

VICTIMS NOT CRIMINALS:

RESPONDING TO COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN ALAMEDA COUNTY

CARLY DEVLIN

EDITED BY CATHERINE MERESAK, IGNACIO CAMACHO, ALLISON DOMICONE, AND SUZANNE MERKELSON

Every night, there are fifty to one hundred commercially sexually exploited children (CSEC) on Oakland's streets, representing a significant, deeply rooted human rights issue in Alameda County. When identified by the police, these girls are arrested, detained, and prosecuted, a punitive move that necessitates closer examination and change. In this paper, I examine CSEC's current pathways through the juvenile justice system and envision a child welfare alternative that represents their unique set of needs. To truly support these girls, it is necessary to radically change legal protocol and respond to the sexual exploitation of children from the child welfare system, rather than the criminal justice system.

INTRODUCTION

The commercial sexual exploitation of children is a pervasive issue in Alameda County. The FBI has designated the Bay Area as one of the nation's thirteen "high intensity" areas for child trafficking, with Alameda County a particular hotspot for sexual exploitation.¹ In Alameda County, 267 cases were identified between January 2011 and December 2012.²

Social services and legal responses are administered on the county level. In Alameda County, the Adult Division District Attorney is spearheading efforts to address the issue. While social services are increasingly directed to support commercially sexually exploited children, legal responses fail to address complex accompanying health and psychosocial problems and may even exacerbate these problems. Commercially sexually exploited children (CSEC) are often arrested, detained, and prosecuted for sex crimes. They can be held in detention at the Juvenile Justice Center for days and months upon their arrests, which can add unnecessary trauma upon already severe trauma histories. Most CSEC leave the Juvenile Justice Center with criminal records, starting or continuing long trajectories of involvement with the juvenile delinquency system. Sixty percent of young women arrested for solicitation are at some point re-arrested.³

The Alameda County District Attorney's initiative, H.E.A.T. (Human Exploitation and Trafficking) Watch, focuses on aggressive prosecution of pimps, community education, and training of social services and law enforcement.⁴ However, discussions that explicitly recognize that CSEC are arrested, detained, and prosecuted are on the periphery of the dominant political discourse in Alameda County. Alameda County should reform the current system so that CSEC do not become enmeshed in the criminal justice system, and instead enter a reworked child welfare system.

Written from the perspective of a social worker, this article traces the current trajectory of girls through the juvenile delinquency system. As 99 percent of all CSEC are girls, policy responses largely focus on addressing their needs.⁵ As a critique of current policies, this paper focuses on the issue as it pertains to girls, though future policy work should address the needs of boys as well. The paper details another path through a reworked child dependency system—a path on which girls are not arrested for their abuse and instead, are offered resources to address their specific needs. The goal of this paper is to provide an alternative discourse and begin the process of imagining a system that adequately supports CSEC.

PATHWAYS THROUGH THE JUVENILE DELINQUENCY SYSTEM

THE PROCESS OF EXPLOITATION

Children are vulnerable to exploitation for a litany of reasons. Victims of trauma are particularly at risk of future trauma and sexual exploitation.⁶ In a study of CSEC in Alameda County that draws upon the experiences of 113 girls, the majority (75 percent) have experienced prior, ongoing victimization, including neglect, emotional abuse, sexual abuse, physical abuse, family violence, and community violence, all of which can normalize exploitation.⁷ Trauma can lead to risk-taking behavior, struggles with mood regulation, disruption in caregiving relationships, lack of supervision, and social isolation.⁸ Poverty and homelessness also play a part—84 percent of CSEC in Alameda County are runaways, many of whom are fleeing abusive or neglectful living situations.⁹

Pimps can seemingly play a role of emotional or economic support that masks exploitation, emotionally manipulating girls to believe they are in caring, supportive relationships. Many CSEC call their pimps “boyfriends,” while other CSEC are pimped by their own families or other girls. Pimps actively recruit girls at group homes, at schools in impoverished neighborhoods, through other CSEC, and with the use of drugs.

Sixty percent of CSEC surveyed in one study were recruited before the age of 14.¹⁰ The average age of exploitation is decreasing as pimps increasingly recruit from middle schools and younger populations, with girls as young as 10 recruited.¹¹

THE JUVENILE DELINQUENCY PROCESS

The response to CSEC is currently punitive, beginning with an arrest that draws girls into the juvenile delinquency system. Police officers usually arrest these girls while on patrol, although girls are occasionally arrested on intentional sting operations as well. Throughout the criminal justice process, a variety of officials—including the arresting officer, members of the District Attorney’s Office, and the judge—have the discretion to release the girls.

Following a first arrest, many girls get caught in a cycle of probation violations and re-arrests. Often, they are released to a family member with an ankle monitor, only to fall back under the sway of their pimps, run away from home, and cut off their ankle monitor. Police may

QUICK FACTS:

DEMOGRAPHICS

99% of all CSEC are girls.³⁴

53% have lived in a group home at some point in their lives.³⁵

82% are young women of color.³⁶

re-arrest CSEC for prostitution, probation violations, or other charges, like theft or assault.

Alameda County is taking some positive steps to address child trafficking, including the formation of Girls Court. Girls Court is designed for the most at-risk young women, including CSEC, with the goal of providing a gender-responsive alternative to the traditional juvenile justice system. Here, the judge frequently lowers the original charges, and the girls are connected with social services. However, even within this configuration, CSEC are still arrested, detained, and prosecuted. In an ideal system, sensitive to the needs of CSEC, these three things would not take place.

SOCIAL SERVICES THROUGHOUT THE JUVENILE DELINQUENCY PROCESS

From arrest to post-release, several social services in Alameda County provide support to CSEC. For example, an advocate from BAWAR (Bay Area Women Against Rape) provides on-the-scene support to girls as they are arrested. When in detention, the girls also have access to the Alameda County Behavioral Health Care Services outpost in juvenile hall, the Guidance Clinic. After release, CSEC continue to have services available, including SafetyNet meetings among representatives from the Juvenile Division of the D.A., the Public Defender’s office, community-based organizations, hospitals, probation, and the Guidance Clinic. Together, these organizations provide legal and residential aid, as well as access to public assistance, mental health services, and advocacy both within and outside of the courts.¹²

EVALUATING THE CURRENT SYSTEM

Treating CSEC as criminals does not help them get off the streets or away from pimps. Both research and anecdotal evidence show that many barriers exist for girls getting off the streets and away from exploiters. The current system does not address these barriers. Some CSEC have not made a commitment to extricate themselves due

to emotional manipulation, shame, need for material resources (e.g., money and shelter), and fear of physical abuse or retaliation by the pimp.¹³ Housing instability also contributes to vulnerability and re-exploitation; turmoil at a family or group home often drives girls back into the hands of their exploiters, especially when the pimps are actively seeking them out.¹⁴ These factors also keep CSEC entrapped in the criminal justice system.

QUICK FACTS:

PSYCHOLOGICAL AND HEALTH-RELATED NEEDS OF
COMMERCIALLY SEXUALLY EXPLOITED CHILDREN

More than 8 of 10 are runaways.³⁷ Many of these girls have prior histories of **victimization**, have experiences of **substance abuse**, and are dealing with **mental health** challenges.³⁸ They have specific reproductive health issues concerning **sexually transmitted infections (STIs)**, **unplanned pregnancy**, and often need treatment for **injuries stemming from physical abuse**.³⁹ Exploitation involves deep emotional **manipulation and abuse**.⁴⁰

According to the WestCoast Children's Clinic data, one quarter of CSEC display trauma-bonding with their exploiter, and 11 percent actively protect their exploiters from legal repercussions.¹⁵ CSEC are often resistant to offer the names of their pimps or press charges once detained in juvenile hall. Girls cycle through levels of commitment to change, where extrication is not a linear process.¹⁶ They may recognize their exploitation and express desire to leave their pimps, only to be re-arrested a month later for alleged prostitution.

Viewed in terms of re-arrest rates, the situation is bleak. As previously mentioned, 60 percent of young women arrested for solicitation are at some point re-arrested,¹⁷ compared to 45 percent of all young people who have received court-ordered probation in Alameda County.¹⁸

The current system fails to get girls out of the cycle of exploitation and re-arrest. It is imperative to create systems that honor CSEC's emotional and material realities. We should take a closer look at how we can support CSEC through the use of the child dependency system.

CURRENT ALTERNATIVE MODELS

Across the country, social workers and law enforcement professionals realize that the current system needs fixing.

The legal system and child welfare system can both be entry points for considering how to better work with these children, rather than against them.

ALTERNATIVE MODELS: LEGAL SYSTEMS

The diversion model connects CSEC who have been arrested and detained with the child welfare system or other similar services before or after adjudication.¹⁹ Several states, including Washington, mandate diversion for first time prostitution-related offenses.²⁰ While some states will drop charges if a girl is explicitly being coerced,²¹ the burden of proof varies as to whether it falls on the prosecution or defense.²²

Other systems give CSEC immunity from prosecution, though they can still be detained in facilities varying according to the girl's age.²³ In Tennessee, girls are released upon being identified as CSEC and given an emergency hotline.²⁴ Other states, like Illinois, usually hold CSEC in temporary protective custody, such as foster homes, mental health facilities, or hospitals.²⁵ Despite the increased sensitivity provided by these methods, CSEC can still be arrested or detained in a locked facility.

The idea of decriminalization is also put forth as an alternative. However, the term is not clearly defined and has been used to represent many permutations of the policies mentioned above. I have intentionally avoided using the term in order to highlight the operative issue: CSEC should not be arrested, detained, or prosecuted.

ALTERNATIVE MODELS: CHILD WELFARE SYSTEM

Advocates have challenged the ban in federal court on Other models focus on collaborations between the child welfare system and juvenile courts. Across the United States, states are increasing funding for services for CSEC and modifying laws to better identify and serve them. Connecticut, Florida, Illinois, and Oregon have made child trafficking an element of mandated reporting guidelines, a departure from the status quo in other states.²⁶ In Connecticut, child welfare workers screen every child who comes across the system for commercial sexual exploitation.²⁷ This is a good first step toward a responsive system.

Additionally, some state governments have increased funding for specialized placement options for youth, offering training to transitional-housing staff and foster-care providers to educate them on the specialized needs of CSEC. However, in most cases, state and county systems lack culturally competent and sensitive placement options for these girls.²⁸

States and counties are implementing systems to carefully

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coordinate service delivery and data tracking, including efforts to collect and share data on CSEC between the juvenile justice system and child welfare system. Alameda County is beginning to use this model at SafetyNet meetings, the multidisciplinary case review meetings organized by the District Attorney. This works toward adequate coordination among the services available to support CSEC, but it is not sufficient.

CHANGES IN ALAMEDA COUNTY

Alameda County needs to critically consider other states' experiments with different legal responses and service delivery options for CSEC. In order to truly support these girls, Alameda County should not arrest, detain, or prosecute them. Additionally, these legal changes should be made in tandem with alterations in the child dependency system.

LEGAL RESPONSES TO CSEC IN ALAMEDA COUNTY

As described above, Alameda County's legal response to CSEC is largely punitive, with girls getting drawn into

A minor may be subject to juvenile dependency court if the minor is a victim of human trafficking, or was paid to perform sexual acts, or if the minor has solicited, agreed to engage in, or engaged in an act of prostitution.

The juvenile dependency court will place the juvenile victim with a specialized program for victims of human trafficking, or if none is available, foster care.³²

the juvenile justice system and amassing criminal records. Even if we look to the dominant reform models described above, they still incorporate arrest and punitive elements, causing further trauma.

There are alternatives to arrest and detention on a legal level. Multnomah County, Oregon is pioneering a radical new approach. The police, working closely with child welfare and the Sexual Assault Resource Center, a community-based organization, do not arrest CSEC.²⁹ Instead, CSEC are connected with clinicians and advocates through referrals from the police, families, CSEC themselves, the Department of Human Services, and community organizations.³⁰ They provide trauma-informed care and work with girls to create safety plans.³¹

The commitment to collaboration already in place in Alameda County, the District Attorney's H.E.A.T.

(Human Exploitation And Trafficking) Watch, is promising for future efforts. Community-based organizations, Social Services, the District Attorney, Public Defender, law enforcement, and Probation are working to coordinate a response sexual exploitation. Taking these steps further to stop arrests of CSEC in Alameda County would require continued collaboration among these players. To encourage them to do so, we must increase public awareness around the current punitive system, combining with political advocacy of front-line providers and supporters within the legal system.

CURRENT MOVES

State Senator Leland Yee has drafted a bill proposing changes to the legal response to CSEC that incorporates the child dependency system. As described by the Coalition to Abolish Slavery and Trafficking, this bill states:

The bill calls for the California Health and Human Services Agency to develop a protocol regarding care in the community, as well as stressing that secure, locked placements like detention should be used as a last resort.

While this bill represents a move away from arresting, detaining, and prosecuting CSEC, it is not sufficiently defined. No language in the bill defines how to identify CSEC, leaving girls to be arrested and detained if a judge or the District Attorney does not quickly identify them.

Additionally, the language on the diversion of CSEC is conditional, leaving room for treating detained girls as criminals. This occurs in several states; diversion and immunity are restricted to those with first-time offenses or those under a certain age. Such exclusions should be eliminated to ensure support for CSEC.

ENVISIONING CSEC IN A NEW CHILD WELFARE SYSTEM

The juvenile justice system is not effectively supporting CSEC, deepening trauma and leading to a cycle of probation violations and re-arrest. Doing so would require implementing child dependency programs to replace the current punitive structure. The current child welfare system is not yet equipped to subsume responsibility for commercial sexual exploitation of children, though with some major changes, it could do so in the future. I describe a new child welfare system that can address these issues in detail below.

Instead of arresting CSEC, police officers should identify

the girl on the scene and call a trained advocate from either a community-based organization or the county to confirm identification. Police involvement should be minimal, as their presence can send the message to CSEC that they have committed a crime.

The trained advocate and first responder should then bring CSEC to the Alameda County Child Assessment Center, a confidential location where advocates can take children who are removed from homes due to abuse or neglect. At the Assessment Center, a trained clinician would assess the CSEC using a Screening, Stabilization, and Transition technique.

This clinician is an important part of the new system. The clinician should be trained in issues facing CSEC and remain culturally competent, nonjudgmental, and supportive. It is important that the clinician develops a positive relationship with the girl that will make her more likely to access social services when needed. The clinician should be familiar with available community resources to introduce them to girls in an accessible way. The clinician should also provide the girls with education on commercial sexual exploitation, discussing potential vulnerabilities, safety plans, and troubleshoot challenges.

Once educated, the Assessment Center should orient and explicitly connect CSECs to available social services. For example, the Assessment Center could assign each a girl to a therapist and case manager to provide direct linkages and support.

To make this system work, Alameda County would need a safe house for CSEC. The safe house would provide a trained staff available to CSEC if they run away from either an exploiter or their foster home. As so many CSEC run away, it is crucial to have a place for them to go so they have another choice besides their exploiters.

This process should be informed by the understanding that it can take CSEC many attempts to leave their exploiters and that progress is not linear. Providers must be nonjudgmental and sensitive to relapses and recidivism, as both will invariably happen. CSEC must know that there are services available and that they can access them on their own terms. As such, there can be no detention during this process. Rather, a girl must take ownership over the process. Supportive environments must encourage her agency and self-determination, both of which are stripped from her during exploitation.

A successful system must hold itself accountable. Ideally, data should be collected on engagement with social services, stability of housing, engagement in risk-taking behavior, any type of re-arrests (for charges other than prostitution), employment status, school engagement, extracurricular involvement, and reported sexual exploitation. This data gives the system the basis for self-assessment.

POTENTIAL CHALLENGES

SB 1029 is not a panacea. It does little to address fundamental issues of poverty, hunger, and criminal justice. It will take a fundamental shift in American attitudes about these issues to even consider policy proposals that change those systems. That sounds perhaps more difficult than it is; half the battle is being able to define the “problems.” In the past, the list of urgent problems demanding policy attention included rampant crime, drug use, and welfare dependency. Though those are still salient issues for a portion of the electorate, our idea of what deserves public attention and public resources has changed. Conversations around income inequality and ending the now-50-year War on Drugs have become more common and more nuanced in just the last three years.

The relatively high cost of living in California means many of our neighbors struggle to afford enough food. Yet Californians are often surprised to learn that no other state does worse at ensuring its residents have access to a program designed specifically to alleviate this condition. I argue that the lifetime ban on SNAP for California drug felons represents a missed opportunity to increase food security and invest in our communities economically.

Unexpected allies have come aboard. Elderly soup kitchen volunteers, saddened by seeing the same faces in line for what used to be called “emergency food” for weeks on end, have joined forces with probation officers tired of repeatedly locking up the same people. Uniting their vastly different perspectives can show the public nothing is gained from the ban. In fact, talking and thinking about the ban may help us raise fundamental questions about these broken systems.

It does not serve us, fiscally and morally, to punish children for their parents’ crimes. Nor is it fair to punish certain offenders decades after they have passed through a system called “corrections.” Should sufficient access to food be considered something less than a human right?

CONCLUSION

Given the current punitive legal response to CSEC in Alameda County, major changes featuring alternatives to arrest and detention are necessary. Crafted from the child welfare system, these alternatives can honor these girls' agency, ending abuse and empowering them to be active advocates for themselves. Respecting CSEC's rights and agency without detainment allows girls to make meaningful changes in their own lives.

Carly Devlin is a second-year Master of Social Welfare student at the University of California, Berkeley. She is passionate about supporting youth who have been involved in the juvenile-justice system.

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