

# **Testimony of The Legal Aid Society**

**On**

**Bill 153**

## **An Act Providing A Safe Harbor to Exploited Children**

**Presented to:**

**The State of Connecticut  
General Assembly's Select Committee on Children**



**MAKING THE CASE FOR HUMANITY**

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**February 26, 2010**

**WRITTEN TESTIMONY IN SUPPORT OF RAISED BILL NO. 153**  
**LCO No. 583**

An Act Providing a Safe Harbor for Exploited Children

**Purpose of Bill:**

The purpose of this bill is to combat the rising problem of the commercial sexual exploitation of children by amending Section 53a-82 of the general statutes, by creating the presumption of an affirmative defense for a person under the age seventeen to a charge of prostitution.

**Summary of the Bill:**

Currently, under Connecticut law, there it is an affirmative defense to prostitution ( §53a-82) if the actor was coerced into committing such offense by another person in violation of section 53a-192a. Section 53a-192a states that *a person is guilty of trafficking in persons when such person commits coercion as provided in section 53a-192 and the other person is compelled or induced (1) engage in conduct that constitutes a violation of section 53a-82, or (2) work.*

Coercion is defined in §53a-192 as:

*(a) A person is guilty of coercion when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will: (1) Commit any criminal offense; or (2) accuse any person of a criminal offense; or (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute; or (4) take or withhold action as an official, or cause an official to take or withhold action.*

An affirmative defense must be raised at trial, and the defendant has the burden of establishing the defense by a preponderance of the evidence. See §53a-12(b). Under the existing law, if someone wants to assert the defense of being coerced into committing the act of prostitution because they are a trafficked person, the prosecution would first present their direct case which would establish the act of prostitution. Then, the defendant would bear the burden of proving, by a preponderance of evidence, that they engaged in the conduct because they were afraid that someone would commit a criminal offense (i.e., afraid that they would be assaulted, or that someone else would be assaulted;) that they would be wrongly accused of committing a criminal offense; that someone would expose a secret that would subject them to hatred, contempt or ridicule; or that an official would take or withhold an action.

While not as high a standard as beyond a reasonable doubt, there is still a requirement that the defendant produce some credible, competent evidence of coercion. This is not always easy to do – especially if the defendant remains afraid of the person who has done the coercion.

By creating a “presumption” of coercion for defendants under seventeen, the legislature has shifted the burden of proof from the child victim of sexual exploitation, to the prosecution, if they chose to charge a child with an act of prostitution.

### **Grounds for Support:**

The commercial sexual exploitation of children is a rapidly growing problem, which affects hundreds of thousands of children in United States. A recent report on the prevalence of commercially sexually exploited children in New York State estimated that there are at least 3000 children who are the victims of sexual exploitation.<sup>1</sup> Although, this number fails to include countless other sexually exploited youth because of the methodology used and the short time-frame of the study, it does begin to quantify the vast scope of the problem.

The Juvenile Rights Practice of The Legal Aid Society represents many of the children who have been the victims of commercial sexual exploitation in all types of New York City family court proceedings. We are the largest child advocacy organization in New York State, and represent children in child protective proceedings, persons in need of supervision proceedings, and juvenile delinquency proceedings in all five boroughs of New York City. Children who have been prostituted may appear in Family Court as subject children in child protective proceedings, as persons in need of supervision, or in juvenile delinquency proceedings. What they frequently share in common is a history of being sexually abused as a child, having been involved in the child welfare system, poor family support systems, and poverty.<sup>1</sup>

Having recognized that these young victims of sexual abuse, who have been exploited by an adult who is not a parent, did not fit within the current structure of New York State law, the Juvenile Rights Practice became a leading proponent and advocate of the Safe Harbor Act. The existing laws in New York State were woefully inadequate in terms of protecting these vulnerable children, and although New York State had passed a Trafficking Act, the needs of the child victims of trafficking and commercial sexual exploitation were not addressed.

Accordingly, the Juvenile Rights Practice become instrumental in educating legislators in the widespread problem of child victims of domestic trafficking, and participated in the drafting of proposed legislation. Although there were some points of compromise along the way, the passage of the Safe Harbor Act, first of its kind in the country, was extremely gratifying. Just last week, the U.S. Committee on the Judiciary held a congressional hearing called "In Our Backyard: Child Prostitution and Trafficking in the US." The crux of the hearing was while the federal government, in the Trafficking Victims Protection Act of 2000,<sup>2</sup> has recognized that

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<sup>1</sup> See New York Prevalence Study of Commercially Sexually Exploited Children Final Report, dated April 18, 2007, prepared for the New York State Office of Children and Family Services by WESTAT.

<sup>2</sup> See Trafficking Victims Protection Act, which defines the term of “severe form of trafficking in persons” as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age . . .” 22 U.S.C. §7102 (2000). It also provides that “[v]ictims of severe forms of trafficking,

prostituted children are victims, and should be treated as such, states still have laws that prosecute children as perpetrators of crimes. Senators Wyden and Franken, among others, called upon Congress to urge other states to create legislation similar to New York State that would provide safe harbor for sexually exploited children.<sup>3</sup> During the hearing, a young lady, speaking with compassion, grace and composure, urged Congress to assist states in passing Safe Harbor legislation. She is a JRP client, a survivor of sexual exploitation, who went on to become valedictorian of her high school class, is attending college, and is a GEMS<sup>4</sup> outreach worker.

The proposed amendment to Section 543a-82 of Connecticut General Statutes recognizes that these vulnerable children cannot be both victim and perpetrator in the eyes of the law, and creates a presumption that a child arrested for an act of prostitution is a victim of a severe form of trafficking. When sexually exploited youth first come to the attention of law enforcement, they are almost always scared, intimidated, and have been sexually, physically and emotionally abused. In this proposed legislation, the State of Connecticut recognizes that these children are in no position to have the wherewithal to provide evidence of an affirmative defense. This presumption gives the Court, and prosecutors, the discretion to refer the child victim to child services, instead of making her the subject of a criminal proceeding.

The Juvenile Rights Practice of The Legal Aid Society strongly supports the passage of Bill No. 153, An Act Providing a Safe Harbor for Exploited Children, which creates a presumption that would allow the young victims of commercial sexual exploitation to overcome their trauma and abuse, in a safe, secure and appropriate environment.

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while in the custody of the Federal Government and to the extent practicable, shall . . . not be detained in facilities inappropriate to their status as crime victims, [and] receive necessary medical care and other assistance . . . “ 22 U.S.C. §7105 (2000).

<sup>3</sup> See [judiciary.senate.gov/webcast/livewebcast.cfm](http://judiciary.senate.gov/webcast/livewebcast.cfm)

<sup>4</sup> GEMS is acronym of the Girls Educational and Mentoring Services program, the nationally acclaimed program for girls who have been commercially sexually exploited. See [www. Gems-girls.org](http://www.Gems-girls.org).

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