



# **Disposition of Minors Engaging in Prostitution:**

## **HB 1991**

September 3, 2013

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# Overview



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# Study Authorization



- House Bill 1991 was introduced by Delegate Jennifer McClellan during the Regular Session of the 2013 General Assembly.
- The bill specifically directs focus upon the disposition of minors engaging in prostitution:
  - Only adults would be guilty of engaging in prostitution.
  - Minors engaging in prostitution would be considered a Child in Need of Services (CHINS).
- The bill also provides that there shall exist an affirmative defense to prostitution when the person arrested or charged was induced to engage in prostitution through the use of force, intimidation, or deception by another.
  - HB 1541 (Watts) has a similar provision, but also requires the person prove they were abducted.

# Methodology



- In order to examine this issue, staff completed the following activities:
  - Literature review;
  - Meetings with key stakeholders, including:
    - Law enforcement; Va. Attorney General’s Office; FBI Behavioral Analysis Unit III; Prosecutors; and, Advocates for Trafficking Victims.
  - Review of relevant Virginia statutes;
  - Collection of arrest and prosecution data; and,
  - Informal survey to Court Service Unit (CSU) Directors.

# Background: Policy Debates



- Determining the best approach to handling juveniles who engage in prostitution has become a hotly debated topic in recent years.
- Arguments can be made that such juveniles should be arrested or detained, and their cases handled through the criminal justice or juvenile justice system.
- Alternatively, arguments can be made that the best approach is to not arrest these juveniles, and that their cases should not proceed through a criminal justice system.
- A middle approach between these two extremes is also possible.

# Background: Policy Debates



- The arguments for arresting juvenile prostitutes and handling their cases in a criminal justice context are:
  - Provides law enforcement with a tool for protecting juveniles from their own behavior;
  - The secure structure of the criminal justice or juvenile justice system may be the only way to effectively provide assistance and services;
  - Without a period of detention, juveniles are likely to return to prostitution very quickly;
  - It is an effective means of gaining the cooperation of juveniles to provide important testimony against pimps and traffickers; and,
  - If juvenile prostitution is not treated as a criminal offense, it can provide a recruitment tool for pimps.

# Background: Policy Debates



- The arguments *against* arresting juveniles and handling their cases in a criminal context are:
  - Juvenile prostitutes are not willing criminals, but are victims;
  - The fear of being arrested and forced into detention makes juveniles more reluctant to obtain help from authorities;
  - The age and mental development of juvenile prostitutes is more deserving of treatment than punishment;
  - There is a dissonance between treating the juvenile as a victim of a sex crime or statutory rape, and at the same time treating the juvenile as a criminal offender; and,
  - Federal trafficking laws treat juveniles as victims.

# Background: Recent Trends



- Recent studies, as well as anecdotal observations made by law enforcement and service providers, indicate the following trends about juvenile prostitution:
  - Females are more likely than males to have a pimp—one study estimates nearly 75%.
    - (E.g., Finkelhor & Ormrod, 2004).



# Background: Recent Trends



- According to one study, the median age that juvenile girls enter prostitution is 14.9 years, with a range of 12.8 years to 17 years.
  - (Clarke, et al., 2012)
- It has been asserted that the average age of entry into prostitution is between 11 and 13 years for boys, and between 12 and 14 years for girls.
  - (Statement of E. Allen, President of Nat'l. Cntr. Missing & Exploited Children, 2010, to Cong. Subcomm. On Crime, Terrorism, & Homeland Security).

# Background: Recent Trends



- Contrary to popular belief, recruitment (at least for domestic victims) does not always take the form of abrupt kidnapping or violence.
  - Pimps gradually “win” over their victims, with promises of love, a better life, or material comforts.

# Background: Recent Trends



- The men who work as pimps are incredibly skillful at grooming, recruiting, and then controlling the juvenile victims who work for them.
  - They frequently use a combination of physical violence and emotional manipulation.
  - The victims often develop intense loyalty towards their pimps, some out of fear, and others out of feelings of dependence or emotional attachment (similar to Stockholm syndrome).
    - (E.g., Julich, 2005).

# Background: Recent Trends



- “Pimps first seek out young girls at bus stations, shelters, malls, arcades, and on the Internet, preying on those who appear vulnerable. A pimp will first act as a ‘boyfriend,’ promising love and a better life while playing on a young girl’s previously identified vulnerabilities.”  
(Annitto, 2011, p. 13).
- A common recruitment tool is a promise of a better life, and after the juvenile begins to be exploited, they are often threatened and assaulted to ensure continued obedience.  
(E.g., Albanese, 2007).

# Background: Recent Trends



- After recruitment, the victims are habituated to the idea of working as a prostitute, often with a complex series of rules, portrayed as a “lifestyle,” or code of conduct.
  - The purpose of these rules is to firmly establish the dominance of the pimp in the mind of the juveniles.

# Background: Recent Trends



- Law enforcement generally observes a strong correlation between working as a prostitute and drug use.
- One study found that prostitutes who began working as juveniles had higher rates of cocaine, alcohol and marijuana use than prostitutes who began working as adults.
  - (Clarke et al., 2012).
- However, a number of pimps and former juvenile prostitutes have reported that there was an active discouragement of “hard” drug use.
  - The pimps felt “hard” drugs made the juveniles unreliable, less productive, and increased the chances of arrest.

# Background: Recent Trends



- Anecdotally, juvenile prostitutes are more frequently advertising their services on the Internet, rather than “working on the street.”
  - (See, for example, Statement of Ernie Allen, President of Nat’l. Cntr. Missing & Exploited Children, 2010, to Cong. Subcomm. On Crime, Terrorism, & Homeland Security).

# Background: Recent Trends



- A recent observed pattern is for a pimp to travel between states, or even across the country, with 2 to 5 girls, only staying in a given city for a week or two at a time.
- Even if a pimp prefers to stay in one area, he will quickly move if necessary to avoid arrest, or isolate and further control a juvenile who is becoming resistant or troublesome.

(E.g., the case of “Jane Doe,” People v. Doe, 935 N.Y.S.2d 481 (2011)).



# Background: Recent Trends



- Because of loyalty to their pimp, and/or fear of going to prison and the legal system, most juvenile prostitutes will adamantly deny that they are working for a pimp.
  - One law enforcement officer expressed the opinion that if a juvenile prostitute is not placed in a secure facility, her first instinct will be to immediately flee, and then contact the pimp or his lead prostitute (“bottom girl.”)
- Law enforcement and victim advocates report that successfully gaining the trust of a juvenile prostitute takes a different approach from the techniques used for other victims, and necessitates multiple interviews.

# Background: Recent Trends



- Frequently, juvenile prostitutes display symptoms equivalent to PTSD, even after they have left the world of prostitution.  
(E.g., Farley, 2004; Fortier et al., 2009).
- Successful recovery requires treatment and therapy; otherwise the juvenile is likely to return to prostitution.
- The life expectancy of juvenile prostitutes who do not leave the world of prostitution is very low.
  - (E.g., Potterat, et al. 2004).

# Background: Recent Legislation



- A number of states have recently modified their statutes dealing with juvenile prostitution.
  - In **Tennessee**, juvenile prostitution was decriminalized.
    - Law enforcement is required to release the juvenile to the custody of a parent or legal guardian, along with the phone number for the national human trafficking resource center hotline, pursuant to Tenn. Code Ann. § 39-13-513(d) (West 2013).

# Background: Recent Legislation



- In **New York**, if a juvenile (under the age of 16) is arrested for prostitution, they are statutorily required to be treated as status offenders, rather than designated as delinquent.
  - The Family Court may, in its discretion, revert the case to a delinquency petition if the juvenile has previously committed a prostitution offense, or if the minor is unwilling to cooperate with the specialized services ordered by the court, per N.Y. Fam. Ct. Act Law § 311.4(3) (McKinney 2013).

# Background: Recent Legislation



- In **Washington**, a juvenile's first offense for prostitution must be diverted out of the juvenile court; a second offense, however, may be treated as a delinquency. Wash. Rev. Code § 13.40.070(7) (West 2013).
- In **Connecticut**, juveniles under the age of 16 cannot be prosecuted for prostitution, while juveniles who are 16 or 17 are presumed to have been coerced into committing the offense, and can only be prosecuted if the presumption is rebutted. Conn. Gen. Stat. § 53a-82(c) (West 2013).

# Background: Recent Legislation



- In **Minnesota** and **Michigan**, juveniles under the age of 16 cannot be prosecuted for prostitution. Minn. Stat. Ann. § 260B.007(6)(b)(1) (West 2013); Mich. Comp. Laws Ann. § 750.448 (West 2013).
- In **Vermont**, juveniles under the age of 18 cannot be prosecuted for prostitution, if they are deemed to be victims of sex trafficking. Vt. Stat. Ann. Tit. 13, § 2652(c)(1)(A) (West 2013).

# Background: Recent Legislation



- In **Illinois**, no juvenile under the age of 18 can be prosecuted for prostitution; the juvenile can only be held in temporary protective custody in the child welfare system, not a secure facility, and law enforcement must immediately initiate a child abuse investigation. 720 Ill. Comp. Stat. 5/11-14(d) (West 2013).

# Legal Analysis: Juvenile Prostitution



- HB 1991 would decriminalize juvenile prostitution, by modifying the prostitution statute, Va. Code § 18.2-346.
  - Adults or minors who solicited a child for purposes of prostitution would still be guilty of a Class 1 misdemeanor, pursuant to Va. Code § 18.2-346(B), or a felony, depending upon the age of the child.
  - However, a minor could not be arrested or charged for engaging in prostitution.



# Legal Analysis: Juvenile Prostitution



- Under HB 1991, a juvenile engaging in prostitution would be taken before an intake officer, for consideration as a “child in need of services as defined in § 16.1-228.”

# Legal Analysis: Juvenile Prostitution



- Decriminalizing prostitution for juveniles could have a number of unintended consequences.
  - If a juvenile were found to be engaging in prostitution, it could be difficult for law enforcement to detain him:
    - The juvenile would not have committed a crime.
    - A police officer would have to argue that the child was in need of services, and there was a “clear and substantial danger to the child’s life or health,” per Va. Code § 16.1-246(B).
  - If the juvenile was advertising on a website or other medium, it could be very difficult to get a search warrant to further investigate the situation.

# Legal Analysis: Juvenile Prostitution



- If a juvenile was taken into custody, and was from Virginia, it is not clear if he could be placed in secure detention.
  - While an argument could be made that Va. Code § 16.1-248.1(1) permits the juvenile to be placed in a secure facility if he has “committed an act that would be a...Class 1 misdemeanor if committed by an adult,” that is probably stretching the meaning of the statute, which is referring to juveniles who have committed a crime or act of delinquency.
  - What this would amount to is holding a juvenile in a secure facility, merely for being a child in need of services.

# Legal Analysis: Juvenile Prostitution



- A juvenile from Virginia could be placed in a shelter, pursuant to Va. Code § 16.1-248.1(B), but only if the juvenile refuses to return home, and no parent, guardian, or other person is willing to provide proper supervision and care.
- A juvenile who is a fugitive from another state could be placed in a secure facility, pursuant to Va. Code § 16.1-248.1(1), but only if there is a verified petition or warrant for him. Otherwise, he would also be placed in a shelter, pursuant to Va. Code § 16.1-248(B).

# Legal Analysis: Juvenile Prostitution



- House Bill 2190, which was introduced by then Delegate Ebbin during the 2011 Regular Session of the General Assembly, and was signed by the Governor, mandates that the Virginia Department of Social Services create a plan for the delivery of services to victims of human trafficking.
  - This plan could provide some practical solutions for how Virginia might effectively respond to juvenile prostitutes and their needs.
    - Final plan projected to be issued later this month.

# Legal Analysis: Affirmative Defense



- HB 1991 also creates a new affirmative defense to prostitution, available to adults, if they were “induced to engage in prostitution through the use of force, intimidation, or deception by another.”

# Legal Analysis: Affirmative Defense



- Virginia currently recognizes the common law affirmative defense of duress.
- As applied in Virginia, the defendant must show that he committed the criminal offense only because of a threat of death or serious injury. Sam v. Commonwealth, 13 Va. App. 312 (1991).
  - The threat can be against either the defendant, or members of the defendant’s family.
  - The threat of harm does not have to be immediate, but must be at least imminent.

# Legal Analysis: Affirmative Defense



- However, the defendant must reasonably believe that performing the criminal conduct was the only opportunity to avoid the imminent threat.
- If the defendant had the opportunity to avoid committing the crime, and could also avoid the threatened harm, he cannot assert the defense of duress. Pancoast v. Commonwealth, 2 Va. App. 28 (1986).



# Legal Analysis: Affirmative Defense



- The proposed affirmative defense to prostitution in HB 1991 is substantively different from the existing common law defense.
- The defense, as written, is silent as to whether the intimidation must be immediate or intermediate; it also does not require that the defendant have no reasonable opportunity to avoid committing the crime.

# Virginia Data- Arrests



- Staff requested the total number of arrests for prostitution-related offenses for CY2008-CY2012.
- Over this 5 year period, there were nearly 4,000 prostitution- related arrests made in the Commonwealth.
  - Of this number, only 2 juveniles were arrested.
    - Source: Va. State Police, Computerized Criminal History System.

# Virginia Data- Juvenile Intakes



## Total Juveniles with Prostitution Petitioned Intakes, FY09-FY13

Type of Offense	FY09	FY10	FY11	FY12	FY13
§ 18.2-346(A)- Prostitution	3	3	5	2	4
§ 18.2-346(B)- Solicitation of prostitution	1	0	1	0	2
§ 18.2-348- Aiding/assisting in procurement	0	0	0	0	1
§ 18.2-347- Maintain or frequent a bawdy place	0	0	2	0	3
§ 18.2-356(i)- Receive money for procurement/placing person to engage in sex	0	0	0	0	2
<b>TOTAL INTAKES</b>	<b>4</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>12</b>

Source: Virginia Department of Juvenile Justice

# Virginia Data- Informal CSU Survey



- The 35 JDR Court Service Units (CSUs) were informally surveyed to determine if they had encountered any instances of a juvenile involved in prostitution or human trafficking in the last 3 years.

# Virginia Data- Informal CSU Survey



- 69% (24 of 35) of CSUs responded.
  - 71% (17 of 24) reported no instances of juvenile prostitution.
  - 29% (7 of 24) reported at least one instance of juvenile prostitution.
- The 7 CSUs reported a total of 31 instances of a juvenile involved in prostitution or human trafficking in the last three years.

# Policy Considerations



- Policy Consideration 1:
  - Should juvenile prostitution be decriminalized in Virginia, so that a CHINS petition would be the only option for an intake officer who encounters a juvenile who has been engaging in prostitution?

# Policy Considerations



- Policy Consideration 2:
  - Should prostitution continue to be a criminal offense for juveniles, but amend the Code of Virginia to require that upon completion of probation, any juvenile so charged would have the charge dismissed?

# Policy Considerations



- Policy Consideration 3:
  - Should an affirmative defense to prostitution exist when the person charged was induced to engage in prostitution through the use of force, intimidation, or deception by another?





## **Discussion**

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