

Child “Prostitution”:
Legal and Policy Frameworks:
Examining the Criminalization of Child
Victims

Maggie Wheeler

Introduction

Historically, children victims of exploitation such as prostitution or human trafficking were seen as delinquents rather than victims. This perspective contributed to the criminalization of child victims, as they were arrested, charged, and prosecuted for offenses related to their exploitation. This also had to do with the labeling theorists of the 1970s, who focused on the societal reaction to behavior deemed "wrong" by moral crusaders who had the power to create and enforce moral codes within society (Boyes-Watson & Gebo, 2017). In recent years, there has been growing recognition of the need to shift from a punitive approach to a victim-centered approach in addressing child exploitation. However, as of 2020, 19 states allow children to be charged with prostitution (Pilcher, 2020). Continuing legal and policy frameworks that provide the foundation for protecting vulnerable populations, such as children, from sexual victimization is the basis of this essay. Legal and policy frameworks define offenses, establish penalties for perpetrators, and outline measures to prevent and respond to such crimes. This paper aims to illuminate how existing laws in the juvenile justice system exacerbate the victimization of children, hinder access to justice, and perpetuate cycles of harm, ultimately advocating for reforms that prioritize victim-centered approaches and address the root causes of exploitation.

Historical Context/Literature Review

According to (Legal Information Institute, 2020). "Prostitution involves engaging, agreeing, or offering to engage in sexual conduct with another person in return for a fee". While the criminalization of sex work and related offenses differ from state to state, "State

and local laws in 49 U.S. states, as well as four Nevada counties, prohibit prostitution" ("Criminal Prostitution Law," 2023). The penalties for these offenses can range from fines and community service to imprisonment, depending on the severity of the offense and the jurisdiction's laws. While these laws were intended to apply to adults, child victims of exploitation are often arrested and prosecuted under these laws despite being victims of coercion, manipulation, and abuse.

Stigmatizing language and stereotypes play a significant role in shaping legal responses to child trafficking and exploitation. McCain (2020) posits that "Describing trafficked and exploited children as prostitutes is a contradiction in terms. 'Child prostitute' suggests consent or agency, when, in this case, there is none". Moreover, the term "child prostitute" implies that the child is voluntarily engaging in commercial sex work when, in reality, they are often coerced, manipulated, or forced into such situations. This normalization can influence legal responses by downplaying the seriousness of the crime and failing to recognize the victimization experienced by the child.

The juvenile justice system's overarching goal is to act "in the child's best interests" and provide rehabilitation and care (Boyes-Watson & Gebo, 2017). This is the core rationale for a juvenile justice system separate from the adult criminal justice system: Children are different from adults and, therefore, are not legally responsible for their actions like adults. The juvenile justice system operates within a separate legal framework from the adult criminal justice system. Depending on the jurisdiction, it typically applies to individuals under a certain age, often 18 or 21. While the main goal

of the juvenile system is rehabilitation, as a state-funded operation, the system often fails due to the lack of funding, resulting in a shortage of necessary resources to provide proper services and care.

The failings of the juvenile justice system are evident in the context of child conviction concerning "prostitution." Every year in the United States, "more than 1,000 children are... arrested for prostitution, even though many of them are not legally old enough to consent to sex." (Saar, 2015). According to "Statutory Rape: A Guide to State Laws and Reporting Requirements" (2004) the age of consent in the U.S. is 16-18, depending on the state. With different parameters when it comes to age difference as well (Statutory Rape, 2004). One of the reasons that child victims are put into the juvenile justice system is that many state prosecutors and others in law enforcement believe that they will lose their power to persuade children to testify in court against their traffickers (Powell, 2014). Forcing child victims into the juvenile justice system solely to secure testimony against their traffickers is morally and ethically unacceptable. Not only does it fail to recognize the trauma and victimization these children have already endured, but it serves to perpetuate their exploitation further and also contradicts the "goals" of the juvenile justice system. This highlights the urgent need for systemic reforms prioritizing protecting and supporting vulnerable children within the justice system. Cyntoia Brown was 16 years old when she was arrested for the first-degree murder of ohnny Allen, handgun possession, aggravated robbery, and criminal impersonation. Her 24-year-old boyfriend and pimp "Kut-Throat" emotionally, physically, and sexually abused her for three weeks and forced her into involuntary prostitution to help pay their bills. That was how Cyntoia met and

Maggie Wheeler

was picked up by Johnny Allen, a 43-year-old real estate agent from Nashville, and taken to his house with the promise of \$150 in exchange for sex (Gajanan, 2020). Once alone at Johnny's house, Cyntoia refused to have sex with him, and when he reached for his bedside table, she feared Allen was reaching for a gun, so she shot him. Cyntoia was charged as an adult and was sentenced to life in prison (Gajanan, 2020). Cyntoia was not eligible for parole until 2055 but was granted clemency by the Tennessee Governor and released in August 2019 (Gajanan, 2020). In the end, Cyntoia spent 15 years in state prison.

Usually, the child who is charged with prostitution and enters the juvenile justice system has been arrested for solicitation. Arresting children who are victims of exploitation leads to retraumatization and the judicial system placing blame on the victim for their exploitation. Unfortunately, there is also a lack of response to the array of issues these children face; for example, according to Pilcher (2020), who interviewed a young woman who had been a victim of sex trafficking at age 11 by her stepfather, she did not get the help she needed within the juvenile justice system. Over seven years, Yvonne became addicted to drugs and was arrested over thirty times for prostitution and drug charges. Even though she was still a minor, Yvonne was taken into the juvenile justice system and was not treated for her drug addiction until after her criminal charges had been cleared, "she says the system prevented her from turning her life around sooner" (Pilcher, 2020). The juvenile justice system's failure to adequately address the needs of child victims of exploitation not only perpetuates retraumatization victim blaming but also hinders their ability to receive the necessary support and interventions to recover and rebuild their lives.

Findings

Intersecting factors such as race and socioeconomic status influence the criminalization of child victims within the legal system. According to the FBI, in 2019, African-American children comprised 50% of all prostitution arrests under the age of 18 in the United States (“Table 43”, 2019). The case studies of Cyntoia Brown and Yvonne, both black women, further demonstrate the experiences of exploitation and victimization faced by marginalized individuals within the justice system. While the two cases are different, both women did not have access to the support they needed. Cyntoia spent 15 years in state prison, and Yvonne did not have access to the programs she needed to get clean. The research and data from the FBI show that African-American children are disproportionately arrested and prosecuted for offenses such as prostitution. These disproportionate arrests lead to disparities in legal outcomes, with marginalized children facing higher rates of incarceration, longer sentences, and harsher penalties compared to their counterparts from other ethnic backgrounds. Children who come from low-income families may also not have access to proper legal representation, which can also lead to disproportionate outcomes in court. The role of institutional bias and systemic failures cannot be ignored in the arrests of child victims.

Criminalizing child victims leads to revictimization by the criminal justice system; for children who have already experienced trauma and exploitation, the process of investigation, prosecution, and court proceedings can be intimidating and re-traumatizing. Criminalizing victims also undermines rehabilitation. Instead of utilizing victim services, criminalization makes it so victims may believe their victimization is their fault. Labeling child victims as criminals can also lead to stigmatization and shame. This societal stigma can compound the trauma they have experienced and negatively impact their mental health, self-esteem, and sense of worth. If child victims are treated as criminals, yet the people who victimized them are not brought to justice, it can also compound their trauma and shame, undermining any efforts to rehabilitate them. In addition, according to the Justice Policy Institute (2024), "the most expensive confinement option for a young person, on average, can cost \$588 a day, or about \$214,000 a year". This staggering financial burden underscores the need for cost-effective and evidence-based alternatives that prioritize rehabilitation and support for child victims of exploitation. Instead of spending money incarcerating these victims, the United States could be investing in programs that address the root causes of exploitation and provide comprehensive support services.

Lastly, as mentioned before, there is a lack of victim-centered approaches that prioritize the prosecution of a perpetrator over the well-being of the victim. Criminalizing victims is not the answer, as it is evident that it leads to more problems than solutions. In order to effectively combat child exploitation and trafficking, it is imperative to prioritize victim-centered approaches that focus on the well-being and protection of vulnerable children over punitive measures.

While there is a failure to address the needs of victims of exploitation within the juvenile justice system, there are rare occurrences where other social services are put in place of criminalization. However, due to limited funding and resource constraints, only some states offer these programs to replace the juvenile justice system. One of these options is diversion programs, which offer an alternative to traditional prosecution and detention, diverting child victims away from the criminal justice system and towards support services and interventions. Many diversion programs take a holistic approach and focus on addressing the needs of child victims, considering factors such as trauma history, mental health, and social support networks. These programs also usually offer counseling, therapy, education, and vocational training tailored to the individual needs of child victims. In addition to diversion programs, there are also rehabilitation centers that focus on trauma-informed care. Rehabilitation options often focus on skill-building and empowerment, helping child victims develop coping strategies, life skills, and positive social connections that can support their reintegration into society. Rehabilitation programs provide support, treatment, and services, whereas diversion programs address the underlying causes of criminal behavior and prevent future offending. Although different, both programs aim to improve the traditional conviction process by prioritizing rehabilitation, addressing root causes of criminal behavior, reducing recidivism, promoting reintegration into society, and embracing restorative justice principles.

There are also barriers to identification, protection, and support for child victims within legal and policy frameworks. These barriers hinder the effective response to child exploitation and trafficking, leaving vulnerable children at risk of continued victimization. One of the key barriers is the inadequate legal framework, which can lead to gaps in support and protection, especially on a state-by-state basis. According to the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime (2023), in 1978, congress authorized \$3-\$4 million annually “to develop effective prevention, treatment, and law enforcement strategies to address CSA”, however, that funding disappeared in the 1980s and has not been returned to the same amount since. There is also according to the Office for Victims of Crime (2023), “a lack of consistent standards, evaluation of what is working” considering legal policies. By allocating resources to fund comprehensive programs and establishing strong legal frameworks, there is a tangible pathway toward fostering resilience, promoting healing, and safeguarding the rights and well-being of child victims. Another barrier is that many legal professionals and law enforcement officers lack the training and knowledge needed to work with child victims. This can lead to a failure to recognize signs of victimization and provide appropriate support and protection to affected children. According to the Office for Victims of Crime (2023), in 2008 Interdiction for the Protection of Children (IPC) Program worked with the Texas Department of Public Safety to train officers in recognizing signs of sex trafficking in child victims. The Office for Victims of Crime (2023) also states that “although some signs are obvious, others are subtler; without training, these indicators can be easily overlooked or explained away by even experienced officers”. Without the needed training and knowledge, law enforcement officers may struggle to effectively communicate

with child victims, identify signs of abuse or trauma, gather admissible evidence, and navigate the complexities of child protection laws, leading to potential gaps in support and protection for these vulnerable individuals.

Conclusion

If the goal of the juvenile justice system is to protect children, then the criminalization of child "prostitution" has to cease. Children being criminalized under prostitution laws, despite being victims of coercion and manipulation, is widespread across states. This is due to the insufficient legal protections that contribute to the criminalization of child victims. In order to reform legal and policy frameworks that prioritize victim-centered approaches, a multitude of steps need to take place. Firstly, a limited amount of research has been done on this topic, meaning a lot of the information and research readily available is outdated. This shows the importance of not only the topic itself but continued research to understand the complexities of child exploitation and trafficking, as well as the impact of legal and policy frameworks on victimization and criminalization. Continued research is essential for informing evidence-based policies and interventions that prioritize the well-being and rights of child victims.

Moreover, ongoing research can shed light on the effectiveness of existing programs and identify improvement areas. It is imperative to take action in advocating for legislative reforms and get states to enact safe harbor laws to protect these child victims. There also needs to be further pressure to promote trauma-informed policies by providing the necessary funding these programs need to thrive.

Maggie Wheeler

This includes increasing funding for victim services. Services such as trauma-informed counseling, housing assistance, legal advocacy, and medical care are essential for supporting the recovery and rehabilitation of child victims and preventing further exploitation. While this paper did demonstrate how existing laws in the juvenile justice system exacerbate the victimization of children, hinder access to justice, perpetuate cycles of harm, and explore the root causes of exploitation, the lack of scholarly research prevents accomplishing the goal of ending the criminalization of child "prostitution."

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Maggie Wheeler

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