

THE PLIGHT OF CYNTOIA BROWN: CAN SAFE HARBOR LAWS PREVENT THE PROSECUTION OF CHILD SEX TRAFFICKING VICTIMS?

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Abstract

In the United States, child sex trafficking has run rampant for decades. Minors who are in poverty or apart of the foster care system are particularly vulnerable to sex trafficking. Despite the fact that these children are victims of their traffickers, states across the nation have consistently detained and charged sex trafficked minors with prostitution and related offenses, and in more grave circumstances, murder. This Article examines the notable, recent case involving child sex trafficking victim, Cyntoia Brown, and identifies the necessity to implement robust Safe Harbor laws in each state throughout the country. Adopting Safe Harbor laws will decrease prosecution of minor child sex trafficking victims for prostitution and related offenses, and increase rehabilitation services to prevent recidivism of victims.

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INTRODUCTION

On August 7, 2019, Cyntoia Brown walked free from the Tennessee Prison for Women after serving 15 years of a life sentence.¹ Cyntoia’s case drew national attention, from high-profile advocates to A-list celebrities such as Kim Kardashian-West and Rihanna, who championed for her release.² The outrage came after Cyntoia was convicted at the age of 16 for aggravated robbery and first-degree murder of 43-year-old real estate agent, Johnny Allen, who picked her up for sex at a local Nashville Sonic Drive-In.³ “Criminal justice reform advocates portrayed Brown’s case as an example of the unreasonable incarceration of a teenager who was a victim of sex trafficking.”⁴ Yielding to public pressure regarding Cyntoia’s case, former Tennessee governor Bill Haslam took rare steps and granted Cyntoia clemency and commuted her life sentence.⁵

Human sex trafficking is a modern-day form of slavery. Over the last two decades, human sex trafficking has received increasing attention from the media, advocates, and policymakers. The issue is that much of the attention focuses on international problems—with stories of teenage mail-order brides and child prostitution in Asia and Europe.⁶ However, child sex trafficking is plaguing the world, including the United States. The exact number of child victims of sex trafficking in the United States is unknown.⁷ However, the Polaris Project reported more than 48,000

1. See Mariah Timms & Natalie Neysa Alund, *Cyntoia Brown, sentenced to life at 16, released from prison. Here’s what you need to know*, USA TODAY (Aug. 7, 2019, 12:05 PM), <https://www.usatoday.com/story/news/nation/2019/08/07/cyntoia-brown-released-nashville-prison-after-serving-15-years/1941329001/> [<https://perma.cc/X5UV-ZY46>].

2. Madeline Holcombe & Leanna Faulk, *Cyntoia Brown was released from a Tennessee prison today. Here are 4 things to know about her case*, CNN (Aug. 7, 2019, 7:29 AM), <https://www.cnn.com/2019/08/07/us/cyntoia-brown-release-wednesday/index.html> [<https://perma.cc/C3TS-532B>].

3. See Bobby Allyn, *Cyntoia Brown Released After 15 Years In Prison For Murder*, NPR (Aug. 7, 2019, 12:24 PM), <https://www.npr.org/2019/08/07/749025458/cyntoia-brown-released-after-15-years-in-prison-for-murder> [<https://perma.cc/6TEZ-PLYB>].

4. *Id.*

5. See Christine Hauser, *Cyntoia Brown is Granted Clemency After 15 Years in Prison*, N.Y. TIMES (Jan. 7, 2019), <https://www.nytimes.com/2019/01/07/us/cyntoia-brown-clemency-granted.html> [<https://perma.cc/KWH6-4E6L>].

6. See CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES 19 (Ellen Wright Clayton et al. eds., 2013) [hereinafter CONFRONTING EXPLOITATION].

7. See *Myths, Facts, and Statistics*, POLARIS, <https://polarisproject.org/myths-facts-and-statistics/> [<https://perma.cc/8MNH-XWKB>] (last visited Oct. 25, 2020).

contacts were made to their trafficking hotline in 2019;⁸ and the number of cases in the United States increases every year.⁹ In an attempt to combat these staggering numbers, the federal government has made human trafficking a crime and is attempting to hold traffickers accountable for their actions.¹⁰ The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations define human trafficking as:

- a) [S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- b) [T]he recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹¹

Further, according to the National Conference of State Legislatures, every state and the District of Columbia has enacted laws establishing criminal penalties for human traffickers who profit off of sexual servitude and forced labor.¹² Despite the enactment of federal and state legislation that is purported to protect children from exploitation and sexual abuse, minors who participate in prostitution are still treated as criminal and delinquent under the criminal justice system. As of 2018, only twenty-three states and the District of Columbia prohibit the criminalization of minors for prostitution.¹³ Thus, the majority of states are still allowing minors to be detained, arrested, and prosecuted for prostitution and other related offenses. States are failing to consider the fact that minor sex-trafficking victims suffer from “immediate and long-term physical, mental, and emotional harm.”¹⁴ Researchers have promulgated the sentiment that “[a] nation that is unaware of these problems or disengaged

8. *2019 Data Report: The U.S. National Human Trafficking Hotline*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf> [https://perma.cc/46LU-UU7J] (last visited Nov. 10, 2020) (reporting 63,380 total situations of human trafficking identified through the Polaris Trafficking Hotline from December 2007 through December 2019).

9. *See 2019 U.S. National Human Trafficking Hotline Statistics*, POLARIS, <https://polarisproject.org/2019-us-national-human-trafficking-hotline-statistics/> [https://perma.cc/3L4C-PNGP] (last visited Oct. 25, 2020).

10. 22 U.S.C. § 7102(11) (effective Jan. 14, 2019).

11. *Id.*

12. Anne Teigen & Karen McInnes, *Human Trafficking State Laws*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> [https://perma.cc/4TT2-MYHJ] (last visited Oct. 25, 2020).

13. *See, e.g., National State Law Survey: Non-Criminalization of Child Sex Trafficking Victims*, SHARED HOPE INT'L 3 (2018), http://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Non-Criminalization-of-Juvenile-Sex-Trafficking-Victims.pdf [https://perma.cc/34SN-3CFG].

14. CONFRONTING EXPLOITATION, *supra* note 6, at 19.

from solving them unwittingly contributes to the ongoing abuse of minors and all but ensures that commercial sexual exploitation and sex trafficking of minors will remain marginalized and misunderstood.”¹⁵ One possible solution to this problem is for every state to stop the prosecution of minor human-trafficking victims and to pass Safe Harbor laws to protect these victims.

This Note will proceed to do four things. First, Part I discusses *Brown v. State*,¹⁶ Cyntoia’s case, and analyzes the court’s decision in upholding her conviction.¹⁷ Then, in understanding the court’s reasoning, Part II will discuss the current criminalization of minor human-trafficking victims in the United States.¹⁸ Part III explores Safe Harbor laws and why they are more beneficial than prosecuting minor human-trafficking victims for sexual offenses.¹⁹ Finally, Part IV concludes in hopeful register by arguing that Safe Harbor laws should be enacted in every state while criminal prosecution of child sex-trafficking victims should be prohibited.²⁰

I. CYNTOIA’S STORY: *BROWN V. STATE*

Cyntoia Brown did not live an easy life growing up. Months before her legal troubles started, she ran away from her adoptive parents’ home and was using drugs and alcohol and staying with a number of different people in Nashville, Tennessee.²¹ In July of 2004, a sixteen-year-old Cyntoia met someone called “Cut Throat,” who was twenty-four years old, and began using drugs with him.²² Cyntoia testified at her trial that “Cut” was nice to her at first, but subsequently, he began to verbally and physically abuse her as well as sexually assaulting her and forcing her to prostitute herself.²³ She was forced to give any money she made to Cut.²⁴

On the night of August 6, 2004, Cyntoia left the hotel she stayed in with Cut and walked over to a local Nashville Sonic Drive-In restaurant.²⁵ Johnny Allen picked up Cyntoia and asked her if she was up for “any action,” meaning he wanted to pay to have sex with her.²⁶ Allen drove Cyntoia to his home where he proceeded to try to kiss her, offer her wine,

15. *Id.*

16. No. M2013-00825-CCA-R3-PC, 2014 WL 5780718 (Tenn. Crim. App. Nov. 6, 2014).

17. *Id.* at *21; *see infra* Part I.

18. *See infra* Part II.

19. *See infra* Part III.

20. *See infra* Part IV.

21. *Id.* at *4.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Brown*, 2014 WL 5780718, at *4.

26. *Id.*

and show her a gun he owned.²⁷ Cyntoia found Allen to be “weird” and she asked him if she could take a nap before they “make love.”²⁸ As she pretended to sleep, Allen allegedly touched Cyntoia and kept getting in and out of the bed she was in.²⁹ Cyntoia began to panic as she thought that Allen’s behavior was rather odd.³⁰ Cyntoia testified to the court that Allen had grabbed her “really hard” before he got into the bed and rolled over to grab something.³¹ Cyntoia thought that he was going to reach for a gun, so she reached over to a nearby “nightstand on her side of the bed, took a gun out of her purse, and fired the gun one time.”³²

As she fled Allen’s house, Cyntoia drove his truck to her hotel and told Cut that she believed she had shot someone.³³ Cut instructed her to drive Allen’s truck to a Walmart parking lot and the following day she called 911.³⁴ The police found Allen laying face-down on his bed with a gunshot wound to the back of the head.³⁵ Officers found Allen’s truck in the Walmart parking lot, and arrested Cyntoia at her hotel.³⁶ Cyntoia was tried as an adult and found guilty of first degree premeditated murder and aggravated robbery.³⁷ Cyntoia was sentenced to life in prison for the murder charges and she was given a concurrent twenty-year sentence for the robbery conviction.³⁸

On appeal, the Court of Criminal Appeals of Tennessee affirmed Cyntoia’s murder convictions but modified her conviction from “especially aggravated robbery” to “aggravated robbery,” for which her twenty-year sentence was reduced to eight years.³⁹ In 2014, Cyntoia appealed the “denial of her petition for post-conviction relief from her convictions of first-degree premeditated murder, first degree felony murder, and especially aggravated robbery and resulting concurrent sentences of life and eight years.”⁴⁰ In her appeal, she contended that her mandatory life sentence was unconstitutional and that she was denied due process, among other claims.⁴¹ Cyntoia argued that her automatic life sentence constituted cruel and unusual punishment because she would not

27. *Id.* at *5.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Brown*, 2014 WL 5780718, at *5

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at *1.

36. *Id.*

37. *Brown*, 2014 WL 5780718.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

be eligible for parole for fifty-one years and thus, would serve a longer term of incarceration than an adult who received a life sentence.⁴² Cyntoia attempted to cite to the United States Supreme Court's decision in *Miller v. Alabama*, in which the Court held that "a mandatory sentence of life without the possibility of parole for juvenile offenders violated the United States Constitution's Eighth Amendment prohibition against cruel and unusual punishment."⁴³ The court, in her appeal, found that *Miller* was not applicable as she would be eligible for parole.⁴⁴ Ultimately, the court affirmed the post-conviction court's denial of the petition for post-conviction relief, and left Cyntoia to serve out the remainder of her sentence.⁴⁵

One glaring issue with Cyntoia's case is that the court failed to consider her background and upbringing when deciding her fate.⁴⁶ Cyntoia grew up in an abusive home.⁴⁷ Cyntoia's biological mother also testified at her daughter's trial that she drank copious amounts of alcohol while she was pregnant with Cyntoia.⁴⁸ During her post-conviction appeal, the court discussed the results from physical and psychological testing that was performed on Cyntoia.⁴⁹ A psychologist testified that Cyntoia "had a 'remarkable' I.Q. of 134 but that she did not function like a typical person with such high intelligence."⁵⁰ The same psychologist also stated that Cyntoia was born with alcohol-related neurodevelopment disorder (ARND), and that she was suffering from the disease at the time that she shot Allen.⁵¹ The psychologist's testimony also suggested that Cyntoia's ARND likely contributed to how she perceived the events on the night she shot Allen.⁵² Nevertheless, the court found that the evidence and diagnosis of ARND was not so compelling that a jury would not have convicted her.⁵³ The failure of the court to take these types of factors into account is just one small problem when it comes to the penalization of minor human trafficking victims.

42. *Id.* at *20.

43. *Brown*, 2014 WL 5780718 at *21 (citing *Miller v. Alabama*, 567 U.S. 460, 489 (2012)).

44. *Id.*

45. *Id.*

46. *See id.* at *20.

47. *See* AJ Willingham, *Why Cyntoia Brown, who is spending life in prison for murder, is all over social media*, CNN (Nov. 27, 2017, 11:13 AM), <https://www.cnn.com/2017/11/23/us/cyntoia-brown-social-media-murder-case-trnd/index.html> [<https://perma.cc/QUS5-ZAY2>].

48. *Brown*, 2014 WL 5780718, at *6.

49. *See id.* at *6–12.

50. *Id.* at *7.

51. *Id.*

52. *See id.* at *7.

53. *Id.* at *12.

II. THE CRIMINALIZATION OF MINORS WHO ARE VICTIMS OF HUMAN TRAFFICKING

A. *Tennessee's Laws Regarding Victims of Human Trafficking*

Cyntoia is just one of almost two hundred minors who have been sentenced to Tennessee's 60-year mandatory minimum life sentence, which is "the toughest [sentencing guidelines] in the nation according to the Sentencing Project."⁵⁴ Over the years, following Cyntoia's conviction, serious debates arose regarding Tennessee's laws, the need for juvenile justice reform, the need for more rights for victims, and the possibility of rehabilitation of minors who have committed crimes.⁵⁵ Following years of advocacy by lawmakers, Tennessee now has laws to protect victims of sex trafficking from being prosecuted for sex offenses such as prostitution. Tennessee currently recognizes a defense to prostitution when the person charged with prostitution is a victim of involuntary labor servitude, sex trafficking, or is a victim as defined by the Trafficking Victims Protection Act.⁵⁶ It is worth exploring how Tennessee concluded that minors who are human trafficked should not be prosecuted for sexual offenses such as prostitution.

In 2010, the Tennessee Bureau of Investigation and the Vanderbilt Center for Community Studies jointly conducted a study in order to shine light on the disturbing crime of human sex trafficking.⁵⁷ The goal of the study was to qualify and quantify the issue of sex trafficking in the U.S. and specifically within Tennessee.⁵⁸ The researchers' findings were "shocking."⁵⁹ Focus groups, which were composed of FBI agents, police officers, district attorneys, and other state officials, discussed how the state laws in place for prostitution and minor sex trafficking did not deter crime and were not sufficient.⁶⁰ The focus groups also stated that prostitution laws are typically enforced against individual prostitutes rather than against the pimps or traffickers.⁶¹

The Director of the Tennessee Bureau of Investigation ultimately concluded that the state needed to institute more serious consequences in

54. Christine Hauser, *Cyntoia Brown is Freed from Prison in Tennessee*, N.Y. TIMES (Aug. 7, 2019), <https://www.nytimes.com/2019/08/07/us/cyntoia-brown-release.html> [<https://perma.cc/LA3G-5XW7>].

55. Christine Hauser, *Cyntoia Brown Inspires a Push for Juvenile Criminal Justice Reform in Tennessee*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/17/us/cyntoia-brown-tennessee-criminal-justice.html> [<https://perma.cc/DDP9-7KBF>].

56. TENN. CODE ANN. § 39-13-513(e) (West 2015).

57. TENN. BUREAU OF INVESTIGATION, *Tennessee Human Sex Trafficking Study: The Impact on Children and Youth* iv (2011).

58. *Id.* at 7.

59. *Id.* at iv.

60. *Id.* at 27, 30.

61. *Id.* at 35.

order to prosecute human trafficking under Tennessee's laws.⁶² He stated that "heavier sentences for offenders who subject their minor victims to violence and sex slavery as well as allowing victims to sue their captors under civil laws for damages would put a more stringent penalty on a horrendous crime."⁶³

In 2011, following the Tennessee Bureau of Investigation's study, lawmakers at the Tennessee Senate 107th General Assembly finally acknowledged the victims of human trafficking.⁶⁴ Senators acknowledged that "the trafficking of human beings for sexual servitude and forced labor is considered second only to transfer of arms as the largest and fastest growing illegal activity in the world."⁶⁵ The senators also recognized that:

[C]hildren are victims of human sex trafficking, they are commercially sexually exploited by traffickers who enslave them and sell them for the purpose of sexually pleasuring customers who rape, molest and sexually abuse these children; and [] children in the child welfare and juvenile justice systems are especially preyed upon by human traffickers because of vulnerabilities they exhibit subsequent to extreme trauma, maltreatment, pervasive neglect, and behavioral health problems experienced by these children in their lives.⁶⁶

Shared Hope International, a non-profit organization whose goal is to prevent sex trafficking and restore and bring justice to women and children who have been victims of sex trafficking, gives each state in the U.S. report cards to inform the public on how well a state is doing passing laws to fight child sex trafficking.⁶⁷ In 2017, Tennessee's Report Card received an "A" grade.⁶⁸ Shared Hope found that Tennessee imposed heavy penalties for sex trafficking and provided tools to assist law enforcement in their investigations.⁶⁹ Although Tennessee did not have perfect laws, due to a lack of specialized protective responses for victims that left them vulnerable and potential bars to victim compensation, the state was still fairing much better than a lot of states in the country.⁷⁰

62. *Id.* at iv.

63. TENN. BUREAU OF INVESTIGATION, *supra* note 57.

64. National Human Trafficking Resource Center Hotline Act, 2011 Tenn. Laws Pub. Ch. 435 (codified at TENN. CODE ANN. § 39-13-312 (West 2020)).

65. *Id.*

66. *Id.*

67. See *What We Do*, SHARED HOPE INT'L, <https://sharedhope.org/what-we-do/> [<https://perma.cc/HHY4-Y8L5>] (last visited Nov. 1, 2020).

68. *Tennessee Report Card*, SHARED HOPE INT'L (2017) https://sharedhope.org/PICframe7/reportcards/PIC_RC_2017_TN.pdf [<https://perma.cc/LUW9-JBPA>].

69. *Id.*

70. *Id.*

Shared Hope even tweeted on September 20, 2019, “TN has recently been ranked at the top of Shared Hope International’s list of states that have made the most impact on cracking down on sex trafficking.”⁷¹ It is fair to assume that had Tennessee’s current laws been in place at the time Cyntoia was convicted, she may have been spared from serving 15 years in prison for her crimes. Unfortunately, many child sex trafficking victims meet the same fate as Cyntoia as their states have yet to adopt laws that prohibit the prosecution of minor sex trafficking victims for prostitution and other offenses.

B. *A Look at Other States’ Laws Regarding Victims of Child Sex Trafficking*

Shared Hope reports that over the past seven years, forty-seven states have raised their “report card grade” and that more than half of the states have an “A” or “B” grade.⁷² However, there are gaps that still exist—namely the laws that provide protections for child sex trafficking victims against penalties for prostitution and other related offenses.⁷³ As of 2018, the following states do not have state laws that completely prohibit the criminalization of minors for prostitution: Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, and Wisconsin.⁷⁴

An important issue to highlight in discussing the existing laws in those states is understanding the stigma behind prostitution. Prostitution, although one of the world’s oldest professions, has long been frowned upon.⁷⁵ Prostitution is viewed as a crime that decreases public morale and those who participate in the activity are seen as displaying deviant behavior that is contrary to society’s values.⁷⁶ But adopting that view of prostitution fails to account for those victims who are not voluntary sex workers. Many child sex trafficking victims can be forced into

71. @SharedHope, TWITTER (Sept. 20, 2019, 12:30 PM), <https://twitter.com/SharedHope/status/1175084749007855617?s=20> [<https://perma.cc/T5W5-K396>].

72. Sarah Bendtsen, *Progress Without Protection: How State Laws Are Punishing Child Sex Trafficking Victims*, SHARED HOPE INT’L (June 13, 2018), <https://sharedhope.org/2018/06/13/progress-without-protection-how-state-laws-are-punishing-child-sex-trafficking-victims/> [<https://perma.cc/NVW9-KEDV>].

73. *Id.*

74. Sonia Lunn, *Safe Harbor: Does Your State Arrest Minors For Prostitution?*, HUM. TRAFFICKING SEARCH (2018), <https://humantraffickingsearch.org/safe-harbor-does-your-state-arrest-minors-for-prostitution/>.

75. See Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J. L. & FEMINISM 69, 69 (1998).

76. *See id.*

prostitution by way of physical, mental, or sexual abuse.⁷⁷ Certain groups of people may be more prone to becoming victims, including minority communities and those who face economic hardships.⁷⁸

Further, there is an assumption that minors involved in prostitution are complicit in their victimization, and this assumption leads to the punitive treatment of these minors within the criminal justice system.⁷⁹ But this assumption is incorrect and fails to acknowledge the risks that minors involved in prostitution face. Minors involved in the sex industry are prone to physical and sexual violence, increased exposure to sexually transmitted diseases, and drug and alcohol abuse.⁸⁰ Being that minor child sex trafficking victims face such serious and life-threatening physical and psychological problems as a result of participating in prostitution, it's perplexing that many states still allow minors to be prosecuted.

This raises the question—why do a majority of states not have laws prohibiting the prosecution of minors for prostitution and related offenses? There are various arguments in favor of and in opposition to decriminalization. Many argue that removing the discretion of police officers, district attorneys, and judges from the prosecution process takes away an effective means of rescuing children.⁸¹ These so-called children's advocates argue that a “comprehensive approach” is necessary and can only be accomplished by leaving every available option in place—even if that includes arrest and detention—if it ensures that officials are handling the situations on a case-by-case basis.⁸²

In order to move forward to decriminalization of these sexual offenses, it must be understood what exactly that means. Decriminalization refers to changing something that is currently illegal into something that is no longer a crime.⁸³ This differs from legalization which would make the crime of prostitution legal and would entail the

77. *Fact Sheet: Human Trafficking*, DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/otip/fact-sheet/resource/fshumantrafficking> [<https://perma.cc/T63W-LU9W>].

78. Heidi Box, *Human Trafficking and Minorities: Vulnerability Compounded by Discrimination*, HUM. RTS. & HUM. WELFARE 28, 28 (2011), www.du.edu/korbel/hrhw/research_digest/minority/Trafficking.pdf [<https://perma.cc/N9KV-SGT4>].

79. See Stephanie R. Fahy, *Safe Harbor of Minors Involved in Prostitution: Understanding How Criminal Justice Officials Perceive and Respond to Minors Involved in Prostitution in a State with a Safe Harbor Law* 11 (Dec. 2015) (unpublished Ph.D. dissertation, Northeastern University), <https://pdfs.semanticscholar.org/095f/79478897878b0024c691c6a384dbc99f3362.pdf> [<https://perma.cc/6PNM-U7G3>].

80. *Id.*

81. Brenda Zurita, *Children in Prostitution: What to Do?*, CONCERNED WOMEN FOR AM. REP. 2 (July 2012), https://concernedwomen.org/images/content/CWA_Decriminalization-of-Prostitution-for-Minors2012.pdf [<https://perma.cc/ZMT2-77FY>].

82. *Id.*

83. *Id.* at 5.

government regulating the act and the taxation of those who choose to participate in it.⁸⁴

Developing these specialized, non-punitive laws in response to juvenile sex trafficking remains a complex challenge for many states. Shared Hope identified the following three common challenges in adopting and implementing specialized laws for victims of child sex trafficking: (1) the lingering misconception that minors can be prostitutes; (2) a lack of alternative and appropriate placement options and services for youth survivors; and (3) the diverging opinions regarding the optimal way to engage youth survivors in long-term services.⁸⁵

There is conflict in many states, where they have been praised for their strong laws that attempt to address child sex trafficking yet continue to arrest minors for their crimes. A prime example is Kansas, who as of 2018 received an “A” score for their child sex trafficking laws.⁸⁶ Despite this grade, the state had more than seventy-nine minor human trafficking victims between 2013 and 2018 who were detained and sentenced to an average of thirty-three days in a juvenile detention facility.⁸⁷ A Kansas judge also came under fire in February 2019 after he claimed that two teenagers, aged thirteen and fourteen, acted as “aggressors” in an exploitation situation where a sixty-seven-year-old male paid the two to have sex.⁸⁸

Some states with the worst laws pertaining to child sex trafficking victims include Maine, New Mexico, New York, South Dakota, and Wyoming.⁸⁹ What causes the laws of these states to be ranked among the worst? Maine’s prostitution law allows for an affirmative defense for those who are victims of sex trafficking, but victims must prove they were compelled to commit the prostitution.⁹⁰ Wyoming’s human trafficking laws criminalize child sex trafficking,⁹¹ but the definition of commercial

84. *See id.*

85. Bendtsen, *supra* note 72.

86. Linda Smith & Karen Countryman-Roswurm, *Child Victims of Sex Trafficking Receive Mixed Messages: If We Aren’t ‘Aggressors’ Then Why are We Arrested?*, SHARED HOPE INT’L (Mar. 13, 2019), <https://sharedhope.org/2019/03/13/child-victims-of-sex-trafficking-receive-mixed-messages/> [<https://perma.cc/TR42-UJ5D>].

87. *Id.* (citing *Modern Day Slavery: A look at Kansas’ human trafficking laws*, KAKE (Apr. 13, 2017, 7:03 PM), <https://www.kake.com/story/34486055/modern-day-slavery-a-look-at-kansas-human-trafficking-laws> [<https://perma.cc/TY3K-C37X>]; Johnathan Shorman, *Dozens of possible child trafficking victims have been jailed in Kansas*, WICHITA EAGLE, <https://www.kansas.com/news/politics-government/article212698514.html> (June 22, 2018, 1:11 PM)).

88. *Id.*

89. *Protected Innocence Challenge Toolkit*, SHARED HOPE INT’L 21–26 (2018), <https://sharedhope.org/wp-content/uploads/2018/11/2018ProtectedInnocenceChallengeToolkit.pdf> [<https://perma.cc/JE92-PZ48>].

90. *See* ME. REV. STAT. ANN. tit. 17-A, § 853-A(4) (2020).

91. *See* WYO. STAT. ANN. § 6-2-706(a) (West 2020).

sexual services in the statute requires proof that the minor was under the ongoing control of a third-party trafficker.⁹²

The Federal Bureau of Investigation's Uniform Crime Reporting program shows an average of 1,100 to 1,200 arrests each year for minors in prostitution.⁹³ The question then is how can states lower the number of arrests of minors for prostitution while also protecting the child sex trafficking victims. The answer is for states to adopt Safe Harbor laws in order to protect minor sex trafficking victims in relation to prosecution for prostitution and other sexual offenses.

III. WHAT MAKES A SAFE HARBOR LAW: ENSURING PROTECTION FOR VICTIMS

In order to recognize the benefit of Safe Harbor laws, it is important to understand what exactly they are and why there was a need for them in the first place. A Safe Harbor law is one that "(1) prevents minors (any child under 18) from being prosecuted for prostitution and (2) directs juvenile sex trafficking victims to non-punitive specialized services."⁹⁴ Safe Harbor laws were originally developed by the states to address the inconsistencies with how child commercial sex victims were treated.⁹⁵ State laws were penalizing adults who had sex with children.⁹⁶ However, the problem was that the laws were not applied regularly when adults purchased sex with minors.⁹⁷ The result was children being arrested and convicted of prostitution.⁹⁸ Thus, the response to combat this issue was to enact Safe Harbor laws.⁹⁹

The enactment of Safe Harbor laws helps ensure that the justice system protects minors from unjust criminalization. Further, because these laws direct minors to child protection proceedings rather than juvenile delinquency hearings, minors have access to specialized services and resources that otherwise would not be available to them.¹⁰⁰

Safe Harbor laws essentially have two components: legal protection and provision of services. Because traffickers often target homeless minors and those who ran away from home, these at-risk youth are at an

92. See WYO. STAT. ANN. § 6-2-701(a)(xiv) (West 2020).

93. Zurita, *supra* note 81, at 16.

94. *Fact Sheet: Safe Harbor Laws*, NAT'L COUNCIL OF JEWISH WOMEN (Sept. 2016), https://www.ncjw.org/wp-content/uploads/2017/07/Fact-Sheet_Safe-Harbor_Updated-2016.pdf [<https://perma.cc/HTA8-98CW>] [hereinafter *Fact Sheet*].

95. *Human Trafficking Issue Brief: Safe Harbor*, POLARIS (2015), <https://polarisproject.org/wp-content/uploads/2019/09/2015-Safe-Harbor-Issue-Brief.pdf> [<https://perma.cc/VM5T-ZRXD>] [hereinafter *Issue Brief*].

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Fact Sheet*, *supra* note 94.

increased risk for prosecution.¹⁰¹ Safe Harbor laws can ensure that trafficked victims are treated as victims, and not as criminals. The legal protection component grants immunity from prosecution where a minor was induced or compelled to commit certain types of offenses.¹⁰² Legislation can alternatively provide for the establishment of diversion programs that will afford “a means for charges to be dismissed if the child completes a specialized services program.”¹⁰³ Safe Harbor laws, through the provision of services component, require that states provide access to specialized services for survivors including medical (physical and psychological) care, safe housing options, educational programs, and counseling services.¹⁰⁴ Both the legal protection and provision of services components are necessary in order to reduce the trauma of survivors and rehabilitate them.¹⁰⁵

New York was the first state to enact a Safe Harbor law, and that law did not go into effect until 2010.¹⁰⁶ As of 2015, “two-thirds of states had passed some version of ‘Safe Harbor’ legislation to move from a prosecutorial to a victim services focus for child sex trafficking victims.”¹⁰⁷ According to the Polaris Project, “[m]ost states that have passed [S]afe [H]arbor legislation have limited the scope of the protections to children that have been commercially sexually exploited,” meaning that Safe Harbor provisions are only applicable to children who have engaged in prostitution or prostitution-related offenses.¹⁰⁸

Even though the number of states which have some form of Safe Harbor laws may seem large, many problems still exist in those states which have enacted Safe Harbor legislation. Most of the states that have passed Safe Harbor laws have legislation that varies significantly from that of other states, meaning there is no uniformity across the board.¹⁰⁹

One reason for the large variance across the United States is that each state has a variety of choices they have to make when drafting legislation in response to minor sex trafficking.¹¹⁰ First, states must decide whether to decriminalize youth prostitution and provide immunity or whether to create a diversion program.¹¹¹ Although some states use a unique or

101. *Id.*

102. *Issue Brief, supra* note 95.

103. *Id.*

104. *Id.*

105. *Id.*

106. SARAH WASCH ET AL., AN ANALYSIS OF SAFE HARBOR LAWS FOR MINOR VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION: IMPLICATIONS FOR PENNSYLVANIA AND OTHER STATES (2016) (Executive Summary).

107. *Id.*

108. *Issue Brief, supra* note 95.

109. WASCH ET AL., *supra* note 106, at 2.

110. *Id.*

111. *Issue Brief, supra* note 95.

blended approach, the majority of states have implemented legislation that falls into one of four categories: immunity without referral, immunity with referral, law enforcement referral to a protective system response, or a diversion process.¹¹²

Immunity without referral provides “immunity from prostitution-related charges to direct juvenile sex trafficking victims away from a punitive response but does not statutorily direct them into an alternative system or specialized response for access to services.”¹¹³ On the other hand, *immunity with referral* provides “immunity from prostitution-related charges and directs juvenile sex trafficking victims to an alternative system or specialized response for access to services.”¹¹⁴ *Law enforcement referral to a protective system response* “does not make minors immune from prostitution charges but directs or allows law enforcement to refer minors suspected of prostitution offenses to child welfare or other system-based services instead of arrest.”¹¹⁵ Finally, a *diversion process* “does not make minors immune from prostitution charges but allows or requires juvenile sex trafficking victims to be directed into a diversion program through which victims can access specialized services and avoid a delinquency adjudication.”¹¹⁶

Second, after states decide whether to decriminalize and provide immunity, they must decide how to provide services and which services to provide.¹¹⁷ Most states provide services to sex trafficking victims through their state child welfare system.¹¹⁸ In other states, the agency that oversees the juvenile justice system is designated to aid child sex trafficking victims.¹¹⁹

A. Immunity vs. Diversion Programs

Twenty states and the District of Columbia legislatively provide prosecutorial immunity for child sex trafficking victims.¹²⁰ Most states that provide criminal immunity only do so for the offense of prostitution, but some states have laws that also extend immunity to crimes committed as a result of being trafficked.¹²¹ For example, Kentucky, Montana, and Oklahoma “require proof that a child is trafficked before they can benefit from criminal and/or juvenile court immunity. Kentucky provides

112. WASCH ET AL., *supra* note 106, at 3.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. WASCH ET AL., *supra* note 106, at 1–3.

118. *See id.* at 2.

119. *Id.* at 6, 12.

120. RICH WILLIAMS, NAT’L CONF. OF STATE LEGISLATURES, SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD TRAFFICKING 4 (2017).

121. *See id.*

immunity to trafficked youth for status offenses, crimes like truancy and underage drinking, if the child committed the act as a result of being trafficked.”¹²² Further, Oklahoma’s Safe Harbor laws require “that any criminal charges . . . be dropped if, at a preliminary hearing, it is found to be more likely than not that the youth is a victim of human trafficking or sexual abuse.”¹²³ Many states provide even more protection than Kentucky, Montana and Oklahoma.¹²⁴ Tennessee’s laws provide that if police determine that a person who is arrested for prostitution is under the age of eighteen, that person will automatically become immune to prosecution for prostitution.¹²⁵

At least twenty-nine states and the District of Columbia have established diversion programs for youth offenders.¹²⁶ With diversion programs, laws vary across states on which officials have the authority to divert, whether the child must first admit guilt or be charged with a crime, and whether the child will be designated by officials as a youth in need of services.¹²⁷ Washington’s state law allows prosecutors to divert minors, while Utah’s law requires police to refer children who are engaging in prostitution to the Department of Child and Family Services.¹²⁸ By contrast, New York leaves the discretion for youth diversion to a judge.¹²⁹

Lastly, eighteen states and the District of Columbia provide for both immunity and diversion opportunities for child sex trafficking victims.¹³⁰ In these cases, state law could prohibit a child under a certain age from being charged for prostitution and could also allow them to be eligible for treatment under state established programs.¹³¹

Diversion programs are considered to be the less protective measure.¹³² As a result, there is a growing preference among legal scholars and policy advocates for the adoption of immunity from prosecution for prostitution and related offenses.¹³³ This preference for immunity was reflected by action taken by the Uniform Law Commission

122. *Id.*

123. *Id.*

124. *See id.*

125. WILLIAMS, *supra* note 120, at 4.

126. *Id.* at 5.

127. *Id.*

128. *Id.*

129. WASCH ET AL., *supra* note 106, at 2.

130. WILLIAMS, *supra* note 120, at 5.

131. *See id.*

132. *See* WASCH ET AL., *supra* note 106, at 12 (noting that juvenile diversion programs have high rates of negative life outcomes, including substance abuse, mental health issues, unemployment, lack of education, and homelessness).

133. *See id.* at 10.

(ULC) and the American Bar Association (ABA).¹³⁴ In 2011, the ABA House of Delegates passed a resolution that urged states to stop prosecuting child sex trafficking victims for prostitution and related offenses, and urged them to instead provide services.¹³⁵ Thereafter, the ULC came up with the Uniform Act on Prevention of and Remedies for Human Trafficking (Uniform Act), which was meant to serve as a guide for state legislators when drafting minor human trafficking laws.¹³⁶ The Uniform Act clearly recommends the immunity approach when dealing with child human trafficking. Section Fifteen of the Uniform Act provides for “Immunity of Minor” with the following language: “An individual is not criminally liable or subject to a [juvenile-delinquency proceeding] for [prostitution] or [insert other nonviolent offenses] if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim.”¹³⁷

However, even if a state has an immunity provision in its Safe Harbor law, that does not mean the law fully protects the minor victim. State Safe Harbor laws vary from allowing an investigative “hold and release” or an arrest complete with arraignment and prosecution.¹³⁸ At the prosecution, in many states the minor is allowed an affirmative defense, which will negate or defeat the criminal liability or unlawful conduct.¹³⁹ This practice is known as conditional or secondary immunity.¹⁴⁰ Further, no state Safe Harbor law currently protects minors from criminal liability for felony prostitution and trafficking-related offenses.¹⁴¹ Thus, a state like Tennessee, which has a robust immunity provision for simple prostitution offenses, does not protect aggravated prostitution or promotion of prostitution, both of which are felonies, and a minor could face additional charges for being in the child sex trafficking business.¹⁴²

Therefore, although immunity provisions may be the prevailing choice over diversion programs, states must enact more protective and robust legislation if they are going to keep youth safe. The point of Safe Harbor laws is to protect youth and keep them from being committed to the juvenile justice system. If current laws allow for schemes that rely on arrest and institutionalization, the goal of Safe Harbor remains unmet. States should commit to actual and full immunity from criminal and

134. *Issue Brief*, *supra* note 95.

135. *Id.*

136. *Id.*

137. NAT’L CONF. OF COMMISSIONERS ON UNIF. ST. LAWS, UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING, § 15 (2013).

138. Brendan M. Conner, *In Loco Aequitatis: The Dangers of “Safe Harbor” Laws for Youth in the Sex Trades*, 12 STAN. J. C.R. & C.L. 43, 82 (2016).

139. WASCH ET AL., *supra* note 106, at 2.

140. *See* Conner, *supra* note 138, at 103.

141. *Id.* at 85.

142. *Id.*

juvenile delinquency proceedings, and this immunity should not just extend to prostitution and similarly related offenses. States should also carefully consider all offenses that might stem from the child sex trafficking trade. Further, proponents for Safe Harbor laws argue that states should enact “a prohibition on arrest, temporary protective custody, and law enforcement and guardian-initiated petitions for dependency or abuse or neglect proceedings.”¹⁴³

B. *Victims’ Services*

In addition to providing immunity or diversion services for sex trafficking minors, Safe Harbor laws also seek to enhance and improve the quality of current services that are offered to victims. Services range from education and counseling to mental and physical treatment. Services may be offered through a referral to the state’s public child welfare system, or they may be offered through specialized programming established by the state which responds to the unique needs of the population that is affected.¹⁴⁴ The idea of victims’ services is easier said than done. Service providers must gain the trust of the juvenile victims if the therapy and treatment services are to be effective.¹⁴⁵

Unfortunately, due to how new Safe Harbor legislation is, there is not much data to compare the outcomes of youth who are referred to social services versus those who go through the juvenile justice system.¹⁴⁶ However, some steps are being taken to evaluate the benefits of social services. The Minnesota Department of Health and Human Services was the first of its kind to evaluate its Safe Harbor program. Minnesota’s No Wrong Door model treated sexually exploited minors as victims and provided for these youth to receive trauma-informed support rather than being processed through the criminal justice system.¹⁴⁷ Minnesota then released “The Safe Harbor First Year Evaluation Overview,” which evaluated the model framework after one year.¹⁴⁸ The report found that out of 163 independent referrals made by child welfare agencies, law enforcement, and other youth-serving systems in the state, 129 minors accepted and participated in the services.¹⁴⁹ Furthermore, the report found that the victims participated in the services voluntarily, as there were no

143. *Id.* at 107.

144. WASCH ET AL., *supra* note 106, at 5.

145. *Id.*

146. *Id.* at 6.

147. *Safe Harbor/No Wrong Door*, MINN. DEP’T OF HUM. SERVS., <https://mn.gov/dhs/partners-and-providers/program-overviews/child-protection-foster-care-adoption/safe-harbor/> [<https://perma.cc/TQU7-6QNS>] (last updated Nov. 5, 2020).

148. See JULIE ATELLA ET AL., *SAFE HARBOR FIRST YEAR EVALUATION REPORT I* (2015).

149. WASCH ET AL., *supra* note 106, at 6.

pending charges against them.¹⁵⁰ Some recommendations from the report were for the state to expand the age limit, to increase funding for the program, and to develop more transportation, housing, and 24-hour services for victims.¹⁵¹

Different states require different services as a part of their Safe Harbor legislation. Texas, for example, requires the governor to create a program that provides “comprehensive, individualized rehabilitation services to child sex trafficking survivors.”¹⁵² Alabama requires that all social and community services be made available to child sex trafficking victims.¹⁵³ Michigan law requires agencies that currently supervise minors to give special attention to children if they are given information that indicates they are a trafficking survivor, though it is unclear what exactly is meant by “special attention.”¹⁵⁴

Unfortunately, these types of programs can be costly and can only be effective if states allocate or create funds for them. As of 2017, at least twenty-five states have created funds in their state treasury to pay for anti-trafficking efforts and survivor services.¹⁵⁵ Minnesota has invested more than \$8 million into its Safe Harbor efforts.¹⁵⁶ Louisiana established the Exploited Children’s Special Fund, which provides funds to pay for services and treatment that is administered by the Department of Children and Family Services.¹⁵⁷ Funding can also be used for other purposes, including to arrest and prosecute child sex traffickers and to train state personnel.¹⁵⁸ If victims’ services are to serve their purpose, states must ensure that they are not only providing the framework for what services are available to child sex trafficking victims but that they are appropriating enough funds to run these programs and services successfully.

C. *Additional Components of Safe Harbor Laws*

In addition to immunity and victims’ services provisions, robust Safe Harbor laws should include provisions that push for increased penalties for child traffickers and provide training programs for state personnel.

Currently, every state criminally penalizes traffickers, and at least forty-four states have increased penalties when the crimes are committed

150. *Id.*

151. *Id.*

152. WILLIAMS, *supra* note 120, at 6.

153. *Id.* at 7.

154. *Id.*

155. *Id.* at 5.

156. *Id.* at 6.

157. *Id.*

158. *See* WILLIAMS, *supra* note 120, at 6.

against children.¹⁵⁹ If the penalties were harsher for child sex traffickers, it would deter individuals from participating in the crime. If there were fewer individuals who traffic children, this would ultimately lead to fewer prosecutions of child sex trafficking victims.

States have undertaken different approaches to these increased penalties for traffickers. In Mississippi, it is a misdemeanor to solicit a prostitute, but if a person under the age of eighteen is solicited, then the solicitation is classified as a felony.¹⁶⁰ Massachusetts makes labor trafficking punishable by five to twenty years in prison, but if the person trafficked is under eighteen years old, then the punishment can be life in prison.¹⁶¹ Other states threaten to impose large fines on the trafficker depending on the age of the victim.

For state personnel to be better equipped to identify and respond to human trafficking survivors, they must be properly trained to handle victims and their situations. State legislators must step in to create training programs and requirements for the responding state personnel. Only thirty-eight states and the District of Columbia have enacted trafficking laws that include a training requirement provision.¹⁶² These training laws include various components such as: “who must be trained, who must be involved in the development of training programs, appropriate coursework, risk assessment indicators for victim identification and collaboration standards between state agencies.”¹⁶³ If state personnel are better equipped to recognize and properly respond to child sex trafficking victims, this can lead to fewer arrests of minors and an increase in the use of victims’ resources.

D. *When the Court Got it Right: In re B.W.*¹⁶⁴

In 2010, the Texas Supreme Court set a new national precedent by ruling that a child who is below the legal age of consent cannot be found guilty of prostitution.¹⁶⁵ Across the United States, there had been prosecutions and convictions of youth for prostitution, but *In re B.W.* was the first appeal of its type to be heard by a state supreme court.¹⁶⁶

In this case, B.W. waved over an undercover officer who had been driving by in an unmarked vehicle, and she offered to engage in oral sex with him for twenty dollars.¹⁶⁷ B.W. was arrested for prostitution and,

159. *Id.* at 7.

160. *Id.*

161. *Id.* at 8.

162. *Id.*

163. *Id.*

164. 313 S.W.3d 818 (Tex. 2010).

165. WASCH ET AL., *supra* note 106, at 11.

166. *Id.*

167. *In re B.W.*, 313 S.W.3d at 819.

even though the charges were dismissed after it was revealed that she was only thirteen years old, the charges were refiled.¹⁶⁸ Before her trial, she was examined by a psychologist who found that B.W. had a history of sexual and physical abuse and she had an untreated substance abuse issue.¹⁶⁹ The trial court found that B.W. engaged in delinquent conduct and the offense of prostitution.¹⁷⁰ In its holding, the Supreme Court of Texas stated that a child under the age of fourteen could not be charged with prostitution because the child lacks the capacity to consent to sex.¹⁷¹

The Texas Supreme Court highlighted the importance of child welfare agencies in child prostitution cases, noting that these types of agencies provide “services within a purely rehabilitative setting” without the stigma of being deemed a prostitute.¹⁷² The Court further illustrated the help these agencies can provide to at-risk youth. For example, if these agencies can provide counseling, education, and other services for child sex trafficking victims, they are doing far better in terms of rehabilitation than the majority of juvenile justice facilities. Like adult prisons, juvenile justice facilities typically fail to provide the appropriate treatment and rehabilitation services for children to reintegrate back into society upon their release.¹⁷³ Children in these facilities are usually not provided psychological treatment, education, or other services.¹⁷⁴ Thus, upon their release, juveniles are likely to face difficult lives where they deal with lack of employment, homelessness, substance abuse, and so forth. Additionally, it is likely that they will continue to be victims of human trafficking as it is a life already known to them. That is why the provision of services to child sex trafficking victims is of the utmost importance. Ultimately, more states, and courts for that matter, should follow Texas’s lead to ensure the protection of child sex trafficking victims.

IV. UNIVERSAL SAFE HARBOR LAWS: A VIABLE SOLUTION

Sex trafficking of children is commonly “overlooked, misunderstood, and unaddressed” in the United States.¹⁷⁵ Researchers have concluded that the consequences of this include that:

- Victims and survivors of these crimes face immediate and long-term social, legal, and health consequences.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.* at 826.

172. *Id.* at 825.

173. *See* WASCH ET AL., *supra* note 106, at 12.

174. *Id.*

175. CONFRONTING EXPLOITATION, *supra* note 6, at 1.

- Exploiters and traffickers, who often operate undetected or without serious penalties, contribute to and benefit financially from the exploitation and abuse of minors.
- People who purchase or trade sex with underage individuals engage in and help fuel demand for the exploitation and abuse of minors.¹⁷⁶

Victims and survivors are suffering in this country because we have overlooked the problem and left it unaddressed for too long. In this case, ignorance is not bliss. In order to remedy the long-standing problem, every state should adopt robust Safe Harbor laws to protect child sex trafficking victims. It is important to acknowledge that even states which currently have Safe Harbor laws on the books do not offer full protection or services to victims.

Child sex trafficking is happening in our communities, cities, and states. Although certain demographics may be more susceptible to child sex trafficking, it can happen to anyone—regardless of race, religion, age, gender, or socioeconomic status. If communities were made more aware of this dire issue, they could push for a change with their state officials. The public should be made aware that minors involved in prostitution and similar offenses are first and foremost victims. Once there is an increased awareness with the public, law enforcement and state legislatures may prioritize the issue of child human trafficking.

One method that states have utilized to improve the legislation and adoption of Safe Harbor laws is by creating task forces. At least twenty-four states have legislatively created task forces to help improve responses to the issue of human trafficking.¹⁷⁷ “Many of the entities are charged with addressing trafficking generally, while at least eleven states have groups charged with addressing child trafficking specifically.”¹⁷⁸ Legislators have assigned these task forces many various duties including making policy recommendations and improving public awareness of trafficking crimes.¹⁷⁹ If every state adopted measures to create task forces, it may potentially lead to every state implementing Safe Harbor laws. As some advocates have argued, Safe Harbor legislation should shift to voluntary, low-threshold services that focus on a model that reduces harm to victims and benefits all youth engaged in the sex trade.¹⁸⁰ Only then will the ultimate goal of Safe Harbor laws be a reality.

176. *See id.*

177. WILLIAMS, *supra* note 120, at 3.

178. *Id.*

179. *Id.*

180. Conner, *supra* note 138, at 102.

CONCLUSION

Cyntoia Brown's case was not only a tragedy, but an injustice. Despite being a sixteen-year-old who was entangled in the prostitution industry at the time of her crime, she was ultimately convicted and sentenced to life in prison. The criminal justice system failed to protect Cyntoia; instead, the system chose to overlook the circumstances surrounding her crime and to condemn her to an excessive sentence. But Cyntoia was lucky, as she was released after serving only fifteen years of her life sentence; many other minors in similar circumstances are not as fortunate.

Child sex trafficking is a real, cognizable problem here in the United States. The increasing number of child sex trafficking victims is alarming and an important issue that needs to be addressed by our community leaders. Unfortunately, in trying to combat the issue of prostitution and similar offenses, minors have been treated as the criminal rather than the victim. Many states have a long history of prosecuting minors for sex offenses when these minors should be protected as they are themselves the victims of a crime. Although efforts have been made by the federal government and by individual state legislatures, too many states follow the trend of criminalizing victims.

Safe Harbor laws are the solution to this longstanding issue. Safe Harbor laws have an underlying goal to decrease prosecution of child sex trafficking victims and to increase access to victims' services and resources that facilitate rehabilitation. Failure to implement Safe Harbor legislation leads to a never-ending cycle of recidivism for victims well into their adulthood. Robust Safe Harbor legislation should be implemented in every state so that victims not only are provided immunity from juvenile justice proceedings, but also are provided with services that range from education and counseling to mental and physical treatment. Safe Harbor legislation will be more beneficial than harmful, and state legislatures need to be proactive to protect the victims of child sex trafficking.