

Using Criminal Justice Theories to Create More Effective Policy for Commercially Sexually Exploited Children

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This note examines Alameda County and California's treatment of commercially sexually exploited children. While the treatment of commercially sexually exploited children has evolved over time, better policy is still needed. Reform in Alameda County's legislation, target audience, and language would both reduce the number of sexually exploited children and would improve the outcome for exploited children trapped in the criminal justice system. Additionally, the principles of the criminological "turning points" theory should encourage legislators to treat sexually exploited children as victims and not as criminals. The note also applies principles from procedural justice theory to recommend that 1) Alameda county commit to treating commercial sex purchasers fairly, increasing the likelihood they will comply with the law, 2) education and policy regarding criminally sexually exploited children include male victims, and 3) the language used to rehabilitate sexually exploited children be reformed to increase the child's sense of agency.

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I. INTRODUCTION

When Lily was thirteen, her father was deported for driving under the influence. He was her rock; he was her only caregiver and most stable relationship. Without a mother or father present to care for them, Lily and her eleven-year-old sister went to live with their grandmother. Living with grandma was sufficient until her health deteriorated due to a longstanding battle with breast cancer. Without any family member willing to care for them, the Alameda County Child Services Agency placed Lily's sister in a group home, and placed Lily with a foster care family.

Lily lasted six months with her foster care mother before she ran away. Her foster care mother routinely yelled at her for walking too slowly when she traveled the mile and a half to and from school, berated her for eating four-day-old leftovers, and called her a racist. Lily escaped, seeking solitude on the street. But existing without family or place to call home limited her ability to survive. In a couple of days' time, she realized two things: first, she didn't have any food to eat or a place to sleep, and second, pimps promised both of those things. "I should be in honors classes," she told me from her desk in Alameda County Juvenile Hall. "I'm smart. I'm a good student. But instead I'm here." Lily reached out to an uncle and his wife in the hopes that they would rescue her from the pimps' hold. Instead, they did what they thought was best—they called the police. Lily felt betrayed. The only people she could ask for help turned her over to the police. The police, while rescuing her from the grasp of the pimps, only moved Lily from one entrapment to another: jail.

"I never thought I would do this, whore myself out," she told me. "But I had to, to survive." When asked if she ever speaks to her

father, she replied simply, “No. I can’t tell him that now I’m a whore.”¹

Stories similar to Lily’s echo within the walls of Alameda County Juvenile Hall and other detention centers across the country. Over 100,000 American children become sex trafficking victims every year, with an average entry age of thirteen.² Trafficked youth are commonly referred to as Commercially Sexually Exploited Children (“CSEC”), and are typically juveniles involved in prostitution or otherwise sexually exploited minors.³ Many CSEC are chronic runaways who choose the less overt danger of the street and commercial exploitation instead of the more immediate sexual and physical abuse in their homes.⁴ Despite CSEC’s grim realities, several states do not treat them as victims of abuse.

Principles from criminological theory applied to CSEC treatment and policy has the potential to help children like Lily get off the streets, out of jail, and back into school. This note uses current criminal justice theory to propose reforms for Alameda County in how legislation, target audience, and language surrounding CSEC are approached. This note applies two criminal justice theories to the treatment of CSEC. First, this note applies the “turning points” theory to support the idea that legislation must treat CSEC as victims and not as criminals.⁵ Second,

¹ Lily shared her story with the author inside of Alameda County’s Juvenile Hall. All identifying details have been changed.

² See *In My Own Backyard: Child Prostitution and Sex Trafficking in the United States: Hearing Before the Subcomm. on Human Rights and the Law*, 111th Cong. 2 (2d Sess. 2010).

³ This note uses “CSEC” to refer to when the youth is exploited by a pimp and when a youth chooses to sell herself independently, to acknowledge the inherently exploitative nature of prostitution, particularly with people who are under the age of 18.

⁴ See *In My Own Backyard*, *supra* note 2. One study of over 200 CESC youth who were serviced by the Oakland non-profit MISSEY found that 83% of the youth had run away from home, 30% had run away from home more than eight times, 51% had been physically abused, 43% had been physically or sexually abused, 64% had been raped, and 24% had attempted suicide. See *MISSEY Data Report*, MISSEY 3–5 (June 2009) see also *Prevalence of Commercially Sexually Exploited Children*, CALIFORNIA CHILD WELFARE COUNCIL 2.

⁵ See JOHN LAUB & ROBERT SAMPSON, *SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS AT 70* (2006). Whether sex work is inherently exploitative is outside the scope of this note. While the author recognizes that some women and men freely choose to be sex workers, the author believes that most sex work is not voluntarily. The author came to this conclusion after field research in Thailand, when most female sex workers interviewed said that the only way to help them was to make sure their children never had to do the work they did.

this note will apply procedural justice theory, which proposes that the way people are treated in the justice system determines whether they will voluntarily comply with the law.⁶

II. DISCUSSION

Because state and county policy aimed at the CSEC population varies dramatically, this note focuses on the CSEC population in Alameda County, California, where the author has had the most contact.⁷ Alameda County has the most progressive legislation for the CSEC population in California,⁸ but it also has one of the most acute CSEC populations.⁹ Criminal theory supports the proposition that this population could be reduced if Alameda County reformed legislation, target audience, and language aimed at the CSEC populations.

First, Alameda County's legislation should reflect the reality that CSEC are victims caught in the cycle of human trafficking. California has one of the largest populations of CSEC in the country. In 2003, the

For more academic research supporting this view, see Iris Yen, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 665 n.78 (2008). Regardless of whether adult prostitution can be voluntarily, governments recognize that child prostitution is inherently exploitative by defining an age of consent.

Whether the legalization of prostitution helps decrease or increase sex trafficking is also outside the scope of this note. For a study concluding that decriminalizing the selling of sex but criminalizing the buying of sex decreases prostitution and consequently sex trafficking, see *Analysis of Legal Frameworks Surrounding the Sexual Exploitation of Children*, ECPAT INT'L (Jan. 2013), http://resources.ecpat.net/EL/Publications/Journals/ECPAT%20Journal_JAN_2013.pdf.

⁶ See TOM R. TYLER, WHY PEOPLE OBEY THE LAW 7 (2006) (explaining that the normative perspective on procedural justice—which includes aspects like neutrality, lack of bias, honesty, efforts to be fair, politeness, and respect for citizens' rights—views people as being concerned with aspects of their experience not linked only to outcomes).

⁷ The author leads the Berkeley Anti-Trafficking Project (BATP), which is an organization that sends a team of members into Juvenile Hall each week to teach the girl's unit about commercial sexual exploitation.

⁸ Alameda County and Los Angeles Counties are the only counties in California which have implemented diversion policies. See Assembly Bill 499, codified as CAL. WELF. & INST. CODE § 18259 (West 2012); renewed by Assembly Bill 799 in 2011, codified as CAL. WELF. & INST. CODE § 18259.1 (2012).

⁹ See Janet C. Sully, *Precedent or Problem?: Alameda County's Diversion Policy for Youth Charged with Prostitution and the Case for a Policy of Immunity*, 55 WM. & MARY. L. REV. 687, 690 (2013).

FBI identified Los Angeles, San Diego, and San Francisco as “High Intensity Child Prostitution Areas” and established child prostitution specific task forces in these cities.¹⁰ In the city of Oakland in particular, the three-year average for prostitution and commercialized vice arrests from 2011 to 2013 was 220 per year.¹¹ While the Oakland Police Department (OPD) does not have statistics for how many children are represented in these arrests, the Oakland police anecdotally estimate that around 100 CSEC are engaging in prostitution on any given night.¹²

In spite of a large CSEC population, California’s legislation is not as progressive as it could be when compared to other states’ policies.¹³ California lacks an adequate Human Trafficking task force, does not have a full safe harbor statute for minors, and does not vacate convictions for CSEC.¹⁴ These shortcomings make it daunting for a sexually exploited child to leave a life of prostitution. To address immediate need, California should pass a full safe harbor statute that expunges juvenile records upon dismissal from a juvenile hall. Over time, Alameda County should build a safe house separate from juvenile hall. Away from the general population of juvenile criminal offenders, the safe house would provide food, shelter, and rehabilitative programming specific to the needs of CSEC and would serve as a “turning point” away from a life of commercial exploitation.

¹⁰ See *The Federal Bureau of Investigation’s Efforts to Combat Crimes Against Children*, U.S. DEP’T. OF JUSTICE OFFICE OF THE INSPECTOR GEN. 70–71 (2009) (hereinafter “FBI Report”), <http://www.justice.gov/oig/reports/FBI/a0908/final.pdf>. Since 2003, the FBI has been developing an Innocence Lost nationwide database to identify prostituted children and their pimps and to track their interstate movements.

¹¹ *City of Oakland 2013 Year End Crime Report*, OAKLAND POLICE DEP’T, <http://www2.oaklandnet.com/oakcal/groups/police/documents/webcontent/oak044795.pdf> (“2013 Crime Statistics”).

¹² Barbara Grady, *Youth Trafficking in Oakland: Big Business Despite Government, Police Efforts*, OAKLAND LOCAL (May 5, 2010) (quoting OPD officers), <http://live.oaklandlocal.com/article/youthtrafficking-part-1> (last updated May 12, 2010).

¹³ See *2013 Analysis of Human Trafficking Laws*, POLARIS PROJECT (2013), http://www.polarisproject.org/storage/2014SRM_pamphlet_download.pdf. Compare California’s 9 awarded points with Arkansas’s 10.5, Connecticut’s 10.5, Florida’s 9.5, Kansas’s 9.5, Louisiana’s 10, Massachusetts’s 10, Minnesota’s 10, Mississippi’s 11, New Jersey’s 12, North Carolina’s 10, Tennessee’s 9.5, Texas’s 10, and Washington’s 12.

¹⁴ See *California State Report: State Ratings 2013*, POLARIS PROJECT 1(2013), https://www.polarisproject.org/storage/documents/California_State_Report_2013_08_01_16_51_38_377.pdf.

Secondly, the target audience for CSEC education and policy must be expanded to include boys and men as much as it includes girls and women. The current narrative for CSEC identification, prevention, and rehabilitation falls too readily into traditional gender lines, reinforcing cultural stereotypes that only girls and women are victims of sexual exploitation and only boys and men are exploiters. If the criminal theory of procedural justice is applied to policy impacting CSEC, it suggests that boys and men would be less likely to commercially sexually exploit children if they felt that they too were treated fairly by the justice system. Because boys can also be victims, Alameda County should conduct more thorough research of the male CSEC population. While data is collected, the current CSEC curriculum taught to the girls' unit in Juvenile Hall should also be taught to the boys' units.¹⁵

In addition to recognizing boys as victims, Alameda County should more carefully and rigorously address the role males play in the demand side of the sex trade as the clients and traffickers of sex workers. Even though research on demand curbing tactics has been published, legislators have been hesitant to implement effective policy.¹⁶ Procedural justice theory can make demand-curbing strategies more effective. Procedural justice supports the idea of more educational programming like San Francisco's First Offender Prostitution Program ("FOPP") which seeks to treat a commercial sex purchaser, commonly referred to as a "john," with dignity.¹⁷ Since girls and women can also play a part in the demand cycle,¹⁸ both boys and girls should receive programming in juvenile hall that addresses the risk factors and consequences of participating in commercialized sex.¹⁹

¹⁵ B ATP, founded at the Berkeley School of Law in 2012, developed and began teaching a curriculum on CSEC to the girls' unit at the Hall in Spring of 2014.

¹⁶ See, e.g., Yen, *supra* note 5.

¹⁷ This note will use the term "commercial sex purchaser" in lieu of "john" in acknowledgement that commercial sex purchasers are not necessarily male. However, though women very well may be buyers of commercial sex, the research studied only reported men as buyers of commercial sex. See, e.g., *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts*, ABT ASSOCS. 6–9 (April 30, 2012) (finding that at least one out of six men buy sex, and not mentioning women as buying sex), <http://www.abtassociates.com/AbtAssociates/files/16/16b0e4c0-e5fe-46d9-9f0d-9aa29a880f1d.pdf>. More research should be done on female purchase of sex.

¹⁸ For example, some girls in the juvenile hall work to set up other girls in the hall with their pimps on the outside, gaining points, if not actual cash, with their pimps.

¹⁹ For one inspiring call to reframe traditional gender lines, see Chimamanda Ngozi Adichie, *We Should All Be Feminists*, TEDxTALKS (Apr. 29, 2013),

Finally, the language used to teach CSEC must be changed from one of victimization to one of empowerment. Procedural justice theory supports the idea that while policy should identify CSEC as victims, children exiting sexual exploitation should not be spoken to as victims as they are rehabilitating themselves. A study of the most appropriate linguistic approach is outside the scope of this paper. More research should be done on how empowering language could be employed with this population, including how third parties label CSEC, how CSEC refer to themselves and to one another, and how language is used in rehabilitative programming.²⁰

A. Legislation

Legislation regarding CSEC varies dramatically between the federal level and state levels. Congress first passed the Trafficking Victims Protection Act (“TVPA”) in 2000 and reauthorized it in 2013.²¹ The TVPA creates an irrebutable presumption that any child engaged in a commercial sex act is a victim of sex trafficking; it does not require minors to prove that they have been forced, defrauded, or coerced to engage in commercial sex.²² Under the 2013 amendments to the TVPA, a minor victim of sex trafficking includes someone who is eighteen to twenty years of age if (1) he or she was trafficked before reaching the age of eighteen and (2) he or she received shelter or services before reaching the age of eighteen because he or she was a trafficking victim.²³

When Congress passed the TVPA, the U.S. State Department began publishing the Trafficking-in-Persons (“TIP”) Report, an annual report that assesses every country’s ability to comply with the minimum standards for the elimination of trafficking according to Section 108 of the TVPA.²⁴ The report then ranks each country in one of three tiers based on the government’s efforts to comply, with tier one, the highest

<http://tedxtalks.ted.com/video/We-should-all-be-feminists-Chim>.

²⁰ The foster care system also plays a key role in the treatment and protection of CSEC, but an adequate discussion of praises and possible reforms is outside the scope of this paper.

²¹ See *U.S. Laws on Trafficking in Persons*, U.S. DEP’T OF STATE, <http://www.state.gov/j/tip/laws> (visited May 7, 2014). Congress reauthorized the TVPA in 2003, 2005, 2008, and 2013.

²² 18 U.S.C. § 1591(a) (2013).

²³ 42 U.S.C. § 14044a(a)(4) (2013).

²⁴ See *Trafficking in Persons Report*, U.S. DEP’T OF STATE, <http://www.state.gov/j/tip/rls/tiprpt/index.htm> (last visited Apr. 20, 2015).

tier, representing the best compliance.²⁵ The United States has been ranked in tier one since the TIP report's inception.²⁶ The 2014 TIP Report found that in 2012, the most recent year for which data is available, 136 males and 443 females under the age of eighteen were reported to the FBI by state and local authorities as having been arrested for prostitution and commercialized vice.²⁷ These arrests were conducted despite the TVPA's clear mandate to treat CSEC as victims and not as criminals.²⁸ These 2012 statistics are down from 2011, when 190 males and 581 females were arrested and from 2010, when 149 males and 677 females were arrested, for prostitution and commercialized vice.²⁹

The fifty states' responses to adopting the same minimum standards as the TVPA have been varied.³⁰ The 2014 TIP Report found that 42 states' and the District of Columbia's laws define child sex trafficking akin to how federal law defines it, and do not require victims to prove force, fraud, or coercion for victims under the age of 18.³¹ However, only 18 of these states have enacted "safe harbor" laws that formally identify children under the age of 18 years as victims.³² And only 14 states have enacted laws to allow trafficking victims to petition the court to vacate prostitution-related criminal convictions that resulted from trafficking.³³

Although the TIP report does not report state-specific data, the Polaris Project, a leading non-profit organization in the fight against modern day slavery, categorizes each state and the District of Columbia according to ten basic categories of anti-trafficking legislation.³⁴ The ten

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See Trafficking in Persons Report 2014*, U.S. DEP'T OF STATE 401, <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>.

²⁸ *Id.*

²⁹ *See Trafficking in Persons Report 2013*, U.S. DEP'T OF STATE 385, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>.

³⁰ For a more thorough review of state legislative responses to the TVPA, *see* Elizabeth LaMura, *Sex Trafficking of Minors in the United States: State Legislative Response Models*, 33 CHILD. LEGAL RTS. J. 301 (2013).

³¹ *See Trafficking in Persons Report 2014*, *supra* note 27, at 399.

³² *Id.*

³³ *Id.*

³⁴ The Polaris Project operates the National Human Trafficking Resource hotline, conducts trainings, provides vital services to victims of trafficking, and pushes for stronger federal and state laws. Read more at

categories of anti-trafficking legislation require that a state have adequate sex trafficking and labor trafficking provisions, asset forfeiture and/or investigative tools, a human trafficking task force, a human trafficking hotline, a safe harbor statute for protecting minors, a lower burden of proof for sex trafficking of minors, victim assistance, access to civil damages for victims, and vacate convictions for sex trafficking victims.³⁵ The Polaris Project ranks states into four tiers, reflecting how many of the categories of legislation they have in place, with Tier 1 representing the highest level of compliance. As of 2014, only three states— Delaware, New Jersey, and Washington— had legislation that satisfied all ten categories required for a basic legal framework to combat human trafficking, punish traffickers, and support survivors.³⁶ In 2014, the Polaris Project placed 39 states into Tier 1, meaning the state had at least seven of the ten listed categories of legislation in place.³⁷ California is included in Tier 1. Ten states remain in Tier 2, meaning that the state had five or six of the ten listed categories of legislation in place,³⁸ and two states were placed into Tier 3, meaning they had three to four of the ten listed categories of legislation in place. No states are currently within Tier 4.³⁹

www.polarisproject.org.

³⁵ See *id.* at 2.

The Polaris Project publishes the Model Provisions of Comprehensive State Legislation to Combat Human Trafficking, last edited in August 2010, to assist state legislators and policy activists in improving their state's response to human trafficking. See *Model Provisions of Comprehensive State Legislation to Combat Human Trafficking*, POLARIS PROJECT

<https://www.polarisproject.org/what-we-do/policy-advocacy/capacity-building/model-provisions-of-comprehensive-state-legislation-to-combat-human-trafficking>.

³⁶ See *2014 State Ratings on Human Trafficking Laws*, POLARIS PROJECT (2014), http://www.polarisproject.org/storage/2014SRM_pamphlet_download.pdf. One can see New Jersey's, Washington's, and Delaware's full human trafficking provisions by clicking on any of these three states "2014 State Reports" at the bottom of the page.

³⁷ All ratings are based on statutes enacted as of July 31, 2014. Tier 1 states for 2014 were: Alaska, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin. See *2014 State Ratings*, *supra* note 36.

³⁸ Tier 2 states were: Arizona, District of Columbia, Idaho, Iowa, Maine, Michigan, Montana, Rhode Island, West Virginia, Wyoming. See *id.*

³⁹ See *id.* at 2–3.

Given the scope of states' legislative responses to modify their own legislation to reflect the TVPA and pass legislation that offers adequate support to CSEC, this note will only examine California's legislative response in detail, with particular attention to Alameda County's current legislation for CSEC.

1. Current Legislation In Alameda County And California

California's legislation is relatively progressive; it falls within the top quartile of the Polaris Project's rating system. However, because it lacks an effective safe harbor statute, does not have a human trafficking task force and does not vacate convictions for CSEC, it falls behind thirteen other states.⁴⁰

Within California, Alameda and Los Angeles counties have the most progressive child exploitation legislation, keeping pace with their acute CSEC populations. In 2008, California passed Assembly Bill 499, which allowed both counties to provide more comprehensive services for CSEC caught within the criminal justice system than had existed before.⁴¹ The statute allowed the District Attorney of Alameda County to develop protocols for identifying and assessing minors who are victims of commercial exploitation. Bill 499 also allowed the District Attorney to form a multidisciplinary team of personnel from the police department, the sheriff's department, the probation department, child protection services, and community-based organizations to develop a training curriculum on how to identify and assess whether a minor may be a CSEC. The District Attorney provides this training curriculum to law enforcement, child protective services, and others who work with CSEC.⁴²

Most importantly, the bill permitted both Alameda and Los Angeles counties to create diversion programs for CSEC arrested on charges of prostitution.⁴³ A diversion program allows a defendant who has violated a criminal law to avoid a criminal record, and substitutes possible incarceration with rehabilitation programs. By subverting

⁴⁰ See *California State Report: State Ratings 2013*, *supra* note 16, at 5, 10.

⁴¹ Assembly Bill 499, codified as CAL. WELF. & INST. CODE § § 18259 (West 2012). It was renewed by Assembly Bill 799 in 2011, codified as CAL. WELF. & INST. CODE § 18259.1 (2012).

⁴² See CAL. WELF. & INST. CODE § § 18259; see also *California State Report: State Ratings 2013*, *supra* note 16, at 8.

⁴³ *Id.*

conviction and incarceration, the offender does not bear the stigmatization of the criminal justice system. Alameda County's CSEC diversion program diverts CSEC away from the juvenile justice system and treats them as victims of child abuse.⁴⁴

Unfortunately, the diversion program is not available to all CSEC. For example, CSEC who have multiple arrests or are less willing to cooperate with law enforcement are typically ineligible for the diversion program.⁴⁵ CSEC ineligible for diversion are prosecuted in the juvenile justice system for charges like solicitation or loitering. This type of diversion policy is a "conditional" diversion policy, where youth are either criminalized or diverted depending on whether they satisfy certain factors and demonstrate general compliance.⁴⁶ The effectiveness of diversion is limited further because even if CSEC enter Alameda County's diversion program, they are still housed in juvenile hall while awaiting their court date.⁴⁷ As a result, despite their diversion, they are not safe from the stressors of the delinquency system.

Other states have more complete diversion policies. For a minor under the age of sixteen, Connecticut provides complete immunity from prosecution.⁴⁸ Other states have followed suit: in Minnesota, youth up to fifteen years old are immune from prosecution, and in Tennessee and Illinois, youth up to seventeen are immune.⁴⁹ Tennessee's "safe harbor" law allows police to detain a minor for a reasonable period of time, but once the officer has determined that the person is under eighteen, he must release the minor and provide her with the number for the national human trafficking resource center hotline.⁵⁰

California's conditional diversion policy, which has only been implemented in two counties, is a step in the right direction but falls short of being a complete safe harbor statute.⁵¹ California should follow

⁴⁴ See *H.E.A.T. Watch*, ALAMEDA CNTY DIST. ATTORNEY'S OFFICE, http://www.heat-watch.org/resources/alameda_county_agencies.

⁴⁵ See Sully, *supra* note 9, 695.

⁴⁶ See *id.* at 694–95; see also *supra* notes 38–40.

⁴⁷ See *id.* at 693–94. This has also been confirmed by the author's interactions with CSEC inside of the Hall.

⁴⁸ *Id.* Connecticut also presumes coercion when considering a CSEC's case, which places the burden on the prosecution to prove otherwise. See *id.* at 695.

⁴⁹ See *id.* at 695–96.

⁵⁰ TENN. CODE ANN. § 39-13-513(d) (2012).

⁵¹ For a thorough explanation of why the current diversion policy does not adequately address CSEC's needs, see Sully, *supra* note 9, at 711–13.

the lead of states like Connecticut and adopt a full safe harbor statute to protect its CSEC from criminal prosecution.

2. Proposed Reform: A Safe House Policy

Researchers John Laub and Robert Sampson argue that major life events constitute positive or negative turning points in a person's life, pointing them towards or away from subsequent criminal acts.⁵² Their argument begins with the idea that the persistence and desistance of crime can be understood within the same theoretical framework. While persistence in crime is explained by a lack of social controls, few structured routine activities, and a lack of purposeful human agency, desistance from crime is explained by a confluence of social controls, structured routine activities, and purposeful human agency.⁵³ Although detention has some of the factors associated with desistance, like structured routine activities, their research questioned whether incarceration could ever create a positive turning point.⁵⁴ Persistent offenders, in sharing their reflections with Laub and Sampson, unanimously did not consider jail a positive turning point.⁵⁵ From a statistical standpoint, Laub and Sampson found an analogous lack of deterrent, rehabilitative, or incapacitative effect of incarceration on persistent offenders.⁵⁶ They attributed these negative factors to the idea that institutional dependency hampered offenders' ability to stop criminal activity, or, in the alternative the negative factors contributed to offenders' tendency to become more defiant of authority.⁵⁷

A CSEC's interaction with law enforcement and subsequent treatment is a turning point towards or away from a life of crime. Alameda County's conditional diversion policy, which places a CSEC in juvenile hall, very likely creates a negative turning point in the CSEC's life. Laub and Sampson found that incarceration, for juveniles and young adults in particular, had a negative effect on later job stability, which resulted in continued and perpetual criminal activity throughout life.⁵⁸ If conditional diversion were replaced with a safe house policy

⁵² See LAUB & SAMPSON, *supra* note 5, at 6.

⁵³ See *id.* at 37.

⁵⁴ *Id.* at 51.

⁵⁵ *Id.* at 188.

⁵⁶ *Id.* at 195 n.14.

⁵⁷ *Id.*

⁵⁸ *Id.* at 51. Another study performed by Western and Beckett and cited by Laub and Sampson showed that the negative effects of youth incarceration on adult employment

that placed a CSEC in a safe house separate from juvenile hall, an interaction with law enforcement would have the potential to be a positive turning point in the CSEC's life. A safe house could more readily supply the confluence of social controls, structured routine activities, and purposeful human agency, which contribute to desistance in crime.

a. The Safe House Policy In Detail

A safe house policy is a more restrictive variation of a "total immunity" policy. A total immunity policy is one that shields youth from court proceedings and criminal conviction records, but does not subject youth to detention by law enforcement or mandatory rehabilitative programs.⁵⁹ Proponents of a total immunity policy believe that any contact with law enforcement causes psychological damage, that rehabilitative programs are not helpful unless voluntary, that court proceedings necessarily treat a victim like a criminal, and that criminal conviction records make it harder for CSEC to find any legal work. Critics of a total immunity policy argue that it is not effective because the minors remain on the street, in exploitative environments, with no way for law enforcement to stop crime or remove CSEC from their pimps.⁶⁰

Safe house policy, in contrast to total immunity policy, still subjects CSEC to detainment by law enforcement and rehabilitative programs but does not subject them to court proceedings or to criminal conviction records. This variation on total immunity policy addresses critics' concerns because law enforcement would be able to remove CSEC from exploitative environments. It also addresses CSEC's needs because it protects them from the psychological harm of being treated like a criminal.⁶¹ Removal from exploitative environments and

time exceeded the negative effects for dropping out of high school and living in an area with high unemployment. See Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. OF SOC. 1030 (1999).

⁵⁹ See Mary K. Flynn, *As More Oakland Youth Join the Sex Trade, Law Enforcement Explores Alternatives to Incarceration*, OAKLANDNORTH (Mar. 13, 2010), <https://oaklandnorth.net/2010/03/13/as-more-oakland-youth-join-the-sex-trade-law-enforcement-explores-alternatives-to-incarceration>.

⁶⁰ See *id.*

⁶¹ See Sully, *supra* note 9, at 711–12 (describing the psychological harm to a CSEC of being arrested, detained, and possibly sentenced and that this treatment often encourages CSEC to return to prostitution).

placement in a safe house could be a positive turning point in a CSEC's life, helping him or her rehabilitate and choose a different life course upon release from the safe house. Proponents of the total immunity policy would argue that a safe house does not go far enough to protect a CSEC's purposeful agency. They argue that a safe house policy would add negative factors to a CSEC's life if the CSEC has no control over their placement within the safe house. However, despite proponents of the total immunity policy's criticism, a safe house policy is more likely to be a positive turning point than the juvenile hall approach. Moreover, a safe house policy will be more effective than no law enforcement contact to help CSEC make different choices going forward.

Implementing a safe house policy requires building a system to house CSEC that is an entirely separate facility from the juvenile hall.⁶² After a law enforcement officer detains a CSEC, the officer would bring the CSEC to a safe house where she or he would receive food, shelter, and programming. The CSEC would be required to stay for a specified period of time comparable to the sentence she or he would receive if convicted for a charge like prostitution, solicitation, or loitering. While there, she or he would be strongly encouraged to attend rehabilitative programming emphasizing physical, emotional, intellectual, and spiritual growth. The programming would not technically be mandatory but participation would be strongly encouraged. If a CSEC refused to stay at the safe house, refused to attend programming, or her or his behavior negatively affected her or his peers, she or he could be turned over to the delinquency system. Additionally, if a minor engaged in criminal behavior, like using drugs or alcohol, while at the safe house, she or he would be given a limited number of chances to stop before being told to leave. If the CSEC was dismissed from the shelter, she or he would be placed in juvenile hall. Upon dismissal from either the safe house or juvenile hall, a CSEC's criminal convictions would be vacated. The removal of the conviction would serve as proof to the CSEC and society that sexually exploited minors are victims and not criminals.

Critics of a safe house policy, like the American Civil Liberties Union (ACLU), contend that this kind of locked safe house is a form of forced detention.⁶³ Procedural justice theory can be used to both support and reject the safe house model. Procedural justice theory posits that

⁶² Undoubtedly, this is a long term vision as one recent study found that fewer than 100 beds exist in residential treatment centers or shelters specifically for victims of sex trafficking. *See National Overview, supra* 19, at iv.

⁶³ *See Flynn, supra* note 59.

how people are treated in the justice system determines whether they will voluntarily comply with the law.⁶⁴ The underlying motivation in support of a safe house policy is that CSEC would be treated better—at least, less like criminals and more like victims—by being placed in a facility that is more like a caring home and less like a prison.

However, for a safe house model to be effective, the safe house must have elements similar to detention. The CSEC must be required to stay in the house for a specified time in an effort to break the CSEC's bonds to the pimp. This element of the safe house model closely resembles the current juvenile justice system. Procedural justice theory, in an effort to convey to the offender that his or her human agency is respected, advocates for a safe house model that does not have a mandatory presence requirement and instead allows apprehended CSEC to come and go as they please. However, this kind of open-door safe house policy would likely not be very effective in breaking a CSEC's dependency on his or her pimps because most CSEC would leave the safe house immediately and return to their pimps before they had an opportunity to rehabilitate.

Critics also argue that a safe house policy is ineffective because it does not address the problem of pimps evading arrest.⁶⁵ Currently, pimps evade arrest because police are unable to gain intelligence from CSEC because CSEC tend to be too bonded to their pimps to reveal any information.⁶⁶ Safe houses could increase how police gather information from CSEC. Instead of trying to force information out of a CSEC at a juvenile hall detention facility, an officer could visit a safe house and foster a trusting relationship with a CSEC to gather information on the pimp. However, this strategy should be more carefully researched, because subjecting CSEC to law enforcement while they are in the safe house could subject them to unwelcome scrutiny and inhibit their psychological recovery.

⁶⁴ See TYLER, *supra* note 6.

⁶⁵ For example, in the year of 2009, the Oakland Police Department arrested 76 youth on charges of prostitution, while in a four-year period from 2006 to 2010, the Oakland Police Department apprehended 148 pimps, averaging out to about 28 a year; only 110 of these arrested pimps received felony convictions. See Sully, *supra* note 9, at 709.

⁶⁶ See, e.g., Ian Urbina, *For Runaways, Sex Buys Survival*, N.Y. TIMES (Oct. 26, 2009) <http://www.nytimes.com/2009/10/27/us/27runaways.html> (describing how the so called “flip” interview often fails).

b. Alignment With Current Laws

A safe house policy would also resolve tension between California's laws regarding CSEC and its other laws regarding minors' sexual acts in three ways. First, a safe house policy would align California's policy toward CSEC with its statutory rape laws, which define statutory rape as an adult having sexual intercourse with anyone under eighteen.⁶⁷ Second, it would resolve the contradiction between state laws that provide harsher penalties for buying or selling minors for prostitution and punishing CSEC as offenders.⁶⁸ Finally, a safe house policy in California and/or Alameda county would ensure full alignment with the federal TVPA, which creates an irrebutable presumption that any child engaged in a commercial sex act is a victim of sex trafficking.⁶⁹

c. Alignment With Psychological Realities

A safe house policy would also reflect the reality that CSEC do not choose to prostitute themselves, but are forced into prostitution because of a lack of alternatives. The sexually exploited girls in Alameda County Juvenile Hall often insist that their "friends" (which may include themselves) are prostituting voluntarily. Contrary to their beliefs, most prostitutes are picked up by a pimp, which involves some coercion,⁷⁰ and the remaining ones "choose" what is known as survival sex, when a person has sex to meet basic needs like food and shelter or to survive an emergency situation.⁷¹

To better understand CSEC's relationships with their pimps, *The New York Times* wrote letters to over a hundred pimps and conducted interviews with over two dozen incarcerated pimps in New York City.⁷² The pimps explained that they targeted minors with "low self-esteem, prior sexual experience, and a lack of options."⁷³ Pimps further reasoned that while pimping teenagers meant more legal risk than pimping adults,

⁶⁷ CAL. PENAL CODE § 261.5(a) (West 2011).

⁶⁸ *Id.* at § 261.9 (West 2012).

⁶⁹ 18 U.S.C.A. § 1591(a) (2008).

⁷⁰ See LaMura, *supra* note 30, at 307–08. Her study cites that in 75-80 percent of cases, a pimp traffics young women and men against their will by force.

⁷¹ See Flynn, *supra* note 59 (quoting researcher and clinical psychologist Dr. Melissa Farley who states that 38% of prostitutes are women who turn to selling themselves as a survival mechanism or to get through an emergency situation like losing a job or an abusive spouse.)

⁷² See, e.g., Urbina, *supra* note 66.

⁷³ *Id.*

teenagers fetched higher prices from clients and were “far easier” to manipulate.⁷⁴ As one pimp noted, “with the young girls, you promise them heaven, they’ll follow you to hell.”⁷⁵ Most of the minors whom the pimps found were already engaged in survival sex. For those who weren’t, the pimps manipulated them by using a more gradual, calculated grooming process: first, the girl would have consensual sex with her “boyfriend,” the pimp; next, he would ask her to help pay the bills by sleeping with his friend; and then, he would “push her from there.”⁷⁶

As indicated by the pimps’ interviews, CSEC are not choosing prostitution but are forced into it because of their circumstances. Since the criminal justice system is meant to punish those who choose to commit a crime, CSEC should be granted immunity for their criminal behavior. There are degrees of choice, and children selling sex for survival is hardly a willing decision.

In sum, a safe house policy should be implemented in Alameda county and in all of California’s counties. A safe house policy, diverting CSEC from the juvenile detention system, would serve as a positive turning point in CSEC’s lives and decrease the likelihood they would return to criminal activity after their sentence. Moreover, a safe house policy would allow the justice system to separate a CSEC from his or her pimp. In addition, the safe house model would align CSEC laws with current laws regarding minors and sexual activity, put California in step with other more progressive states, and ensure that CSEC are treated as victims, analogous to the federal TVPA legislation. Lastly, by automatically vacating a minor’s conviction for commercial sexual exploitation, Alameda county and California would recognize the psychological realities of CSEC’s “choice” to engage in sexual exploitation.⁷⁷

⁷⁴ *Id.*

⁷⁵ *Id.* at 3 (quoting Harvey Washington, who was arrested and sentenced to four years of jail time in Arizona in 2005 for pandering one seventeen year old and three adult prostitutes).

⁷⁶ *Id.* (quoting Washington).

⁷⁷ Whether all criminal convictions should be vacated, such as theft, or only those relating to the minor’s sexual exploitation, such as loitering, is outside the scope of this note. More consideration should be given to this question before the legislature enacts a provision vacating a CSEC’s criminal convictions.

B. Audience

In the last decade, the conversation regarding sex trafficking victims has expanded from only recognizing girls and women as victims to also recognizing that boys and men can be victimized by sex trafficking.⁷⁸ This expansion in sex trafficking discourse has occurred both nationally and internationally.⁷⁹ Researchers and policy makers argue that any effective approach to eradicating sex trafficking must aim to curb demand as much as it aims to reduce supply.⁸⁰ This note proposes that Alameda County recognize boys as CSEC victims and use educational programming at both the juvenile and adult levels as a tool to curb demand for prostitution.

1. Male CSEC Victims In The United States Generally And Specifically Alameda County

Studies have shown that a large percentage of sexually exploited youth in the country are boys. One 2008 study published by the Office of Juvenile Justice & Delinquency Prevention found that an estimated 76% of CSEC youth in the United States were female and 24% were male, and another study by the John Jay College and Center for Court Innovation found that closer to 50% of sexually exploited children in the United States were boys.⁸¹ Despite these high numbers, most policy targeting CSEC has neglected boys as possible victims. In the words of

⁷⁸ See, e.g., *And Boys Too: An ECPAT-USE Discussion Paper About the lack of Recognition of the Commercial Sexual Exploitation of Boys in the United States*, ECPAT USA 5 (2013), <https://d1qkyo3pi1c9bx.cloudfront.net/00028B1B-B0DB-4FCD-A991-219527535DAB/1b1293ef-1524-4f2c-b148-91db11379d11.pdf>.

Additionally, compare the titles of Thailand-Cambodia's Memorandum of Understandings. In 2003: Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating *Trafficking in Children and Women* and Assisting Victims of Trafficking, Siem Reap, Cambodia (May 31, 2003). In 2013: Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating *Trafficking in Persons* and Protecting Victims of Trafficking, Siem Reap, Cambodia (draft as of April 25, 2013).

⁷⁹ One 2008 study found that male sex workers were largely invisible in the global sex trade, with many researchers failing to mention them at all. When researchers did mention them, they ascribed choice to male sex workers but ascribed victimization to female sex workers. See *And Boys Too*, *supra* note 78, at 5.

⁸⁰ See, e.g., Yen, *supra* note 5.

⁸¹ See Sully, *supra* note 9, at 707 n.118; *And Boys Too*, *supra* note 78, at 4.

the John Jay College researchers, “boys are far more numerous [in the sex market]. . . than is commonly acknowledged. . . yet there is scant discussion about boys, and no services for them at all.”⁸² A 2012 study by the global organization ECPAT found that the majority of research on boys has focused on boys as runaway and homeless youth and not as victims of sexual exploitation.⁸³ Like their female counterparts, these boys often engage in commercial sex to meet their basic needs, including money, food, shelter, clothing, and transportation.⁸⁴ But unlike their female counterparts, they have not been tracked or even asked in intake interviews whether they engage in commercial sex.⁸⁵

In Alameda County in particular, the CSEC population was reported as 98% female in 2009.⁸⁶ Two of 204 CSEC serviced by the non-profit organization MISSEY were male and one was transgender.⁸⁷ This male-female distribution is substantially lower than the nationally reported studies for male-female distribution of CSEC youth.⁸⁸ Because minimal research has been done on male victims in Alameda County, it is hard to know whether MISSEY’s data reflects the actual gender distribution of Alameda County’s CSEC population. The low number of reported boys could indicate not that there are so few male CSEC, but rather that they are not being properly identified. Certain factors keep boys from being properly identified as victims, including 1) the unwillingness of boys to identify as sexual exploitation victims for fear of being perceived as gay, 2) a lack of initiative and follow-through by law enforcement and social service agencies who believe that boys are not victims of CSE, and 3) limited outreach by anti-trafficking organizations to places that have male prostitution.⁸⁹ It is hard to create an effective policy for male CSEC without more data. Thus, the first

⁸² *Id.* at 6 (quoting Ric Curtis et al., *The Commercial Sexual Exploitation of Children in New York City, Volume One*, CTR FOR COURT INNOVATION & JOHN JAY COLL. OF CRIMINAL JUSTICE 115 (2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>).

⁸³ See <http://www.ecpat.net> for more information on this globally recognized organization.

⁸⁴ *And Boys Too*, *supra* note 78, at 6.

⁸⁵ *Id.*

⁸⁶ See *MISSEY Data Report*, *supra* note 4 (finding that of the 204 youths they serviced in Alameda county, 98% were female and with 1 youth identifying as transgender and 2 youths identifying as male).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *And Boys Too*, *supra* note 78, at 5.

step for Alameda County is to thoroughly research the male segment of its CSEC population.

2. Boys And Men As Part Of The Demand Cycle

While boys must be recognized as victims of commercial sexual exploitation, they should also be educated on their role in the demand cycle for commercially sexually exploited children. It is important to acknowledge that girls and women contribute to the demand cycle because they can both purchase commercial sex and profit from it by engaging in pimping themselves. However, the majority of CSEC purchasers are male. One recent study found that between ten to twenty percent of men in the United States admit to having purchased sex at some point in their lives, rates similar to that of Australia and Europe.⁹⁰ These substantial statistics are evidence that purchasing commercial sex is not a rare or deviant activity; as a result, reforms must be implemented immediately and broadly.⁹¹

3. Proposed Reforms: Educational Programming

Procedural justice theory has the potential to radically reduce the demand for CSEC sex. Procedural justice theory proposes that people are more likely to view legal authority as legitimate and are more likely to voluntarily comply with the law when they believe that the legal process is fair.⁹² Applying procedural justice to policy impacting CSEC: CSEC populations will be reduced if boys who are victims of CSEC and boys and men who are purchasers of commercial sex feel they are treated fairly by the criminal justice system. First, Alameda County must include boys in its CSEC education and policy, acknowledging that they are also at risk of sexual exploitation. Secondly, the county should implement more educational programming about CSEC at the juvenile and adult level to help curb demand.

a. Reforms Concerning Male CSEC Victims

Recognizing boys as victims of CSEC is essential from a procedural justice standpoint. Boys have been largely ignored as CSEC victims and have only been recognized for their role as commercial sex purchasers, which is damaging. One iteration of procedural justice

⁹⁰ See *National Overview*, *supra* note 19, at 7.

⁹¹ *Id.*

⁹² See TYLER, *supra* note 6, at 3–4.

theory is that being treated in a certain way makes a person behave a certain way; thus, treating boys and men solely as commercial sex purchasers and/or perpetrators encourages them to act in a corresponding manner.

Alameda County should make prompt reforms to treat boys as possible victims of sexual exploitation. The first step for Alameda County is to conduct more research on the sexual exploitation of boys in the county. The county will need to engage creative methods for surveying the male CSEC population since traditionally this segment has been so underreported.

While gathering more specific data on the male CSEC population, the county could immediately implement its current educational programming on CSEC in boys' juvenile hall units. Currently, students from the University of California Berkeley School of Law teach a four-week CSEC-focused curriculum in the girl's unit of juvenile hall. Week one of the curriculum addresses the concept of CSEC, the corresponding myths, and the "choice" available to CSEC; week two addresses barriers to exiting the life of sexual exploitation; week three addresses humans' needs and how they can be met in a healthy way; week four addresses legal rights and life skills.⁹³ A similar curriculum that addresses the specific challenges facing male CSEC victims should be introduced into the boys' units within the juvenile hall.⁹⁴

b. Reforms To Address The Demand Cycle

In addition to supporting the idea that Alameda County should recognize boys as CSEC victims, procedural justice theory also informs how the county should treat commercial sex purchasers. Two policies which are frequently used to reduce demand are public shaming and educational programming. Public shaming can be categorized as a "disintegrative" form of shaming whereas educational programming can be categorized as a "reintegrative" form of shaming.⁹⁵ Disintegrative or stigmatizing shame occurs when a community rejects both the actor and

⁹³ Boalt Anti-Trafficking Project, CSEC Curriculum (on file with the author).

⁹⁴ Such challenges include the lack of international and national recognition that males are victims of sexual exploitation, how and why boys are brought into the sex trade to the extent their path differs from girls' paths, and how cultural expectations and perceptions of men affect male CSEC victims.

⁹⁵ See JOHN BRAITHWAITE, *CRIME, SHAME, AND REINTEGRATION* (1989).

the act as disgraceful.⁹⁶ Reintegrative shaming acknowledges that although the act itself may be evil, the actor is not inherently evil; instead it seeks to reconcile the actor with the community without letting the act become the actor's identity.⁹⁷ Procedural justice theory supports the implementation of more reintegrative shaming tactics like educational programming instead of public shaming.

Educational programming would work easily in conjunction with the safe house policy proposal aforementioned. As resource demand would decrease because fewer CSEC victims would be prosecuted, more resources could be allocated to fund educational programming. Educational programming is preferred above the alternative approach to curb demand: public shaming. Common disintegrative shaming tactics used on commercial sex purchasers to stigmatize them include the publication of their names and sometimes even their photographs in local media outlets or police websites.⁹⁸ Over half of the 826 police departments across the country that conduct reverse sting operations— a police tactic where female a police officer poses as a prostitute to lure and arrest a john— release the identities of commercial sex purchasers who are convicted in addition to those who are arrested.⁹⁹ Another variation of disintegrative shaming involves sending letters, familiarly called “Dear John” letters, to the home of alleged commercial sex buyers or to the home of the owner of a vehicle that was used in soliciting a commercial sex.¹⁰⁰

Proponents of disintegrative shaming tactics rely on research that states when asked what would deter them from buying sex, johns say that having their identities publicly circulated would do so.¹⁰¹ Opponents of disintegrative shaming counter that the deterrence is unproven, it abrogates due process rights because identities are released upon arrest prior to conviction, and that it unjustly affects families of arrestees.¹⁰² Alameda County does not currently use disintegrative shaming tactics, but some have argued that they should be implemented as they have been in other California counties like San Bernardino and

⁹⁶ Stacey Hannem-Kish, *Crime, Shame, and Reintegration*, in *ENCYCLOPEDIA OF PRISONS & CORRECTIONAL FACILITIES* 201 (Mary Bosworth ed., 2005).

⁹⁷ *Id.*

⁹⁸ See *National Overview*, *supra* 19, at 22.

⁹⁹ *Id.* at 25.

¹⁰⁰ *Id.* at 22.

¹⁰¹ *Id.* at 50.

¹⁰² *Id.* at 51.

Fresno.¹⁰³

Instead of public shaming, more educational programming should be implemented at both the adult offender level and at the juvenile offender level. Educational programming can be categorized as a type of reintegrative shaming which seeks to condemn the sex purchase of the john but not the john himself. And yet, an educational program is not “soft” on the john because it confronts the john with the victim’s story, a central component of reintegrative shaming tactics.¹⁰⁴ Procedural justice theory supports implementing reintegrative shaming tactics like educational programs because they appeal to a commercial sex purchaser’s identity as separate from his sex purchase, increasing the likelihood that he will perceive the criminal justice system as fair.

San Francisco’s First Offender Prostitution Program (FOPP) is one educational program begun by the Standing Against Global Exploitation (SAGE) Project in 1995.¹⁰⁵ FOPP allows persons who have been charged with soliciting or engaging in lewd public conduct,¹⁰⁶ soliciting or engaging in prostitution,¹⁰⁷ or loitering in any public place with the intent to commit prosecution¹⁰⁸ and who have no prior adult criminal contact to bypass the court system by participating in a one-day educational course.¹⁰⁹ Participants pay a sliding administration fee of \$350 to \$1000, which helps pay for the school.¹¹⁰ The program, which has also been implemented in Santa Clara County, has been largely successful.¹¹¹ In surveys of program attendees, 100% said that they learned something new and 97% said it was unlikely they would solicit a prostitute again.¹¹² These sentiments are reflected in reality: of the 2200 men who attended FOPP between 1997 and 2001, only eighteen were arrested again for soliciting prostitutes.¹¹³ One participant in FOPP said

¹⁰³ Chip Johnson, *To Fight Child Prostitution, Shame the Johns*, SFGATE, <http://www.sfgate.com/bayarea/johnson/article/To-fight-child-prostitution-shame-the-johns-5150521.php> (last updated Jan. 16, 2014).

¹⁰⁴ Stacey Hannem-Kish, *supra* note 95.

¹⁰⁵ See *First Offender Prostitution Program (FOPP)*, SAGE PROJECT, <http://sagesf.org/first-offender-prostitution-program-fopp> (last updated Oct. 2013).

¹⁰⁶ CAL. PENAL CODE § 647(a) (West 2015).

¹⁰⁷ *Id.* at § 647(b) (West 2015).

¹⁰⁸ *Id.* at § 653.22 (West 2015).

¹⁰⁹ *First Offender*, *supra* note 105.

¹¹⁰ *Id.*

¹¹¹ See Assembly Committee on Public Safety, bill analysis, paragraph 8 (June 25, 2013).

¹¹² See Yen, *supra* note 5. See also Sully, *supra* note 9, at 710.

¹¹³ *Id.*

that when he learned of one former sex worker's rough childhood, he realized that "they have feelings, too, like everyone else."¹¹⁴ Another stated that he would not be able to solicit a sex worker again without remembering the pain in the voices of the former prostitutes who had presented their testimony to him.¹¹⁵ FOPP treats a commercial sex purchaser like a person who can change his behavior instead of a deviant who must be locked up because his essential nature is evil. As a result, procedural justice theory posits that the human treatment of johns has a causal relationship to the reduction in those johns soliciting prostitutes.

In addition to implementing programs like FOPP at the adult offender level, educational programming should also be implemented in juvenile hall to educate youth on how they might play a role in the demand side of the sex trade. The current curriculum for the girls in juvenile hall addresses them only as victims and not as perpetrators. Instead, both the girls' and boys' units should receive curriculum explaining how they could become complicit in the sex trade. An appropriate curriculum would include a discussion of the legal ramifications for pimping or assisting a pimp and a description of how a person can still face a conviction even if they didn't have the intent to pimp. The modified curriculum should stimulate reflection and dialogue on how minors can be protected from entering the sex trade.

Because programs like FOPP and juvenile hall curricula catalyze long-term change, educational programming as a form of reintegrative shaming should be used to curb demand for child sexual exploitation in Alameda County.

C. Language

Third, Alameda County should reform the language used to educate CSEC and juvenile offenders to better accommodate CSEC's needs. While the language of victimization currently used is an improvement from the "moral depravity" characterization of CSEC at the beginning of the 20th century, it prevents CSEC from making positive change.

Language concerning the prostitution of minors has evolved over the past century. At the end of the 19th century, New York state legislators, who intended to protect women from urban vice, passed

¹¹⁴ *Id.* at 677, n.177 (quoting Donna M. Hughes, *Best Practices to Address the Demand Side of Sex Trafficking*, UNIV. OF R.I. 1-2 (2004), http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf).

¹¹⁵ *Id.*

“wayward minor” laws that criminalized female sexual promiscuity.¹¹⁶ The 1923 New York Law defined a wayward minor as any “female between the ages of sixteen and twenty-one who either (1) is habitually addicted to the use of drugs or the intemperate use of intoxicating liquors, (2) habitually associates with dissolute persons, (3) is found of her own free will and knowledge in a house of prostitution or assignation or ill fame, or (4) habitually associates with thieves, prostitutes, pimps or procurers or disorderly persons.”¹¹⁷ The policy underlying these laws was to protect women who were in danger of becoming morally depraved.¹¹⁸

Today, the same group of girls and boys who, in New York, would have been characterized as wayward minors are now defined as commercially sexually exploited children. In 2008, New York led the way in recognizing this population as exploited victims and not as “wayward” minors in danger of moral depravity.¹¹⁹ Following New York’s lead, several states have passed similar safe harbor statutes, but many states still treat CSEC as criminals deserving punishment.¹²⁰ States must continue to pass legislation that recognizes these children as exploited victims and that grants them full safe harbor from criminal prosecution and conviction.

1. Current Language In Alameda County

The current language in Alameda county is focused on having a CSEC acknowledge that they were the victim of sexual exploitation. The current programming in the juvenile hall teaches CSEC that a commercially sexually exploited child is a victim who did not have a choice to make. Because she or he had to engage in survival sex to meet her or his basic needs, she or he has not been able to freely choose the

¹¹⁶ See Cheryl D. Hicks, *‘In Danger of Becoming Morally Depraved’: Single Black Women, Working-Class Black Families, and New York State’s Wayward Minor Laws, 1917–1928*, 151 U. PA. L. REV. 2077, 2078 (2003).

¹¹⁷ N.Y. LAW § 913-a (1923).

¹¹⁸ See Hicks, *supra* note 116, at 2104.

¹¹⁹ See *Sex Trafficking of Minors and ‘Safe Harbor’*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/safe-harbor> (last visited Apr. 20, 2015).

¹²⁰ Illinois, Massachusetts, Minnesota, New Jersey, Ohio, Vermont, and Washington have passed similar safe harbor statutes and Connecticut, Michigan, and Tennessee have passed laws that protect minors from prosecution. See *id.* See also *supra* notes 24, 27, 29 for a categorization of states into different tiers based on the position of their state legislation towards CSEC.

course of her or his life thus far. The current curriculum taught by the Boalt Anti-Trafficking Project introduces the concept of choice in its first week and teaches that CSEC do not have a free choice to make but have been forced into “the life” by outside circumstance. However, this language of victimization should be altered to empower CSEC to change the course of their lives going forward.

2. Proposed Reform: A Language Of Empowerment

Procedural justice theory suggests that language defines how people view themselves within the context of the criminal justice system.¹²¹ The way people are labeled and spoken to predetermines the roles they will play during their term of incarceration and beyond. To the outside world, CSEC must be labeled and treated as victims to ensure they will receive adequate legal protection by the legislature and law enforcement. However, while attempting to rehabilitate CSEC victims themselves, teaching an absence of choice does not empower them. Many of the CSEC in juvenile hall strongly disagree with the idea that they are victims; they believe that they and their friends chose to prostitute themselves on the streets. Procedural justice theorizes that having an external system which forces a label onto a person who does not intrinsically identify with that label can make the labeled individual feel as if she or he is being treated unfairly.

Forcing a “victim” label onto resistant CSEC youth in juvenile hall is not helpful because it predisposes them to be skeptical of the remainder of the curriculum. Instead, an educational curriculum that uses a language of choice would allow CSEC to identify choices they made in the past and would encourage them to see the array of choices they could make in the future. When CSEC are removed from exploitative environments, the victim identity does not empower a CSEC to make a different choice going forward. In juvenile hall, CSEC should be taught that although they have been exploited in the past, they now have an opportunity to change their life course and be called by a different name: a survivor.

VI. CONCLUSION

Oakland’s billboards proclaiming the plight of sexually exploited youth and pleading for people to report any tips to police reflect the local crisis of commercial sexual exploitation of children.

¹²¹ TYLER, *supra* note 6.

Alameda County is already doing good work ministering to the needs of CSEC, and it can continue to address their needs by focusing on legislation, audience, and language.

The county should adopt legislation that allows the justice system to establish a safe house policy of immunity. Police officers would pick up CSEC on the streets as they do now, but instead of taking them to the juvenile hall, they would take them to a safe house where they could receive food, shelter, and educational programs.¹²² This treatment would make it more likely for an interaction with law enforcement to be a positive turning point in a CSEC's life, turning him or her away from crime later in life. Moreover, by automatically vacating minors' convictions of prostitution, the community would acknowledge that becoming a CSEC is neither a choice nor an immutable identify.

Secondly, the county should incorporate boys and men into their CSEC policy and education. First, the county must direct programming toward boys who are also victims of CSEC. Second, the county must adopt a nuanced education policy to address the men who create the demand cycle for CSEC. Procedural justice theory suggests these reintegrative shaming tactics will increase the perception that men and boys are fairly treated in the criminal justice system, increasing their voluntary compliance with the law.

Thirdly, the county should reform the language used with the CSEC population for teaching purposes. To the outside world, CSEC should be treated and labeled as victims. But in educational conversations with CSEC, reiterating a victim narrative does not help CSEC. Instead, procedural justice theory supports treating CSEC as people who are capable of choosing their life course and not powerless to it. As a result, during educational lessons with CSEC, the language of victimization should be changed to a language of empowerment to best help them make different choices in the future.

Turning points theory and procedural justice theory propose modifications to current CSEC policy to make it more effective. If the county could adopt these legislative, educational, and linguistic alternatives when working with both the population of CSEC and the population of consumers of CSEC, the county would better address

¹²² As mentioned, there are constitutional concerns regarding holding someone without a criminal conviction, but properly addressing these concerns is outside the scope of this paper. *See supra* p. 14 and accompanying note 61.

CSEC's needs and help them escape a life of sexual exploitation.