Protecting Juveniles of Commercial Sexual Exploitation: Washington Shifts to a Child Protection Model

by Mary Ahan

States have begun to confront the rising number of women, men, and children trafficked into forced labor and sexual servitude. With an estimated 100,000 children victimized each year in the United States by commercial sexual exploitation, 2 states need to respond swiftly with laws that provide services and treatment to child trafficking victims, training to law enforcement to identify victims, and establish penalties that will deter buyers, traffickers, and pimps.

On April 1, 2010 Governor Christine Gregoire signed SB 6476, an Act relating to sex crimes involving minors, into law after the bill had unanimously passed through the state legislature. The new law revises sex crimes provisions relating to minors by diverting juvenile victims of prostitution away from the criminal justice system, by shifting the paradigm to viewing juvenile prostitutes as victims of commercial sexual exploitation, and by increasing the criminal penalties for those who purchase and sell child victims for the purpose of sexual exploitation.

The state of Washington previously responded to incidents of human trafficking by enacting the Trafficking in Persons Act and the Mail Order Bride Act, in addition to criminalizing trafficking of persons.

Washington has a particular interest in confronting commercial sexual exploitation because of the state’s international seaports, location on the Pacific Rim, and close proximity to Canada. The time is now for new laws with the recent emphasis on prosecuting child sex traffickers.

Washington’s new law provides law enforcement with an alternative to criminally prosecuting children involved in prostitution. All criminal complaints involving juveniles are referred to the juvenile court, where a prosecutor screens the complaint to determine whether the alleged facts bring the case within the jurisdiction of that court and if there is probable cause to charge based on the available evidence. If both of these requirements are met, the prosecutor will either file an information charging the alleged offender of the crime or divert prosecution to the Department of Social and Health Services (DSHS). The prosecutor is still required to initiate a prosecution if the alleged juvenile offender: (1) is accused of a class A felony, a class B felony, certain class C felonies, or (2) has previously been committed to the DSHS, or (3) has been referred by a diversion unit, or (4) has two or more diversion agreements, or (5) was armed with a firearm. The prosecutor must when the child is charged with a misdemeanor and it is their first offense.

Beginning July 1, 2011, a prosecutor will also be required to divert prosecutions of alleged juvenile offenders when the alleged offense is either Prostitution or Prostitution Loitering and the alleged crime is the juvenile’s first such offense. For subsequent offenses, the prosecutor has the discretion to initiate a prosecution in juvenile court or to divert the case depending on whether the county provides a comprehensive services and shelter program for minor victims.

If a case is diverted away from prosecution, DSHS will file a “child in need of services” (CHINS) petition to adjudicate the placement of the child with DSHS. A child who is sexually exploited is now eligible to be designated as a CHINS, and may receive needed services and treatment. Once the child is designated as a CHINS, DSHS is required to provide placement for the exploited child for up to fifteen days in a secure or semi-secure crises residential center where the child will receive intervention services without fear of criminal charges. Secure and semi-secure residential centers provide children with a safe and supportive environment and operate in a manner to reasonably assure that the youth
will not run away to return to their trafficker/pimp. 19 For crisis residential centers to maintain their licenses, DSHS requires that these centers have access to, counselors experienced and trained to work with sexually exploited youth. 20

The new law establishes the Prostitution Prevention and Intervention Account within the state treasury, which provides funding for treatment and rehabilitation programs and crisis residential centers with access to trained staff. 21 Fines collected from buyers and pimps/traffickers for their illegal exploitation of children will be deposited into this account. 22 The money paid in fines by those who exploit will be spent to rebuild the lives of their victims by funding mental health and substance abuse counseling, parenting skills training, housing relief, education, vocational training, and other services for victims. 23

Washington’s new law demonstrates a commitment to treat children who are victims of sexual abuse as victims rather than as criminals. The new law creates a presumption that a child arrested for Prostitution or Prostitution Luring is a victim of a severe form of trafficking in persons 24 and a victim of commercial sexual abuse of a minor, 25 and, as such, is eligible for benefits from the state Crime Victim’s Compensation fund, even if the child is charged with prostitution.

In addition to implementing new protections for children who are commercially exploited, the law increases penalties for those who victimize children. The crime of Sexual Abuse of a Minor is increased from a class C felony to a class B felony, creating longer sentences for buyers. 26 The crime of promoting commercial sexual abuse of a minor is now a class A felony, increased from a class B felony, allowing courts to impose a life sentence for traffickers/pimps who exploit minors. 27 Additionally, persons convicted of commercial sexual abuse of a minor, promoting sexual abuse of a minor, promoting travel for commercial sexual abuse of a minor, or received a deferred sentence or deferred prosecution or have entered into a diversion agreement, will be required to pay a $5,000 fee, an increase from a $500 fee. 28 The money the buyers and pimps/traffickers will pay for these crimes will be deposited into the Prostitution and Prevention and Intervention Account. 29

The state legislature also passed a forfeiture-by-wrongdoing provision. Upon arrest for suspected violation of commercial sexual abuse of a minor, promoting sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting office is required to impound the vehicle used in the commission of these crimes if the person arrested is the owner of the vehicle or rented the vehicle. 30 The vehicle is then impounded and held under an order that clearly states “prostitution hold.” 31 For the vehicle to be released, the person arrested must pay all impoundment, towing, and storage fees, in addition to a fine of $2,500 which will be deposited into the Prostitution and Prevention and Intervention Account. 32 If the person contests the validity of the impoundment and prevails or is found not guilty at trial, the person is entitled to a full refund of the impoundment, towing, and storage fees. 33

Under Washington’s new law, buyers and traffickers/pimps who commercially sexually exploited children are not allowed clean amnesties of a child victim’s age. 34 The defendant may assert that at the time of the offense a reasonable attempt was made to determine the true age of the child by checking a driver’s license, marriage license, birth certificate, or other identification card or paper and that he did not rely solely on the child’s stated or apparent age. This defense is permissible only if the defendant can prove the attempt by a preponderance of the evidence. 35

The Washington legislature emphasizes the importance of training frontline child abuse professionals who encounter child victims of commercial sexual abuse and exploitation. New policies and procedures relating to law enforcement officers’ contacts with child victims of sexual exploitation are to be developed by December 1, 2010, and by January 1, 2011, a curriculum will be developed based on the model policy for training in police academies. 36 Training is critical due to the unique dynamics of many child sexual exploitation investiga-

1 Staff Attorney, NDAAs National Center for Prosecution of Child Abuse.
3 In 1990, Filippa Clemente was forced into a sham marriage arranged by an ex-seattle police officer and his wife. She was forced into indentured servant for the next three years while she worked as their maid. Janet I. Ti, Spotlight on Trafficking of Women and Children, Seattle Times, Nov. 13, 2001. In 2000, Anastasia King was murdered by her husband who had a prior history of domestic violence and abusive marriage; she met her husband through the unregulated international match-making industry. Robert L. Jamieson, Jr., Susp. Threatened to Kill Previous Wife, Record-Shore, Seattle Post-Intelligencer, Jan. 30, 2001.
4 Wash. Rev. Code Ann. § 7.68.350 (2010), H.B. 2381 (Wa 2001). Created a state task force to measure and evaluate the progress of the state in trafficking prevention activities; identify available federal, state, and local programs that provide services to victims of trafficking; and make recommendations provide a coordinated system of response to victims of trafficking. The Task Force expired March 1, 2003 but was extended until June 30, 2004 (H.B. 1990).
5 § 19.22.080, 684; S.B. 6412 (Wa 2002). Requires international matching-making agencies to provide criminal and marital background information on the person from Washington state to the prospective partner in a language the person speaks.
6 9A.40.100 (2010); H.B. 1175 (Wa 2003).
9 DeShawn “Cash Money” Clark was convicted of several crimes including second-degree human trafficking, promoting prostitution. Five others were also convicted of various crimes. The street gang forced girls and women to perform sex acts for money. The state legislature criminalized human trafficking in 2003. This charge was the first time King County prosecuted a trafficker with this statute. Shunam Pan Chan, 6 Charged in First King County Case Using Human Trafficking Law, The Seattle Times, Mar. 26, 2009, available at http://seattletimes.nwsource.com/html/localnews/2008926143_hooks25eth.htm.
11 A pursuant to available funding, youths diverted to DHS must be connected to services and treatment for sexually abused youths. S.B. 6476 § 5, 61st Leg., Reg. Sess. (Wa 2010).
12 § 1.15(16).
13 § 10.
14 § 18.
15 § 14.
17 § 5(1).
18 § 12(2).
19 § 12(3).
20 § 12(4).
21 § 6(3). All refunds will be paid by the impounding agency and the claimant must provide proof of payment. S.B. 6476 § 6(c,d), 61st Leg., Reg. Sess. (Wa 2010).
22 § 17(3).
23 § 16.

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