>
<tr>
<td>2015</td>
<td>17.1***</td>
<td>9.3***</td>
<td>2.16***</td>
</tr>
<tr>
<td></td>
<td>(1.05)</td>
<td>(0.98)</td>
<td>(0.62)</td>
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<tr>
<td>Constant</td>
<td>22.3*</td>
<td>13.6*</td>
<td>2.7</td>
</tr>
<tr>
<td></td>
<td>(10.6)</td>
<td>(6.7)</td>
<td>(3.6)</td>
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<tr>
<td>Overall R²</td>
<td>0.456</td>
<td>0.358</td>
<td>0.267</td>
</tr>
<tr>
<td>N</td>
<td>240</td>
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*p < .1  **p < .05  ***p < .01  ****p < .001

*This is the same model as Model 3 in Table 1 provided for comparison.
categories. The only factor significantly associated with more criminal provisions is the percentage of Republican legislators. It appears that as states have responded to increased pressure for anti-CSEC legislation, legislatures under GOP control have been particularly likely to pass legislation strengthening criminal prosecution of perpetrators. Turning to Model 3, in contrast, we do not see a significant impact of partisan control on whether states have been more active in passing protective provisions for victims (protective provisions include CSEC being fully decriminalized for minors; CSEC victims being able to access support services through one or more non-punitive pathways; statute of limitations being eliminated or substantially lengthened to allow for adequate time for perpetrator prosecution; and CSEC victims being provided with state child welfare services even if a trafficker is not a family member or “caregiver”). The passage of protective provisions for victims does appear to be a nonpartisan issue. States with more women legislators, more anti-trafficking NGOs, and more white Evangelicals have substantially higher scores on this measure of protective provisions. And as was the case in the models examining the overall score, in both Models 2 and 3 the presence of an anti–human trafficking task force and Safe Harbor laws are highly significant in the absence of the variables capturing the trend of increasing scores over time.

In sum, these analyses tell us a great deal about the likely factors driving different degrees of development of comprehensive anti-CSEC policies across states. The national trend of increasing Shared Hope scores since 2011 is the product of state governments and state bureaucracies implementing a wide range of changes in their practices regarding CSEC. As we saw earlier, states with the least comprehensive anti-CSEC policies in 2011 have experienced the largest degrees of change as they attempt to catch up with rapidly changing norms in this issue area. These changes have been fueled by the diffusion of both legislation and institutions dedicated to the reduction of human trafficking. The passage of Safe Harbor laws is strongly associated with the passage of additional anti-CSEC legislation, as is the creation of anti-trafficking task forces. The presence and diffusion of anti–human trafficking task forces over this period accounts for nearly a third of the explained within-state variation in Shared Hope scores (in Models 5 and 6). The creation of new institutions charged with pursuing policy change has been demonstrated to be an extremely effective approach in other policy areas and this appears to be the case for anti-CSEC legislation as well.\footnote{See, e.g., Rebecca Sager & Keith Bentele, Coopting the State: The Conservative}
In addition to related legislation and task forces, these analyses indicate that the states that have passed and implemented the most comprehensive suites of anti-CSEC policies are those with more GOP legislators, women legislators, and white Evangelicals. In this type of cross-sectional analysis, these associations help us identify the characteristics of states with more comprehensive anti-CSEC legislation, but we can only speculate on the mechanisms linking the characteristic and the outcome. This is the most straightforward in the case of Evangelicals. The issue of human trafficking has been a cause célèbre for Evangelical activists for many years. These analyses suggest these Evangelical efforts have been successful although whether these outcomes have been achieved through direct lobbying, elevating this issue within the state Republican Party, increasing the awareness of the broader public, or through other means cannot be determined here. Due specifically to the tight bond of Evangelical voters and organizations to the Republican Party, it is not surprising that GOP-controlled legislatures have been more active in passing anti-CSEC legislation. However, it is interesting to note that the positive association of GOP majorities with comprehensive anti-CSEC policies is accentuated in states with more poor children. Again, we can only speculate on the mechanism here, but it appears that Republican state legislators may be more convinced of, or motivated by, the problem of CSEC in states with larger populations of poor children and consequently children at risk of being sexually exploited. Further, our analysis of different types of provisions indicates that the partisan dynamic of GOP majorities implementing more anti-CSEC legislation is driven by more aggressive passage of criminal provisions in Republican-controlled legislatures. Last, the presence of more female state legislators is associated with higher Shared Hope scores. This association appears to be driven in large part by protective provisions being much more likely to pass in states with more women legislators.

Finally, while our analyses initially appeared to suggest that the presence of anti-trafficking NGOs have had little impact on state adoption of anti-CSEC legislation, our subsequent analyses suggest that the impact of NGOs is conditional and associated with particular legislative responses to CSEC. First, we found that the presence of more NGOs is associated with substantially higher scores

Evangelical Movement and State-Level Institutionalization, Passage, and Diffusion of Faith-Based Initiatives, 7 RELIGIONS 1, 1–3 (2016) (discussing the creation of faith-based governmental offices).

76. See id.

in states without an anti–human trafficking task force, and having an above average number of NGOs was found to nearly compensate for the absence of a task force. However, in states with task forces, the number of NGOs appears to matter much less. And this is not necessarily a bad thing, as the creation of task forces outsources some of the work of NGOs to a state-funded institution.\footnote{See infra Figure 6.} Second, the influence of NGOs may also be operating through second order effects. For example, the presence of more NGOs is one of the only significant factors associated with the passage of a Safe Harbor law and the presence of these laws is strongly associated with the passage of additional anti-CSEC legislation. Last, we found that the presence of more anti-trafficking NGOs is unambiguously associated with more protective provisions for child victims, a major goal of many of these organizations.

IV. IMPLICATIONS

We must continue the significant trend of states passing increasingly more comprehensive prevention, protection, and prosecution state-level CSEC legislation each year. Raising a state’s Shared Hope Report Card score by 3–8 points may not seem like much, but each additional 2.5 points represents a policy that can make real-life changes for sexually exploited children.\footnote{See 2014 REPORT CARDS, supra note 40, at 21–25.} These points represent safe housing for CSEC victims, increased penalties for traffickers and exploiters, no “age mistake” defense for buyers of sex, and includes child pornography within the definition of CSEC.\footnote{Id. at 21–23.} While the legislative process can be abstract at times, a higher Shared Hope score means increased services and human rights for CSEC victims, and increased protections from exploiters for all vulnerable children.

Our analyses point to multiple potential avenues to drive this change. Statewide human trafficking task forces are poised to provide ongoing leadership as their presence fosters the passage of increasingly comprehensive legislation. Therefore, we urge the maintenance of such task forces by the majority of states who currently employ this effective advocacy tool, and the creation of task forces by the four states currently lacking a task force. We also urge all states to pass Safe Harbor legislation to ensure CSEC victims are protected from criminalization and provided with long-term, essential services. In addition to these direct benefits to victims, the passage of Safe Harbor legislation appears to substantially increase the likelihood of the passage of additional anti-CSEC legislation. Our analyses also
illustrate the efficacy of the entry of Evangelical activists and organizations into state Republican Party politics for shaping legislative outcomes. Anti-CSEC organizations and activists may see dividends by emulating this model or at least by building relationships or coalitions with the faith-based organizations that have already cultivated such political ties. That said, while we find a moderate partisan skew, in that Republican controlled legislatures have been more likely to increase criminal penalties for traffickers and buyers, we find no partisan dynamic in the passage of provisions protecting victims. Further, all states regardless of partisan control, have substantially improved their CSEC policy frameworks in recent years. In the big picture CSEC legislation has largely been a bipartisan issue in this era of partisan gridlock. Consequently, advocacy organizations should continue to build connections and inroads to state party organizations in both parties.

The specific implications of our analyses for anti-trafficking NGOs are less clear. Given that our variable is the number of anti-trafficking NGOs, the takeaway appears to be that more is better. The presence of more NGOs is associated with stronger protections for victims, more comprehensive CSEC legislation in states without task forces, and the passage of Safe Harbor laws. Overall, it appears that, as advocates would hope, the more organizational resources directing funding and awareness toward the issue of human trafficking the more active state legislatures have been. Last, our finding that more comprehensive, and particularly more protective provisions, addressing CSEC have passed in the presence of more female legislators suggests that anti-CSEC advocates have an interest in supporting the expansion of the number of women legislators and success of female political candidates.

CONCLUSION

State legislation is essential in determining what CSEC-specific services and protections commercially sexually exploited children can receive. The TVPA clearly articulates that all commercially sexually exploited persons under the age of eighteen are considered victims of human trafficking, regardless of proof of force, fraud, or coercion. However, forty states still criminalize commercially sexually exploited children, often citing the need to detain “uncooperative” exploited youth or under the guise of protection from traffickers and

81. See infra Figure 4.
82. See 2014 REPORT CARDS, supra note 40, at 1; infra Table 2.
exploiters when comprehensive, trauma-informed shelters and social services are not available. Consequently, it is not enough to simply decriminalize CSEC on paper. We must increase funding for existing evidence-based CSEC programming, as well as expand crucial services such as sustainable housing, job skills training, and health care to offer long-term, sustainable protections for CSEC victims.

The recently passed Justice for Victims Trafficking Act (JVTA) did create a “Domestic Trafficking Victims’ Fund” to help subsidize victims’ services; however, the fund is financed through fines of prosecuted traffickers and buyers of sex. While prosecution of human trafficking cases is on the rise worldwide, buyers of sex have very low conviction rates and often utilize plea bargains to evade full culpability. Additionally, law enforcement officials have reported that they do not want to arrest perpetrators of sexual violence to save them from the embarrassment and stigma from having to register as sex offenders. Therefore, we cannot rely primarily on the criminal justice system to sustain these critical services.

We must also acknowledge the racist origins of human trafficking legislation to ensure this racial bias does not continue, particularly by the criminal justice system which currently detains children of color at disproportionately higher rates than whites. The very term “human trafficking” originated from the 1900s term “white slave traffic,” which only acknowledged the abduction of white women and girls to the exclusion people of color who were also forced into prostitution at that time. This prevailing narrative reinforces structural barriers such as racism, poverty, homelessness, homophobia, economic inequality, and classism that fuel the cycles of sexual exploitation.


85. Steps to Safety, supra note 36, at 7.


Additionally, law enforcement and court officials must receive trauma-informed training on the re-traumatizing effects of confrontation with authority figures, physical restraint, and/or confinement for CSEC victims. Deeming a child as “uncooperative” by police officers or judges is the second most common justification for detaining CSEC victims. Reactions that may be considered “disrespectful,” such as swearing, spitting, hitting, and self-harm are developmentally appropriate for people with severe trauma histories, but are often perceived “non-compliant.” This is especially true for girls because they are acting outside of prescribed feminine ideals and can, therefore, be seen as “deviant.” Thus, police and judicial protocols for CSEC victims’ interactions must become trauma-informed in order to understand the neurobiological responses of traumatized children.

Furthermore, we must change our current cultural narrative that idealizes childhood as a time of innocence. Children who do not fit a prescribed “innocence mold” may be labeled as “bad kids,” not deserving of protection and services. This model of innocence requires that children be white, heterosexual, and have little or no sexual knowledge (even if sexual knowledge has been obtained through sexual violence). Additionally, they should have access to quality education, adequate healthcare, and must live in secure housing within a heterosexual nuclear family. The experience of CSEC victims is often so far outside of this model that they can be seen as complicit in their exploitation and viewed as criminals, thereby further reinforcing cycles of violence instead of offering hope and healing necessary for kids to thrive.

Further research is needed to determine the extent to which these cultural issues are associated with the prevalence of CSEC and the experience of CSEC victims on a broader scale. Our current understanding of these concerns is based on anecdotal evidence from human trafficking and children’s human rights advocates. Findings from such studies can help illuminate questions such as which factors are significantly associated with states’ criminalization of prostitution for minors and why more children of color are arrested for CSEC than whites.

93. See Saar et al., supra note 14, at 26.
94. Price, supra note 92, at 1.
95. Id.
96. Id.
97. Id. at 4.