1984

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Author: D. Kelly Weisberg
Source: American Journal of Criminal Law
Citation: 12 Am. J. Crim. L. 1 (1984).
Title: Children of the Night: The Adequacy of Statutory Treatment of Juvenile Prostitution

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Children Of The Night: The Adequacy Of Statutory Treatment Of Juvenile Prostitution

D. Kelly Weisberg*

The term "prostitute" conjures up images of adult women lounging in bars or on street corners on dark summer nights. However, a significant proportion of prostitutes are juveniles. Sources estimate that approximately 600,000 juvenile females and 300,000 juvenile males are involved in prostitution throughout the country.¹ While a voluminous literature exists on adult female prostitution,² surprisingly little attention has been devoted in the legal literature to the particular problem of juvenile prostitution.³

This article examines the law's response to the problem of juvenile prostitution. Part I discusses recent research findings⁴ which

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The author wishes to express gratitude to Professor Caleb Foote for his helpful comments on an earlier draft of this article.

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4. Adult female prostitution has been the subject of considerable research. However, knowledge of both juvenile male and female prostitution has been limited. This gap in the literature has been remedied partially by recent research. See generally D. Bracey, Baby Pros (1979) [hereinafter cited as Bracey, Baby Pros]; Gray, Turning Out: A Study of Teen-
sheds light on the nature of this social problem. Part II explores recent statutory reforms which address juvenile prostitution on the federal level, and Part III examines these reforms on the state level. In Part IV, dilemmas in the law's response to juvenile prostitution will be highlighted with an eye to determining the extent to which legislation adequately addresses social reality. Finally, methods are suggested by which the law could better respond to the problem of juvenile prostitution.

I. SCOPE OF THE PROBLEM

Before exploring state and federal legislative policy directed at juvenile prostitution, it is helpful to examine the nature of this social problem. Recent empirical research sheds considerable light on adolescent prostitution. Although many questions remain unanswered, this research (based on fairly large juvenile samples) provides data on a number of aspects of the phenomenon, including: (1) the youth's family background and early life experiences; (2) initial involvement in prostitution; and (3) prostitution lifestyle and experiences. The research findings are summarized below.

A. Family Background and Early Life Experiences

Juvenile prostitutes range in age from 12 to 18, with a mean age of 16 for both males and females. The youths originate from all

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5. For data on the ages of adolescent females, see James, Entrance, supra note 4, at 17; Enablers Report, supra note 4, at 18. For data on adolescent males and females, see Huckleberry Report, supra note 4, at 7.

6. Gray and James provide evidence for the mean and median age of juvenile females. See Gray, Turning Out I, supra note 4, at 16; and James, Entrance, supra note 4, at 17. For data on juvenile males, see URSA Report, supra note 4, at 71. Occasional accounts mention
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socioeconomic classes" and from many racial and ethnic groups. A large number of juvenile prostitutes come from broken homes. The majority of juvenile prostitutes fail to complete high school; many drop out of school before the ninth grade.

7. This socioeconomic representation is reflected in many research samples. Gray's sample contained juvenile females from lower to lower-middle socioeconomic backgrounds, as measured by family income, occupation and parents' education. Gray, Turning Out I, supra note 4, at 23-24. Bracey's sample, similar to Gray's, was almost evenly divided between working class and lower class families; only ten percent came from middle class backgrounds. BRACEY, BABY PROS, supra note 4, at 19. (Bracey noted that many of these middle class prostitutes were "weekend warriors," living at home with their families, attending school regularly and working as prostitutes on weekends. Id. at 58). The Enablers' sample reflected a more middle- and upper-class composition, as did Silbert's and James'. See Enablers Report, supra note 4, at 18, 21; Silbert, Sexual Assault, supra note 4, at 15; James, Entrance, supra note 4, at 17. Research on adolescent male prostitutes notes that they too originate from all socioeconomic classes. See URSA Report, supra note 4, at 77; Shick, Service Needs of Hustlers, (unpublished manuscript 1980) [hereinafter cited as Shick, Service Needs]; Huckleberry Report, supra note 4, at 12.

8. James' study of prostitutes (N=136) reveals 61.8% were white, 25% Black, 11% Native Americans and 1.5% Chicanas. James, Entrance, supra note 4, at 19. According to James, Asian and Native American juveniles seldom prostitute. Id. at 17. The Enablers' findings for Minneapolis and Silbert's for San Francisco are similar. In the Enablers sample (prostitutes under age 20), nearly 80% were Caucasian, 12.1% Black, 3.4% Native American and 3.4% Chicana. Enablers Report supra note 4, at 15, 18. Of the prostitutes in Silbert's study, similarly, the majority were white. Specifically, 69% were white, 18% Black, 11% Hispanic, 2% American Indian, and 1% Asian. Silbert, Sexual Assault, supra note 4, at 10. Huckleberry House research found 70% of juvenile females were white, 10% Black, 13% Hispanic, 3% Asian and 3% Native American. Huckleberry Report, supra note 4 at 7. In the URSA study of juvenile males, two-thirds of the youths were white, one-fourth Black, 3% Native Americans and 6% other. URSA Report, supra note 4, at 71. Shick's study of juvenile males contained 88% whites, 3% Blacks and 8% Hispanics. Shick, Service Needs, supra note 7, Table I, at 29.

9. Studies of both juvenile females and males report this finding. James found that 70% of prostitutes noted the absence of one or more parent (usually the father) during their childhoods. James, Entrance, supra note 4, at 18. The majority of Gray's respondents also came from homes broken by separation or divorce. Gray, Turning Out I, supra note 4, at 25. In the Enablers study, 67% of the prostitutes under 20 maintained that their natural or adoptive parents were no longer together at the time of the interview. Of these, 49% noted that the absence of one of the parents had occurred when they were five or younger. Enablers Report, supra note 4, at 22. Similarly, approximately one-third (10/32) of the prostitutes in Bracey's study came from intact nuclear families. BRACEY, BABY PROS, supra note 4, at 40. Almost two-thirds of juvenile boys come from broken homes. URSA Report, supra note 4, at 77; Huckleberry Report, supra note 4, at 12.

10. Enablers Report, supra note 4, at 47; URSA Report, supra note 4, at 73.

11. Many studies report that juvenile prostitutes drop out of school at an early age and have school problems. See, e.g., Enablers Report, supra note 4, at 47; Gray, Turning Out I, supra note 4, at 33-34; James, Entrance, supra note 4, at 18. The mean grade level completed by Gray's sample was 9.6. Gray, Turning Out I, supra note 4, at 33-34. In James' study,
Physical abuse is a common feature of the youth’s family background. The majority of juvenile females\(^\text{12}\) and many juvenile males\(^\text{13}\) have been beaten by family members, often on a regular basis.\(^\text{14}\) For many youths it occurs until the time they leave home.\(^\text{15}\)

Sexual abuse also characterizes the backgrounds of both juvenile male and female prostitutes. Sexual abuse by family members commonly starts in the youth’s early years—for females usually by age 10 or younger\(^\text{16}\) and may occur frequently.\(^\text{17}\) Although data are more limited on juvenile male prostitutes, research suggests they also experience sexual abuse by family members.\(^\text{18}\) Fathers and other male family members are the major perpetrators of this sexual abuse on juvenile male and female prostitutes.\(^\text{19}\)

(N=136) 10.3% had left school at grade 7, 10.3% at grade 8, 20.6% at grade 9, 29.4% at grade 10, 5.1% at grade 11 and 4.4% at grade 12. James, Entrance, supra note 4, at 20. Similarly, the Enablers study reported that only one-half of the prostitutes were in school. At the time of the interview, only 11.5% had completed high school or its equivalent. Enablers Report, supra note 4, at 47. At the time of first involvement in prostitution, 37.5% were in school, 20% were enrolled but truant and 42.5% were not in school. Id. at 54.

Research on juvenile male prostitutes reveals parallel findings. More than 75% had not completed high school. URSA Report, supra note 4, at 73. Shick notes that three-fourths of juvenile male prostitutes drop out of school prior to completing the twelfth grade. Shick, Service Needs, supra note 7, at 5-6.

12. In James' sample, 62.5% of the female prostitutes reported being physically abused and 70% of the juvenile females in the Huckleberry House research reported being abused in the home. See also James, Entrance, supra note 4, at 48; Huckleberry Report, supra note 4, at 15. Similar percentages were noted in the Enablers research. See Enablers Report, supra note 4, at 22.

13. For juvenile male prostitutes, estimates of physical abuse by family members range from 34% to 47%. See URSA Report, supra note 4, at 78; Huckleberry Report, supra note 4, at 12.

14. Enablers Report, supra note 4, at 22; James, Entrance, supra note 4, at 48. Data on frequency of physical abuse are available only for juvenile females.

15. Enablers Report, supra note 4, at 22.

16. Nearly half of the familial sexual abuse experiences reported by prostitutes in the Enablers study began by age 10 or younger, and in all instances before the juvenile reached age 14. Enablers Report, supra note 4, at 23. Data on frequency of sexual abuse are available only for juvenile females.

17. In the Enablers study, 31% of 77 prostitutes stated they had been sexually abused one or more times. Specifically, twenty-two women related incest experiences; one-third of these recounted that this abuse occurred more than three times. Enablers Report, supra note 4, at 22-23.

18. Twenty-nine percent of the URSA sample and 19.1% of the juvenile males in the James sample had been sexually abused by a family member. URSA Report, supra note 4, at 78; see also James, Entrance Into Male Prostitution, Final Report (Aug. 1982) (research report submitted to the National Institute of Mental Health), 44-47 [hereinafter cited as James, Male Prostitution].

19. The Enablers study found that fathers perpetrated 26% of the sexual abuse, and step-fathers 26%. Enablers Report, supra note 4, at 23. James notes that of the prostitutes in her sample who were sexually abused, 17% were abused by a relative. James, Entrance, supra note
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The lives of many of these adolescents are characterized by a history of runaway behavior. Two primary factors contributing to runaway episodes are physical abuse and family conflicts. The youth’s homosexuality often creates the conflict for juvenile male prostitutes. Sexual orientation is one salient difference between male and female adolescent prostitutes. While the vast majority of female prostitutes are heterosexual, the majority of adolescent male prostitutes identify as either gay or bisexual.

B. Initial Involvement in Prostitution

The juvenile’s initial act of prostitution occurs in early adolescence. The average age at the first exchange of sexual services for

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4, at 29. The URSA research notes that juvenile male prostitutes are sexually abused by relatives, who include fathers as well as siblings. URSA Report, supra note 4, at 78.

20. All respondents in the Enablers study (age 19 or younger) had left home at least once by the time they were 16. Eighty percent had left home at age 14 or younger. Enablers Report, supra note 4, at 22, 28. More than three-fourths of the prostitutes in James’ sample reported involvement in runaway episodes. James, Entrance, supra note 4, at 51. Specifically, 16.9% said they ran away once or twice, 21.3% occasionally and 52.9% regularly. Id. at 54. Twenty-seven percent reported that their first arrest was for running away. Id. at 1. Gray’s data also revealed a high percentage of runaways: 11 of 17 respondents were either runaways from home or an institution at the time the juveniles began prostitution. Gray, Turning Out I, supra note 4, at 106.

A high percentage of juvenile male prostitutes also have runaway histories. Estimates range from 42% to 77%. Shick, Service Needs, supra note 7, at 21; URSA Report, supra note 4, at 85.

21. Disputes with family, in addition to physical and emotional abuse were significant factors influencing the decision to leave home. Enablers Report, supra note 4, at 22. See also James, Entrance, supra note 4, at 24. Specifically, 52.1% pointed to general conflict as a reason, 8.3% pointed to “fighting,” 8.3% to physical abuse, 25% to a specific conflict which prompted their leaving, 8.3% to a “traumatic event” precipitating their running away; 4.2% answered they had been rejected. Enablers Report, supra note 4, at 22, 29. Gray concurred that a major reason for running away from home was dissatisfaction with home life. Gray, Turning Out I, supra note 4, at 25.

Similar reasons were given by juvenile male prostitutes for running away from home. The primary reason cited by the Huckleberry study was family tension (59%). Huckleberry Report, supra note 4, at 27. Family conflict was also the most frequently given response in the URSA male sample for reasons to run away from home. URSA Report, supra note 4, at 85.

22. Huckleberry Report, supra note 4, at 27; URSA Report, supra note 4, at 85.

23. Seventy-two percent of the women in Silbert’s sample stated they were heterosexual. Silbert, Sexual Assault, supra note 4, at 57.

24. In the URSA sample, the majority of male prostitutes identified as either gay or bisexual. Specifically, 47% identified as gay, 29% bisexual, 16.5% as heterosexual. The remainder identified as transvestite or transsexual. URSA Report, supra note 4, at 76. In contrast, only 14% of Silbert’s female sample described themselves as homosexual or bisexual. Silbert, Sexual Assault, supra note 4, at 57. It is an interesting finding, and perhaps further confirmation of the female prostitutes’ negative attitudes toward sexuality, that another 14% described themselves as asexual. Id.
money is 14.25 Soon after this initial act, youths begin prostitution on a regular basis.26

Pimps play a central role in the initiation of juvenile females into prostitution.27 The juvenile is influenced by the pimp's flattery,28 suggestions of her desirability, as well as by the promise of money, protection, companionship and emotional intimacy.29 Some juveniles are coerced into prostitution by pimps.30 The presence of pimps appears to be a feature distinguishing juvenile female from male prostitution, as research suggests that few juvenile males are introduced to prostitution by pimps.31 Other persons influential in

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25. According to the Enablers, the peak age for involvement is 14. Enablers Report, supra note 4, at 52, 54. In fact, 62.2% of the adolescents in that sample prostituted by age 14. Id. Other studies concur that the average age at the first act of prostitution is 14. See, e.g., James, Entrance, supra note 4, at 29; James, Male Prostitution, supra note 18, at 97; Gray, Turning Out II, supra note 4, at 412. Silbert, however, notes that a few girls as young as eleven or twelve enter prostitution. Silbert, Sexual Assault, supra note 4, at 10. But cf. James, Entrance, supra note 4, at 17.

26. URSA reports that although the average age at which juvenile males hustled for the first time was 14, the average age at which they began prostitution on a regular basis was one year later, at approximately age 15. URSA Report, supra note 4, at 79-80.

27. Virtually all the prostitutes in James' sample had been approached at some time by a pimp and asked to prostitute. James, Entrance, supra note 4, at 68. Similarly, many respondents in the Enablers study reported the influence of a pimp in their initial involvement in prostitution. In describing how they "turned out," 58.3% said they were turned out by a "man," and 31.6% stated they were first turned out, specifically, by a pimp. Enablers Report, supra note 4, at 56. Because of the difficulty in clarifying the exact meaning of the respondents' reference to "a man," the researchers suggested that the percentage reflecting the actual involvement of pimps might be considerably higher. Id.

Although Bracey does not report the percentage of juvenile prostitutes in her sample who were turned out by pimps, she does note the influence of pimps. See Bracey, BABY PROS, supra note 4, at 23. However, Bracey does suggest the indirect influence of pimps in recruitment of prostitutes. She notes that many pimps use other women prostitutes (women in their "stables") as recruiters; one way in which a prostitute ingratiates herself with her pimp is by recruitment of other prostitutes. Recruitment serves as a method of becoming the pimp's favorite. Praise, gifts and status accrue to the recruiter. The pimp uses his women as recruiters for many reasons: (1) it is safer than recruiting himself; (2) he can thereby save himself time and trouble; (3) he can depend on experienced prostitutes to recruit individuals with the necessary qualities; (4) experienced prostitutes are often more effective than the pimp in recruiting, especially in recruiting young girls; and (5) frequently, the promise of friendship and companionship with other women makes recruitment attractive to the juvenile. Id. at 23-24.

28. James, Entrance, supra note 4, at 68.

29. Bracey, BABY PROS, supra note 4, at 23. Some juveniles view prostitution as necessary to maintain a love relationship with the pimp. Enablers Report, supra note 4, at 56, 57.

30. Huckleberry research reports that 17% of the juvenile female prostitutes were forced into prostitution against their will by pimps. Huckleberry Report, supra note 4, at 34. See also Morgan, Little Ladies of the Night, N.Y. Times, Nov. 16, 1975 (Magazine), at 34 [hereinafter cited as Morgan, Ladies]; Schoor, Blood Stewart's End, N.Y. Magazine, March 27, 1978, at 53. But see Enablers Report, supra note 4, at 56.

31. URSA Report, supra note 4, at 129; Huckleberry Report, supra note 4, at 32. The Huckleberry Report indicates that males are more likely to be introduced to prostitution by
the adolescent's decision to become a prostitute include friends and relatives. Several factors, including money, excitement, adventure, and sociability, motivate juveniles to turn to prostitution. Many juveniles turn to prostitution during a runaway episode to provide money for housing and food. Some youths turn to prostitution to escape family and school problems. Also, many minors are at-

friends and other more experienced street youth. Id. at 32. This contrasts to a 13% rate for females influenced by girlfriends. James, Entrance, supra note 4, at 77.

32. Many studies emphasize the importance of friends in influencing a juvenile to enter prostitution. In the Enablers study, 16% of the prostitutes stated they had friends who were already prostitutes when the juveniles themselves became involved in prostitution. Enablers Report, supra note 4, at 53. In Gray's study all the female prostitutes reported having known someone on a fairly intimate basis who was involved in prostitution before they themselves turned out: for ten of the girls, this individual was a friend. Gray, Turning Out II, supra note 4, at 410. Similarly, in James' study, 13% learned of prostitution from a girlfriend. James, Entrance, supra note 4, at 77. Bracey's data are consistent; most girls in her sample claimed that other females represented the main influence in their decision to become prostitutes. These other individuals included schoolmates, neighborhood friends, former friends who had left home, and new acquaintances. Bracey, Baby Pros, supra note 4, at 20.

33. In James' study, 23% responded they learned of prostitution from a relative. James, Entrance, supra note 4, at 77. Seven of the 17 juveniles in Gray's sample also reported early exposure by relatives involved in prostitution. Gray, Turning Out II, supra note 4, at 410. Some accounts reveal the relative was a mother who introduced the daughter to prostitution. See, e.g., MacVicar & Dillon, Childhood and Adolescent Development of Ten Female Prostitutes, 19 J. AM. ACAD. CHILD PSYCHIATRY 145, 151-52 (1980) [hereinafter cited as MacVicar, Development]; Barclay & Gallemore, Family of the Prostitute, 18 CORRECTIVE PSYCHIATRY & J. SOC. THERAPY 10, 10-16 (1972) [hereinafter cited as Barclay, Family].

34. Economic reasons motivating a juvenile to prostitute are frequently noted in research findings. See, e.g., James, Entrance, supra note 4, at 68; Gray, Turning Out II, supra note 4 at 411; Enablers Report, supra note 4 at 53; URSA Report, supra note 4, at 80. Gray and James also note the juvenile's desire to partake of the glamorous lifestyle associated with prostitution. Gray, Turning Out I, supra note 4, at 79; James, Entrance, supra note 4, at 68. For males, money is also the primary motivation, with sexual gratification the second most frequently cited reason to prostitute. Motivating factors also include a desire to obtain "fun and adventure," as well as to satisfy sociability needs. URSA Report, supra note 4, at 80; James, Male Prostitution, supra note 18, at 115.

35. Gray emphasizes that the juveniles' living situation and financial circumstances predispose a juvenile to prostitution. Most of the juveniles were in unstable living situations at the time of their decision to become prostitutes: 11 of 17 prostitutes were either runaways from home or from institutions. When asked what influenced them most to turn to prostitution, half responded that their decision was brought about by pressure, either of a social or financial nature. Gray, Turning Out I, supra note 4, at 88, 106.

James similarly mentions economic factors as influencing runaways to turn to prostitution. James, Entrance, supra note 4, at 68. Huckleberry research also notes the importance of economic factors motivating runaway boys to prostitute. Huckleberry Report, supra note 4, at 31-32.

36. When the respondents under twenty years of age in the Enablers study were asked about their general situation prior to "turning out," 50% stated they were having family problems, and almost 17% stated that they had school problems. Enablers Report, supra note 4, at 55. Most of the Enablers respondents said they were either not in school at the time they
tracted to prostitution because it provides remunerative employment when other employment is either unavailable or unappealing. 37

Feelings about sex and sexuality after the initial involvement in prostitution also separate juvenile female and male prostitutes. Juvenile females reveal considerable ambivalence. 38 Some adolescent females feel they are not ready for such sexual activity; others maintain they do not enjoy sexual relations. 39 Many manage the sexual component of their employment by differentiating sex for pleasure from sexual relations with customers. 40 For some adolescent females this psychological technique of "distancing" is not successful, and sex for pleasure remains an unknown concept. 41 Juvenile males, on the other hand, differ from juvenile females in their attitudes about the sexual aspect of prostitution. Whereas a substantial number of juvenile females find having intercourse with the customer the most unattractive aspect of prostitution, 42 many juvenile males indicate that one of their primary reasons for engaging in prostitution is for

37. When asked if they felt they had other employment options at the time, half of the youths in the Enablers sample responded in the negative; 71.7% stated they felt they had no other ways of supporting themselves at the time. Respondents were also queried whether they would have started prostitution had they been able to obtain a good job. In response, 48% said they would not; 35% said they would. Enablers Report, supra note 4, at 53. Gray reveals the types of positions held by the few juveniles who were employed prior to prostitution. Such jobs were usually short-term, and part-time, including primarily clerical work, nurses' aides, day care aides or day work. Gray suggests that juveniles' dissatisfaction with these jobs may be an influential factor in their turning to prostitution. She concludes that although the females are exposed to legitimate paths to conventional goals, the rewards are insufficient to hold them. Gray, Turning Out II, supra note 4, at 406.

A similar finding appears to apply to juvenile male prostitutes. URSA reports that of the male prostitutes who are or have been employed, 13% have worked in clerical jobs, 27% as unskilled or semiskilled laborers, and 35% in restaurants or fast food chains. The study concludes: "These findings undoubtedly reflect the types of employment most readily available to relatively unskilled and uneducated youth in urban areas." URSA Report, supra note 4, at 74-75.

38. James, Entrance, supra note 4, at 31.

39. Id.

40. Id. at 38. Bracey notes that one striking finding of her research was the females' neutral attitude toward the sexual act. The prostitutes neither liked sex nor disliked it, but viewed it only as a manner of making money. Bracey, Baby Pros, supra note 4, at 51.

41. James, Entrance, supra note 4, at 38.

42. The response most frequently cited by Gray's sample in answer to the question regarding unattractive aspects of prostitution was "having to have intercourse with the customer." Gray, Turning Out I, supra note 4, at 105.
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sexual gratification.\textsuperscript{43}

\section*{C. Prostitution Lifestyles and Experiences}

For juvenile girls, the relationship with the pimp is pivotal to their lifestyle of prostitution. The pimp instructs the juvenile in the “rules of the game.”\textsuperscript{44} The central rule is to surrender earnings, requiring prostitutes to turn over the bulk of their earnings to their pimps.\textsuperscript{45} Those who do not may suffer retaliation.\textsuperscript{46}

The pimp-prostitute relationship is generally short-lived.\textsuperscript{47} The relationship is also frequently fraught with conflict. Although mutual attraction and affection may mark the beginning of the rapport, these sentiments are soon replaced by hostility and fear.\textsuperscript{48}

Juveniles tend to engage in various types of prostitution. The majority of juvenile males and females are street prostitutes.\textsuperscript{49} In

\begin{itemize}
\item \textsuperscript{43} Twenty-seven percent of the male prostitutes in the URSA sample cited sex and gratification as a motivating factor for engaging in prostitution. This was the second most frequently cited response. URSA Report, supra note 4, at 80.
\item \textsuperscript{44} Gray reports that many juveniles were explicitly briefed by the pimp on how to wash the customer, check him for venereal disease, persuade him to wear a condom, watch for the police, guard against pregnancy, pick up customers and locate “trick houses.” Gray, Turning Out I, supra note 4, at 413.
\item \textsuperscript{45} In Gray’s sample only 3 of 17 girls reported retaining all their earnings. Of the others, three juveniles split their money with the pimp; the remaining eleven turned over all or most of their earnings. In return, the pimp would purchase clothes for them, provide entertainment, and sometimes represent to them that he was saving the money for their future. \textit{Id.} at 414. The Enablers findings were similar: 69\% of the prostitutes were expected to turn over all their money to the pimp. Enablers Report, supra note 4, at 70.
\item \textsuperscript{46} See infra text accompanying notes 51 to 56.
\item \textsuperscript{47} Sixty-two percent of the relationships of juveniles under twenty years of age lasted three months or less, and 90\% less than one year. Relationships between pimps and adult prostitutes tend to last longer than for adolescents. Enablers Report, supra note 4, at 69.
\item \textsuperscript{48} Gray, Turning Out I, supra note 4, at 121.
\item \textsuperscript{49} James differentiates between “type of prostitution upon first involvement” and “type preferred.” Most prostitutes are first involved in street hustling. At the time of the interview, 82\% were street prostitutes—by far the largest category. An additional 5\% were involved in “phone” prostitution, 3\% in bars, 2\% in hotels/casinos, and 3\% in several of the above. James, Entrance, supra note 4, at 78. Asked what type of prostitution they preferred, James’ respondents largely answered “street prostitution”; in addition, 24\% said “phone”; 5\% the “bar scene”; 4\% hotels or casinos, and 3\% “studio” prostitution. \textit{Id.} at 79.
\item In the Enablers study, most prostitutes twenty years of age or younger (95\%) were involved in street hustling. In addition 18\% said that they prostituted occasionally in bars and hotels; 35\% took private calls; 18.3\% participated in “sauna” prostitution and another 25\% encountered customers by “dancing.” Enablers Report, supra note 4, at 20. (Individuals could give multiple responses to this question and percentages were based on the total number of responses). Bracey and Gray concur that most juveniles are street prostitutes. BRACEY, BABY PROS, supra note 4, at 18-19; Gray, Turning Out I, supra note 4, at 13. Gray hypothesizes that more juveniles than adults work as streetwalkers. \textit{Id.}
\end{itemize}

URSA research on male prostitutes reports similar findings. Most male prostitutes (94\%)
addition, some adolescent males and females are also involved in prostitution by phone, in bars, discos, hotel/casinos, saunas, dance halls, agencies or in response to advertisements.\textsuperscript{50}

Regardless of the type of prostitution, these juveniles' lives are characterized by some degree of violence. This violence is perpetrated by pimps as well as customers. Juvenile girls are frequently beaten by their pimps.\textsuperscript{51} Often such abuse occurs on a regular basis;\textsuperscript{52} in some cases it is excessively brutal.\textsuperscript{53} The physical abuse occurs for several reasons, including: not surrendering earnings,\textsuperscript{54} not making enough money, being disrespectful, violating the rules of prostitution, and leaving or threatening to leave the pimp.\textsuperscript{55} Many juvenile female prostitutes have such low self-esteem that they feel the beatings are justified.\textsuperscript{56}

Juvenile prostitutes, both females and males, also risk physical violence from customers. Most juvenile girls have experienced violence from clients on at least one occasion, sometimes more often.\textsuperscript{57} Several factors cause this violence, including: misunderstandings regarding the sexual acts to be performed, failure to satisfy a customer, refusal to perform requested services,\textsuperscript{58} the customer's refusal to pay,\textsuperscript{59} as well as retaliation for the prostitute's robbery of a customer.\textsuperscript{60} Juvenile males also experience violence at the hands of...
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their customers, although some research suggests it is not as frequent.61 Further, murders of juvenile prostitutes by pimps and/or customers are not unknown.62

II. FEDERAL LEGISLATIVE REFORM

Federal policy which addresses juvenile prostitution consists of four pieces of legislation. This legislation includes: 1) the Protection of Children Against Sexual Exploitation Act,63 2) the Child Abuse Prevention and Treatment and Adoption Reform Act,64 3) the Runaway and Homeless Youth Act,65 and, 4) the Missing Children Act.66 This article will now examine the nature of this legislation and the manner in which it deals with the problem of juvenile prostitution.

A. Protection of Children Against Sexual Exploitation Act

The involvement of juveniles in prostitution became an object of widespread national interest in the late 1970's. In response to increasing media attention focusing on juvenile prostitution67 as well as child pornography,68 Congress held hearings in 1977 on the subject of child sexual exploitation. In response to testimony by law enforcement officials, law professors, social workers, sociologists, psychologists, journalists and others, Congress enacted the Protection of Children Against Sexual Exploitation Act of 197769 [hereinafter the Sexual Exploitation Act].


The Sexual Exploitation Act was the culmination of considerable legislative activity in the 95th Congress. Numerous bills were introduced in both the House and Senate. Two subcommittees in the House and one in the Senate held public hearings. The resultant Sexual Exploitation Act was designed to fill gaps in federal law in order to protect children from sexual exploitation.

Prior to the enactment of the Act, various federal agencies constituted the federal effort to combat child sexual exploitation. These agencies (the Department of Justice, the Federal Bureau of Investigation, the Postal Service, and the Customs Service) would only enforce the five existing federal statutes. These statutes prohibited the mailing, importation, and interstate transportation of obscene materials.

70. In the first few months of the session, four bills addressing child sexual exploitation were introduced in the Senate. Three of these bills (S. 1011, S. 1499 and S. 1585) were referred to the Committee on the Judiciary. One bill, S. 1040, was referred to the Committee on Human Resources. On May 6, 1977, the Committee on Human Resources passed a resolution urging the Committee on the Judiciary to hold hearings at the earliest possible time, either singly or in conjunction with the Committee on Human Resources, to consider appropriate legislation. S. Rep. No. 438, 95th Cong., 2d Sess. 3-4, reprinted in 1978 U.S. Code Cong. & Ad. News 41 [hereinafter cited as S. Rep. No. 438, with all cites to the U.S. Code Cong. & Ad. News].

71. The Subcommittee on Crime of the House Committee on the Judiciary sought to determine the extent of the problem as well as to assess the adequacy of existing federal and state legislation from the criminal justice perspective. This Subcommittee concluded that federal criminal sanctions were necessary to penalize: (1) the inducement of children to participate in pornographic activities for commercial purposes and, (2) the transportation of children interstate for purposes of prostitution. See generally Sexual Exploitation of Children: Hearing on H.R. 8059 Before the Subcomm. on Crime of the House Comm. on the Judiciary, 95th Cong., 1st Sess. (1977).

The Subcommittee on Select Education, Committee on Education and Labor, in the House of Representatives also held hearings to determine the best manner to address the problem. This Subcommittee examined the issue of child sexual exploitation from the child abuse perspective. The Subcommittee recommended enactment of legislation which subsequently amended the Child Abuse Prevention and Treatment Act (discussed infra). See generally Sexual Exploitation of Children: Hearings on H.R. 8059 Before the Subcomm. of the House Comm. on Education & Labor, 95th Cong., 1st Sess. (1977). (This Subcommittee since has been renamed "Subcommittee on Juvenile Justice").

72. Hearings on child sexual exploitation were also held in the Senate by the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary. This Subcommittee explored the problem from the juvenile delinquency perspective, especially focusing on the interrelationship between child sexual exploitation and runaway behavior. These hearings reached conclusions similar to those of the House Subcommittee on Crime that existing federal law failed to protect children from sexual exploitation and that specific legislation in this area was advisable. See S. Rep. No. 438, supra note 70, at 45. See also Protection of Children Against Sexual Exploitation: Hearings on S. 1585 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 95th Cong., 1st Sess. (1977). (This Subcommittee since has been renamed "Subcommittee on Juvenile Justice").

material; broadcasts of obscenity, as well as the interstate transportation of females under age eighteen for purposes of prostitution.

The Sexual Exploitation Act addresses various forms of the sexual exploitation of juveniles. Although much of the Act pertains to the regulation of child pornography, one provision addresses the problem of juvenile prostitution. Specifically, the legislation amends the White Slave Traffic Act [hereinafter the Mann Act] by expanding its scope to prohibit the interstate transportation of minor males for purposes of prostitution.

The Sexual Exploitation Act was based primarily on Senate Bill S. 1585. This bill, introduced by Senators Mathias and Culver on May 23, 1977, was one of four bills introduced in the Senate dealing with child sexual exploitation. As introduced, S. 1585 concentrated only on the production of materials depicting children in sexually explicit conduct. However, on June 9, Senators Mathias

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78. For a legislative history of the pornography provisions, see Note, Child Pornography Legislation, 17 J. Fam. L. 505, 515, 518 (1978-79). See also Baker, Preying on Playgrounds: The Sexploitation of Children in Pornography and Prostitution, 5 PeperDine L. Rev. 809, 842 (1978). Prior to the Sexual Exploitation Act, federal law prohibited the sale, distribution and importation of obscene materials. The Act remedied a gap in existing federal law by adding a new offense to Title 18, § 2251, which prohibits the production of pornographic materials involving minors under age 16. See 18 U.S.C. § 2253(1), supra note 70, at 44. The Act also increased the penalty provisions for the mailing (§ 1461), importation (§ 1462), and transportation for sale and distribution (§ 1465) of obscene materials involving children. For purposes of this chapter, the term “minor” was originally defined as any person under the age of 16 years. Legislation pending at the present time (H.R. 3635 and S. 1469) would change the protected age from 16 to 18 years. The proposed legislation would also increase the penalties for violation of the Act by increasing the fines for a first offense from the present $10,000 to $100,000 (H.R. 3635) and $75,000 (S. 1469), and for a second offense to $200,000 (H.R. 3635) and $150,000 (S. 1469) respectively.
80. See 18 U.S.C. § 2253(1), supra note 70, at 44. For purposes of this chapter, the term “minor” means any person under the age of sixteen years.
82. Four bills were introduced in the first months of the 95th Congress. In addition to S. 1585, bills S. 1011, S. 1499, and S. 1040 were considered. The first three bills were referred to the Committee on the Judiciary, whereas S. 1040 was referred to the Committee on Human Resources. S. Rep. No. 438, supra note 70.
83. The original bill (S. 1585) concentrated only on the production of materials depicting children in sexually explicit conduct by prohibiting the actual production of any such materials to be mailed or transported in interstate commerce. At the time of its introduction, the bill left the sale and distribution of such materials to existing obscenity statutes. S. Rep. No. 438, supra note 70, at 51.
and Culver offered amendment 380 which made minor revisions in their original bill and also included a new section revising the Mann Act.84

The amendment was a response to the May 27 hearings of the Subcommittee to Investigate Juvenile Delinquency.85 The Subcommittee’s hearings uncovered several factors which led to the proposed amendment. First, the Subcommittee learned of the interstate traffic in young boys and a number of prostitution rings dealing in young men.86 Experts at the hearings also testified that child prostitution was a highly organized, multimillion dollar industry operating on a nationwide scale primarily recruiting young runaways.87 When the Subcommittee realized that the existing Mann Act was applicable only to females, they felt that an amendment was necessary to remedy this gap.

Amendment 380 proposed several additions to S. 1585. First, it made the language of the transportation provision88 gender-neutral. Section 4(a) of S. 1585 made it a federal offense for anyone to transport a person under 18 years of age across state lines to engage in prostitution. At the time of the congressional hearings, no provision existed regarding the interstate transportation of males under the age of 18.89 Section 4(a) of S. 1585 remedied this gap in federal law by applying the general proscription to any person under 18 years of

84. S. REP. NO. 438, supra note 70, at 51.
86. S. REP. NO. 438, supra note 70, at 48-51.
87. Id. at 8. The finding of the organized nature of juvenile male prostitution, however, has been disputed. See URBAN AND RURAL SYSTEMS ASSOCIATES, JUVENILE PROSTITUTION: A RESOURCE MANUAL 44-47 (July 1982) (prepared for Youth Development Bureau, Dept. of Health & Human Services) [hereinafter cited as URSA, RESOURCE MANUAL].
88. The former provision read:
   Whoever knowingly persuades, induces, entices, or coerces any woman or girl who has not attained her eighteenth birthday, to go from one place to another by common carrier, in interstate commerce or within the District of Columbia or any Territory or Possession of the United States, with intent that she be induced or coerced to engage in prostitution, debauchery or other immoral practice, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.
89. S. REP. NO. 438, supra note 70, at 51. The term “minor” as used in 18 U.S.C. § 2423 means a person under the age of eighteen years. 18 U.S.C. 2423(b)(1) (1978). However, for purposes of the pornography sections, “minor” means any person under the age of sixteen years. 18 U.S.C. § 2252(a) (1978). Legislation pending at the present time (H.R. 3635 and S. 1469) proposes to raise the age of the minor for the pornography sections to eighteen years as well.
In addition, amendment 380 also attempted to clarify certain vague and archaic language found in prior law. The existing provision of federal law prohibited the transportation across state lines of females under age 18 to engage in *prostitution, debauchery or other immoral acts*. The proposed language prohibited solely the interstate transportation of a person under age 18 for purposes of prostitution. As reported out of the Judiciary Committee, S. 1585 eliminated the "debauchery and other immoral acts" language.

The Committee also deleted the previous requirement of Section 2423 that the minor be transported in a common carrier. By omitting this language, the Committee intended the penalties for interstate transportation to apply regardless of the mode of transportation utilized. Also, the Judiciary Committee chose not to define the term "prostitution," which is also not statutorily defined in any provision of the Mann Act. This lack of definition frees prosecutions from any dependence upon the definition found in various state laws, and facilitates prosecutions whether or not the act of prostitution with a juvenile was illegal in the state to which the minor was transported for such purposes. It was envisaged that the meaning of the word "prostitution" remain that which is commonly understood by the term: the exchange of favors for something of value. Lastly, during Committee consideration the existing penalty provision (a maximum of $10,000 fine or 10 years imprisonment or both) was retained.

Senate Bill 1585 was referred jointly on June 13, 1977, to the Subcommittee to Investigate Juvenile Delinquency and the Subcommittee on Criminal Laws and Procedures. After a joint hearing of these two subcommittees, the Subcommittee to Investigate Juvenile Delinquency reported the bill as amended by amendment 380 out by poll, on June 28, 1977. Subsequently, after Senator McClellan,

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90. S. REP. No. 438, supra note 70, at 54.
92. S. REP. No. 438, supra note 70, at 54.
93. Id. at 55.
94. Id. at 54.
95. Id.
96. Id. at 42.
97. The subcommittee heard testimony by Senator Roth, a sponsor of other pending legislation. Id. at 48. Professor Paul Bender, a member of the faculty of the University of Pennsylvania Law School, and Assistant Professor Martin Guggenheim of the faculty of New York University Law School, and associated with the ACLU Juvenile Rights Project also testified. Id. at 42.
98. Id. at 51.
Chairman of the Subcommittee on Criminal Laws and Procedures, indicated that his Subcommittee did not plan to consider the legislation, the Juvenile Delinquency Subcommittee’s report was considered by the full Judiciary Committee. On September 14, 1977, the Committee unanimously agreed to report S. 1585 with an amendment in the nature of a substitute with a recommendation that the bill as amended pass.

Meanwhile, legislation to combat sexual exploitation of children was being introduced in the House of Representatives. Thirty-nine bills with over one hundred cosponsors were offered. The House Judiciary Committee and, ultimately, the House chose H.R. 8059, introduced by Representative Conyers on June 28, 1977, as their representative bill.

Prior to the introduction of H.R. 8059, approximately half of the proposed bills were introduced as amendments to the Child Abuse and Prevention Treatment Act. These bills were referred to the appropriate committee, the Committee on Education and Labor. The remaining bills were channelled to the House Judiciary Committee based on its jurisdiction over legislation to be placed in Title 18, the Criminal Code. Although working on a parallel course, the committees ultimately decided that criminal sanctions specifically imposed by the new legislation belonged in amendments to Title 18 in order to maintain integrity and consistency in the codification system.

Support for inclusion of the Mann Act revision occurred at the joint hearing of the two House subcommittees on June 10, 1977. John C. Keeney, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice, raised several potential constitutional conflicts inherent in some provisions of the then pending pornography provisions. During his testimony Mr. Keeney supported as an alternative approach broadening the Mann Act to include within its scope, first, males, and second, the inclusion of other facilities of commerce in addition to common carriers. H.R. 8509,

99. Id. Senator McClellan indicated, however, that his Subcommittee would not object to consideration of the Juvenile Delinquency Subcommittee’s report by the full Judiciary Committee. S. Rep. No. 438, supra note 70.
101. Id. at 10.
104. Id. at 3.
105. Id. at 4. Mr. Keeney’s testimony occurred the day following, and was influenced by the introduction of amendment 380.
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as introduced on June 28, 1977, incorporated both of these suggested provisions.

Following its introduction in the House, H.R. 8059 was channelled to the Subcommittee on Crime. During the Subcommittee’s markup of the bill, Representative Holtzman offered an amendment in the nature of a substitute. This amendment, which paralleled the Senate Judiciary Committee provision amending the Mann Act, was accepted. Vague and archaic language in the Mann Act was removed. Also, H.R. 8059 was made applicable not only to prostitution, but also to any prohibited sexual conduct if commercially exploited. After the adoption of one further amendment referring to pornography, the Committee on the Judiciary favorably reported H.R. 8059 with amendments.

Although the Senate bill, S. 1585, and the House bill, H.R. 8059, were similar in many respects, differences existed and needed to be resolved in the Conference Committee. Ultimately, the conferees chose the House version for the Mann Act revisions with minor modifications, but selected the Senate language on child pornography.

For the Mann Act revisions, the conference committee chose the

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106. Id. at 10. In the House Judiciary Committee Report, the Committee openly recognized the influence of § 4(a) of S. 1585. Id. at 11. Specifically, the pending Senate legislation facilitated the House’s awareness of the need for the legislation, as well as the nature of the proposed changes.

107. Such language was removed in order not to revive the questionable Caminetti interpretation of the act. Caminetti v. United States, 242 U.S. 470 (1917). In interpreting the meaning of “immoral purpose,” the Caminetti Court held the words to proscribe virtually all nonmarital sexual relations where interstate movement is involved. Furthermore, it stated that it was neither the Court’s privilege nor duty to enter into “speculative fields” by trying to construe the legislature’s intent. Id. at 490. When the words are plain, it is presumed Congress knew the meaning of the words employed in association with the [Mann] Act and that statutory words were presumed to be used in their usual sense. Id. at 485. In addition, the Judiciary Committee decided to delete certain language because case law also lacked clarification in the definitions of such terms as “for immoral purposes” or “debauchery.” See H.R. REP. No. 696, supra note 100.

108. Section 2423(a)(2) prohibits any person who transports, finances or facilitates the interstate transportation of a minor with the intent that such minor engage in prohibited sexual conduct, if such person so transporting, financing, causing, or facilitating movement, knows or has reason to know that such prohibited sexual conduct will be commercially exploited by any person. 123 CONG. REC. 34,993 (1977).

109. Id. Representative Ertel, a member of the Subcommittee on Crime, proposed an amendment to § 2251 to add the words “or if such film, photograph, negative, slide, book, magazine or other visual or print medium has actually been mailed or transported in interstate or foreign commerce.” This amendment was adopted by the Judiciary Committee; however only the “visual or print medium [which] has actually been mailed or transported” language was ultimately enacted as § 2251. See 18 U.S.C. § 2251 (1978).

110. H. REP. No. 696, supra note 100.
language of H.R. 8059 rather than the Senate language, both because of H.R. 8059's broader coverage and its more explicit terminology. The House version, which was finally adopted, was chosen for adding "finances" and "facilitates the movement of any minor" to the more limited "transport" and "causing to be transported" language found in the Senate bill. The House version thus defines the act more broadly than mere transportation; it now includes financing the minors' transportation in whole or in part, as well as facilitating it in any manner.

The Conference Committee also rejected other Senate terminology. The Senate bill utilized "sexually explicit conduct" phraseology to expand its coverage of prostitution. The House version, which was preferred, utilized the more precise term "prohibited sexual conduct" which will knowingly be commercially exploited by any person. Also, the Senate bill, as preferred, did not include "simulated" sexual conduct within its prohibition.

Lastly, the title of the House bill, "Transportation of Minors" was adopted rather than the Senate terminology "Coercion or Enticement of Minors." The new title, chosen in preference to the Senate language mirroring prior legislation, was selected as a more accurate reflection of the character of the new legislation.

Congress approved S. 1585 as reported out of the conference committee in the belief first, that it would provide an effective tool for the federal agencies, and, second, that it went as far as the federal government could, within constitutional limits, to eliminate child sexual exploitation. Unanimously approved by the House, and approved on a voice vote by the Senate, the legislation was signed into law on January 28, 1978, as P.L. 95-225, the Protection of Children Against Sexual Exploitation Act of 1977.

B. Child Abuse Prevention and Treatment Act

Federal legislation also addresses juvenile prostitution by means

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113. H.R. 8059, supra note 111; S. CONF. REP. No. 601, supra note 111, at 7.
114. H.R. 8059, supra note 111; S. CONF. REP. No. 601, supra note 111, at 7.
115. H.R. 8059, supra note 111; S. CONF. REP. No. 601, supra note 111, at 7.
118. 1978 U.S. CODE CONG. & AD. NEWS 40, 57 (regarding the Senate vote on S. 1585).

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of statutory treatment of child abuse. In 1977 when Congress first considered legislation on sexual exploitation of children, a number of bills attempted to address the problem by proposing amendments to the Child Abuse Prevention and Treatment Act [hereinafter the Child Abuse Act].

Child sexual exploitation was addressed comprehensively on the federal level for the first time in 1977. However, child abuse legislation had been enacted several years earlier, in 1974. In order to assess the subsequent 1978 amendments to the Child Abuse Act as they pertain to juvenile prostitution, it is necessary to understand the nature of the original child abuse legislation. Prior to 1974, there was no coordinated federal effort addressed to child abuse and neglect. In 1973, in response to increasing public concern about battered children, Senator Mondale (D.-Minn.) introduced S. 1191. This legislation received tremendous bipartisan support and was ultimately enacted in 1974 as the Child Abuse Prevention and Treatment Act.

The Act provided for several programs directed at the prevention and treatment of child abuse and neglect. These included:

(1) [t]he establishment of a National Center on Child Abuse and Neglect within the Department of Health, Education, and Welfare [now the Department of Health and Human Services]; (2) mandated programs for the collection


121. Limited federal support for child abuse prior to the enactment of the Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974), was available through Subchapter IV Parts A and B of the Social Security Act, 42 U.S.C. §§ 601-626 (1968), which authorizes social services to AFDC children and child welfare services including child protective services. The limited nature of earlier federal support can be seen in the funding of $46 million for the entire child welfare program in 1973. Of that $46 million, approximately only $507,000 was spent on activities related to child abuse. S. Rep. No. 167, supra note 120, at 27.


and dissemination of information, including the incidence of child abuse and neglect; (3) a source of funding for basic research in the area of child abuse and neglect; (4) a source of funding for service delivery, resource, and innovative demonstration projects designed to prevent and/or treat child abuse and neglect; (5) an Advisory Board to assist the Secretary of Health, Education and Welfare in seeking to coordinate federal programs; and (6) encouragement to States by way of grants for the payment of expenses involved in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.\(^{124}\)

To qualify for federal funds, the states were required to meet a list of criteria set forth in the Act.\(^{125}\) These criteria specified child abuse reporting procedures, a comprehensive uniform definition of child abuse and neglect, investigation of reports, and administrative procedures. Also required were assurances of confidentiality of records and the appointment of guardians ad litem for children involved in child abuse or neglect judicial proceedings. For purposes of the Act, the term “child abuse and neglect” was defined as “the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child’s welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby.”\(^{126}\)

When the Child Abuse Act was enacted in 1974, funds were appropriated for a four-year period.\(^{127}\) Upon termination of appropriations in 1977, the 95th Congress considered legislation to extend portions of the Act dealing with child abuse. Simultaneously, the legislature also began to consider revisions of the Act to include provisions dealing with the sexual exploitation of children.

The primary sponsors of the bills on sexual abuse of children, each entitled “Child Abuse Prevention Act,” were Congressmen Dale Kildee (D.-Mich.) and John Murphy (D.-N.Y.).\(^{128}\) The series of bills introduced at the beginning of the 95th Congress contained almost identical substantive provisions, with one critical distinction.

\(^{124}\) S. REP. No. 167, supra note 120, at 27-28.


\(^{128}\) H.R. REP. No. 696, supra note 100. During the 95th Congress, Congressmen Kildee and Murphy were responsible for proposing or sponsoring 21 of the 34 bills dealing with the prohibition of sexual exploitation of children.
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Some bills were intended to place enhanced criminal penalties for sexual abuse of children in Title 18 of the Criminal Code. Other bills proposed enhanced criminal penalties to be placed as amendments to the Child Abuse Act located in Title 42.

Bills to amend Title 18 subsequently were referred to the Judiciary Committee for consideration. The legislation proposing criminal penalties to amend the Child Abuse Act was referred to the Committee on Education and Labor. While the two Committees worked on a parallel course toward reporting the legislation, considerable debate ensued on whether the proposed federal legislation on sexual abuse should amend the Criminal Code or be placed in the Child Abuse Act.

When hearings were held on proposed legislation before the House Subcommittee on Crime, primary among the issues considered was the potential location of the proposed legislation. Members of the House Subcommittee on Crime, as well as Judiciary Committee members expressed the view that legislation imposing criminal penalties rightfully belonged in Title 18 of the federal Criminal Code. When testimony by the Department of Justice was received at a joint hearing of the Subcommittee and the Select Education Subcommittee, the Justice Department official agreed, stating that Title 18 would be the most appropriate location for the proposed criminal provisions.

Members of the Judiciary Committee continued to espouse this viewpoint on later occasions. First, Judiciary Committee members opposed the Kildee bill, which amended the Child Abuse Prevention and Treatment reauthorization legislation (H.R. 6693) by providing criminal penalties for the sexual abuse of children, when it came to the House floor. At that time, both Representative Conyers, chairperson of the Subcommittee on Crime, and Congressman Railsback forcefully stated their position in support of locating crim-

129. H.R. 3913, 3914, 5326, 5474, 5499, 6351, 6734, 6747, 7254, 7468, 7522, 7834, and 7895 were identical and all proposed amendments to Title 18. These bills were referred to the Judiciary Committee. H.R. Rep. No. 696, supra note 100, at 2.

130. H.R. 4571, 4630, 4631, 5063, 5595, 5960, 6035, 6733, 6746, 6947, 7093, 7521, 7704, 7894, 8009, 8066, 8561, 8765, 9097, 9124 were proposed as amendments to Title 42. They were referred to the Education and Labor Committee.


133. See H.R. Rep. No. 696, supra note 100, at 5.
inal penalties in the Criminal Code.\textsuperscript{134} Second, when the committee met on September 29, 1977, to markup H.R. 8059 as reported from subcommittee with amendments, discussion ensued on Representative Railsback's proposal to tie child abuse funding to state criminal laws on sexual abuse. This proposal was rejected in Committee.\textsuperscript{135} H.R. 6695, the Child Abuse reauthorization bill including all necessary funding, was subsequently approved by the House, but without the imposition of criminal penalties. Criminal provisions were placed instead in Title 18 via the Sexual Exploitation Act (H.R. 8059).\textsuperscript{136}

A similar debate raged in the Senate. Proposals to address sexual exploitation by amending the Child Abuse Act were also introduced in the Senate. One such proposal by Senator Matsunaga, S. 1499,\textsuperscript{137} was essentially identical to the first Senate bill which Senator Roth introduced\textsuperscript{138} to deal with sexual exploitation. The latter attempted to prohibit sale and distribution of materials depicting children engaged in sexually explicit conduct. S. 1499 differed only in two minor respects. It was drafted as an amendment to the Child Abuse Act and had less severe penalties.

On June 13, 1977, the Matsunaga proposal, S. 1499, and two other bills on child sexual exploitation,\textsuperscript{139} were jointly referred to the

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\item[\textsuperscript{134}] Aside from proposing that criminal sanctions against child abuse be placed in the Criminal and not in the Welfare Code, the bills handled by the Subcommittee on Crime could be distinguished by their wording. They all contained a clause making it illegal to deal in the "interstate or foreign" transport of children for sexual purposes and of materials depicting children in sex acts. This phrase was not included in any of the bills proposed to amend Title 42. It appears that Rep. Conyers and his colleagues no longer wanted the problem of sexual abuse of children to be considered merely an intrastate problem. If these bills passed, certain crimes would be within federal jurisdiction. H.R. Rep. No. 696, \textit{supra} note 100, at 1-2.
\item[\textsuperscript{135}] H.R. Rep. No. 696, \textit{supra} note 100, at 10.
\item[\textsuperscript{136}] H.R. 8059 passed the House by a vote of 420-0 on October 25, 1977. That same day, Joint House and Senate Bill 1585, containing provisions identical to those in H.R. 8059 was also passed. This bill superseded H.R. 8059 and became the Protection of Children Against Sexual Exploitation Act. [1977-1978] 1 \textit{Cong. Index} (CCH) 35,034 (Status of House Bills, Nov. 11, 1978). \textit{See also infra} note 13.
\item[\textsuperscript{138}] The Judiciary Committee ultimately chose not to report S. 1011. The decision was based largely upon an opinion from the Department of Justice noting several problems in the bill. The Justice Department opinion focused on: (1) vague definitions of activities that were neither pornographic nor an abuse of children; (2) scope limited only to photographs or films; (3) circumscribed activities limited only to interstate mailings; (4) excessive penalties that would make convictions difficult to obtain; (5) potential unconstitutional prohibition of both obscene and non-obscene materials. S. Rep. No. 438, 95th Cong., 1st Sess. 11-12 (1977). \textit{See supra} note 70.
\item[\textsuperscript{139}] Senator Roth's S. 1011, \textit{see supra} note 138; and the Mathias/Culver bill, S. 1585.
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Subcommittee to Investigate Juvenile Delinquency and the Subcommittee on Criminal Laws and Procedures. On June 16, 1977 the two subcommittees held a joint hearing chaired by Senator Culver. Following testimony by a Justice Department official and two constitutional law professors on June 28, 1977, the Subcommittee to Investigate Juvenile Delinquency reported out by poll, S. 1585 with amendments. The Criminal Law Subcommittee did not consider the legislation and the Subcommittee chair, Senator McClellan, indicated that the Subcommittee would not object to consideration of the Juvenile Delinquency Subcommittee's report by the full Judiciary Committee. Thus, the Matsunaga proposal, to amend the Child Abuse Act by providing criminal penalties for sexual exploitation, died in the Subcommittee to Investigate Juvenile Delinquency. Instead, that Subcommittee reported out S. 1585 which became the Protection of Children Against Sexual Exploitation Act. For this reason the Senate bill extending the Child Abuse Prevention and Treatment Act contained no reference to criminal penalties for the sexual exploitation of children.

The Child Abuse Act amendments as enacted had several purposes. First, they authorized the Act for five additional years, through fiscal year ending September 30, 1982. Second, they

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141. Id.
142. Id. at 5.
143. Id.
144. Id. at 13.
145. See generally S. Rep. No. 167, supra note 120. The proposed "Opportunity for Adoption Act" was first introduced during the 94th Congress. Hearings were held on an earlier version of this bill in July 1975 by the former Subcommittee on Children and Youth of the Committee on Labor and Public Welfare (the predecessor to the Committee on Human Resources). Id. at 25.
146. The Subcommittee held hearings on April 4 on the proposed "Opportunities for Adoption Act of 1977" and on April 6 and 7 on renewal of the Child Abuse Prevention and Treatment Act. Id. at 15.
148. The bill authorized $25 million for fiscal year 1978, which was the same amount authorized under the prior law for the 1977 fiscal year. The bill also made modest increases in authorizations for the next four years, i.e. $27.5 million for fiscal year 1979, and $30 million for fiscal years 1980, 1981 and 1982, respectively. H.R. Rep. No. 609, 95th Cong., 1st Sess. 1 (1977).

At the present time, legislation is pending to reauthorize the Act. Both the House (H.R. 1904) and Senate (S. 1003) introduced re-authorization legislation during the 98th Congress. This legislation would extend and amend provisions of the act. In its present form, which passed the House on February 2, 1984, by a vote of 396 to 4, the bill authorizes continued
amended the Act by the addition of a number of provisions, including: (1) placing the responsibility on the National Center on Child Abuse and Neglect [NCCAN] for dissemination of materials it compiles and publishes on research and training; (2) the requirement that the Secretary of Health and Human Services establish research priorities for the child abuse effort; (3) the expansion of the federal definition of child abuse; (4) the extension of protection against charges of abuse and neglect to individuals who, in accordance with their religious tenets, rely on nonmedical healing for their children; (5) the provision of federal assistance to ongoing service programs for child abuse prevention and treatment in place of the prior restriction on the use of the funds to demonstration projects; and, (6) an increase in the percentage of appropriated funds allocated to the states for assisting state child abuse prevention and treatment efforts from 20 percent to 30 percent.149

The most significant of these amendments in terms of juvenile prostitution was the expansion of the federal definition of child abuse and neglect. Specifically, the definition was amended to include sexual exploitation. By P.L. 95-266, Congress amended the Child Abuse Act to expand the definition of sexual abuse by the insertion of the phrase “or exploitation.”150 Following this amendment, the definition of child abuse and neglect read:

the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State in question, by a person who is responsible for the child’s welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby. . . .151

In a later subsection of the Act authorizing special state sexual abuse programs, it became clear that prostitution was one of the forms of

149. Id. at 1-2.
151. Id. (emphasis added). The amendments also altered the definition in two other respects. After the term “age eighteen,” the phrase was inserted “or the age specified by the child protection law of the State in question.” Also, as mentioned in the text supra, the definition was amended to protect certain individuals, such as Christian Scientists, from neglect for their reliance on a nonmedical system of healing for their children.
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sexual exploitation specifically addressed. Unfortunately, when the act was reauthorized by the 97th Congress, this specific authorization section was deleted. For a short time, then, the term "sexual exploitation" was left undefined in federal child abuse legislation. However, the current Administration recently issued new child abuse regulations. These regulations make specific reference to juvenile prostitution as a form of sexual exploitation. Final rules issued by the Department of Health and Human Services on January 26, 1983, state that for states to be eligible for funds under the Child Abuse Act, the statutory definition of child abuse in their mandatory reporting law must include the term "sexual exploitation." That term is clearly defined in these rules to encompass "allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare." The issuance of these new regulations encourages states to address sexual exploitation, specifically defined to encompass juvenile prostitution.

C. Runaway and Homeless Youth Act

A third piece of federal legislation which addresses the problem of juvenile prostitution is the Juvenile Justice and Delinquency Prevention Act of 1974. Included as Title III of the Act is the Runaway and Homeless Youth Act [hereinafter RHYA]. The RHYA

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152. The definition was contained in the section authorizing special state grants pertaining to sexual abuse. 42 U.S.C. § 5104(b)(3)(A) (1977). As used in this subsection, the term "sexual abuse" included:

- the obscene or pornographic photographing, filming, or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution, or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby...

(emphasis added). Id.

153. Omnibus Reconciliation Act of 1981, Title VI, ch. 7 §§ 609, 610. For further discussion of the history of this definition, see American Bar Association, Child Sexual Exploitation: Background and Legal Analysis (monograph by the National Legal Resource Center for Child Advocacy and Protection) (April 1983), at 17-19 [hereinafter cited as ABA, Sexual Exploitation Monograph, 2d ed.].


155. Id.


157. The Act created the Office of Juvenile Justice and Delinquency Prevention within LEAA to coordinate all federal juvenile justice programs. Programs funded under Title III of the Act were to be administered by the Department of Health and Human Services, Office of
authorized the Secretary of Health, Education and Welfare (now the Secretary of Health and Human Services) to provide assistance to local groups to operate temporary shelter care facilities for runaways.\textsuperscript{158}

It is estimated that approximately 1 million young people run away from home each year.\textsuperscript{159} Many of these youths turn to theft, robbery or the sale of drugs in order to support themselves during their runaway episodes.\textsuperscript{160} A significant percentage of these juvenile runaways, both male and female, turn to prostitution. Although exact figures are unknown, studies indicate that the number of runaways who become involved in prostitution varies from between 10 to 90%.\textsuperscript{161}

The RHYA authorized the availability of grants for the establishment or maintenance of state, local and nonprofit runaway houses.\textsuperscript{162} To qualify for federal funding a runaway house must meet several requirements. It must: (1) be located in an area accessible to such youth; (2) have a maximum capacity of no more than 20 children with an adequate staff-child ratio; (3) develop adequate Youth Development. S. Rep. No. 165, 95th Cong., 1st Sess. 30-31 (1977); H.R. Rep. No. 946, 96th Cong., 1st Sess. 15 (1980).

\textsuperscript{158} Runaways are also dealt with by the legislation as a whole, which addresses juvenile court jurisdiction. The Act defines runaways as juveniles who have left home without permission of their parents or guardians. Juvenile Justice Delinquency Prevention Act of 1974 § 312(a), 42 U.S.C. § 5712 (Supp. 1975).

\textsuperscript{159} S. Rep. No. 165, supra note 157, at 22.

\textsuperscript{160} Id. at 23.

\textsuperscript{161} Research reveals that significant numbers of juvenile prostitutes are runaways. Prior studies suggest that from 75 to 100\% of adolescent female prostitutes are runaways (James, Entrance, supra note 4, at 51; Enablers Report, supra note 4 at 22, 28), and from 42 to 67\% of adolescent male prostitutes are runaways (Huckleberry Report, supra note 4 at 27; URSA Report, supra note 4, at 85). On the other hand, knowledge is more limited on the percentage of runaways who turn to prostitution. Various unsubstantiated estimates have been suggested, ranging from 10 to 90\%. See U.S. General Accounting Office, Report to the Chairman, Subcommittee on Select Education, House Committee on Education and Labor, Pub. No. HRD-82-64, Sexual Exploitation of Children—A Problem of Unknown Magnitude, at 46 (April 20, 1982) [hereinafter cited as GAO Report]. See Problems of Runaway Youth, 1982: Hearings Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. 50-51 (1982) (testimony of Prof. D. Kelly Weisberg) [hereinafter cited as Hearings on Runaway Youth].

\textsuperscript{162} Priority among applicants is given to nonprofit private organizations or institutions which have had past experience in dealing with runaway or otherwise homeless youths. The size of grants to an organization is to be determined by the number of such youths in the community and the availability of services. 42 U.S.C. § 5711 (Supp. 1981). As defined by the act, the runaway center is “a locally controlled facility providing temporary shelter, and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless youth.” Runaway Youth Act, 42 U.S.C. § 5712(a) (Supp. 1981). The term “runaway center” replaced the former “runaway house” in the 1980 Amendments to the Act. Juvenile Justice Amendments of 1980, Pub. L. No. 96-509, 94 Stat. 2750 (1980).
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plans for contacting the child's parents or relatives and assuring the safe return of the child, for contacting local government officials, for providing other appropriate alternative living arrangements; (4) develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, and welfare personnel, and the return of runaway youths from correctional institutions; (5) develop an adequate plan for aftercare counseling of youths and their parents; (6) keep adequate statistical records profiling the children and their parents while assuring the confidentiality of these records; and, (7) submit annual reports and budget estimates to the Secretary of Health and Human Services.\footnote{163}

In contrast to halfway houses, runaway facilities shelter youths on a short-term rather than a long-term basis. Their primary function is to provide a place where runaways can find immediate assistance which includes housing, medical care and counseling.\footnote{164} Once a resident of the runaway shelter, the youth is encouraged to contact home and to reestablish a permanent living arrangement.\footnote{165} The shelters are also equipped to provide aftercare counseling for both the runaway and the youth's family after the runaway has moved to permanent living facilities, whether these facilities are the youth's own home or independent living arrangements.\footnote{166} Community services, such as medical and psychological services, are often available to the clients of the runaway houses. Although these runaway shelters primarily serve runaway youths, many shelters frequently serve juvenile prostitutes as well.\footnote{167}

In 1980 Congress re-enacted the Runaway Youth Act and


164. 1977 U.S. CODE CONG. & AD. NEWS 2565.

165. The runaway shelter must contact the child's parents, if such action is required by state law, and assure the safe return of the child according to the best interests of the child. 42 U.S.C. § 5712(b)(3) (Supp. 1981).

166. S. REP. No. 165, \textit{supra} note 157, at 21. Aftercare counseling is to be provided to runaway youths and their parents within the state as well as to those youths who are returned to their home out-of-state. 42 U.S.C. § 5712(b)(5) (Supp. 1981).

167. The GAO study reveals that some shelters exclusively serve juvenile prostitutes. Three such federally-funded shelters cited by the study include: New Bridge in Minneapolis, Minnesota, Chrysalis in Denver, Colorado, and Crossover in Milwaukee, Wisconsin. GAO Report, at 18-20. (New Bridge has ceased operation since the GAO study). In addition, juvenile prostitutes also are included among youths generally who use runaway shelters. The largest shelter which serves runaways, prostitutes and other troubled youths, is Covenant House in New York City serving over 10,000 youths annually. GAO Report, \textit{supra} note 161, at 20. For more detailed information on resources available to juvenile prostitutes nationwide, see generally URSA, \textbf{RESOURCE MANUAL}, \textit{supra} note 87. See also \textit{infra} text accompanying notes 325 to 335.}
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broadened its scope. The Act was re-named "Runaway and Homeless Youth Act." The amendment constituted recognition of the fact that many runaways do not leave home of their own volition; many youth are "throwaways" rather than runaways. These "throwaways" leave home because their families have thrown them out or disintegrated. Still other youths leave home to escape physical or sexual abuse.

In addition, the 1980 amendments clarified the requirement that services provided by the shelters be available to the families of runaway and homeless youths as well as to the youths themselves. Also, program authorities were added for the development of model programs designed to assist chronic runaways. As initially enacted in 1973, the Act authorized appropriations of ten million dollars specifically for the runaway programs for fiscal years 1975, 1976, and 1977. In 1977 the Act was re-authorized for three additional years by adding provisions authorizing appropriations at the same level for fiscal years 1978, 1979 and 1980.

The 1980 legislation extended the Juvenile Justice and Delinquency Prevention Act, including the Runaway and Homeless Youth Act, for four additional years. The legislation authorized appropriations for the Act for the same period, 1981-1984, increasing the amount to twenty-five million dollars per year. However, considerable controversy ensued regarding the appropriation of funds.

169. The Act was amended to "reflect the reality that many youths who need assistance are involuntarily homeless." S. REP. No. 165, supra note 157, at 82.
170. See James, Entrance, supra note 4, at 48; Enablers Report, supra note 4, at 22, 23; Huckleberry Report, supra note 4, at 12; URSA Report, supra note 4, at 78.
172. Under the Grants Program, supplemental grants are to be provided to "runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designated to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as a result of an adjudication." 42 U.S.C. § 5711 (Supp. 1981).
174. Juvenile Justice Amendments of 1977, Pub. L. No. 95-115, 91 Stat. 1048 (1977). In 1977 H.R. 6111 was the primary House bill, incorporating Administration amendments, as well as provisions from H.R. 1137 (which proposed an additional focus on learning disabled children who became involved in the juvenile justice system). Constituting a bipartisan effort, H.R. 6111 was reported unanimously to the House by the Committee on Education and Labor on May 19, 1977. H.R. 6111 was considered and passed by the House by a vote of 401 to 5. On October 3, 1977, H.R. 6111, the Juvenile Justice Amendments of 1977, was signed by President Carter. H.R. REP. No. 946, supra note 157.
175. H.R. REP. No. 946, supra note 157, at 11-12.
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Although Congress originally authorized appropriations for 1975-77, Congress faced strong opposition from the Ford Administration, which reduced the appropriation level. In fiscal year 1980 and 1981, only eleven million dollars was actually appropriated. The Reagan Administration continued this opposition. In 1982 the Administration proposed cancelling the legislation and proposed the inclusion of the program in the Social Services Block Grant. This proposal would have delegated the problem of runaway youths to the individual state governments.

Congressional resistance to the Administration proposal produced two results. First, Congress refused to include RHYA in the block grant. Second, the fiscal year 1982 Continuing Resolution maintained the program at eleven million dollars for one additional year. However, for fiscal year 1983, the Administration proposed to reduce funding for the runaway youth program to seven million dollars, or to reduce prior funding by thirty-six percent. Further, the Administration proposal included once again the delegation of the runaway program in 1984 to the states as part of the “new federalism” initiative. Hearings were held on these proposals in July 1982. After considerable delay and debate, Congress appropriated eighteen million dollars to carry out the RHYA.

D. Missing Children Act

A fourth piece of federal legislation which indirectly addresses the problem of runaway prostitutes was passed recently by Congress and signed into law. The Missing Children Bill was introduced in the 97th Congress to address the subject of missing persons, especially missing children. The existence of large numbers of missing children first came to public attention in 1981. Several well-publicized

177. S. REP. No. 165, supra note 157, at 59.
179. Id.
180. Id. at 140.
181. Id.
182. See Hearings on Runaway Youth, supra note 161.
183. H. REP. No. 914, 97th Cong., 2d Sess. 24 (1982). This is still less than the $25 million per year authorized in 1980.
185. “Roughly 50,000 children disappear from their families each year, and a majority of them never return home,” stated Rep. Peter Rodino (D.-N.J.), Chairman of the House Judiciary Committee, and a supporter of the legislation. Legislative Activities, House of Representatives, Custody—Missing Children, 8 FAM. L. REP. (BNA) 2657 (September 7, 1982).
cized murders of children previously reported missing\textsuperscript{187} spurred national interest in this problem.

The purpose of the proposed legislation was to facilitate the establishment of a special national clearinghouse of information to identify deceased persons and to help locate missing persons, especially missing children. Congress accomplished this goal by amending Section 534 of Title 28 of the United States Code,\textsuperscript{188} to extend the Federal Bureau of Investigation's authority regarding the National Crime Information Center (NCIC). Through the NCIC established in 1967, the FBI collects and records data to assist in law enforcement. The NCIC, created under the authority granted to the Attorney General, acquires, collects, classifies and preserves identification, criminal identification, and other records and provides this information to authorized federal, state and local officials.\textsuperscript{189}

Two new tasks were imposed on the Justice Department over and above those tasks previously mandated by Section 534.\textsuperscript{190} The first new task was to acquire, collect, classify and preserve information which would assist in the identification, specifically, of deceased individuals, as well as in the location of missing persons. Second, the legislation would facilitate intergovernmental cooperation by requiring the Justice Department to exchange this specific identifying information with state and local governments.

In May 1968, one year after the establishment of NCIC, the NCIC Advisory Policy Board appointed a subcommittee to develop classifications of missing persons. At the 1969 Advisory Policy meeting, the subcommittee recommended two categories of persons who could be included in a special file on missing persons: individuals under 18 years of age, and individuals over 18 years of age who suffer from senility or amnesia, who are mentally retarded or disturbed, or whose disappearance was not voluntary.\textsuperscript{191} The suggested categories

\textsuperscript{187} Cases which attracted considerable notoriety involved the twenty-nine black children murdered in Atlanta and five-year-old Adam Walsh in Hollywood, Florida.

\textsuperscript{188} 28 U.S.C. § 534 (1982) as amended. The section previously was entitled "Acquisition, preservation, and exchange of identification records; appointment of officials." The new title is "Acquisition, preservation, and exchange of identification records and information; appointment of officials." The new title illustrates the addition to the data base of information, rather than the inclusion merely of official crime records.


\textsuperscript{190} The function of acquiring, collection, classifying and preserving identification records was transferred to the Attorney General by Reorg. Plan No. 2 of 1950, § 1, 64 Stat. 1261 (eff. May 24, 1950) (codified at 28 U.S.C. § 509).

\textsuperscript{191} S. Rep. No. 583, 97th Cong., 2d Sess. 3 (1982).
ries were expanded to include other groups of missing persons. Runaways would have been included under a new proposed category.\textsuperscript{192}

While still formulating policy, in 1973 the NCIC Advisory Policy Board suggested, rather than create a separate missing person locator file, that the missing persons file be placed in the existent Wanted Persons file. The FBI, however, recommended against integrating these files.\textsuperscript{193} Two years later, in 1975, the missing persons file classification finally became a reality. The file constitutes only a small percentage of the current NCIC computer databank—less than .3 percent.\textsuperscript{194} However, the creation of the classification was important in providing, for the first time, a data base on missing juveniles. Since the establishment of the file classification in 1975, workers have entered approximately 780,000 missing persons' records into the national file.\textsuperscript{195}

Despite the existence of this file since 1975, several factors illuminated the need for additional federal legislation. First, few of the total number of children or adults actually missing were ever entered into the system. Although accurate statistics for missing children, including runaways, are unavailable, the Department of Health and Human Services estimates that 1.8 million children are missing from their homes each year.\textsuperscript{196} However, as of April 1, 1982, only approximately 24,000 persons, adults and juveniles, were listed on the NCIC computer.\textsuperscript{197}

A second problem giving rise to the need for federal legislation was the underutilization of the current system by state and local law enforcement agencies. Although estimates of the degree of underutilization varied, a survey conducted by the Subcommittee of Investigations and Oversight of the Senate Labor and Human Resources Committee showed that only ten to fourteen percent of the missing

\textsuperscript{192} The suggested categories specifically included persons who are missing and declared emancipated by the laws of the state of residence. \textit{Id.}

\textsuperscript{193} The FBI legal staff made several recommendations in response: (1) any missing person file should be a separate file, (2) the file should be an index to missing persons only and not persons for whom an arrest warrant is outstanding, (3) each missing person file record should be based upon written documentation in the possession of the agency entering the file, (4) persons to be included should be only those under noncriminal legal disability as follows: (a) unemancipated juveniles, (b) persons legally adjudicated as under legal disability, (c) persons determined to be under real and dangerous physical disability, and (5) that the file must not abridge the rights of privacy. \textit{Id.} at 4.

\textsuperscript{194} \textit{Id.}

\textsuperscript{195} \textit{Id.}

\textsuperscript{196} \textit{Id.}

\textsuperscript{197} \textit{Id.}
children had been reported to the NCIC missing persons file. Many police departments do not regularly use the file to list children as missing. Several reasons have been suggested for the reluctance of local police departments to enter missing children on the NCIC system. These include: (1) a feeling that missing children are a “domestic dispute” best handled on the local level, (2) a lack of awareness about the availability of the system, and (3) a reluctance to use limited manpower to update the NCIC files periodically.

As a result of increasing activism by children’s rights groups and law enforcement groups, demands were made for the federal government to play a larger role in the search for missing children. The public manifested concern at a time when the press and the public were devoting increased attention to runaways and their vulnerability to sexual exploitation. In fact a joint statement by several lobbying groups recognized this factor as contributing to the need for assistance in locating missing youths.

The Missing Children Bill is based on S. 1701 and H.R. 6976, two bills among several pieces of legislation introduced on this subject in the 97th Congress. From June 1981 to August 1982, numerous bills were introduced in both the House and the Senate, all seeking to amend Section 534 of Title 28. The primary sponsors of the legislation were Senator Paula Hawkins (R-Fla.) and Congressman Paul Simon (D-Ill.). Hawkins and Simon introduced legislation in Congress at approximately the same time. Congressman Simon introduced H.R. 3781 in the House on June 3, 1981. H.R. 3781 was referred to the House Committee on the Judiciary along with:


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with later bills on missing persons introduced that session in the House of Representatives.\textsuperscript{205} Hearings were held on H.R. 3781 in the House on November 18, 1981.\textsuperscript{206} Senator Hawkins introduced S. 1355 in the Senate on June 11, 1981.\textsuperscript{207} S. 1355 was referred to the Senate Committee on the Judiciary.\textsuperscript{208}

In successive months both Senator Hawkins and Congressman Simon introduced further legislation on the subject of missing children. On October 5, 1981, Senator Hawkins introduced S. 1701\textsuperscript{209} and Congressman Simon introduced H.R. 6976 on August 11, 1982. Although reflecting the same purpose as the legislation originally introduced, S. 1701 and H.R. 6976 were each different versions of the earlier bills, S. 1355 and H.R. 3781 respectively.\textsuperscript{210} Both bills were referred to the Committee of the Judiciary of their respective houses.\textsuperscript{211} In the Senate, hearings were held on April 1, 1982.\textsuperscript{212} The Judiciary Committee reported out S. 1701 as amended on July 29, 1982.\textsuperscript{213}

S. 1701, the bill chosen by the Senate Judiciary Committee, differed from S. 1355 in several respects. First, the two bills defined differently the time delay which would trigger federal assistance in cases, specifically, of deceased persons.\textsuperscript{214} Second, the two bills differed in their definition of the term “missing person.” S. 1355, referring to “any missing child,” classified into four categories the particular type of child subject to the legal protection of the new identification measures as one who (1) has not attained seventeen years of age, (2) does not have a previous history of running away, (3) on the basis of available evidence, is not the victim of an abduction by a parent, and (4) has been missing for at least forty-eight

\textsuperscript{205} Id.


\textsuperscript{208} Id.


\textsuperscript{210} For more information on the differences between these two pieces of legislation, see infra notes 214-17 and accompanying text.

\textsuperscript{211} S. 1701 was referred to the Senate Judiciary Committee on October 5, 1981. 127 CONG. REC. 11,080 (1981). H.R. 6976 was referred to the House Judiciary Committee on August 11, 1982. 128 CONG. REC. 5,757 (1982).


\textsuperscript{213} 128 CONG. REC. 12,279 (1982); see S. REP. No. 583, 97th Cong., 2d Sess. (1982).

\textsuperscript{214} S. 1355 identified the period as thirty days after the date of death of the individual involved. S. 1701 specified instead “fifteen days after the date of discovery of the deceased individual.”
Thus, S. 1355 specifically excluded from the protected ambit of the proposed federal law those juveniles with a history of running away.

S. 1701 was not quite as restrictive. S. 1701, referring to "any missing person," defined differently the four classifications of protected persons. These included any person who (1) is under proven physical or mental disability making the person a danger to himself or others, (2) is in the company of another person under circumstances indicating that his physical safety is in danger, (3) is missing under circumstances indicating that the disappearance was not voluntary, or (4) is unemancipated as defined by the laws of his state of residence. Thus, missing children as well as missing persons were protected; a 48 hour wait was not required prior to initiation of identification procedures; and, in addition, unlike S. 1355, S. 1701 did not specifically exclude chronic runaways. Instead, S. 1701 provided that those youths who left home involuntarily would be appropriate subjects for federal assistance. Although this was an improvement over S. 1355, it still excluded many runaways since all runaways, except those who are throwaways, leave home voluntarily. Thus, as originally proposed, S. 1701 offered protection to only a small fraction of the runaway population.

In choosing S. 1701 as its representative bill, the Committee on the Judiciary made several amendments before reporting the bill. First, the Committee deleted the 15 day time period required after discovery of a deceased individual before triggering federal identification measures. Identification measures would be utilized after the discovery of any deceased individual who had not been identified. In addition, the Committee added a broader definition of "missing person." Rather than limit the definition to the four categories originally proposed, the Committee inserted more expansive phraseology. The Committee added the phrase "including but not
limited to. . ." to designate that even those missing persons who did not fall within the specified categories also would be subject to identification assistance procedures. Finally, the Committee added an additional requirement to be fulfilled prior to the initiation of federal identification measures. In order to use the clearinghouse to help locate unemancipated minors, such minors' parents, legal guardians or next of kin must first report the missing youths to the appropriate law enforcement agency with jurisdiction to investigate the matter. The parent, guardian or next of kin could then directly request the FBI to make an entry into the NCIC. After thus amending S. 1701 and reporting it out of Committee, the bill was cleared for floor action. S. 1701 as amended passed the Senate on a voice vote on September 23, 1982.

Meanwhile, the Committee on the Judiciary in the House of Representatives was considering House legislation on Missing Children. Representative Simon (D.-Ill.) introduced two of these bills, H.R. 3781 and H.R. 6976. H.R. 3781, introduced on June 3, 1981, was the first legislation before Congress; H.R. 6976 was introduced almost one year later on August 11, 1982. Both bills proposed to amend Section 534, of Title 28 and were subsequently referred to the Committee on the Judiciary. H.R. 6976 was selected as the House version of the Missing Children Act. It passed the House and was then sent to the Senate Judiciary Committee on September 22, 1982.

After consideration by the Senate Judiciary Committee, H.R. 6976 was passed as amended by a voice vote on the Senate floor on September 28, 1982. However, the House rejected the Senate amendment on September 29, 1982, and both Houses appointed conference to meet jointly in order to settle the remaining issue which blocked passage of the Missing Children Act. The involvement of the FBI in the process of entering missing persons into the NCIC computer was the final point of contention.

220. See supra note 218.
221. The Committee added this language in proposed Sec. 2(a)(3)(D). See S. 1701, supra note 218; 128 Cong. Rec. 12,077 (1982).
222. S. 1701, supra note 218; 128 Cong. Rec. 12,081.
226. 128 Cong. Rec. 11,998 (1982).
Primarily influenced by a letter of September 29, 1982, from FBI Director William H. Webster, the Joint Conference reached a compromise. Director Webster expressed his preference for H.R. 6976, because S. 1701 would cause procedural problems for the FBI. S. 1701 required the FBI to enter into the computer information regarding missing persons upon the direct request of that individual’s parent, legal guardian or next of kin. This procedure bypassed the local or state law enforcement agency empowered to investigate the disappearance contrary to FBI policy.\(^\text{228}\)

Based upon Director Webster’s assurances of FBI cooperation,\(^\text{229}\) a compromise to the S. 1701 requirement was reached. Parents, guardians and next of kin could request confirmation of a data entry. In the event that parents, legal guardians or next of kin of missing persons, including unemancipated minors as defined by the jurisdiction of their disappearance, requested confirmation that the identity information regarding that individual was entered into the computer, the FBI was authorized to: 1) verify such entry, and, 2) enter such information if the appropriate State or local law enforcement agency refused to enter the missing child in the NCIC system.\(^\text{230}\) The FBI would enter data upon the direct request of a parent or guardian only in cases where local police failed to enter such data. After being passed by both Houses, H.R. 6976 as amended, was signed by the President on October 12, 1982.\(^\text{231}\)

As enacted, H.R. 6976 contains several differences from the bill previously approved by the Senate (S. 1701). Two of these differences have important implications for identification of runaways. Whereas S. 1701 listed specific categories of missing persons who

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\(^{230}\) Id. at 8,219.

\(^{231}\) 18 WEEKLY COMP. PREs. DOC. 1,324 (Oct. 12, 1982). Legislation recently proposed by Senator Specter (R-Pa.) would improve efforts to locate missing children. S. 2014, introduced by Senator Specter on October 27, 1983, would amend the Juvenile Justice and Delinquency Prevention Act by taking specific action to aid efforts to locate missing children. The bill calls for an administrator to establish a national toll-free hot line for information on missing children; to establish a national resource center and clearinghouse to assist state and local governments, agencies, and individuals; to coordinate all federally-funded programs involving missing children; to conduct studies and publish statistics on missing children; and to publish annual summaries of research in the area. An advisory board on missing children would aid in coordinating these activities and establishing priorities for research programs. Under this bill, programs would cover children under 14 and also minors under 18 when there is a suspicion of kidnapping. Hearings on the proposed legislation began in the Juvenile Justice Subcommittee of the Judiciary Committee on February 7, 1984.
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triggered identification measures, H.R. 6976 as enacted contains an expansive definition instead of lists of specifics. H.R. 6976 authorized the Justice Department to gather information to assist in the location of "any missing person (including an unemancipated person as defined by the laws of the place of residence of such person)."\textsuperscript{232} The implication of this difference for runaways becomes readily apparent. No longer excluded are those persons who are missing under circumstances indicating that their disappearance was voluntary. Thus, all runaways are now eligible for identification assistance measures.

In addition, H.R. 6976, as enacted, also facilitates parental involvement in reporting. Although not as permissive as the parental access provision of S. 1701 allowing entries to be made upon parental request, the new legislation does authorize some degree of parental involvement with federal authorities. H.R. 6976 as enacted guarantees to parents the right to FBI confirmation that a missing child has been entered by local law enforcement agencies in the national computerized system. In the event that local law enforcement authorities reveal any reluctance to investigate reports of runaways, parents are able to request directly that the FBI enter the missing child in the data bank. Not only may this provision lessen parental trauma and helplessness, but also it may facilitate more rapid location of missing children, particularly those runaways who travel interstate.

The establishment of such a clearinghouse should better equip law enforcement officials to identify and find missing and runaway children and to return them to their parents. Particularly important is the ability of such a nationwide clearinghouse to enable law enforcement to locate runaways more promptly in order to intervene before such youths either turn to prostitution or else become more entrenched in the occupation.

\textsuperscript{232} H.R. 6976, 97th Cong., 1st Sess. (1982) (emphasis added). Conditions which lead to emancipation of minors are defined by state statute. For example, the California Emancipation of Minors Act [\textsc{Cal. Civi. Code} §§ 60-79\textfrac{1}{2} (West 1982)] provides that an emancipated minor is one between the ages of 14 and 18 who has entered into a valid marriage, is on active duty in any of the armed services, or has received a declaration of emancipation. \textsc{Cal. Civi. Code} § 62 (West 1982). A minor may petition the superior court in the county of his residence for a declaration of emancipation. The petition must verify that he or she is at least 14 years of age, voluntarily lives apart from his or her parents or legal guardian with their consent, is managing his or her own finances, and has a legitimate source of income. \textsc{Cal. Civi. Code} § 64 (West 1982). If the petition of emancipation is sustained, the youth’s emancipated status is recorded in the Department of Motor Vehicles’ law enforcement computer network. An emancipation identification card is issued to minors who have filed successfully for such a petition. \textsc{Cal. Civi. Code} § 64(d) (West 1982).
III. STATE LEGISLATION

At the time of the congressional hearings on the protection of children from sexual exploitation in 1977, a range of state statutes addressed the sexual abuse of minors. These statutes were available to prosecutors to punish individuals who engaged in child sexual exploitation, in general, and prostitution with minors, in particular. Statutes prohibited such offenses as: carnal knowledge, statutory rape, indecent liberties, and child molestation. Other state statutes indirectly addressed the sexual conduct underlying juvenile prostitution by prohibiting certain forms of sexual contact between adults and minors, such as incest and sodomy. In many states, statutes which made it an offense to contribute to the delinquency of a minor could also be utilized to prohibit sexual misconduct involving such activities as pimping or patronizing a juvenile.

Still other state statutes addressed juvenile prostitution, again implicitly, by prohibiting the exploitation of children for certain purposes. For example, laws sanctioned the employment of children for illegal or immoral activities. Although not specifically prohibiting the employment of children for sexual activities, these laws were broad enough to permit prosecutions for acts of prostitution with juveniles.

State penal legislation had several limitations in its application to juvenile prostitution. Few statutes envisaged that the prostitute might be a juvenile. Criminal statutes in only a few jurisdictions

234. See, e.g., GA. CODE § 16-6-3 (1982).
240. See, e.g., R.I. GEN. LAWS §§ 11-9-1, 11-9-2 (1981). Such laws prohibit the employment of a child as rope or wire walker, gymnast, wrestler, contortionist, equestrian performer, acrobat; in gathering or picking rags; or collecting cigar stumps, bones or refuse; or begging, or peddling, among other activities. On the application of early child labor laws regarding exhibitions or entertainments by children, see Annot., 72 A.L.R. 141 (1931).
241. See, e.g., OHIO REV. CODE ANN. § 2907.21 (Page 1982) (effective January 1, 1974), (induce or procure a minor under sixteen years of age to engage in sexual activity for hire); PA. CONS. STAT. ANN. § 5902(e)(1)(iii) (Purdon 1982) (effective December 4, 1978) (promoting
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distinguished between participants involved with juvenile, as opposed to adult, prostitutes. Other statutes were discriminatory on their face, defining prostitution in gender-based terms to apply only to sexual acts with females. These statutes failed to prohibit prostitution involving juvenile males. Still other statutes prohibited sexual misconduct with youths of only certain ages. These jurisdictions failed to proscribe sexual acts (other than statutory rape), involving older adolescents. Finally, no statutory scheme penalized the exchange of sexual services by a patron with a minor for a fee.

At the time of the federal hearings on child sexual exploitation, few states had legislation directed at juvenile prostitution. However, following the hearings in 1977, a wave of such legislation swept state legislatures. To date, numerous states have enacted new criminal legislation or revised existing legislation to address this social problem.

A. Trends in Criminal Legislation

State statutory treatment of juvenile prostitution now encompasses both criminal and civil statutes. Criminal statutes are directed at punishing the adult actors engaged in acts of prostitution of a child under sixteen); Tex. Penal Code Ann. § 43.05 (Vernon 1974) (causes a person younger than seventeen to commit prostitution); Wash. Rev. Code Ann. § 9A.88.070 (1977). Washington enacted its criminal legislation on juvenile prostitution in 1975, two years before the congressional hearings. The Washington legislation was enacted in response to empirical research on adolescent prostitution within that state. See also James & Meyerding, Early Sexual Experience, supra note 4, and Gray, Turning Out I, supra note 4. James' research was conducted initially in 1970-72, and compared with data from her second study in 1974-75.

ABA, Sexual Exploitation Monograph, supra note 153. Also, research conducted a few years prior to the 1977 sexual exploitation hearings explored and critiqued the several prostitution statutes that were discriminatory on their face. See Rosenbleet and Pariente, The Prostitution of the Criminal Law, 11 Am. Crim. L. Rev. 373, 422-27 (1973) [hereinafter cited as Rosenbleet & Pariente].

242. ABA, Sexual Exploitation Monograph, supra note 153. Also, research conducted a few years prior to the 1977 sexual exploitation hearings explored and critiqued the several prostitution statutes that were discriminatory on their face. See Rosenbleet and Pariente, The Prostitution of the Criminal Law, 11 Am. Crim. L. Rev. 373, 422-27 (1973) [hereinafter cited as Rosenbleet & Pariente].

243. See supra note 236.

244. The few state statutes existing at the time of the 1977 congressional hearings which penalized participants in juvenile prostitution were all directed at pimps rather than patrons. See statutes cited supra note 241.

with juveniles. Civil statutes, in the form of revisions in state child abuse legislation, attempt to aid identification of juveniles engaged in prostitution in order to facilitate prevention and treatment. Several trends are apparent in state statutory treatment of juvenile prostitution.

1. **Age-Based Lines**

One trend in the criminal statutes is the enactment of age-based distinctions. These distinctions reflect the different ages of the juveniles involved in prostitution. Specifically, many statutes enhance the penalties for perpetrators according to the age of the juvenile involved. The targeted perpetrators are pimps, and, in some states, patrons as well. Under statutory schemes with age-based lines, pimps and patrons of younger prostitutes are punished more severely than those same persons involved with older prostitutes.

Some statutes accomplish this objective of enhancement of penalties by proscribing prostitution offenses with, specifically, "minors." In these states, penalties for adult participants in prostitution vary according to the age of majority for juveniles. Other states have enacted age-based distinctions by the addition to their penal codes of an offense incorporating various degrees—the degree determined by the age of the juvenile. In Washington, for example, the offense of promoting prostitution is a felony of the first degree if the prostitute is under 18 years old. In cases where the prostitute is 18 or above, the Washington penal code classifies the offense as a second degree felony. The latter offense carries a less severe penalty.

2. **Pimp-Focused**

A second trend in recent legislation is the focus on pimps of

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249. Id. at § 9A.88.080.

250. The offense of promoting prostitution in the first degree is a class B felony in Washington, carrying a maximum penalty of 10 years in prison, or $10,000 fine, or both. Promoting prostitution in the second degree is a class C felony, carrying a maximum penalty of 5 years in prison, or $5,000 fine, or both. Id. at § 9A.20.020.
juvenile prostitutes. These statutes fall into two general types. The first type punishes those individuals who induce minors to become prostitutes. These statutes generally penalize the "promotion" of prostitution. They penalize the range of promotional activities commonly performed by pimps by means of the prohibition of such acts as: "causing," "aiding," or "inducing" a minor to turn to prostitution. The second type of statute focuses on the profit element of pimping. These statutes punish such acts as "deriving support from child prostitution," or "receiving profits derived from prostitution" by juveniles.

Both types of statutes frequently incorporate the age-based distinctions discussed above. Some statutes define a separate offense, such as aggravated promotion, when the pimping activity involves a prostitute either under a specified age, or a minor. Other statutes categorize the offense into several degrees according to the age of the prostitute. Penal codes utilizing this approach often classify promotion of juvenile prostitution as a first degree felony, while promotion of adult prostitution constitutes a felony of the second degree. Other states have adopted a more complicated structure, and have enacted an offense with as many as three or even four degrees. Again, in either the aggravated offense or the two-plus

251. The broadest such statute proscribes the acts of one who "advances, causes, aids, procures, solicits customers, provides persons or premises for, operates house, enterprise or other conduct to aid, facilitate prostitution." Id. at § 9A.88.060(1).
253. MINN. STAT. § 609.323 (1982).
254. In Maine, the offense of aggravated promotion applies when the prostitute is less than eighteen years of age. ME. REV. STAT. ANN. tit. 17-A, § 852 (1983). The offense is a class C felony.
255. MASS. GEN. LAWS ANN. ch. 272, § 4B (West Supp. 1983-84). Massachusetts punishes individuals who knowingly derive total or partial support from the proceeds of a minor's prostitution.
256. See supra notes 249 and 250 and accompanying text.
257. Minnesota penalizes the offense of receiving profit from prostitution when the prostitute is: 1) under sixteen, as well as 2) from sixteen to eighteen, and also, 3) when the prostitute is eighteen years of age and older. The penalty for receiving profits from a juvenile under age sixteen is 5 years, $5,000 fine or both; from a juvenile sixteen to eighteen years of age, 3 years, $3,000 or both; and from an individual eighteen years old or older, 1 year, $1,000 or both. MINN. STAT. § 609.323 (1982).
258. New York penalizes promoting prostitution by a four degree offense. Promoting prostitution of an adult is a class A misdemeanor, carrying a penalty of not more than one year in prison or a fine of not more than $1,000. Promoting the prostitution of an individual less than nineteen years old is a class D felony, carrying a penalty of not more than 7 years in prison or a fine of up to twice the amount gained from the commission of this crime. Promoting the prostitution of an individual less than sixteen is a class C felony, carrying a penalty of not more than 15 years in prison or a fine of up to twice the amount gained from the commission of this crime. Promoting the prostitution of an individual less than eleven years old is a
degree offense, penalties for pimps are enhanced based on the age of the juvenile.

3. **Penalty Enhanced if Force Utilized**

Recent statutes also reflect a legislative awareness of the coercion often used by pimps to induce minors to engage in prostitution. Several states have enacted prohibitions against inducing a juvenile to engage in prostitution through force, threats or intimidation. In some states, the prohibition includes compulsion by means of the use and/or withholding of drugs. Offenses involving coercion carry especially severe penalties in all these jurisdictions.

4. **Patrons**

A fourth trend in recent legislation concerns punishment of the patrons of juvenile prostitutes. Several states have enacted provisions penalizing those individuals who patronize, specifically, juvenile prostitutes. As is true for the offense of "promoting," some of these statutes incorporate age-based distinctions. That is, the lower the age of the juvenile prostitute, the greater the penalty for the patron. Although penalties for patrons are graduated, they tend to

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259. The offenses which the Minnesota code punishes most severely are the offenses of: (1) soliciting, inducing or promoting the prostitution of a juvenile under sixteen, and (2) using force to promote prostitution. Minn. Stat. § 609.322 (1982). Oregon has enacted a special offense as well for compelling prostitution of a youth under eighteen in cases involving force or intimidation. Or. Rev. Stat. § 167.017 (1981). See also Cal. Penal Code § 266(i) (West 1970 & Supp. 1982).


263. See, eg., N.Y. Penal Law §§ 230.02, 230.03, 230.04, 230.05 (McKinney 1980 & Supp. 1983-84), which penalize patronizing in the fourth degree when the prostitute is seventeen or older, patronizing in the third degree when the juvenile is less than seventeen, patronizing in the second degree when the juvenile is less than fourteen years old, and patronizing in the first degree when the juvenile is less than eleven years old.
be less severe than for pimps.\textsuperscript{264} Other states continue the double standard apparent in treatment of adult prostitution and fail to punish patrons of juvenile prostitutes.\textsuperscript{265}

5. **SEVERE SANCTIONS**

Another trend apparent in many state statutes is the severity of penalties meted out to adult actors engaged in acts of juvenile prostitution. The real target of these harsh penalties appears to be the pimp. Severity of punishment is apparent in two ways. First, pimps are punished more severely than patrons of juveniles. Second, pimps of juveniles are subject to more severe sanctions than are pimps of adult prostitutes.

Such penalties reflect legislators’ moral judgments about culpability. The sanctions illustrate the twin views that the individual who induces a juvenile to turn to prostitution is more culpable than the customer of a juvenile, and second, that the pimp of a juvenile is more culpable than the pimp of an adult. These views of culpability are reflected differentially in the legislation. Some states accomplish this result indirectly by punishing pimps but failing to punish patrons.\textsuperscript{266} Other states accomplish this result more directly by legislating higher fines and longer periods of imprisonment for pimps than patrons of juveniles.\textsuperscript{267} Penalties for pimps of juveniles range up to

\textsuperscript{264} But see infra note 268 and accompanying text.

\textsuperscript{265} The Massachusetts child prostitution statutes, for example, include no mention of patrons. See also infra note 266 and accompanying text. For a discussion of the equal protection problems as applied to adult prostitutes, see Rosenbleet and Pariente, supra note 242, at 381-411.

\textsuperscript{266} See, e.g., ALASKA STAT. § 11.66.110 (1978); KY. REV. STAT. ANN. § 529.040 (Baldwin 1981).

\textsuperscript{267} The following chart makes this comparison apparent:
30 years in prison and a $50,000 fine.

This same philosophy of the aggravated culpability of pimps also explains the number of statutes which incorporate gradations in offenses for "promoting" (pimping) adolescent prostitutes. These gradations involving two, three or four degrees generally are not present in the respective jurisdiction's statutory treatment of patrons of juveniles.

Statutes also punish pimps of juveniles much more severely than pimps of adult prostitutes. Thus, for example, in Minnesota, an individual who promotes the prostitution of an adult is subject to a penalty of three years, $3,000 fine or both. However, in that same state, an individual who promotes child prostitution, specifically, prostitution of a juvenile under age 16, is subject to a penalty of 10 years, or $10,000 fine or both. Some states have other stringent provisions when juveniles are involved. For example, one statute precludes probation and suspended sentences for perpetrators.

<table>
<thead>
<tr>
<th>State</th>
<th>Penalty-Pimps</th>
<th>Penalty-Patrons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>&lt;18 yr. prostitute, class C felony</td>
<td>&lt;18 yr. prostitute, class D felony</td>
</tr>
<tr>
<td>Minn.</td>
<td>&lt;16 yr. prostitute, 10 yrs, $10,000 or both</td>
<td>&lt;18 yr. prostitute, 5 yrs, $5,000 or both</td>
</tr>
<tr>
<td>New York</td>
<td>&lt;11 yr. prostitute, class B felony</td>
<td>&lt;11 yr. prostitute, class D felony</td>
</tr>
<tr>
<td></td>
<td>&lt;16 yr. prostitute, class C felony</td>
<td>&lt;14 yr. prostitute, class E felony</td>
</tr>
<tr>
<td></td>
<td>&lt;19 yr. prostitute, class D felony</td>
<td>&lt;17 yr. prostitute, class A misdemeanor</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>&lt;18 yr. prostitute, class D felony</td>
<td>&lt;18 yr. prostitute, class A misdemeanor</td>
</tr>
</tbody>
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273. The Massachusetts statutes proscribing promoting child prostitution and deriving support from child prostitution provide that probation, parole, and suspended sentences are precluded until the defendant has served a mandatory minimum sentence. Mass. Gen. Laws Ann. ch. 272, §§ 4A, 4B (West 1980).
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Such statutes also reflect widely held views of culpability for sexual misconduct with juveniles.

6. Third Parties

Another characteristic common to state statutory treatment of juvenile prostitution concerns the inclusion of third party-custodians. In many jurisdictions third parties, such as parents or guardians, are subject to penalties for roles they play in the prostitution of children or wards.\(^{274}\) Statutes now expressly punish persons who use a position of authority to solicit or induce an individual to practice prostitution,\(^{275}\) who permit a minor under one's custody or control to engage in prostitution,\(^{276}\) or who, by abuse of any position of confidence or authority, procure another person for the purpose of prostitution.\(^{277}\) Other statutes implicitly incorporate such proscriptions by broad statutory designation of perpetrators.\(^{278}\) Such inclusion of third parties reflects an awareness of the influence of parents and additional "significant others" in the entrance into prostitution of some juveniles.

7. Juvenile as Victim

Another trend in recent legislation is the treatment of juveniles as victims rather than criminals. This view of juveniles can be seen in the failure to punish juvenile prostitutes in these recently enacted state criminal statutes. Most statutes simply omit any mention that the juvenile might be subject to sanctions.\(^{279}\) Some state statutes specifically exclude the juveniles involved in prostitution from liabil-

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\(^{274}\) A few criminal codes contained such provisions prior to the wave of legislation in the seventies. Previous legislation derived from the era of the concern with white slave traffic. See, e.g., ALA. CODE § 13-7-3, originally enacted in 1897. This statute was repealed in 1977. ALA. CODE §§ 13A-12-110 - 13A-12-113 (1977).

\(^{275}\) See, e.g., MINN. STAT. § 609.322 (1981). The Minnesota statute proscribes using a position of authority as the basis for sexual exploitation. Sexual exploitation includes prostitution.

\(^{276}\) See, e.g., ILL. REV. STAT. ch. 38, § 11.18 (1979); IND. CODE ANN. § 35-45-4-3 (Burns 1979); MO. ANN. STAT. § 567.030 (Vernon 1979).


\(^{278}\) Both the New York and Washington statutes use the terms "aids" and "facilitates." N.Y. PENAL LAW § 230.15 (McKinney 1980); WASH. REV. CODE ANN. § 9A.88.060 (1977). But see MINN. STAT. § 609.33 (1981) which specifically precludes prosecution of relatives by blood, marriage or adoption, for receiving profit derived from prostitution (the preclusion does not apply to prosecutions for promoting prostitution).

\(^{279}\) Only one recently enacted statute specifically provides for legal consequences incurred by the juvenile prostitute. The Maine statute provides that if the juvenile engaging in prostitution is under 18, the juvenile can be committed to a youth center, mental health facility, or remitted to the parents' custody. ME. REV. STAT. ANN. tit. 15, § 3314 (1981).
Juvenile prostitutes, of course, may be punished under juvenile delinquency statutes. It is significant, however, that the aspect of punishment of the juvenile is absent in the wave of recent legislation. The same view of the juvenile prostitute as victim is also reflected in recently enacted civil statutes. These civil statutes treat juvenile prostitution as a form of child abuse.

8. Runaway Prostitutes

Another significant element of recent legislation is the recognition of the interrelationship between runaway behavior and juvenile prostitution. Several state statutes penalize those individuals who facilitate the transportation of minors for purposes of prostitution. Transportation may include movement into, or through, the jurisdiction. For example, Minnesota defines promoting to include the "transportation of persons for purposes of prostitution from one point within this state to another point either within or without this state, or bringing an individual into this state to aid the prostitution of that individual." Similarly, California recently amended its penal code to prohibit the transportation of juveniles for purposes of prostitution.

9. Defenses

Many statutory schemes make certain defenses inapplicable to some persons prosecuted for involvement in juvenile prostitution. These provisions are intended to facilitate prosecutions of adult perpetrators. Several defenses which are specifically made inapplicable include: (1) the persons involved are members of the same sex; (2) the juvenile did not actually engage in prostitution; (3) the juvenile did not actually engage in prostitution.
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Juvenile previously prostituted,288 and (4) the juvenile consented to the acts of prostitution.289 Such statutes facilitate prosecutions of male patrons of juvenile male prostitutes. Also, they aid in prosecutions of adults in situations where juveniles are willing participants in the sexual acts.

One common defense is the mistake of age defense. Jurisdictions have taken different views toward this defense. Some states provide for a strict liability offense and do not permit the adult to argue ignorance of the juvenile's age.290 However, other states permit this defense. Some states allow the defense in prosecutions of patrons but not pimps.291 Still other states allow the defense for offenses with older juveniles but not younger juveniles.292 In jurisdictions permitting the defense, the defendant's reasonable mistake that the juvenile is above the protected ages will enable the defendant either to (1) escape liability or (2) incur a less severe sanction.

10. EXEMPTIONS

A final trend is the provision for exemptions for some perpetrators. Several statutes accomplish a result similar to a defense by enabling certain defendants to escape liability. For example, Minnesota exempts those related by blood, marriage or adoption from the crime of receiving profit from prostitution.293 This treatment is paradoxical in light of the trend in other states of including such persons as parents or guardians and including them as culpable parties. Some jurisdictions also exempt perpetrators who are similar in age to the juveniles.294 This latter exemption attempts to eliminate prosecutions for mere sexual experimentation among juveniles.

B. Trends in Civil Legislation

Juvenile prostitution is also addressed by state statutory treat-

288. Id.
289. Id.
290. See, e.g., COLO. REV. STAT. § 18-7-407 (Supp. 1983); MONT. CODE ANN. § 45-5-603(b) (1983).
291. See, e.g., MINN. STAT. § 609.325(2) (1982) (mistake of age is no defense to prosecutions under code sections pertaining to promoting prostitution, implying that it is a defense for patronizing sections); N.Y. PENAL LAW § 230.07 (1978) (mistake of age is a defense in prosecutions for patronizing, but not for promoting).
293. MINN. STAT. § 609.323 (1982).
294. New York exempts patrons under 21 years old from the offense of patronizing in the third degree (patronizing a juvenile less than 17 years old), and exempts patrons under 18 from the offense of patronizing in the second degree (patronizing a juvenile less than 14 years old). N.Y. PENAL LAW §§ 230.04, 230.05 (McKinney 1980).
ment of child abuse. All jurisdictions have child abuse and neglect reporting laws which mandate certain professionals to report suspected child abuse to appropriate state agencies. Each state defines the types of abuse which must be reported. "Sexual abuse" is often included in these definitional provisions; however, the term as defined in state laws, until recently, only included sexual contact between child and parent or caretaker. Juvenile prostitution, consisting of sexual contact between a child and a third party which is encouraged by a parent or caretaker, was not reportable.

Since 1978 states have been encouraged to include the term "sexual exploitation," clearly defined to include prostitution, as a form of child abuse which must be reported. To date, fifteen states have revised their mandatory reporting laws to include the term "sexual exploitation" within their definitions of abuse and neglect. Two of these fifteen statutes specifically refer to juvenile prostitution. All these statutes provide for the involvement of child protective agencies in cases of reported juvenile prostitution involving a parent or caretaker.

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296. Encouragement first came in the form of proposed rules issued by the Department of Health and Human Services on May 27, 1980. The proposed rules suggested that in order for states to be eligible for funds under the Child Abuse Prevention and Treatment and Adoption Reform Act, the statutory definition of child abuse in their reporting law would have to include sexual exploitation. ABA, Sexual Exploitation Monograph, (1st ed., 1981), supra note 153, at 17. These proposed rules specifically defined sexual exploitation as, "allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare." 45 Fed. Reg. 35794 (1980) (codified at 45 C.F.R. § 1340.2) cited in id. However, this proposed regulation, intended to implement changes in the original Act necessitated by the 1978 amendments, was never approved. Id. Nevertheless, it may well have served as a motivating force behind revisions in several jurisdictions. Final rules were issued by the Department of Health and Human Services on January 26, 1983. 48 Fed. Reg. 3698 (1983) (codified at 45 C.F.R. § 1340.2). The definition in these rules of sexual exploitation mirrored the proposed 1980 regulation. See supra notes 153 to 155 and accompanying text.


A few additional states include the term "exploitation" of a child, without a sexual reference, in their reporting laws. Statutes which include this term as a reportable condition, or the term "sexual abuse," or which require reporting of the "commission of any sexual act" upon a child could also be construed to require reporting of juvenile prostitution by a parent or caretaker. See ABA, Sexual Exploitation Monograph, 2d ed., supra note 153, at 19.

These civil child abuse statutes reflect views previously noted in the criminal treatment of juvenile prostitution. First, the civil statutes reflect an awareness that parents or guardians occasionally influence the entrance of juveniles into prostitution. Second, these civil statutes reflect the view that the juvenile prostitute is a victim of adult sexual misconduct, rather than a youthful perpetrator of criminal acts.

The several preceding trends in criminal and civil legislation illustrate two themes which underlie recent legislative activity. First, legislation seeks to penalize severely those individuals who engage in sexual exploitation of minors. The second theme, stemming from societal concern with child abuse, focuses on protecting the victim. In this view, the juvenile prostitute is a victim of adult conduct, in need of intervention and protection by the legal system.

IV. LEGAL REALITY AND SOCIAL REALITY

Legislative policy on juvenile prostitution has been formulated only in the past decade. Similarly, social science research on the phenomenon has been conducted only recently. This poses the dilemma that legislation has been enacted largely without the benefit of existent empirical knowledge. The question must be asked whether the new legal policy comports with social reality, that is, “does federal and state legislation adequately address the many dimensions of this complex social problem?” In an attempt to answer this question, the effectiveness of both federal and state legislation will be explored.

A. Federal Legislation and Social Reality

Federal legislation addresses juvenile prostitution by several methods. Summarizing Part II above, federal legislation prohibits the transportation of minors for purposes of prostitution. Second, by amendments to the Child Abuse Act, federal legislation defines juvenile prostitution as a form of child abuse. Third, by providing for the funding of runaway centers, federal legislation addresses the interrelationship between prostitution and runaway behavior. Finally, the Missing Children Act facilitates the identification and location of missing children, and thereby facilitates intervention for

299. See supra text accompanying notes 67 to 118.
300. See supra text accompanying notes 119 to 152.
301. See supra text accompanying notes 156 to 184.
some runaway prostitutes.302

The effectiveness of these laws, however, varies greatly. The federal prohibition of transportation of juveniles for prostitution appears to be only a partially effective response by the criminal justice system. Several problems are apparent in the application of this legislation. First, the effectiveness of the legislation appears to be gender-related. The Mann Act provisions are able to address the interstate aspects of prostitution in cases involving only juvenile females. Because the legislation is directed primarily at pimps, and because only juvenile female prostitutes have pimps who facilitate their transportation into other states, only female prostitution is affected.

It is doubtful whether the legislation has any effect on juvenile male prostitution, because as previously mentioned, research reveals that juvenile male prostitutes do not work for pimps.304 Rather, these youths tend to work for themselves. If juvenile males travel interstate for purposes of prostitution, they do so of their own volition and by means of their own resources. Thus, although facially neutral, the new Mann Act provisions appear to be gender-based in application. Sanctions directed at the transportation of juvenile male prostitutes appear to have only symbolic, rather than real, impact.

However, even in cases involving juvenile females, the Mann Act appears to have limited effectiveness. The disparity between the number of convictions under the Mann Act and the considerable interstate travel involving prostitutes leads to disappointment with the Mann Act's effectiveness. In 1980, prosecutors achieved only four-
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teen convictions, sixteen in 1981 and eight in the first nine months of 1982. 305

Notwithstanding this low number of convictions, social science data suggest that pimps facilitate considerable interstate travel involving juvenile female prostitutes. One study asked fifty-eight juvenile prostitutes where they travelled for work. Sixty percent of the fifty-eight girls named twenty-four states. 306 These prostitutes indicated that the pimp frequently participated in or made the decision to travel. 307 Thus, although the federal legislation is an important tool in the hands of law enforcement, it appears to be utilized effectively in only a small number of cases. 308

Another manner of addressing juvenile prostitution on the federal level is the Child Abuse Prevention and Treatment and Adoption Reform Act. 309 As originally enacted, the Act encourages states to adopt legislation requiring designated individuals to report child abuse. 310 The 1978 amendments to this legislation define sexual exploitation, including juvenile prostitution, as a form of child abuse. 311 Acts of prostitution involving parents or caretakers now

305. Telephone interview with Calvin Shosida, Federal Bureau of Investigation (September 24, 1982). The Federal Bureau of Investigation has investigative jurisdiction over violations of 18 U.S.C. § 2423. Data concerning prosecutions under 18 U.S.C. § 2423 are obtained from monthly reports by United States Attorneys to the Department of Justice. These data are reported by the United States Attorney only by reference to the principal statute involved. The above data are limited to those cases in which 18 U.S.C. § 2423 was the sole or principal violation. Thus, there may have been additional charges filed and dispositions obtained under 18 U.S.C. § 2423 which were reported by United States Attorneys under other statutes and which were not reflected in the Justice Department reporting system. On the method of FBI data collection, see Hearings on Exploitation of Children, supra note 304.

306. Enablers Report, supra note 4, at 78, 80 (extrapolated from data in Table 77). Confirming the existence of the “Minnesota Pipeline” (the name given to the prostitution route between Minnesota and New York), 10 of 44 women in the Enablers study (age 17 or younger) said they had travelled to New York City for business. Id. at 78. A. PALMQUIST AND J. STONE, THE MINNESOTA CONNECTION (1978).

307. Enablers Report, supra note 4, at 82. For 41 prostitutes under 20, 32.6% of the respondents explained the decision to travel as a mutual decision with the pimp; 6.1% said it was the pimp’s decision. Id.

308. One explanation for the few convictions may stem from the difficulties of prosecuting pimps due to the prostitutes’ reluctance to testify against the pimps.


310. See “Child Abuse Act” supra note 309.

311. See supra notes 150 to 152 and accompanying text.
constitute a form of abuse in many jurisdictions which must be reported to appropriate state agencies.

A major shortcoming of the legislation is its limitation to parents and caretakers. Only sexual exploitation perpetrated by parents, caretakers, or persons "responsible for the child's welfare" is a reportable condition. Acts of prostitution promoted by any other family member, or by extrafamilial third parties such as pimps, are outside the ambit of the reporting legislation.

The effectiveness of this provision depends on the extent of parents' or guardians' participation in acts of prostitution involving their children or wards. Occasional accounts of such misconduct do appear in the literature as well as in case law; however, an analysis of available empirical data suggests that parental involvement in juvenile prostitution is not a frequent occurrence.

Evidence on the incidence of parental or caretaker involvement may be deduced from data on the process of entrance into prostitution. These data suggest that the persons who most often facilitate entrance into prostitution for girls are not parents or caretakers, but pimps. Other persons influential in females' involvement in prostitution include women recruiting for a pimp, a madam, other prostitutes, and customers. Data on juvenile males suggest that friends are the persons most influential in their entrance into prostitution.

Such evidence suggests that in only rare cases is the juvenile's entrance into prostitution facilitated by a parent or caretaker.

313. One journalist mentions an account in an article about a runaway center, Covenant House. The center's director of residential services related that a juvenile came to the shelter beaten from head to toe with an extension cord by her mother, who wanted the girl to work the streets. Cited in Hearings on Exploitation of Children, supra note 304, at 43. See also Barclay, Family, supra note 33, at 10-16; MacVicar, Development, supra note 33, at 151-52.
314. See, e.g., State v. Shipp, 93 Wash. 2d 510, 610 P.2d 1322 (1980). In another case, a Kentucky housewife was arrested and convicted of promoting prostitution of minors. She had promoted her own child into prostitution in Louisville and Fort Knox, Kentucky. Cited in Hearings on Exploitation of Children, supra note 304, at 70.

It is possible that more parental involvement occurs in sexual exploitation regarding pornography. See generally Anson, The Last Porno Show, in SEXUAL VICTIMOLOGY OF YOUTH (1980).
315. See supra note 27.
316. In Silbert's study, 20% of these other persons were women recruiting for a pimp or were a madam, 7% were other prostitutes, and 3% were customers. Silbert, Sexual Assault, supra note 4, at 40.
317. Huckleberry research reveals that 80% of juvenile male prostitutes learn about prostitution from friends or other street youths. Huckleberry Report, supra note 4, at 32.
318. In Silbert's study, only 5% of the female prostitutes said a family member introduced them to prostitution. Silbert, Sexual Assault, supra note 4, at 40. The percentage of parents comprising this category of "family member" is unspecified.
This hypothesis is supported further by data which reveal that many adolescent prostitutes learn about prostitution after they run away from home.319 Many youths make the decision to turn to prostitution only after they are on the streets, and in need of money to survive.320 The timing of the youths’ entrance into prostitution is an additional factor suggesting the lack of any significant correlation between parental involvement and juveniles’ entrance into prostitution.321

These two factors (influential persons and the timing of entrance) lead to the tentative conclusion that parental involvement in prostitution is not widespread. Since the incidence of this problem appears to be small, the Child Abuse Act amendments on reporting of sexual exploitation by parents or caretakers appear to have limited utility in the identification of juvenile prostitutes.

This is not to suggest that federal child abuse legislation is totally ineffective in combatting the problem. The legislation’s primary contribution appears to be not identification, but rather prevention, of juvenile prostitution. The objective of the original legislation, to encourage reporting of physical abuse, is an essential tool in the prevention of juvenile prostitution. Physical abuse is one of the primary etiological factors contributing to juvenile prostitution. Not only do significant numbers of both juvenile male and female prostitutes come from abusive family backgrounds, but many prostitutes attribute their running away to such abuse.323 Thus, the federal child abuse legislation, addressing physical abuse, is an important weapon in the prevention of juvenile prostitution.

The third method of addressing juvenile prostitution on the federal level appears to be quite effective. The Runaway and Homeless Youth Act which provides for the funding of nationwide runaway shelters324 helps both adolescent male and female prostitutes who are runaways.

319. See James, Entrance, supra note 4, at 68. See also URSA Report, supra note 4, at 79-81; Huckleberry Report, supra note 4, at 34.
320. Huckleberry Report, supra note 4, at 34.
321. This is not to suggest that parents are not perpetrators of sexual abuse on their children. Rather, it suggests only that few parents engage in this particular form of sexual abuse—the prostitution of their children.
322. See supra notes 12 to 15 and accompanying text.
323. See supra note 21 and accompanying text.
324. The Runaway and Homeless Youth Act, as amended, supports 169 runaway and homeless youth centers in all 50 states, the District of Columbia and Puerto Rico. Hearings on Runaway Youth, supra note 161, at 42. For descriptions of these programs, see Office of Juvenile Justice and Delinquency Prevention, Runaway Youth Program Directory (1979).
Several federally-funded runaway shelters have exemplary programs which address the specific needs of adolescent prostitutes. Three such centers include: Bridge in Boston, The Shelter in Seattle, and Huckleberry House in San Francisco. The Bridge Over Troubled Waters was founded in Boston in 1970 to serve the needs of runaway youths. Located near the Boston Commons which is a setting for juvenile prostitution, the agency offers a broad range of services to runaway youths in general, and specific services for juvenile prostitutes in particular.

Providing shelter for homeless youths is one important service of Bridge. When a runaway approaches the agency, the staff first attempts family reunification. If this is neither possible nor advisable, the agency provides short-term residential care. Another component of the program is a mobile medical van which travels throughout Boston providing medical screening, treatment of simple disorders and follow-up treatment. Venereal disease screening is an important medical service provided to juvenile prostitutes and other sexually active youth.

In addition, Bridge provides crisis intervention, on-going personal counseling, and a 24-hour crisis telephone hotline. Family counseling is utilized whenever possible. Bridge also provides training to enable youths to qualify for the high school graduation certificate. This training is an important service for the many juvenile prostitutes who are high school drop-outs. The agency also recently received funding for a youth employment program.

Seattle's The Shelter also offers services to juvenile prostitutes. The Shelter began in 1973 as a small locally funded agency. After receiving federal funds in 1975, the agency increased staff and services. The Shelter first established an emergency residential facility,
and later implemented an outreach streetwork project. Staffed by social work professionals and ex-street people, this streetwork program called Project START (Street Transition Advocates Resource Team) features an intensive prevention and treatment effort.331

Project START's Judicial Advocates project has implemented an educational program about street life and prostitution in thirty-five city and county schools to increase community awareness and to prevent juveniles from turning to prostitution. In addition, street workers regularly visit sites frequented by street youths and young prostitutes to offer necessary services. The street outreach supervisor receives referrals on youths charged with prostitution from the prosecutor's office and juvenile court. The supervisor, in conjunction with Judicial Advocates, has developed a counseling and educational program for these court-referred youths. To the extent these youths desire to leave prostitution, referrals are made to a specialized employment and training program. In addition, one outreach worker coordinates housing resources for young prostitutes who desire to move away from the streets.332

Huckleberry House in San Francisco also provides services to juvenile prostitutes and runaway youths.333 The agency provides crisis and short-term housing, employment counseling, training and job referrals, medical and legal assistance, educational assistance, food and clothing. The agency also facilitates independent living, out-of-home placements, and family reunification. In addition, youths receive individual counseling in the areas of self-awareness and self-worth, sexuality and sexual identity, substance abuse and peer relationships.

This agency initiated a Sexual Minority Youth Services Project in 1978, and a Sexual Minority Youth Employment Project in 1979, due to the increase in clients involved in prostitution, as well as to the numbers of clients identified as gay or bisexual.334 These two

331. Id. at 6-7; URSA, RESOURCE MANUAL, supra note 87, at 86. The Shelter is located at 1545 - 12th Avenue, South, Seattle, Washington 98144 (206-328-0902); Project START is located at YMCA, 909 - 4th Avenue, Room 610, Seattle, Washington 98104 (206-223-1303).


projects offer special services to those youths who are gay or bisexual. A large number of juvenile prostitutes are included among Huckleberry's clients.\textsuperscript{335}

These and other centers funded by the Runaway Youth Act assist many juvenile prostitutes. Many centers are able to identify and provide specific services needed by these youths, both because of aggressive outreach programs as well as locations in geographically accessible areas.

The Runaway Youth Act furnishes funding which is essential to the operation of these facilities. Federal funds are used for services, staff salaries and to attract additional public and private funding.\textsuperscript{336} The services these facilities provide are necessary to prevent many runaways from turning to prostitution. For youths already involved in prostitution, the services fulfill essential functions, such as providing food and shelter, and thereby decreasing dependence on pimps and patrons. In addition, by means of long-term services such as educational and vocational training, the centers provide the means by which these youths may change their lifestyles and eventually exit from prostitution.

The fourth method of addressing juvenile prostitution on the
federal level is the Missing Children Act. This legislation establishes a special national clearinghouse to facilitate identification of missing children, including runaways. This legislation has potential for helping juvenile prostitutes in several ways. First, it may facilitate location of runaways soon after they have departed from home. Such prompt identification of runaways may prevent some youths from turning to prostitution to meet their survival needs. Identification of those runaway youths who already have entered prostitution may also yield positive outcomes. Intervention by local law enforcement authorities may lead to referrals to social service delivery systems which can facilitate the youth’s exit from the occupation, or at the least, provide the youth with needed services.

Despite its potential, the legislation faces several obstacles in addressing the social reality of juvenile prostitutes. First, the act’s procedure is exceedingly cumbersome. Parents must first approach local law enforcement and wait until they complete investigation. Only after local investigation or refusal to investigate may parents contact the FBI. Parents may not place children’s names in the computer in the first instance since only local authorities may do so: they can only confirm whether local authorities have entered a name. Only in egregious cases in which local authorities refuse to investigate may parents go over the heads of local authorities and request entries by the FBI. This cumbersome and lengthy process requires parents to go back and forth numerous times between local and federal authorities. It places considerable responsibility on parents in a time of stress and frequently results in intense frustration.

Second, this clearinghouse is premised on several assumptions which do not apply to the juvenile prostitute. For this system to work effectively parents must report a child as missing to local law enforcement to commence an investigation which culminates in the entry of data into the national clearinghouse. Many families of juvenile prostitutes, however, do not report their child as missing. Next, familial reunification must be a viable objective, but the families of some of these children have disintegrated as a result of death, separation and divorce. Often runaway prostitutes leave home because of family conflicts or leave because their parents throw them


338. See supra note 9 and accompanying text. In Bracey's study of 32 juvenile female prostitutes, she notes the large number of juveniles who originated from families which disintegrated. In six cases the minor's only parent or guardian left home or died without making adequate provisions for the youth. Bracey, supra note 4, at 40-41.

339. See supra notes 21-23 and accompanying text.
Many juvenile prostitutes originate from abusive home situations. Returning the runaway to such families may not be desirable. Also, families who have rejected youths because of family conflicts are not necessarily promising candidates for family reunification.

The successful functioning of the national clearinghouse depends not only on parental cooperation but also, to some extent, on the cooperation of the juveniles. The juvenile who has been taken into police custody must provide authorities with accurate identifying information, such as name, residence, and birthdate, for example. This is essential in order to match data on the apprehended juvenile with data on a juvenile earlier reported missing. Yet, juvenile prostitutes are especially likely to provide false identification. They are aware they are committing acts which are illegal; they may provide false information to prevent their families from learning of their offenses. Furthermore, some youths may provide false information because they prefer not to return to an abusive family situation.

Data on the incidence of throwaways among runaway prostitutes are limited. One study of juvenile female prostitutes suggests that 11% are throwaways—for 9% the juvenile was thrown out by her parents, and for 2% the juvenile was abandoned when the parent(s) left. Cases of juvenile males who came to New York's runaway center, Covenant House, reveal similar stories. One teenager's family moved out-of-state and refused to tell him their new address. Cited in Hearings on Exploitation of Children, supra note 304, at 53.

All of the programs agree that, for the reasons we have discussed earlier, young prostitutes are among the most difficult of all runaways to work with. They also agree that, by and large, young prostitutes are seldom amenable to family reunification. Young hustlers particularly if they are gay-identified, are often rejected by their families. Others, most notably adolescent female prostitutes, are often from such dysfunctional and abusive families that attempts at reunification would be destructive and might subject the youth to further abuse.

This applies, of course, only to those runaways actually on the streets, not to those missing and deceased juveniles. The latter sometimes may be identified through medical data.

I was sitting in this police station and a cop asks me, ‘What’s your name?’ So I said [to myself] ‘what can I use?’ I used ‘Paul Philip Shannon.’ I looked out the window—you could see out the window—they had the roll-out windows with the bars. I looked out the window and I saw this [sign] ‘Shannon Bail Bondsman Company.’ Then I see the chain link fence at the outside of the windows and it said, ‘Philip Fence Company.’ So that’s where I got my name.

I interview with Larry (conducted by Urban and Rural Systems Associates), August 7, 1980. This is evidenced by the case of a young girl who ran away from her father's home in Philadelphia. She was forced to engage in prostitution at truck stops by a St. Louis man for...
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This is not to suggest that the legislation is of no avail. Rather, it suggests that the Missing Children Act has potential to facilitate the location of only some runaway prostitutes. Specifically, it offers the most hope for identifying those youths 1) who have a parent or parents remaining, 2) whose parent or parents is/are concerned sufficiently about a child's disappearance to report him/her as missing, 3) whose parent or parents desire(s) the youth's return, and 4) who themselves will cooperate with law enforcement officials by providing accurate identifying information.

B. State Legislation and Social Reality

State legislation suffers the same variation in effectiveness as federal legislation in addressing juvenile prostitution. One characteristic of many recent statutes is the use of age-based distinctions. Most statutes with age-based lines differentiate between offenses involving juveniles who are under 16, and those who are 16 and older. Some of these statutes make further distinctions in the 16 and older category, and treat separately those offenses involving juveniles under age 16, aged 16 through 18, and aged 18 or older.

The statutes which define offenses according to juveniles under age 16 appear well tailored to social reality. Although this age may have been incorporated in some statutes because it constitutes the age of consent, it nonetheless comports well with empirical evidence on juvenile prostitution. Social science data reveal that the median age of both juvenile male and female prostitutes is 16

three months. The juvenile testified that she had given false information to police when she was picked up on a soliciting charge. "I didn't want anybody to send me back home if they found out I was a runaway," she said. She testified that she had been beaten by her father in Philadelphia and had not wanted to return to him. Forced Into Prostitution, Girl 13, Says, St. Louis Post Dispatch, March 24, 1982, at 3A, col. 1.


348. The commentator to the revised Missouri legislation notes, "The age of 16 was chosen as the dividing line in subsection 1(2) because that is the 'age of consent' in the Sexual Offenses Chapter." Mo. REV. STAT. § 567.050 (Vernon 1977) (commentary). Subsection 1(2) refers to "Promoting Prostitution in the first degree."
Half of juvenile prostitutes are younger than 16; age sixteen is therefore an appropriate dividing line upon which to base sanctions.

A few statutes proscribe offenses with very young prostitutes. These categories generally proscribe offenses with youths age 14 and under. One jurisdiction penalizes offenses with juveniles under age 11. These statutes do not reflect accurately social reality. Data reveal that few juveniles younger than 14 engage in prostitution on a regular basis. Cases involving juveniles younger than age 11 have never been reported in empirical studies. While prostitution with youths of these ages certainly should be penalized, there appears to be little reason for a separate offense. Jurisdictions which sanction offenses with youths under age 16 adequately encompass these perpetrators.

State legislation also reflects a concern with penalizing the various aspects of pimping. This method of addressing juvenile prostitution comports well with social reality. The pimp is a central feature of juvenile female prostitution. He is especially deserving of punishment for two reasons. First, he is actively involved in the juveniles’ entrance into prostitution. Second, much of the violence associated with prostitution stems from acts by pimps.

However, as mentioned above, local and federal law enforcement of these penal statutes is woefully inadequate. Too frequently, police do not investigate or fail to arrest pimps because they believe prostitutes will not testify against their pimps. Yet, more vigorous efforts are necessary and can be successful. Research reveals that patient, supportive police work with young prostitutes may persuade them to testify.

349. See supra note 6 and accompanying text.
350. See, e.g., CAL. PENAL CODE § 266(i) (West Supp. 1984) (person under 16 years old); HAWAII REV. STAT. § 712-1202 (1976) (person less than 14 years old); N.Y. PENAL LAW § 230.05 (McKinney 1980) (patronizing person under 14).
351. N.Y. PENAL LAW § 230.06 (patronizing person under 11); 230.32 (McKinney 1980) (promoting person under 11).
352. Prostitutes age 14 and 15 have been reported. Few, if any, prostitutes younger than 14 have been found. Two samples (Enablers and URSA) found no juveniles younger than age 14. See Enablers Report, supra note 4, Table 1, at 18; James, Entrance, supra note 4, at 17; Huckleberry Report, supra note 4, at 7; URSA Report, supra note 4, Figure 1, at 71. But see Girl, 13, Accused of Prostitution, San Jose Mercury, Nov. 12, 1982, at 4F, col. 1 (thirteen-year-old girl arrested after 3½ week career in prostitution).
353. See supra notes 251 to 261 and accompanying text.
354. See supra note 30 and accompanying text.
355. See supra notes 51-55, 62, and accompanying text.
356. In research conducted by the author, staff of a few law enforcement agencies (e.g.,
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Another problem in the enforcement mechanism of prosecuting pimps is its ineffectiveness vis a vis male prostitution. Since adolescent male prostitution is distinguishable from female prostitution by the absence of pimps, prosecution of pimps does not effect juvenile male prostitution. This characteristic of state legislation, like the federal Mann Act provisions, appears to be gender-based in application.

Another trend apparent in some state statutes is to penalize customers of juvenile prostitutes. In theory, this appears to be an effective approach since customers, like pimps, are committing criminal offenses and some are violent toward the juveniles. However, in reality, prosecutions of customers are all but non-existent. The focus of law enforcement efforts, traditionally, is the arrest of the prostitute. Few resources of local authorities are ever directed at the customer.

Still another characteristic of some recent state statutes is the recognition of the link between runaway behavior and juvenile prostitution. These statutes prohibit bringing juveniles into the state for purposes of prostitution, facilitating their transportation within the state as well as their movement out of the jurisdiction. These statutes appear to be an important method of addressing juvenile prostitution in light of the considerable intrastate and interstate transportation of juvenile prostitutes by pimps.

Nonetheless, as discussed in regard to the federal Mann Act revisions, these state statutes also appear to have gender-based application. Since only juvenile female prostitutes have pimps, the new state statutes fail to address juvenile male prostitution. These male youths, if they travel within the state for purposes of prostitution, do so of their own volition. Furthermore, as previously discussed, enforcement of penalties has been lax and ineffective with respect to female prostitution. Considerably more effort should be expended on this matter.

Another characteristic of state statutes is the inclusion of penal-

Louisville, Kentucky; Minneapolis; Seattle) suggested that when police take time to be especially supportive of the prostitute, she is more willing to testify. Some progressive police departments now provide emotional and residential support services to prostitutes as well as protection from the pimp. See Weisberg, CHILDREN OF THE NIGHT: A STUDY OF ADOLESCENT PROSTITUTION (forthcoming 1984), especially Chapter 7 Community and Program Responses to Adolescent Prostitution.

357. See supra notes 57 to 62 and accompanying text.
358. See supra notes 283 to 285 and accompanying text.
359. See supra notes 306 and 307 and accompanying text.
360. See supra notes 31 and 303 and accompanying text.
ties for third party custodians. Persons who use a position of authority to solicit or induce a juvenile to practice prostitution or who merely permit a juvenile under one's custody or control to engage in prostitution may be punished under these laws.\textsuperscript{361} Although such third party custodians are occasionally involved in encouraging or facilitating acts of prostitution by their children or wards,\textsuperscript{362} such involvement appears to be a rare occurrence.\textsuperscript{363} This legislation, therefore, will help very limited numbers of juveniles.

Recognition of the mistake of age defense\textsuperscript{364} has a debilitating effect on anti-child prostitution laws. In jurisdictions which recognize this defense, a customer or pimp who reasonably believes a juvenile is above the protected ages will escape liability or receive a less severe sentence. This defense appears paradoxical in light of the large number of age-stratified juvenile prostitution statutes recently enacted.\textsuperscript{365} It seems contradictory to enact a statutory scheme punishing adult participants in juvenile prostitution dependent on the specific age of the juvenile, while at the same time to allow the adult to avoid liability by claiming a mistake as to the juvenile's age. Provision of this defense appears to nullify the successful operation of state legislation. A more consistent approach would be a strict liability offense.

Recent civil legislation reveals similar problems to those of the state criminal legislation. The new civil legislation requires persons to report cases of juvenile prostitution by a parent or caretaker.\textsuperscript{366} As previously discussed,\textsuperscript{367} this appears to be an appropriate response to the problem due to the occasional involvement in prostitution by family members. To be truly effective, the family network should be broadened to include relatives' involvement in prostitution, since relatives, too, are sometimes involved in the juvenile's entrance into prostitution.\textsuperscript{368} However, since family members are only infrequently involved in juveniles' entrance into prostitution, these reporting provisions probably will result in the identification of only a limited number of juvenile prostitutes.

Several better approaches to addressing juvenile prostitution

\textsuperscript{361} See infra notes 274 to 278 and accompanying text.
\textsuperscript{362} See infra notes 33, 313 and 314 and accompanying text.
\textsuperscript{363} See infra notes 315 to 321 and accompanying text.
\textsuperscript{364} See infra notes 290 to 292 and accompanying text.
\textsuperscript{365} See infra notes 246 to 250 and accompanying text.
\textsuperscript{366} See infra notes 295 to 297 and accompanying text.
\textsuperscript{367} See infra note 33 and accompanying text.
\textsuperscript{368} Id.
may be suggested. Initially, state legislatures should address the underlying causes of juvenile prostitution. Adequate resources should be provided for the identification, prevention and treatment of physical and sexual abuse. Admittedly, the effectiveness of such measures may be crippled because too often resources are expended only on the more visible and egregious cases (and on the lower socioeconomic class). Nonetheless, this approach offers at least some hope of preventing future generations from turning to the streets.

Second, state legislatures should penalize the parental rejection which causes many youths to leave home as throwaways. Acts of parental abandonment should be made criminal offenses. To date, only limited state remedies are available to punish or deter such conduct. One important improvement in state legislation would be enforcement of parental support obligations. At the least, if parents refuse to readmit an adolescent into their home after a family conflict or a runaway episode, parents' provision of support should be required. States furnishing support to these minors directly, or indirectly through state-funded runaway shelters, should be able to collect that support from such parents. This would enable these youths to maintain themselves in shelter facilities and in independent living situations without turning to prostitution to meet survival needs.

369. This was the conclusion of a study conducted by Commissioner Hodges, Administration for Children, Youth and Families, which was solicited by Senator Specter, Chairperson, Subcommittee on Juvenile Justice during the RHYA Oversight Hearings. In response to Senator Specter's request, Commissioner Hodges wrote:

The purpose of this letter is to respond . . . regarding information about state laws that can be invoked against parents who lock out or push out their children. . . . On the first issue, all States have laws against contributing to the delinquency of a minor. This remedy can be used where children are forced or urged to leave home. However, it is most often used where adults engage children in unlawful activities. Secondly, general non-support statutes can be invoked in response to a complaint or action by a parent, the police, prosecuting attorney, or a protective service agency. . . . I have personally talked with county prosecutors and did not detect a willingness to prosecute parents, except where there is child abuse or criminal neglect. The usual practice is to utilize other supportive services to help strengthen the family and involve the children in positive activities.

Hearings on Runaway Youth, supra note 161, at 6.

370. This is apparently a common occurrence. As one child welfare witness testified before the Senate Subcommittee on Juvenile Justice, "I can't tell you the number of times I have telephoned parents to inform them that we have their children and to have them tell me that since I have them, then I can keep them." Hearings on Exploitation of Children, supra note 304, at 37 (statement of Father Bruce Ritter, Covenant House).

371. By statute, both parents generally have a responsibility to support their children. See, e.g., FLA. CIV. CODE § 196 (1979). Statutes also provide that a state furnishing support has the right to seek reimbursement for that support where possible. See, e.g., FLA. CIV. PROC. CODE § 1671 (1979).
Third, better interstate and intrastate cooperation between agencies is essential to deal effectively with the problem of the runaway prostitute. Too often, an adolescent who runs out of state and is apprehended as a prostitute by authorities in one jurisdiction will be returned home without facing criminal charges and without notification to authorities in the home state. As a consequence, social service agencies in neither state intervene. In a short time, the juvenile again runs away and is working on the streets once again. Law enforcement officials in one jurisdiction who apprehend and then release a runaway prostitute should notify social welfare agencies in the youth's home state before returning the juvenile home. Appropriate state agencies may then offer necessary services to the youth. In addition, if runaway juveniles are formally adjudicated on charges of running away and/or prostitution, the courts should refer juveniles to appropriate social service agencies which may assist the youths. Police and juvenile court workers should be encouraged to make referrals to these agencies. They should also be encouraged to conduct follow-up to assure that the youths receive adequate attention.

Finally, states should provide funding for the runaway programs in their jurisdictions. These programs serve essential needs of many adolescent prostitutes. Federal monies are simply not ade-

372. This appears to be the traditional response of law enforcement authorities to juvenile runaway prostitutes. This is evident from the congressional testimony of a detective in one metropolitan police department.

SENATOR SPECTER. Detective Robertson, what is the customary position for a minor arrested on a charge of prostitution?

MR. ROBERTSON. It is the policy of the police department in Washington, D.C., if we can avoid giving a child a criminal charge, that is, if she is charged with prostitution and she is from out-of-State jurisdiction, we will drop the charges of prostitution. She will be handled as a runaway and sent home...

Hearings on Runaway Youth, supra note 161, at 44.

373. Detective Robertson of the Washington, D.C. police department also notes:
A kid from Iowa or Pennsylvania, if she is a prostitute and has been for some time, this city jurisdiction here [Washington, D.C.] will simply send that kid home as a runaway. The home State jurisdiction has no knowledge she was involved in prostitution. There is no one there to intervene once she comes home. She may stay there, home for a while, and then go to Houston and is picked up for prostitution in Houston and sent back again. Again, there is no indication to tell Pennsylvania that this child is a prostitute and needs some sort of help.

Id. at 45.

374. One reason that law enforcement officers release runaway prostitutes without pressing charges is the greater processing time involved in the arrest of a juvenile compared to that of an adult. URSA, RESOURCE MANUAL, supra note 87, at 63. Further, local law enforcement may also be aware that juvenile courts are reluctant to institutionalize young prostitutes. This may lead the cop-on-the-beat to be reluctant, in turn, to arrest the juvenile because of the knowledge that the youth will soon be back on the streets. Id.
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quate to support the staff and many services of these runaway programs. Runaway shelters are one of the few effective resources which have a proven record in dealing with this youth population. These programs urgently need federal and state funds if they are to survive and continue to provide the services critically needed by these youths.

V. CONCLUSION

Juvenile prostitution is a complex social problem. Its complexity is due in part to its interrelationship with such other social problems as physical abuse, sexual abuse, and running away. It is a lifestyle which attracts both males and females, although differences exist between juvenile male and female prostitution. These factors combine to make juvenile prostitution a difficult problem for policymakers to address.

Recent state and federal legislation effectuates a two-pronged approach to the problem. Criminal statutes penalize adult participants who engage in or encourage prostitution with juveniles. Civil statutes attempt to identify the juvenile prostitute more promptly in order to offer the youth necessary services.

Several problems are apparent in the federal and state statutory response to juvenile prostitution. One problem stems from assumptions about the best manner to address juvenile prostitution. Such assumptions tend to be premised on knowledge about female prostitution. Thus, recent statutes attempt to penalize the economic exploitation associated with juvenile prostitution. Also, federal and state statutes punish those individuals who promote the juveniles' entrance into prostitution, especially through the use of coercion, or by means of facilitating interstate or intrastate transportation. Because of the inherent difference between juvenile male and female prostitution regarding the role of the pimp, these statutes are only partly effective. This statutory treatment is inadequate since such statutes are appropriate responses only to juvenile female prostitution.

The law's response to juvenile prostitution reflects little awareness of the nature and incidence of juvenile male prostitution. The recent Mann Act revisions, the only recent policy to address specifically juvenile male prostitution, are hampered by the assumption that juvenile male and female prostitution are identical.

375. See supra note 336 and accompanying text.
In fact, juvenile male and female prostitution are different sides of a coin. Although similar in etiology, significant differences exist which require a different response from the legal system. Since legislative policy aimed at pimps generally will not affect juvenile male prostitution, efforts must be directed elsewhere. Statutes penalizing customers are one appropriate response. However, not all jurisdictions have adopted such special statutes. In addition, the effectiveness of many of these statutes is crippled by the mistake of age defense. This defense allows customers to escape liability if they can prove that they were reasonably mistaken about the age of the juvenile. Since patron statutes are the only criminal statutes which address the reality of juvenile male prostitution, it is important for more jurisdictions to adopt this approach and to abandon the mistake of age defense.

Of course, statutes are only the initial stage in the law’s response to juvenile male or female prostitution. The effectiveness of statutes depends on adequate enforcement. In terms of addressing juvenile female prostitution, the federal Mann Act legislation should be enforced more vigorously. Similar criticisms have been levied that the enforcement of state prostitution laws is lax and that pimps go unpunished.\textsuperscript{376} Arrests and prosecutions of adult participants are necessary to combat the exploitation and violence associated with juvenile prostitution. Further, police and government agents must dispense with the double standard and enforce statutes penalizing customers. In order to address juvenile male prostitution, such enforcement must be gender-neutral and apply to customers of both male and female juveniles.\textsuperscript{377}

Additionally, the application of the law to juvenile offenders must also be gender-neutral. When legal authorities apprehend run

\begin{footnotesize}
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\item \textsuperscript{376} Data for 1970, for the state of California, reveals that only 25 males were convicted of either pimping or pandering. Of the 25, only 4 were sentenced to state prison. Cited in A. Burgess, Rape: Crisis and Recovery 402 (1979).
\item \textsuperscript{377} It has been suggested that enforcement efforts are ineffective in controlling adolescent male prostitution in part because police officers are often reluctant to pose as prostitutes in order to arrest customers. This stems from the officers’ reluctance to pose as homosexuals. URSA, Resource Manual, supra note 87, at 61.
\end{itemize}
\end{footnotesize}
aways and juvenile prostitutes, attention must be directed toward both juvenile males and females. A “boys will be boys” philosophy will not assist the males in this situation. Intervention must be assured to help runaway prostitutes of both sexes.

Still another major problem inherent in the federal and state statutory response to juvenile prostitution is its emphasis on punishment. The focus of much recent legislation is the adult participant in prostitution. But concentration on severe punishment of adult participants is insufficient. Legislators commonly believe that enacting new legislation and stiffer penalties adequately addresses the problem. Yet emphasis on prevention and treatment may be more effective. Few services and programs exist which are targeted specifically to juvenile prostitutes. The federal budget for runaway programs which provide important services for runaway prostitutes, is woefully inadequate. State resources for these programs are similarly sparse. Law makers must realize that the best method of addressing juvenile prostitution is reaching into the public coffers to support these programs. Stiffer penalties for adult participants, while an easy response to the problem, has a greater theoretical than real impact on the problem.

The expenditure of adequate state and federal resources is necessary before juveniles become so entrenched in prostitution that they can not leave the profession. Early intervention with runaways is the best approach. Specifically, juvenile prostitution needs to be addressed by means of increased services for these youths. Without addressing this issue, public policy-makers consign the children of the night to continue walking dark streets.

378. Many studies have pointed out that female status offenders are more likely to be arrested and to be treated more harshly than males. See, e.g., Chesney-Lind, Judicial Enforcement of the Female Sex Role: The Family Court and the Female Delinquent, 8 Issues in Criminology 51 (1973); Chesney-Lind, Judicial Paternalism and the Female Status Offender: Training Women to Know Their Place, 19 Crime & Delinquency 121 (1973); Datesman and Scarpitti, Unequal Protection for Males and Females in the Juvenile Court, in Juvenile Delinquency: Little Brother Grows Up (1977); Mann, Differential Treatment Between Runaway Boys and Girls in Juvenile Court, 30 Juv. & Fam. Ct. J. 37 (1979).

379. James finds that juvenile male prostitutes are arrested for prostitution far less often than female prostitutes. James, Male Prostitution, supra note 18, at 108. The URSA study also raises the possibility of discriminatory enforcement due to male police officers' reluctance to pose as homosexuals. URSA, Resource Manual, supra note 87, at 61.