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PROVIDE JUSTICE FOR PROSTITUTED TEENS: STOP ARRESTING AND PROSECUTING GIRLS

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This essay presents the policy argument that we should stop arresting prostituted (commercially sexually exploited) teensⁱ who are trafficked domestically in the United States. The essay relies on a growing body of empirical evidence to support the policy of no arrest for prostituted teens because as juveniles they are the victims and not the offenders, in the exchange of sex with an adult for money or other goods. Current policies focused on control of the teen fall short in addressing the offending behavior of the pimps and “johns” or customers and are based on misconceptions about the relationship between the pimps and the prostituted teens and the pathways to youth prostitution. There is no evidence that a pro-arrest policy directed at juvenile victims is a successful crime control approach. Such an approach also ignores remediation of underlying social factors that propel teens into prostitution. Achieving justice and social control of prostitution is more likely with a law enforcement focus on the purveyors of sex with a child—the so-called “pimps”—and the “customers” or “johns” who engage in criminal sexual conduct with the teens -- and not on arrest and enhanced social control of juveniles. Ceasing the practice of arrest of prostituted juveniles is not a simple task, however, because it requires a major shift in the way law enforcement approaches this crime.

Despite some important research on child and teen prostitutionⁱⁱ and other commercial sexual exploitation (CSE) in the U.S., for a number of reasons, the sexual victimization of youth via prostitution has, until relatively recently, received little attention. Commercial sexual exploitation (in which a youth engaged or agreed or offered to engage in sexual conduct in return for a fee, food, or clothing; stripped or was filmed or photographed doing sexual acts; or loitered for the purpose of engaging in a prostitution) may have escaped attention in large part because of the secrecy of the behaviors, the youth and vulnerability of the victims and the use of a variety of tactics by the perpetrators (including violence, fear, force, and “grooming”). Further contributing to the neglect of the crimes perpetrated against these youth is the fact that often the children who are prostituted are “throwaways,” or are poor, minority, runaway or drug-involved and garner little sustained public concern or attention because they are not empowered constituencies. Although there have been some new approaches, consistent with the notion that these teens are victims and not offenders, implemented in a number of states or local jurisdictions, to date these approaches have developed and refined further a rationale for

the increased social control of girls while usually offering minimal consideration of or funding for support to help them escape the social circumstances that contributed to their vulnerability to exploitation, and have devoted remarkably little focus and coordinated resource deployment directed toward arrest of the adult perpetrators.

More attention has recently been paid to CSEC (Albanese, 2007; Cooper et al., 2005; Curtis et al., 2008; Estes & Weiner, 2001; Friedman, 2005; Gragg et al., 2007) and it is more likely today to be challenged on the local, national and international levels in an attempt to reduce the numbers of victimized children and the manner and severity of the harm inflicted on them. In recent decades, evidence has been mounting that commercially sexually exploited youth have been repeatedly victimized in a variety of destructive and damaging ways, including: physical (Widom & Kuhns, 1996), emotional (Kidd & Krall, 2002) and sexual abuse (Brannigan & Gibbs Van Brunschot, 1997; Forst, 1994; Silbert & Pines, 1981; Simons & Whitbeck, 1991); and drug abuse (Inciardi et al., 1991) and social marginalization (Farrow et al., 1992; Inciardi et al., 1991). As one might expect, children and youth exposed to the cumulative destructive factors of child maltreatment and CSE have many and deep harms and coincident needs. Both the anecdotal and, increasingly, the more systematic or empirically-based profiles of these prostituted teens (Curtis, et al., 2008; Friedman, 2005; Gragg et al., 2007) show patterns of involvement in multiple service-based systems (children and youth or child protective services, mental/behavioral health, juvenile/criminal justice, and physical health), because of their multiple, cumulative, and long-lasting needs. The best evidence we have to date is that, with a few notable exceptions, these agency involvements are, usually, not tailored to the needs of CSE youth and are usually short lived, uncoordinated, and unsupported by professional best practices (whether expert- or evidence-based models) (Clawson & Grace, 2007; Estes & Weiner, 2001).

Today in response to the prostitution of children, there is evidence that many of the same rationalizations offered 30 years ago to deflect attention from the criminal aspects of perpetration of intra-familial child sexual abuse are employed. The arguments that the girl "asked" for it, "enjoyed" it or "seduced" the male or that he did not know she was under the age of consent are used to defend policies that focus on arrest and control of the prostituted juvenile and release of the customer or "john" who often could be charged with rape of a minor. These approaches reflect justifications which rationalize and neutralize the culpability of the person who pays to have sexual intercourse with a child or underage teen (Estes & Weiner, 2001; Flowers, 2001). While it is true that in the 1970s and 1980s children who were victims of intra-familial child sexual abuse (CSA) were not commonly arrested or prosecuted as happens with CSE victims today, it is useful to recall that in the early stages of the discovery of CSA (Herman, 1981) it was common for the young teen to be the one removed from the home and viewed as "incorrigible" or as a person in need of supervision based on her alleged "misbehaviors" (Chesney-Lind & Sheldon, 2004). In

the 1970s it was not unheard of for the authorities to place female teen victims of incest in youth detention settings ostensibly for the purpose of “protecting” these victims while avoiding “contamination” of other “wards of the state” who resided in group homes and community settings. In truth this was a means of controlling these teens. The incest survivor was feared for her advanced sexual knowledge and “promiscuity” suggesting once again that, for girls, victimization is one short step in a pathway to the juvenile justice system (Chesney-Lind & Sheldon, 2004).

Although they often may find themselves kept in secure detention, recent research indicates that minors involved in the sex trade or trafficking who come into contact with the police are as likely to be viewed as victims as offenders (Halter, 2009). Our available social and legal responses to commercially sexually exploited children and youth, however, often make such an assessment of little practical difference for the teen victim. Even when this occurs it has been reported that because of their demeanor and behavior, prostituted girls and boys may be held in great disdain by social service providers and the community in general (Friedman, 2005). Indeed, in the U.S. minors who are found to have traded sex for money may also be arrested and charged in criminal courts or even when viewed as victims they may be threatened with such charges if they do not cooperate with the authorities. Recent research reveals that U.S. law enforcement personnel are inconsistent in their treatment of juveniles involved in prostitution (Finkelhor & Ormrod, 2004; Halter, 2009). This inconsistency may reflect the conflict between law enforcement driven criminalization of prostituted youth and application of other statutes and regulations that define sexual contact by an adult with a person under 18 as a reportable act of child maltreatment. Indeed child, welfare agencies may place responsibility on the offending adults or on other adults who failed to protect the youth.

Service providers and potentially sympathetic law enforcement officers may be confused by teens’ assertions that they are ‘doing what they want’ or (for girls) that they love the pimp and do not view themselves as the victims. We know that teen girls who are prostituted may believe that they are earning their own money and thus determining their own life path, although in the most common scenario for “pimp involved” girls, the pimp controls and does not allow them and direct access to the money they receive (Albanese, 2007; Estes & Weiner, 2001). While it has been reported that both girls and boys are insidiously drawn to “the life” by the lies of those who recruit them, the lure of the parties and drugs, or even the simple shelter and food that they may also get as part of the payment barter (Williams, Powell, & Frederick, 2008), and the rationalizations that they control their fate (Friedman, 2005), few have placed this discussion of how teens get drawn in to prostitution in the context of their attempts to escape extremely destructive and violent families or the extreme poverty and hunger they have encountered in their young lives. In addition, objectively viewed, the behaviors of prostituted teens arguably can be understood as survival-based coping (Albanese, 2007; Goodman et al., in press; Williams,

in press). There is also an unwillingness to approach the possibility that as part of a survival strategy youth may “prostitute themselves,” that is, they may trade sex for money without involvement of a pimp. These youth are less likely to be viewed as victims and are either ignored or criminalized, with scant attention to the adults who have paid for sex with these minors.

Once “captured” by the system, these youth may be confined in juvenile detention facilities where the victimization they experienced is minimized; traditional methods of preserving order and asserting authority may result in re-traumatization and/or re-victimization and lead to attempts to return to the “life” they know on the street or with the pimp wherever he is located. The focus is on using the law and threat of prosecution to “encourage” them to provide evidence that can be used against the “pimp.” The criminal justice system in the U.S. no longer finds it necessary to use such techniques to “persuade” youth to testify against family members who have sexually assaulted them and this approach today with prostituted teens is equally indefensible. Those who are deemed to have not been pimp-involved are more likely to be viewed as offenders and treated as such (Halter, 2009).

The empirical evidence about the criminal justice interactions with prostituted teens and the impact of the system response on these youth is scant. Until such research is conducted, we must turn to evidence related to practice with teens charged with other types of offenses. We have seen evidence that increased criminalization of youth and application of harsh sanctions has garnered political support generally in the U.S. But research (Frazier, Bishop & Lanza-Kaduce, 1999) has shown that not only do such policies generally not deter these individuals, in many cases, these juveniles go on to commit more frequent and more serious crimes. In addition, prosecution is likely to be disproportionately applied to minority youth. Although the prosecution of prostituted teens had not been studied empirically, qualitative research has suggested that it is similarly unlikely that such action will have a significant deterrent effect on the behaviors of the teen.

Some have argued that recent changes in prosecutorial policies or family court statutes that allow prostituted teens to escape prosecution will be a boon for the pimps who, as a result, will find that such changes make it easy to quickly get those identified by police as under-age back out “on the streets” with no consequences or interruption of profit. Others suggest that the pimps may even become more inclined to target and recruit teens, knowing these teens will not be prosecuted. But this argument misses the point that with a pro-prosecution of teen victims’ policy in place, under-age girls are most likely to hide their age from law enforcement. Unfortunately, such under-age females then often see the pimp as the one person who can protect her from the “system” and likely incarceration. In addition, the threat of prosecution of a juvenile may increase the likelihood that during all interactions with the police the teen will try to hide her young age and, when arrested, attempt (often successfully) to pass herself off as an adult (Williams, Fernandez, & Frederick, 2009). Interestingly, once under-age

teens have been entered into the criminal justice system and fingerprinted as “adults” the pimps find it easier to manage their movement as *de facto* adults through the revolving door of arrests, minimal fines and release back on the streets. This makes it clear how important it is for police to learn how to detect the juveniles amongst those persons they arrest for prostitution. An arrest that provides a teen who has presented fake ID with an adult identity backed up by her own fingerprints would seem to most casual observers to be just the opposite of what a juvenile arrestee wants. But this mistake by law enforcement means that in future arrests for prostitution this teen will more easily pass as an adult and be summarily treated as such. On the other hand, removing the threat of prosecution (along with changes in the supports provided to teens who leave this “life”) may instead increase the likelihood that teens will admit their correct ages or even come forward and seek assistance of law enforcement and eventually provide assistance in the prosecution of the perpetrators. Once teens become aware they will not be prosecuted but will be offered reasonable and age appropriate protection and this information becomes known and is seen as credible on the streets it will be more difficult for the pimp (or other exploiter) to convince them that he or she is their only protection from lockup. In most communities such promises of no prosecution of 16 and 17 year old or even younger victims are rare and, in addition, useful services for these youth are unavailable to help them exit the “life” of teen prostitution, and to stop the violence they experience at the hands of the pimps and the customers (Clawson & Grace, 2007).

While youth and social service agencies may be aware of the acute problem of prostitution of children and teens in their communities, few have the resources to design comprehensive programs to prevent it or to assist teens exiting prostitution (Priebe & Suhr, 2005). In most cases, assistance is needed from a variety of resources including but not limited to, health professionals, counselors, youth agencies, schools, and law enforcement. A lack of trust of authorities inhibits the youth’s ability to seek out these services, thus increasing the apparent need of coordinated efforts (Clawson & Grace, 2007; Clawson, Salomon, & Grace, 2008).

Based on findings from the Pathways Study (Williams, 2008; in press) the inability to meet the needs of these youth can be attributed, in part, to failure to develop ways to reach, build and maintain connections with and support for youth on the streets; lack of coordination of and training for services across multiple jurisdictions; reluctance to provide means by which youth can be free of destructive families; and failure to provide appropriate interventions for those with complex trauma.

Justice calls for more arrests and serious charges lodged against the “pimps” and “johns.” Achieving justice and social control of prostitution requires a law enforcement focus on the purveyors of sex with a child—the pimps—and also on the demand side focusing on the customers or “johns.” Evidence suggests that customers’ decisions to engage in prostitution are more free and consensual than those of prostitutes (Monto, 2004). More research is needed on strategies to reduce

the demand side of prostitution. Recommitting law enforcement efforts to arrest of perpetrators should be easy; however, prosecuting the pimps is not unlike interdiction in the drug trade where finding the kingpins or bosses requires resources for investigations that are likely to cross state and even national boundaries. Thus far in most jurisdictions the major law enforcement strategy has been to “clean up” prostitution through a focus on arrests of prostitutes and customers, often using sting operations. When these mostly street or internet-based sting operations occur it is unlikely that the third party exploiters, the pimps and purveyors of sex are apprehended. More coordinated time consuming coordination of law enforcement and prosecution efforts are required to reach the individuals and networks. These coordinated efforts do not achieve the immediately visible results that politicians and communities seek to “clean up” visible evidence of prostitution. Sustained and coordinated efforts applied by a law enforcement focus on pimps are likely necessary before more meaningful success will be achieved.

In consideration of many of the concerns raised in this essay, some jurisdictions have decided not to eliminate the prosecution of prostituted teens but to make it a rarely used option, offering teens the “opportunity” to escape prosecution. In these jurisdictions there are many difficulties faced in an attempt to encourage the teens to regain trust the authorities. To that end, anecdotal experience in cities such as Boston have shown that it is important that the justice system not *renege* on promises too quickly and that prosecutors, judges, law enforcement, and social service providers understand the complexities of the prostituted teens’ victimization experiences and connection to the pimp or others in “the life.” Exiting the web of relationships and social problems that contribute to a youth’s vulnerability to commercial sexual exploitation is likely to be a process that requires some second chances. These second chances may not be forthcoming unless the juvenile and criminal justice system actors are educated about these matters. The success of these approaches requires careful evaluation and documentation.

Complications are likely to arise in NY State with the passage of the “Safe Harbor Act” pertaining to petitions of delinquency (Family Court Act, Article 3, Section 311.4) which will provide for arrested prostituted teens under the age of 16 to instead be certified as “in need of supervision” and not be adjudicated as “delinquent.” This new law also does not apply to 16 and 17 year old juveniles. The courts will be able to have a petition of delinquency reinstated if the juvenile refuses counseling or does not cooperate with court requirements, such as, testifying against and avoiding all other contact with the sex traffickers. Juveniles with prior prostitution adjudications will not be eligible. While this “Safe Harbor” act is viewed as an important opportunity for those who are 15 years of age or younger to escape prosecution, if this act leads in practice to a “one strike and you are out” approach it may not provide safe harbor for most prostituted teens who will once again be treated as offenders and not victims.

A review of the family background and experiences of many prostituted teens reveals a long history of highly destructive families fraught with violence and dysfunction. Many of the teens have been in numerous foster care settings or have lived on the streets or with no permanent home for months and even years. They often have little trust in the child welfare systems that some of them have encountered first hand or heard about from others. Their experiences and survival based coping skills suggest a successful strategy for care and support of these youth may be achieved only through the development of meaningful partnerships between the youth and social services (Williams, in press). Without such partnerships that provide the youth a pathway to achieve freedom from incarceration and some meaningful control over their lives (including in many cases freedom from their families) (Bittle, 2002) there may be little likelihood of success. Such new partnerships need to be implemented and carefully evaluated. The narratives of teens who have been prostituted underscore the urgency of this need but also must be balanced against the complexity of making necessary policy changes to put appropriate empowering supports in place.

It is not enough to develop such programs for youth and to change the way they are treated in the criminal and juvenile justice systems, approaches to stopping prostitution of teens require a broader societal focus. Such an approach should address the social conditions that propel teens into prostitution including family violence, lack of financial and material resources, and sexual socialization of males that feeds demand for teen prostitution and supports patriarchal social relations that facilitate pimps having power over teen girls. Meaningful partnerships are needed between youth and social services to help the teens regain control over their lives (Rabinovitch & Strega, 2004). Committing law enforcement efforts to arresting the perpetrators, though challenging, may actually be the easy part. Ceasing the practice of arresting juveniles who engaged, agreed or offered to engage in sexual conduct in return for a fee, food, or clothing; have stripped or been filmed or photographed doing sexual acts; or have loitered for the purpose of engaging in a prostitution offense, however, is not a simple task because it requires a shift in the way we understand social control of youth and how we view the relationship between the state, teens and their families.

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ENDNOTES

ⁱ Most of the research and law enforcement activity has been about prostituted females. Commercial sexual exploitation of boys, a serious issue (see Curtis et al. 2008), needs attention and further study.

ⁱⁱ Discussion of this issue is fraught with problems of nuances of language and word choice. Writing the words “child or youth prostitute” or “youth involved in prostitution” may suggest to some a willingness or voluntary involvement on the part of the youth. Some prefer the term “prostituted child” or “prostituted teen” that makes more clear that the prostitution or other CSE is at the hands of someone else —the customer, client (or some would call this person the rapist, john or trick) or the third party exploiter (also called the pimp, panderer, or procurer) who benefits from the acts and takes the money.