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# Juvenile Victims of Domestic Sex Trafficking: Juvenile Justice Issues

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## Summary

There has been growing concern over sex trafficking of children in the United States. Demand for sex with children (and other forms of commercial sexual exploitation of children) is steady, and profit to sex traffickers has increased. Law enforcement is challenged not only by prosecuting traffickers and buyers of sex with children, but also by how to handle the girls and boys whose bodies are sexually exploited for profit.

Under the Victims of Trafficking and Violence Protection Act of 2000 (TVPA; P.L. 106-386), the primary law that addresses trafficking, sex trafficking of children is a federal crime; moreover, an individual under the age of 18 who is involved in commercial sex activities is considered a *victim* of these crimes. Despite this, at the state and local levels, juvenile victims of sex trafficking may at times be treated as criminals or juvenile delinquents rather than victims of crime. Of note, there are no comprehensive data that address the number of prostituted or otherwise sexually trafficked children, and there are limited studies on the proportion of these juveniles who are treated as offenders.

A number of factors may, alone or in combination, contribute to the criminalization of juvenile trafficking victims. One is a lack of victim identification and an awareness of key indicators that may help in identifying victims. Even in states that statutorily consider juveniles involved in commercial sex to be victims, law enforcement may not have received sufficient training to be able to identify victims. Another factor is a lack of secure shelters and specialized services for victims; despite knowing that the juvenile is a victim, law enforcement may charge the individual with a crime so as to place the victim into one of the only available safe and secure environments—a detention facility within the juvenile justice system.

Researchers and policy makers have suggested a number of options aimed at preventing minor trafficking victims from being caught up in the juvenile justice system and diverting them to programs and services that can help rehabilitate and restore these youth. These have included supporting law enforcement training on human trafficking, enhancing law enforcement and community partnerships, enacting safe harbor laws preventing the prosecution of victims as offenders, establishing diversion programs for juveniles involved in commercial sex, and establishing provisions to seal or expunge records of trafficked youth's involvement in the juvenile justice systems.

Because the federal government considers juveniles involved in prostitution as *victims* of trafficking, and because much of the policing to combat prostitution and sex trafficking—both of adults and children—happens at the state level, federal policy makers have considered how to influence states' treatment of trafficking victims (particularly minors) such that state policies are more in line with those of the federal government. Financial incentives from federal grants and victim compensation funds could be provided through a variety of avenues. These routes include TVPA-authorized grants, juvenile and criminal justice grants, Violence Against Women Act (VAWA; P.L. 113-4)-authorized grants, and the Crime Victims Fund.

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There has been growing concern over sex trafficking of children in the United States.<sup>1</sup> Demand for sex with children (and other forms of commercial sexual exploitation of children) is steady, and profit to sex traffickers has increased.<sup>2</sup> While law enforcement, policy makers, social service providers, and the public have acknowledged the presence of this issue, they have grappled with measuring the extent of child sex trafficking as well as determining how best to combat it from a number of angles.

Within the criminal justice realm, law enforcement is tasked with investigating and prosecuting both the supply side (sex traffickers, or pimps)<sup>4</sup> as well as the demand side (buyers of commercial sex) of sex trafficking. In addition to the challenges in prosecuting traffickers and buyers of sex with children, law enforcement faces challenges with how to handle the girls and boys whose bodies are sexually exploited for profit.<sup>5</sup>

Indeed, the U.S. view of juveniles involved in commercial sexual activity has evolved over the past decade. How to categorize the juveniles involved in commercial sexual activities has become one of the perennial issues for law enforcement and policy makers.

A central question is whether these youth should be characterized as victims or perpetrators. The federal government and some states have conceptualized these children differently, and this variability has contributed to the implementation of differing policies throughout the country. In short, while the federal government considers these minors as *victims* and thus eligible for specialized services, some states may still treat these minors as *perpetrators* engaged in prostitution and related crimes.

This report examines juvenile victims of sex trafficking and their intersection with states' juvenile justice systems throughout the United States. It outlines the federal conceptualization of minors involved in commercial sexual activities and discusses factors that may contribute to the

### Sex Trafficking of Minors: Under the Umbrella of Human Trafficking

Human trafficking involves the exploitation of individuals for forced labor or commercial sex. Federal law defines "severe forms of trafficking in persons" as

(A) sex 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) the 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.<sup>3</sup>

Experts generally agree that this definition includes the prostitution of minors.

<sup>1</sup> For more information and an overview of sex trafficking of children in the United States, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin. For more information on human trafficking broadly, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana Rosen; see also U.S. Department of State, *Trafficking in Persons Report 2013*, June 2013. In this report, the terms "child," "minor," "youth," and "juvenile" are all used interchangeably to refer to an individual under the age of 18.

<sup>2</sup> Meredith Dank et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, Research Report, Urban Institute, March 2014; and U.S. Department of Justice, *The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, Washington DC, August 2010, pp. 32-33.

<sup>3</sup> 22 U.S.C. §7102.

<sup>4</sup> Of note, when referring to the trafficking of minors, the terms "pimp" and "trafficker" are synonymous. This does not necessarily hold true when referring to the trafficking of adults. In the context of adults, a pimp who does not use force, fraud, or coercion to induce adults to prostitute themselves would not be considered a trafficker.

<sup>5</sup> There are separate challenges for conceptualizing adults and children involved in commercial sexual activity. This report focuses on challenges for law enforcement when presented with the juveniles (girls and boys) involved in commercial sexual activity.

treatment of sex trafficking victims as perpetrators. It then outlines various criminal justice policy options and approaches to victim-centered policing regarding sex trafficking of minors. The report concludes with a discussion of the federal role in incentivizing states' juvenile and criminal justice systems and treatment of sex trafficking victims.

## Federal Conceptualization of Minors as Sex Trafficking Victims

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) is the primary law that addresses human trafficking.<sup>6</sup> In outlining what constitutes “severe forms of trafficking in persons,” the TVPA includes both sex trafficking and labor trafficking. Generally, both forms of trafficking involve some element of force, fraud, or coercion. With respect to sex trafficking, however, the law specifies that when a *minor*—an individual under the age of 18—is involved, the commercial sexual activity need *not* contain force, fraud, or coercion in order to be deemed sex trafficking.<sup>7</sup> In other words, for purposes of prosecuting a trafficker, if a minor is involved in a commercial sex act, he or she is considered a victim of sex trafficking (and thus a victim of a severe form of trafficking in persons) in the federal government’s eyes. Notable elements of this position include the following:

- A minor is considered a victim of trafficking regardless of whether the commercial sex act is believed to be forced or voluntary.<sup>8</sup>
- A minor is considered a victim of trafficking regardless of whether the minor represents himself/herself as an adult. The law provides that in prosecutions involving a minor victim, the government is not required to prove that the defendant knew that the victim was under the age of 18.<sup>9</sup>
- A minor is considered a victim of trafficking regardless of whether he or she is removed from his or her community.

As the TVPA considers juveniles involved in prostitution as *victims* of trafficking, federal enforcement efforts are aimed at combating the traffickers and buyers of commercial sex. At the federal level, these perpetrators are often prosecuted for violations of the Mann Act,<sup>10</sup> the Racketeer Influenced and Corrupt Organization Act (RICO),<sup>11</sup> or the TVPA.<sup>12</sup>

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<sup>6</sup> P.L. 106-386. This act is also called the Trafficking Victims Protection Act (TVPA). The TVPA is codified under 18 U.S.C. §1591 et seq. (the criminal statute pertaining to sex trafficking of children), 22 U.S.C. §7101 et seq., and 42 U.S.C. §14044 et seq.

<sup>7</sup> 22 U.S.C. §7102.

<sup>8</sup> 18 U.S.C. §1591(a).

<sup>9</sup> 18 U.S.C. §1591(c).

<sup>10</sup> 18 U.S.C. §2421 et seq. The Mann Act was enacted in 1910 to fight against prostitution and other forms of sexual misconduct. As currently written, the Mann Act, among other things, makes it a felony to knowingly transport “an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offence.” 18 U.S.C. §2423(a).

<sup>11</sup> 18 U.S.C. §1961-1968; Title IX of the Organized Crime Control Act of 1970 (P.L. 91-452). RICO allows for the prosecution of anyone who participates or conspires to participate in a criminal enterprise/organization through two acts of “racketeering activity” within a 10-year period of time. The predicate offenses for racketeering include various (continued...)

## Variations in States' Conceptualization of Minors as Sex Trafficking Victims

Notably, the investigation and prosecution of child prostitution are mostly state matters. Every state outlaws the prostitution of children<sup>13</sup> as well as human trafficking broadly (including sex trafficking of children).<sup>14</sup> However, despite their protected status at the federal level, juvenile victims of sex trafficking may at times be labeled and treated as criminals or juvenile delinquents at the state and local levels.<sup>15</sup> Consequently, these children may be arrested and placed in juvenile detention facilities with juveniles who have committed serious crimes instead of in environments where they can receive needed social and protective services. In addition, because of being processed through the criminal justice system, they may then have permanent records as offenders.<sup>16</sup> Some researchers have noted that labeling these victims as prostitutes or offenders and subsequently placing them in the juvenile justice system is a practice that may further harm these victimized youth.<sup>17</sup>

### Factors Impacting Criminalization

A number of factors may, alone or in combination, contribute to the criminalization of juvenile trafficking victims. One such factor is the variability in state laws regarding sexual activities and youth. For example, states may take varying stances regarding the criminality of prostitution and solicitation. They may also have differing thresholds for the age of consent, or when an individual can legally consent to sexual intercourse (this typically ranges from 16-18 years of age). In

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(...continued)

state and federal crimes listed in the U.S. Code. For more information on RICO, see CRS Report 96-950, *RICO: A Brief Sketch*, by Charles Doyle.

<sup>12</sup> Specific statutes available to prosecute such crimes include, but are not limited to, the following: 18 U.S.C. §1591—Recruiting, enticing, or obtaining (including via force, fraud, or coercion) individuals to engage in commercial sex acts, or benefiting from such activities; 18 U.S.C. §2421—Transporting individuals across state or international lines for prostitution or other unlawful sexual activities; 18 U.S.C. §2422—Enticing or coercing an individual to cross a state or international line for prostitution or other unlawful sexual activities; 18 U.S.C. §2423—Transporting a minor across state or international lines for prostitution or other unlawful sexual activities; 18 U.S.C. §2424—Keeping an alien in a house or place of prostitution; and 18 U.S.C. §2241(c)—Engaging in interstate travel for sexual activities with a child under age 12, and sexual activities with a child under age 16. For more information on the breadth of federal offenses regarding sexual abuse of children, see CRS Report R42132, *Sexual Abuse of Children: Federal Criminal Offenses*, by Richard M. Thompson II.

<sup>13</sup> U.S. Department of State, *Trafficking in Persons Report 2014*, June 2014.

<sup>14</sup> Polaris Project, “Wyoming Becomes 50<sup>th</sup> State to Outlaw Human Trafficking,” press release, February 27, 2013.

<sup>15</sup> A number of organizations evaluate state initiatives to, among other things, decriminalize prostitution by minors and divert these youth to specialized services. See, for instance, Shared Hope International, *Protected Innocence Challenge*, <http://sharedhope.org/what-we-do/bring-justice/reportcards/>. See also Polaris Project, *2013 State Ratings on Human Trafficking Laws*, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws>.

<sup>16</sup> Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences, September 25, 2013. See also Linda A. Smith, Samantha Healy Vardaman, and Melissa A. Snow, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children*, Shared Hope International, May 2009.

<sup>17</sup> National Criminal Justice Reference Service, “Diversion Programs: An Overview,” *Juvenile Justice Bulletin*, September 1999.

addition, states may adopt different cutoff ages for when an individual is considered a juvenile or an adult for criminal justice purposes under state law.<sup>18</sup>

Another factor impacting the potential criminalization of juvenile sex trafficking victims involves awareness of key indicators that may help in identifying victims. Victims often do not readily self-identify as such,<sup>19</sup> and this leaves the challenge of victim identification to authorities such as law enforcement and social service providers. A law enforcement officer who has not been trained in identifying children as victims of commercial sexual exploitation may mistakenly charge a child with a crime such as prostitution.

In addition to instances in which victims may enter into the juvenile justice system because law enforcement does not perceive that the juvenile is a trafficking victim, there are cases in which juveniles enter the system despite law enforcement knowing that the juvenile is a victim. An officer who recognizes that an individual is a victim may charge the individual with a crime so as to place the victim into one of the only available safe and secure environments—a detention facility within the juvenile justice system.<sup>20</sup> There are few safe facilities for child victims of sex trafficking, and law enforcement may rely on the security of juvenile justice facilities, even if they may not be the most appropriate option for the placement of trafficking victims.

## **Prevalence of Criminalization**

The most recent data indicate that “136 males and 443 females under 18 years of age were reported to the federal government as having been arrested for prostitution or commercialized vice by state and local authorities” in 2012.<sup>21</sup> Of note, there are no comprehensive data that address the number of prostituted or otherwise sexually trafficked juveniles who are treated as offenders. Several studies provide some insight into this number, including how law enforcement agencies process children who are prostituted. These studies vary widely, however, in their populations considered, time frames examined, and conclusions drawn.

- One study, conducted by the U.S. Department of Justice (DOJ), relied on National Incident-Based Reporting System (NIBRS)<sup>22</sup> data from 76 law enforcement agencies in 13 states. Researchers examined 241 prostitution incidents between 1997 and 2000 that involved juvenile offenders, juvenile

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<sup>18</sup> For information on the age delineation between juvenile and adult court in each of the states, see *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, National Conference of State Legislatures, January 10, 2014.

<sup>19</sup> Polaris Project, *In Their Shoes: Understanding Victims' Mindsets and Common Barriers to Victim Identification*, 2010. See also Heather J. Clawson, Nicole M. Dutch, and Amy Salomon, et al., *Study of HHS Programs Serving Human Trafficking Victims: Final Report*, U.S. Department of Health and Human Services, December 2009.

<sup>20</sup> Notably, service providers generally advocate for *secure* facilities for trafficking victims “in order to establish physical and emotional safety” for victims. See Heather J. Clawson and Lisa Goldblatt Grace, *Finding a Path to Recovery: Residential Facilities for Minor Victims of Domestic Sex Trafficking*, U.S. Department of Health and Human Services, September 2007.

<sup>21</sup> U.S. Department of State, *Trafficking in Persons Report 2014*, June 2014, p. 401.

<sup>22</sup> NIBRS is part of the FBI's Uniform Crime Reporting (UCR) program. Although both NIBRS and UCR are incident-based reporting systems, NIBRS presents more detailed information about crime incidents than does the UCR. NIBRS does not have as widespread of participation from state and local police, and the FBI has indicated that the data are not sufficiently robust to make broad generalizations about crime in the United States. See the FBI's website at <http://www.fbi.gov/ucr/ucr.htm#nibrs>. For more information about UCR and NIBRS, see archived CRS Report RL34309, *How Crime in the United States Is Measured*, by Nathan James and Logan Rishard Council.

victims, or both. Findings from this study reveal that, across these 241 incidents, 229 juveniles were implicated as offenders, and arrests were made in about 74% of those cases.<sup>23</sup> Although the percentage of juveniles involved in prostitution who were arrested is lower than the percentage of adult prostitutes arrested (90%),<sup>24</sup> this nonetheless suggests that in the sample examined, juveniles were more likely to be treated as offenders than as victims. Researchers cautioned that the data were “based on a small number of cases from an unrepresentative sample of jurisdictions.”<sup>25</sup> Of note, data from this research were obtained from prostitution cases occurring before the enactment of the TVPA. While the TVPA is federal legislation, and the cases in this study come from state and local law enforcement agencies, the TVPA may have influenced states’ perceptions and treatment of juveniles involved in commercial sex; as such, the results from this research may not be reflective of modern trends.

- Another review, part of the National Juvenile Prostitution Study,<sup>26</sup> surveyed police about their juvenile prostitution cases from 2005. Using survey data from 132 agencies, researchers categorized juveniles as victims, as delinquents, or as both victims and delinquents based on how they were treated by police. Juveniles were categorized as being treated as victims if (1) only the exploiter was arrested or (2) the juvenile and exploiter were arrested but the charge against the juvenile was not a prostitution-related charge (e.g., disturbing the peace or a drug charge). Juveniles were categorized as being treated as delinquents if they were the only ones arrested or detained. They were categorized as being treated as both victims and delinquents if the exploiter was arrested on a charge specific to a sexual assault against a minor and the juvenile was also arrested on a prostitution-related charge. Based on this classification, 53% of juveniles were classified as victims, 31% as delinquents, and 16% as both victims and delinquents. For the cases where a child was classified as both a victim and delinquent, researchers examined the case summaries more carefully to see whether they could be classified more accurately as victims or as delinquents. In all cases, researchers were prompted to change the status to victim only because either (1) the initial charges were dropped or (2) there was a specific comment from the investigator that the only reason the juvenile was charged was so they could get needed services. Overall, 69% of juveniles were ultimately classified as victims and 31% as delinquents. The study found a strong and significant association between how the case came to the police’s attention and how the juvenile was treated by law enforcement. Cases that began through a police report (i.e., a report by the juvenile, a family member, a social service provider, or others) were almost eight times more likely to result in the juvenile being treated as a victim than those cases that began through action taken by the police (i.e., surveillance or undercover operations). Juveniles were also more likely to be treated as victims if

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<sup>23</sup> David Finkelhor and Richard Ormrod, *Prostitution of Juveniles: Patterns From NIBRS*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, June 2004, p. 5.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, p. 4.

<sup>26</sup> Kimberly J. Mitchell, David Finkelhor, and Janis Wolak, “Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study,” *Child Maltreatment*, vol. 15, no. 1 (February 2010).

they were younger, female, frightened, or were dirty or had body odor at the time of the initial encounter with police.

- A third study examined case files (from police departments in six U.S. cities) of 126 youth who had allegedly been involved in prostitution between 2000 and 2006.<sup>27</sup> Similar to the findings from the National Juvenile Prostitution Study, data from this review indicate that 60% of police viewed the prostituted youth as victims and 40% thought of them as offenders. These juveniles were more likely to be considered victims if, among other things, they showed greater law enforcement cooperation, they could identify a greater number of exploiters, they had no prior criminal record, and they resided locally (in or near the jurisdiction of the police investigation). Researchers also noted that even if police conceptualized victims as such, they may arrest them on criminal charges and take them into custody as a protective response.

## **Criminal Justice Policy Options**

As researchers have noted, “law enforcement personnel often are the first to respond to commercial sexual exploitation and sex trafficking cases” and “their ability to identify victims, investigate cases, and make appropriate referrals is crucial.”<sup>28</sup> In other words, juvenile victims may come in contact with law enforcement before other officials or victim services specialists. As such, some experts have focused on law enforcement and juvenile justice systems’ central roles in combating sex trafficking.

Researchers and policy makers have suggested a number of options aimed at preventing minor trafficking victims from being caught up in the juvenile justice system and diverting them to programs and services that can help rehabilitate and restore these youth. These have included supporting law enforcement training on human trafficking, enhancing law enforcement and community partnerships, enacting safe harbor laws that prevent the prosecution of victims as offenders, establishing diversion programs for juveniles involved in commercial sex, and establishing provisions to seal or expunge records of trafficked youth’s involvement in the juvenile justice systems.

## **Law Enforcement Training and Community Partnerships**

As noted, barriers to treating juveniles involved in commercial sex as victims rather than perpetrators include, among other things, a lack of knowledge and victim identification by law enforcement and other officials as well as a lack of secure facilities where these minors can receive appropriate shelter and specialized services. As such, some states and localities have legislatively or otherwise implemented law enforcement training on human trafficking awareness and/or have established community partnerships that can provide victimized youth with a segue away from the justice system and into specialized services.

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<sup>27</sup> Stephanie Halter, “Factors That Influence Police Conceptualizations of Girls Involved in Prostitution in Six U.S. Cities: Child Sexual Exploitation Victims or Delinquents?” *Child Maltreatment*, vol. 15, no. 2 (May 2010).

<sup>28</sup> Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States: Infographic*, National Academy of Sciences.

## Training

At the federal level, some agencies have established law enforcement training for issues surrounding human trafficking victim identification and case investigation. The Departments of Justice and Homeland Security, for example, have provided guidance to law enforcement on identifying potential indicators of human trafficking.

- DOJ, through the Bureau of Justice Assistance, has developed “training for law enforcement and communities to identify trafficking in persons.”<sup>29</sup>
- The Department of Homeland Security (DHS), through its Blue Campaign, provides law enforcement with information on recognizing key indicators of trafficking.<sup>30</sup>

In addition, the TVPA has authorized grants—including the DOJ Grants to State and Local Law Enforcement for Anti-trafficking Programs and the Grants for Law Enforcement Training Programs<sup>31</sup>—that may be used for such law enforcement training, though these grants have not received funding.

At the state level, some states have legislatively required or supported such law enforcement training. Over half of states “have enacted statutes requiring or encouraging law enforcement personnel to receive training regarding human trafficking-related matters.”<sup>32</sup> This may take a number of forms. Some states not only require training, but also outline specific training criteria in statute. Others require training but do not statutorily outline the training criteria. Some allow for, but do not statutorily require, training. Still others are statutorily silent on law enforcement training.<sup>33</sup> Of note, the lack of a statutory mandate or support for human trafficking-related training does not indicate that such training is unavailable in a given state. It may be independently initiated by state agencies or other nonprofit organizations.

## Community Partnerships

One federally supported partnership model is DOJ’s Anti-Human Trafficking Task Force Initiative.<sup>34</sup> Through this initiative, DOJ funds nationwide anti-trafficking task forces, which are composed of federal, state, and local law enforcement, U.S. Attorneys, and victim service providers. The task forces (of which there were 16 in FY2013,<sup>35</sup> down from 26 in FY2012 because of a reduction in task force funding)<sup>36</sup> coordinate cases and conduct law enforcement

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<sup>29</sup> Department of Justice, Bureau of Justice Assistance, *Anti-Human Trafficking Task Force Initiative*, [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=51](https://www.bja.gov/ProgramDetails.aspx?Program_ID=51).

<sup>30</sup> Department of Homeland Security, Blue Campaign, *Law Enforcement*, <https://www.dhs.gov/blue-campaign/law-enforcement>.

<sup>31</sup> For more information on these programs see the section of this report on TVPA “Authorized but not Appropriated” grants.

<sup>32</sup> Polaris Project, *2013 Analysis of State Human Trafficking Laws: Training for Law Enforcement*, August 2013, p. 1. As of August 2013, twenty-nine states had enacted legislation to mandate or support human trafficking awareness training for law enforcement.

<sup>33</sup> *Ibid.*, pp. 1-2.

<sup>34</sup> For more information on this Initiative, see <http://www.ojp.usdoj.gov/BJA/grant/httf.html>.

<sup>35</sup> U.S. Department of State, *Trafficking in Persons Report 2014*, June 2014, p. 399.

<sup>36</sup> U.S. Department of State, *Trafficking in Persons Report 2013*, June 2013, p. 383.

training on the identification, investigation, and prosecution of human trafficking cases. Research has reportedly shown that locales with task forces are more likely to identify and prosecute trafficking cases.<sup>37</sup>

Some state criminal justice systems and local law enforcement agencies have partnered with social service providers, among others, to prevent trafficked youth from becoming enmeshed in the juvenile justice system or to divert these victims to specialized services.

- **Dallas Police Department & Letot Center.** In 2005, the Dallas Police Department created the Child Exploitation/High Risk Victims & Trafficking Unit (CE/HRVTU). The unit tracks high-risk victims and trains police officers on victim identification. While the unit does not generally charge these victims with prostitution, they do charge them with lesser crimes in order to detain them in a staff secure facility—the Letot Center.<sup>38</sup> The Letot Center partners with the Dallas Police Department to provide shelter and community-based services to high-risk and trafficked youth. It serves about 250-300 individuals every year.<sup>39</sup>
- **Georgia Care Connection.** In 2009, the Georgia Governor’s Office for Children and Families established the Georgia Care Connection (GCC), a coordination center to address the needs of child sex trafficking victims. Specifically, it was “created to establish and sustain comprehensive assessment, treatment and after care services for victims.”<sup>40</sup> The GCC is establishing standardized procedures for how jurisdictions handle youth across the state. Notably, through this program, victims are *not* arrested.<sup>41</sup>

Experts have noted that collaboration among law enforcement and other elements of the community—including victim service providers, health care providers, businesses, schools, and other members of the criminal justice world—serves critical roles, helps increase awareness of the trafficking problem, and supports research and information sharing.<sup>42</sup> This may be critical, as experts have noted that “[m]any professionals and individuals who interact with youth—such as teachers, health care providers, child welfare professionals, and law enforcement—are unaware that these crimes occur and often are ill-equipped with how to respond to victims, survivors, and those at risk.”<sup>43</sup> One of the main questions that arises is which entity should (or is best equipped to) lead coordination efforts. Moreover, should there be just one entity that leads these efforts? If so, is this law enforcement or another segment of the professional community? As some have

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<sup>37</sup> The number of investigations and prosecutions among the task forces varies widely. More investigations are for sex trafficking than labor trafficking, which may be a result of law enforcement’s ability to rely upon pre-existing vice units devoted to prosecution enforcement. U.S. Department of State, *Trafficking in Persons Report 2010*, June 2010, p. 340.

<sup>38</sup> Rami Badawy, *Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution*, National District Attorneys’ Association, Part II of III, November 8, 2010.

<sup>39</sup> For more information on the Letot Center, see <http://www.letotgirlscenter.org/index.htm>.

<sup>40</sup> Georgia Governor’s Office for Children and Families, *Grant Programs*, <https://children.georgia.gov/yd-grant-programs>.

<sup>41</sup> Rami Badawy, *Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution*, National District Attorneys’ Association, Part II of III, November 8, 2010.

<sup>42</sup> Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States: Infographic*, National Academy of Sciences.

<sup>43</sup> Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences: Report Brief, September 25, 2013.

noted, law enforcement personnel are often first responders in child sex trafficking cases.<sup>44</sup> This may naturally lead to a community coordination role. Nonetheless, while some states may designate law enforcement to lead an anti-trafficking coordination role, others—such as California, through the newly authorized Commercially Sexually Exploited Children Program<sup>45</sup>—may delegate state social services or other officials to coordinate such efforts.

Just as law enforcement practices may vary across states and localities, so too may their community coordination efforts. As such, in contemplating the federal government’s role, policy makers may question whether they want to influence the implementation or direction of state and local law enforcement roles in community partnerships that may serve to identify victimized youth and keep them out of the traditional juvenile justice systems.

## Safe Harbor

As noted, the federal government considers juveniles involved in commercial sexual activities as *victims* of trafficking, and these victims are eligible to receive specialized services where available. Researchers, victim advocates, and some policy makers have recommended that states adopt policies that are in line with the federal stance on child victims of sex trafficking. More specifically, they have proposed encouraging states and localities to adopt what have been referred to as “safe harbor” laws, preventing minor victims of trafficking from being prosecuted for prostitution and ensuring that they are provided with specialized services.<sup>46</sup>

Congress outlined its conceptualization of safe harbor via the 2013 TVPA reauthorization by amending the requirements for the Attorney General’s model state trafficking statute. The Attorney General is required to promulgate a model state trafficking statute, and the 2013 TVPA reauthorization updated this requirement to note that the model statute should include a package of safe harbor provisions guiding states to

(A) treat an individual under 18 years of age who has been arrested for engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation as a victim of a severe form of trafficking in persons;

(B) prohibit the charging or prosecution of an individual described in subparagraph (A) for a prostitution offense;

(C) require the referral of an individual described in subparagraph (A) to appropriate service providers, including comprehensive service or community-based programs that provide assistance to child victims of commercial sexual exploitation; and

(D) provide that an individual described in subparagraph (A) shall not be required to prove fraud, force, or coercion in order to receive the protections described under this paragraph.<sup>47</sup>

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<sup>44</sup> Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States: Infographic*, National Academy of Sciences.

<sup>45</sup> This program was authorized in June 2014 by California legislation, SB855.

<sup>46</sup> Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, eds., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences, September 25, 2013, p. 8. See also Polaris Project, *Safe Harbor: Protecting Sexually Exploited Minors*, August 2013.

<sup>47</sup> P.L. 113-4; 22 U.S.C. §7101 note.

As of August 2013, 18 states had “enacted statutes providing some measure of safe harbor protection to minor victims of human trafficking and commercial sexual exploitation.”<sup>48</sup> Nonetheless, as some researchers have pointed out, states with enacted safe harbor statutes may continue to arrest and prosecute juvenile victims as perpetrators—“an inconsistency between the law as it is written and implementation of law by law enforcement.”<sup>49</sup> For example, nine states reportedly had some form of safe harbor protection in place prior to 2012,<sup>50</sup> of those, three states—New York, Illinois, and Tennessee—fully eliminated criminal liability for juveniles under the age of 18 involved in prostitution.<sup>51</sup> Nonetheless, according to FBI data, all of these states still arrested individuals under the age of 18 for prostitution (including commercialized vice) in 2012.<sup>52</sup> *Notably, these arrest data do not mean that the juveniles were actually prosecuted.* However, the arresting of these victims as perpetrators may be reflective of a number of issues such as a lack of law enforcement awareness of the victimization of these juveniles or a lack of alternative secure shelters and specialized services available to these victims.

Some have suggested that *implementation* of safe harbor laws should encompass more than statutory decriminalization (in which minors are classified as victims—and made eligible for services—rather than held criminally liable for prostitution) or diversion (in which minors must receive rehabilitative services if charged with prostitution) of minors involved in prostitution. They assert that it should also include elements such as

- training for officials who may come into contact with prostituted minors;
- task force and interagency information sharing, including the exchange of information to connect exploited youth with services;
- availability of victim services including physical, mental, emotional, familial, educational, and recreational rehabilitation;
- enhanced penalties for exploiters—both traffickers and buyers—of commercial sex with minors; and
- funding to implement safe harbor legislation and protect minors.<sup>53</sup>

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<sup>48</sup> Polaris Project, *2013 Analysis of State Human Trafficking Laws: Safe Harbor—Protecting Sexually Exploited Minors*, August 2013, p. 2. These states include Michigan, New York, Connecticut, Illinois, Washington, Massachusetts, Minnesota, Tennessee, Florida, New Jersey, Ohio, Arkansas, Kansas, Kentucky, Louisiana, Nebraska, and North Carolina. In addition, while Texas does not have a safe harbor statute, a 2010 Texas Supreme Court Decision noted that children cannot be prosecuted for prostitution because they cannot consent to sex.

<sup>49</sup> Lauren Jekowsky, *Un-Safe Harbor: Why U.S. State Legislation is Ineffectively Addressing Sex Trafficking of Minors*, Human Trafficking Center, March 10, 2014.

<sup>50</sup> These states include Michigan (the provision that indicates only individuals 16 and over can be prosecuted for prostitution was not enacted as a separate safe harbor law), New York (2008), Connecticut (2010), Illinois (2010), Washington (2010), Massachusetts (2011), Minnesota (2011), Tennessee (2011), and Vermont (2011). While Texas does not have safe harbor statutes, a 2010 Texas Supreme Court Decision noted that children cannot be prosecuted for In 2012, Florida, New Jersey, and Ohio implemented some form of safe harbor protection, and in 2013, Arkansas, Kansas, Kentucky, Louisiana, Nebraska, and North Carolina did so.

<sup>51</sup> Polaris Project, *2013 Analysis of State Human Trafficking Laws: Safe Harbor—Protecting Sexually Exploited Minors*, August 2013; and Lauren Jekowsky, *Un-Safe Harbor: Why U.S. State Legislation is Ineffectively Addressing Sex Trafficking of Minors*, Human Trafficking Center, March 10, 2014.

<sup>52</sup> Federal Bureau of Investigation, *Crime in the United States 2012*, Table 69.

<sup>53</sup> Lauren Jekowsky, *Un-Safe Harbor: Why U.S. State Legislation is Ineffectively Addressing Sex Trafficking of Minors*, Human Trafficking Center, March 10, 2014. See also Darren Geist, “Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors,” *Legislation and Policy Brief*, vol. 4, no. 2 (2012).

As such, federal policy makers interested in incentivizing states to enact safe harbor laws may consider whether the incentive is for the enactment of such laws or for their full *implementation* by the states.

## Juvenile Problem Solving Courts and Diversion Programs

In moving youth victimized by commercial sexual exploitation away from the traditional juvenile justice system and away from being labeled as prostitutes or offenders, diversion or specialty courts may serve as an option.

- Take drug courts, for instance. While these courts may vary in their populations served, specific program models, and resources, they all generally follow a model that involves offender assessment, judicial interaction, monitoring (such as drug testing) and supervision, graduated sanctions and incentives, and treatment services.<sup>55</sup> Adult, juvenile, and family drug courts, among others, are tailored to address the needs of specific populations. Juvenile drug courts are guided by 16 strategies<sup>56</sup> including community partnerships, drug testing, and family engagement. At the end of June 2013, there were 447 juvenile drug courts throughout the country.<sup>57</sup>
- Another example of diversion courts is the Juvenile Mental Health Courts (JMHCs). These courts aim to divert youth with behavioral health needs from juvenile detention facilities to community-based services.<sup>58</sup> Just as the juvenile drug courts (despite their variances) follow a general model, so do the JMHCs. Researchers have noted that common characteristics include regularly scheduled dockets for cases and status hearings; less formal interactions between the court officials and participants; screenings for trauma, substance abuse, and mental health disorders; status meetings involving a team of officials and the involved

### Diversion Programs

Diversion programs broadly aim to move certain categories of arrested individuals away from traditional criminal justice settings into environments where they can receive specialized services. These programs generally defer prosecution on the condition of successful completion of a treatment program. At that point, charges may be reduced or dismissed. This may or may not involve records being expunged.

Generally in the juvenile justice arena, “[t]he concept of diversion is based on the theory that processing certain youth through the juvenile justice system may do more harm than good.”<sup>54</sup> As such, these programs move youth away from the juvenile justice system and into intervention or treatment programs.

<sup>54</sup> National Criminal Justice Reference Service, “Diversion Programs: An Overview,” *Juvenile Justice Bulletin*, September 1999, referencing Richard J. Lundman, *Prevention and Control of Juvenile Delinquency*, 2<sup>nd</sup> ed. (New York: Oxford University Press, 1993). Youth involved in the juvenile justice system may acquire a delinquent self-image or may be stigmatized in the eyes of others. See *Principles and Practice of Child and Adolescent Forensic Mental Health*, ed. Elissa P. Benedek, Peter Ash, and Charles L. Scott (American Psychiatric Publishing, Inc., 2010), p. 372.

<sup>55</sup> Department of Justice, Office of Justice Programs, National Institute of Justice, *Drug Courts*, June 30, 2013. See also U.S. Government Accountability Office, *Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts*, GAO-12-53, December 2011.

<sup>56</sup> Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Juvenile Drug Courts: Strategies in Practice*, NCJ 197866, March 2003.

<sup>57</sup> Department of Justice, Office of Justice Programs, National Institute of Justice, *Drug Courts*, June 30, 2013.

<sup>58</sup> Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Juvenile Mental Health Treatment Courts Database*, [http://gainscenter.samhsa.gov/grant\\_programs/juvenilemhc.asp](http://gainscenter.samhsa.gov/grant_programs/juvenilemhc.asp).

youth; systems of accountability; graduated incentives and sanctions; and defined criteria for program success.<sup>59</sup>

Specifically, diversion courts targeting trafficking victims charged with prostitution and related offenses have been suggested as a means to divert these youth out of the traditional juvenile justice systems. Some may argue that diversion courts are not an ideal option for dealing with trafficking victims—relative to full decriminalization and immunity from prosecution—because they may still allow for trafficked youth to be processed through the juvenile justice system. Others, however, may argue that diversion courts, depending upon their structure, may have benefits such as providing victims with secure shelter from exploiters and some form of specialty services.

Diversion courts targeting youth involved in commercial sex have sometimes been referred to as girls courts or human trafficking courts. While there does not appear to be a uniform model for these courts (as there generally is for juvenile drug courts and juvenile mental health courts), a number of states and localities have implemented their own variants of such programs. And, they have taken varied approaches in their program establishment. For instance, while some programs target young girls who are victims of sex trafficking, others target all at-risk girls, and others are aimed at all trafficking victims regardless of gender or age.

- **Hawaii Girls Court.**<sup>60</sup> This program targets at-risk girls and female offenders. While holding these girls accountable for their actions, the program also offers gender specific services. Elements of the program include an open court system; group sessions separately for girls and parents; and mental health, education, and employment services. Of note, the Hawaii Girls Court is not specific to trafficking victims or girls arrested for prostitution violations. Nonetheless the court recognizes that it “focuses on the differing needs of adolescent females who, although appearing before the court as an offender, are most often victims of physical or sexual abuse or domestic violence themselves.”<sup>61</sup>
- **Orange County (California) Girls Court.** This program targets girls in the foster care system, and the “goal of the program is to help the young participants facing mental health issues, substance abuse and academic failure to receive treatment and counseling, and to gain the skills and resources they need to achieve stable, productive lives.”<sup>62</sup> The Orange County Girls Court does not specifically target trafficking victims.
- **Harris County (Texas) GIRLS (Growing Independence Restoring Lives) Court.** This program targets young girls who are victims or at risk of becoming victims of trafficking and diverts them away from the traditional juvenile justice system. It features a multidisciplinary team of officials, judicial oversight, review hearings, and supervision and monitoring.<sup>63</sup> Notably, “[u]pon successful

<sup>59</sup> Lisa Callahan, Henry J. Steadman, and Lindsay Gerus, *Seven Common Characteristics of Juvenile Mental Health Courts*, Policy Research Associates, National Institute of Justice funded-study 2009-IJ-CX-0038, 2013.

<sup>60</sup> For more information, see the Hawaii Girls Court website at <http://www.girlscourt.org/aboutus.html>.

<sup>61</sup> Hawaii Girls Court, *Frequently Asked Questions*, <http://www.girlscourt.org/faq.html>.

<sup>62</sup> Superior Court of California, County of Orange, *Collaborative Courts*, <http://www.occourts.org/directory/collaborative-courts/>.

<sup>63</sup> Harris County GIRLS Court, <http://www.apaintl.org!/TADCP/documents/DrugCourtconferencepowerpoint-HarrisCountyGirlsCourt.pdf>.

completion of the program, GIRLS Court records are sealed to prevent the child from carrying the stigma of a criminal adjudication.”<sup>64</sup>

- **New York Human Trafficking Intervention Initiative.** This initiative is a statewide network of human trafficking courts that “targets cases involving individuals charged with prostitution-related offenses in an effort to identify and assist sex trafficking victims.”<sup>65</sup> If a court determines that a case involves a *victim* needing resources, the program will connect the defendant/victim to needed shelter, healthcare, drug treatment, and immigration services, along with education and employment assistance. Compliance with program mandates may lead to the dismissal or reduction of charges. This program is not specific to juveniles or to females.
- **Franklin County (Ohio) Changing Actions to Change Habits (CATCH) Court.** The CATCH Court is a specialty docket in the Franklin County Municipal Court geared toward “assist[ing] human trafficking victims who have been charged with commercial sex acts.”<sup>66</sup> This voluntary two-year program offers “outreach, connection, advocacy, and counseling to women with multiple solicitation charges”<sup>67</sup> and rewards successful participants with a dismissal of their charges.<sup>68</sup>

Because programs’ structures and implementation vary widely across states and localities, so too may their measures of success. In deciding whether to incentivize the establishment of such programs, policy makers may question how each program may measure “success.” Some practitioners have noted that success of a diversion program should be measured not solely through recidivism, but through a variety of related successes such as whether the victim has employment, housing, or a protection order against her trafficker, to name a few.<sup>69</sup> As such, beyond the decision of whether to incentivize specialty courts for trafficking victims, Congress may question whether federal incentives may be sufficiently nimble to allow for incentivizing “successful” program results that may come in many forms.

## Vacating and Expunging Convictions

As states evolve in their views of how to treat individuals (both juveniles and adults) involved in commercial sexual activities, there remain individuals who will have or who already have criminal records that were generated during their victimization. Because victims may be arrested, processed through the criminal justice system, and convicted of prostitution or related offenses, the ensuing criminal records can adversely impact their future education, employment, housing,

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<sup>64</sup> Statement by Assistant District Attorney Ann Johnson before the U.S. Congress, House Committee on Homeland Security, *Combating Human Trafficking in Our Major Cities*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 20, 2014.

<sup>65</sup> New York State Unified Court System, “NY Judiciary Launches Nation’s First Statewide Human Trafficking Intervention Initiative,” press release, September 25, 2013.

<sup>66</sup> Ohio State Bar Association, *Human Trafficking Exists in Every Ohio Zip Code*, July 8, 2013.

<sup>67</sup> Franklin County Municipal Court, *2013 Annual Report*, February 28, 2014, p. 8.

<sup>68</sup> Susan Tebben, “Human Trafficking, Prostitution Very Real in Ohio, Including Athens County,” *Athens Ohio Today*, January 26, 2014.

<sup>69</sup> Sarah Schweig, Danielle Malangone, and Miriam Goodman, *Prostitution Diversion Programs*, Center for Court Innovation, 2012.

financial, and other life opportunities. As such, some researchers, advocates, and policy makers have considered options that may vacate<sup>70</sup> and/or expunge<sup>71</sup> these convictions.<sup>72</sup>

In 2010 New York was the first state to enact legislation that affords trafficking victims the ability to seek to vacate convictions of prostitution and related offenses.<sup>73</sup> A victim may seek such a vacatur if his or her “participation in the offense was a result of having been a victim of sex trafficking” as defined by New York statute or by the federal TVPA.<sup>74</sup> Indeed, some have advocated that states adopt policies that not only vacate victims’ convictions for prostitution (and other nonviolent related offenses) but also expunge victims’ records.<sup>75</sup>

While these suggestions regarding vacating convictions and expunging records of trafficking victims have not been targeted specifically toward *minor* victims, states may consider options appropriate for this juvenile population. As states vary in their laws regarding prostitution and trafficking, as well as in their rules for vacating and expunging convictions generally, so too may their approaches to handling these issues for trafficking victims. As such, if the federal government chooses to influence states’ treatment of trafficking victims in the criminal and juvenile justice systems, policy makers may consider incentives that are applicable across the states.

## Federal Incentives to States

As noted, because federal law considers juveniles involved in prostitution as *victims* of trafficking, and because much of the policing to combat prostitution and sex trafficking—both of adults and children—happens at the state level, federal policy makers have considered how to influence states’ treatment of trafficking victims (particularly minors) such that state policies are more in line with those of the federal government. Often, federal incentives to states are implemented through the provision or withholding of grant funding. With respect to the treatment of juvenile sex trafficking victims, policy makers may be particularly interested in those programs wherein funds may be used to enhance state and local law enforcement awareness and treatment of sex trafficking victims.<sup>76</sup>

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<sup>70</sup> The notion of vacating a conviction is a reversal of the conviction, making it null and void.

<sup>71</sup> For this discussion, the concept of expunging records relates to clearing the record of criminal proceedings in a given case (and often sealing them from inclusion in state or federal repositories). The specific details and rules of expungement vary by jurisdiction.

<sup>72</sup> See, for instance, Polaris Project, *2013 Analysis of State Human Trafficking Laws: Vacating Convictions for Sex Trafficking Victims*, August 2013. See also Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators*, Sex Workers Project, Urban Justice Center, April 2012.

<sup>73</sup> New York Criminal Procedure Law §440.10(1)(i) Motion to vacate judgment.

<sup>74</sup> *Ibid.*

<sup>75</sup> See, for instance, Polaris Project, *2013 Analysis of State Human Trafficking Laws: Vacating Convictions for Sex Trafficking Victims*, August 2013. A number of states such as Vermont and New Jersey have enacted laws addressing both vacating convictions and expunging records.

<sup>76</sup> A number of policy options involve identifying, protecting, and serving youth who are at-risk for, or who have been victims of, sex trafficking. However, a discussion of these options—such as those involving social services for victims—is beyond the scope of this report.

Notably, policy makers may debate a range of options aimed at identifying juveniles involved in commercial sex and treating them as victims. However, a central element of the current policy discussion has surrounded potential means to incentivize states' implementation of policies that are in line with the federal conceptualization of juveniles involved in commercial sex as victims. As such, this section solely focuses on possible federal incentives to states, particularly to support law enforcement's treatment of these trafficked youth.

## **TVPA Authorized Grants for Law Enforcement**

The TVPA, as amended, has authorized a number of criminal justice-focused grants that may help law enforcement identify and assist minor victims of sex trafficking as well as prosecute trafficking cases. Some of these programs are focused specifically on combating the sex trafficking of minors while others have a broader scope. Notably, the TVPA has authorized a broad spectrum of programs to support trafficking investigations and victim services; however, the programs outlined below are only those with a law enforcement nexus and, more specifically, which could be used to combat sex trafficking of minors within the United States.<sup>77</sup> Only one law enforcement-centered program—the Department of Justice Grants for Victim Services—has received funding, and it is generally not targeted to serve *child* victims of sex trafficking.

### **Authorized and Appropriated**

- **DOJ Grants for Victim Services.**<sup>78</sup> Through this program, DOJ may award grants to states, Indian tribes, local governments, and nonprofit, nongovernmental victims' services organizations to develop, expand, or strengthen service programs for victims of trafficking in the United States. In FY2014, this program received \$14.3 million in appropriations.<sup>79</sup> Reportedly in FY2009, the DOJ Grants for Victim Services used funding specifically to serve U.S. citizen and lawful permanent resident (LPR) minor victims of trafficking.<sup>80</sup>

### **Authorized but *not* Appropriated**

- **DOJ: Grants to State and Local Law Enforcement for Anti-trafficking Programs.**<sup>81</sup> DOJ may award grants to state and local law enforcement for programs to (1) investigate and prosecute severe forms of trafficking, and related offenses that occur, in whole or in part, within the United States; (2) train law enforcement personnel in identifying victims of severe forms of trafficking; (3) investigate and prosecute those who engage in the purchase of commercial sex and prioritize the investigations and prosecutions of cases involving minor victims; (4) educate those individuals who have been convicted of these and

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<sup>77</sup> For an overview of all programs authorized by the TVPA, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

<sup>78</sup> P.L. 106-386; 22 U.S.C. §7105(b)(2)(A).

<sup>79</sup> Full-Year Continuing Appropriations Act, 2013 (P.L. 113-6).

<sup>80</sup> Department of Justice, Office for Victims of Crime, *2013 OVC Report to the Nation: Fiscal Years 2011–2012*.

<sup>81</sup> P.L. 109-164, §204; 42 U.S.C. §14044c.

related offenses; and (5) train law enforcement to work specifically with trafficking victims.

- **DOJ: Grants for Law Enforcement Training Programs.**<sup>82</sup> DOJ may award grants to state and local governments to assist law enforcement in identifying and protecting victims of trafficking. Funds may be used to train prosecutors to identify, investigate, or prosecute trafficking as well as to utilize and develop laws to prohibit trafficking.
- **DOJ and Department of Health and Human Services (HHS): Assistance for U.S. Citizens and LPRs.**<sup>83</sup> DOJ and HHS (in consultation with the Department of Labor) are to establish a grant program to assist U.S. citizens and LPRs who are victims of severe forms of trafficking. DOJ and HHS are to consult with nongovernmental organizations that provide victims services to determine the assistance that would be most beneficial to victims. The program is to facilitate communication and coordination between assistance providers, provide a means to identify such providers, and provide a means to make referrals to programs for which victims are already eligible. DOJ and HHS may award grants to states, Indian tribes, local governments, and nonprofit, nongovernmental victims' services organizations.
- **DOJ and HHS: Grant Program for Certain Persons Subject to Trafficking.**<sup>84</sup> DOJ, in consultation with HHS, may make block grants to four entities located in different regions of the United States to combat sex trafficking of children. These entities refer to state or local units of government that have significant criminal activity involving sex trafficking of minors; have demonstrated cooperation between federal, state, local, and where applicable, other stakeholders, in addressing sex trafficking of minors; and have developed a workable, multi-disciplinary plan to combat sex trafficking of minors. The grants may be used to provide residential care, social services, clothing and other daily necessities, case management, and legal services, among other supports.

## Juvenile Justice Grants<sup>85</sup>

Although the federal government does not directly administer juvenile justice systems, it funds a number of grant programs that assist (and influence) states' juvenile justice programs. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) administers the juvenile justice grant programs.

One of the primary vehicles through which grant funding has been allocated to states is the Juvenile Justice and Delinquency Prevention Act (JJJPA).<sup>86</sup> Over the years, and under the

<sup>82</sup> P.L. 109-162 §111; 42 U.S.C. §14044f.

<sup>83</sup> P.L. 110-457, §107; 22 U.S.C. §7105(f).

<sup>84</sup> P.L. 113-4; 42 U.S.C. §14044a.

<sup>85</sup> For more information on federal juvenile justice grant programs, see CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*, by Kristin Finklea and CRS Report RS22655, *Juvenile Justice Funding Trends*, by Kristin Finklea.

<sup>86</sup> The JJJPA was first enacted in 1974 (P.L. 90-415) and most recently reauthorized in 2002. While authorization for its main provisions expired in FY2007 and FY2008, some of the grant programs have continued to receive annual appropriations.

umbrella of the JJDPA, Congress has funded a number of formula and competitive grants to states for a variety of purpose areas. Until FY2014, Congress also funded juvenile justice grants through the Juvenile Accountability Block Grant (JABG) program.<sup>87</sup>

In an attempt to divert trafficking victims out of juvenile justice systems, some policy makers may look to the purpose areas of existing juvenile justice grant programs. Some may consider whether purpose areas may be modified or expanded to help reduce the juvenile justice contact of minor victims of sex trafficking.

### **JJDPA State Formula Grants**

One of the primary grant programs under the purview of the JJDPA is the State Formula Grants program. States may use money from this program for a variety of purpose areas including the planning, establishment, operation, coordination, and evaluation of projects for the development of more effective juvenile delinquency programs and improved juvenile justice systems. Notably, within the wide range of purpose areas, there are a number of relevant purpose areas relevant to steering trafficked youth away from the juvenile justice systems. Specifically, grant money can be allocated toward community-based alternatives to incarceration, treatment for juvenile offenders who have been the victims of child abuse or neglect, mentoring programs for at-risk or offender youth, and mental health services.

In order to receive its share of the formula grant funding, each state must adhere to four core mandates.<sup>88</sup> Policy makers may examine the existing set of core mandates and question whether this may be one vehicle for influencing states' behavior regarding the criminalization of minors involved in commercial sexual activity.

### **Juvenile Accountability Block Grant Program<sup>89</sup>**

From FY1998 through FY2013, the JABG program provided grants to states and units of local government to strengthen their juvenile justice systems and foster accountability within their juvenile populations. The program focused resources on holding juveniles accountable for their actions and building up the juvenile justice system in the states.<sup>90</sup> Among the 17 purpose areas for which grant funding could be used, a number related to diverting youth away from the traditional juvenile justice systems and providing needed services. Specifically, these included establishing

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<sup>87</sup> The JABG program, while originally created by the FY1998 DOJ Appropriations Act (P.L. 105-119), was codified by the 21<sup>st</sup> Century Department of Justice Reauthorization Act (P.L. 107-273). Its authorization expired in FY2009, though it received annual appropriations through FY2013.

<sup>88</sup> Failure to adhere to these requirements results in a 20% reduction of funding for each mandate with which the state is not in compliance. The first core mandate with which states must comply is that juveniles charged with or who have committed a status offense (one that would not be a crime if committed by an adult) may not be placed in secure detention or secure correctional facilities. The second mandate is that juveniles may not be detained or confined in any institution in which they would have contact with adult inmates. The third mandate is that juveniles are not to be detained or confined in any jail or lockup for adults, except for juveniles who are accused of non-status offenses. The fourth mandate is that states must show that they are implementing juvenile delinquency prevention programs designed to reduce the disproportionate number of minorities confined within their juvenile justice systems.

<sup>89</sup> 42 U.S.C. §3796ee.

<sup>90</sup> Indeed, the only core mandate the program required was that states implement a system of graduated sanctions in order to be eligible for funding.

juvenile drug and gun courts as well as establishing risk assessment, early intervention programs, and comprehensive services for juvenile offenders.

- JABG funds have been used to support diversion courts serving specific populations; in 2005, the Hawaii Girls Court received JABG funding to hire specialized staff to help develop and enhance the program.

## **Criminal Justice Grants: Edward Byrne Memorial Justice Assistance Grant (JAG) Program<sup>91</sup>**

Since the late 1980s, Congress has established a number of grant programs, including the JAG program and its predecessors, to help state and local law enforcement in their crime control efforts. Currently, JAG funds can be used for “additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice” for purpose areas including prosecution and court programs, corrections and community corrections programs, and crime victim and witness programs, among others.<sup>92</sup> Grants are made to states and units of local government. While these funds are generally targeted toward traditional (adult) criminal justice systems, nothing in the authorizing language prohibits states and local governments from using their funds to serve individuals under the age of 18.

## **Violence Against Women Act (VAWA) Programs<sup>93</sup>**

VAWA primarily addresses certain types of violent crime (namely intimate partner violence, dating violence, sexual assault, and stalking) through grant programs to state, local, and tribal governments; nonprofit organizations; and universities.<sup>94</sup> Through the most recent VAWA reauthorization (P.L. 113-4), Congress clarified that victim services and legal assistance (authorized by VAWA) include services and assistance to victims of domestic violence, dating violence, sexual assault, or stalking who are also victims of severe forms of trafficking in persons (as defined under the Trafficking Victims Protection Act of 2000). While this did not specifically add services to trafficking victims to the purpose areas of all VAWA programs, it clarified that services can be provided to certain victims populations who are also trafficking victims. This reauthorization also amended several VAWA grant programs to specifically add to their allowable activities serving victims of trafficking. As such, these grants may be used to enhance the criminal and juvenile justice response to child victims of sex trafficking.

- The Creating Hope Through Outreach, Options, Services, and Education for Children and Youth (CHOOSE Children & Youth) program was established under P.L. 113-4 in order to enhance the safety of youth and children who are

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<sup>91</sup> For more information on this program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

<sup>92</sup> 42 U.S.C. §3751(a).

<sup>93</sup> For more information on VAWA programs and grants, see CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco. Information in this section was taken from this CRS report.

<sup>94</sup> VAWA was first enacted through P.L. 103-322 and was most recently reauthorized through P.L. 113-4.

- victims of or exposed to domestic violence, dating violence, sexual assault, stalking, or sex trafficking, and to prevent future violence.<sup>95</sup>
- P.L. 113-4 expanded the purpose areas of the Grants to Indian Tribal Governments Program<sup>96</sup> to serve victims of trafficking. The program aims to, among other things, assist tribal governments in developing and enhancing effective plans to respond to domestic violence, dating violence, sexual assault, sex trafficking, and stalking. Purpose areas include improving services for victims; strengthening tribal criminal justice systems; creating community education and prevention campaigns; addressing the needs of children who witness domestic violence; providing supervised visitation and safe exchange programs; and providing transitional housing assistance and legal assistance.
  - P.L. 113-4 also expanded the purpose areas of the Tribal Domestic Violence and Sexual Assault Coalitions Grant Program<sup>97</sup> to serve victims of trafficking, in addition to victims of domestic violence, dating violence, sexual assault, and stalking. This grant program aims to increase awareness of domestic violence and sexual assault against American Indian and Alaska Native women; enhance the response to violence against women at the tribal, federal, and state levels; identify and provide technical assistance to tribal coalition membership and tribal communities to enhance access to essential services; and develop and promote state, local, and tribal legislation and policies that enhance best practices for responding to violent crimes against Indian women.

## **Compensation: Crime Victims Fund<sup>98</sup>**

The Crime Victims Fund (CVF) was established by the Victims of Crime Act (VOCA, P.L. 98-473) to provide funding for state victim compensation and assistance programs. Since its enactment, VOCA has been amended several times to support additional victim-related activities including (1) discretionary grants for private organizations, (2) the Federal Victim Notification System, (3) funding for victim assistance staff within the Federal Bureau of Investigation and Executive Office of U.S. Attorneys, (4) funding for the Children’s Justice Act Program, and (5) assistance and compensation for victims of terrorism.

Thus far, CVF money has not been used to fund *grant programs* outside of those authorized by VOCA. The Administration’s FY2015 budget included a proposal to raise the CVF cap and specified that the additional money should be used to fund two initiatives—one being victims of trafficking grants “focused on providing services to domestic victims of human trafficking.”<sup>99</sup> Policy makers may question whether they want to expand the uses of the CVF to support victim-centered grant programs outside of those authorized by VOCA.

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<sup>95</sup> 42 U.S.C. §14043c.

<sup>96</sup> 42 U.S.C. §3796gg–10.

<sup>97</sup> 42 U.S.C. §3796gg(d).

<sup>98</sup> Information in this section is from CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*, by Lisa N. Sacco.

<sup>99</sup> U.S. Department of Justice, *FY2015 Performance Budget, Office of Justice Programs*, p. 39.

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