THE FEDERAL BATTLE AGAINST CHILD SEXUAL
EXPLOITATION: PROPOSALS FOR REFORM

GREGORY LOKEN*

I know most—most of the people, kids in Houston that run away, I happen to know them as close personal friends. They do resort to . . . prostitution. That's like the big thing. They hang out at the corner, and they'll be thumbing a ride, and after they get the ride, then they go to this guy's pad, and to get a place to sleep tonight they have to pay a price. And that wasn't for me.

—Mike Sturgis, 16-year-old "throwaway" youth¹

Paying "the price" for a place to sleep has become an all too familiar feature of growing up in America.² From 1970 to 1983, national arrests of juveniles engaging in prostitution skyrocketed 144%, even while the population of youths aged fourteen to seventeen, the prime years for entry into adolescent prostitution,³ fell seven percent.⁴ Juveniles now comprise a significant number

* Executive Director of the Institute for Youth Advocacy at Covenant House, which provides crisis shelter for runaway and homeless youths. A.B., A.M., J.D., Harvard University. I am grateful to Lisa R. Bambino and Peg Peterson for their research assistance and to the entire staff of Covenant House for their tireless work on behalf of vulnerable children.


² Prostitution and pornography are only the most graphic aspects of a national problem of child sexual abuse. For information on other forms of child sexual abuse, see A. Russell & C. Trainor, Trends in Child Abuse and Neglect: A National Perspective 21-35, 94, 107 (The American Humane Ass'n 1984).


of all prostitutes, and evidence reveals that a substantial minority of those juvenile prostitutes are involved in commercial pornography. Larry Flynt, publisher of Hustler magazine, told a Congressional subcommittee in 1977 that “there are millions, not a handful, millions of people out there that are turned on by children and want to see them exploited sexually.” The evidence suggests that those people have had their wish.

For most of this century, the Mann Act was the primary federal statute addressing the sexual exploitation of children.

---

2 S. O'Brien, Child Pornography 21 (1983) (estimating 300,000 male prostitutes under 16 in 1976 and 300,000 female prostitutes under 16 in 1976); Lee, The Social World of the Female Prostitute in Los Angeles, (1982 Ph.D. Dissertation for United States International University) (40% of prostitutes in the Los Angeles area were juveniles) (on file at Harv. Women's L.J.). See also Silbert & Fines, Entrance into Prostitution, 15 Youth & Society 471, 473 (1982) (sample of 200 female street prostitutes contained approximately 60% age 16 or under, and 70% under age 21, with many as young as 10, 11 and 12 years old). The age distribution of male prostitutes has not been as carefully documented. But see MacNamara, Male Prostitution in American Cities: A Socioeconomic or Pathological Phenomenon, 35 Am. J. Orthopsychiatry 204 (1965) (age range of 103 male prostitutes 15 to 23).

3 See D. Weisberg, Children of the Night 68–69 (1985) (of 54 juvenile male prostitutes, 27% had been photographed by a customer, including 72% photographed for commercial pornographic magazines and 11% for movies); Janus, Scanlon & Price, Youth Prostitution, in Child Pornography and Sex Rings 127, 139 (A. Burgess ed. 1984) (75% of male hustlers ages 14 to 25 had participated in pornography). See also 2 Sexual Offenses Against Children: Report of the Comm. on Sexual Offenses Against Children and Youths Appointed by the Minister of Justice and Attorney General of Canada and Minister of National Health and Welfare 1198–99 (1984) (survey of juvenile prostitutes in Canada indicates they are “a high-risk group in regard to being exploited by pornographers”) [hereinafter cited as the Badgley Report, after the committee’s chairman, Robin Badgley).


5 One indication of the extraordinary rise of sexual exploitation of children is the contrast between the evidence gathered in 1971 by the U.S. Commission on Obscenity and Pornography and that presented to the U.S. House Subcommittee on Crime in 1977. The former found that “[m]agazines wholly composed of [nude] photos of young girls are unknown,” and that “[p]repubescent children are apparently nonexistent in stag films.” Sampson, Commercial Traffic in Sexually Oriented Materials in the United States (1969–1970), in 3 Technical Reports of the U.S. Comm'n on Obscenity and Pornography: The Market Place: The Industry, 100 n.79, 188 (1971). But see id. at 100 (boys used as models in male magazines). The House Subcommittee, by contrast, was told that 5–10% of the pornography market in 1977 involved children. This market included substantial numbers of magazines and movies depicting young boys and girls in graphic sexual activity. Subcommittee on Crime Hearings, supra note 7, at 61 (testimony of Lloyd Martin, founder of the sexually exploited child unit of the Los Angeles Police Department).


7 For purposes of this Article, “sexual exploitation” is defined as the use of children in either prostitution or sexually explicit photographed or videotaped performances; the
In the last twelve years, however, Congress has enacted several additional statutes that can also be applied to the problems of juvenile prostitution and pornography. Such acts include the Protection of Children Against Sexual Exploitation Act of 1977, the Child Protection Act of 1984, the Runaway and Homeless Youth Act, the Missing Children’s Assistance Act, and the Missing Children Act. This Article analyzes these statutes and proposes additional Congressional action in order to strengthen the means of prosecuting those who exploit children.
prevent further exploitation, and grant compensation to the victims of abuse.

I. EXISTING STATUTES

A. Current Criminal Statutes

1. The Mann Act

Although juvenile prostitution in the United States can be traced back to the mid-nineteenth century,\(^8\) the federal government's first attempt at regulation was not until 1910, when Congress passed the White-Slave Traffic Act (Mann Act).\(^9\) The Mann Act outlaws virtually all interstate movement that has the "primary purpose"\(^10\) of engaging a woman or girl in prostitution or concubinage.\(^11\) The first section of the Mann Act\(^12\) criminalizes\(^13\)

\(^8\) In his famous study of 2000 New York City prostitutes during the 1850’s, Dr. William Sanger found that three-eighths were between the ages of 15 and 20 years old. \textit{W. SANGER, THE HISTORY OF PROSTITUTION 452 (1919) (1st ed. 1888). See also, A. ROSE, STORYVILLE, NEW ORLEANS 148-50, 159 (1970) girls as young as 10 entered turn-of-the-century New Orleans brothels.}


\(^10\) Where the main "purpose" of travel is other than sexual immorality the Act does not apply. See Mortensen v. United States, 322 U.S. 369 (1944) (brothel owners' transportation of prostitutes for vacation not within Act's proscription).

\(^11\) The Supreme Court in Hansen v. Haff, 291 U.S. 559, 562 (1934), placed some limits on the broad sweep of the statute by declaring it inapplicable to "extramarital relations, short of concubinage." Convictions under the first section of the Act are relatively rare: only 67 from July 1, 1978, through June 30, 1983, of which only 36 resulted in prison sentences. \textit{U.S. ADMIN. OFFICE OF U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR, SENTENCES IMPOSED CHART (1983) (on file at HARV. WOMEN’S L.J.) [hereinafter cited as SENTENCES IMPOSED CHART].}


\(^13\) Anyone is subject to five years’ imprisonment and/or a fine of $5,000 who:

... knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice.

\textit{Id.}
the knowing transportation\textsuperscript{24} of any woman or girl for the purposes of prostitution or any other "immoral practice."\textsuperscript{25} The second section\textsuperscript{26} penalizes the inducement or coercion of any female to travel for those same purposes.\textsuperscript{27} While broad in the kinds of sexual immorality it seeks to reach, and unlimited in the age range of the women and girls it "protects," the Act is sharply limited by the fact that it applies only to females; the transportation of males for the same purposes is beyond its scope. In addition, although the first section reaches both interstate movement by the woman or girl and the purchase of a ticket for such interstate travel,\textsuperscript{28} the second section is violated only when she actually makes the trip, and then only if she travels via "common carrier."\textsuperscript{29} Thus, interstate travel by pimps to seduce prostitutes or by customers to make use of their services is also beyond the reach of the Act.

In its original form,\textsuperscript{30} the third section of the Mann Act,\textsuperscript{31} like the second, imposed penalties for coercing females to travel for the purposes of prostitution or concubinage. This section simply offered more severe penalties than those provided by the second section when the female coerced was under age eighteen.\textsuperscript{32} The Protection of Children Against Sexual Exploitation Act of 1977,\textsuperscript{33} however, dramatically revised this section.\textsuperscript{34} The Act’s most important change was the application of the section to both genders;

\textsuperscript{24} Identical penalties are imposed on anyone who "procures tickets" for such transportation. \textit{Id.}

\textsuperscript{25} \textit{Id.}


\textsuperscript{27} While this section may seem important on a technical level, in practice it has fallen into virtually complete disuse. Between July 1, 1977 and June 30, 1983, there was only one conviction under this section of the Act. \textit{Sentences Imposed Chart, supra note 21.}


\textsuperscript{32} The third section imposes ten years’ imprisonment and/or a $10,000 fine rather than the five years/$5,000 fine imposed by the second section for identical conduct toward adult women. \textit{Id.}


boys under age 18 are now protected.\textsuperscript{35} In addition, the revision
substituted a clearly defined concept—"prohibited sexual con-
duct"—for the notoriously vague "immoral purpose" language of
the prior law.\textsuperscript{36} This new definition added a wide range of sexual
acts\textsuperscript{37} to the statute's prohibitions, which originally had been
designed only in relation to sexual intercourse.

In at least one respect, however, the 1978 revision restricted
the coverage of this section. Transportation of a minor for "pro-
hibited sexual conduct" now is prohibited only if the perpetrator
"knows or has reason to know" that the minor's conduct will be
"commercially exploited."\textsuperscript{38} Thus, the taking of a minor from
state to state for the purpose of non-commercial sexual abuse is
no longer within the scope of this section.\textsuperscript{39} The revision made
some progress in extending the reach of the statute, but the Mann
Act still failed as a fully effective shield for children: between
1979 and 1983, only thirty-eight people were convicted under this
section of the Act.\textsuperscript{40}

2. The Protection of Children Against Sexual Exploitation Act
of 1977

The Protection of Children Against Sexual Exploitation Act\textsuperscript{41}
(Sexual Exploitation Act) was designed to eradicate the national

\textsuperscript{35} 18 U.S.C. § 2423(b)(1) (Supp. 1985). In addition, the "common carrier" requirement
was eliminated. 18 U.S.C. § 2423(a) (Supp. 1985).
\textsuperscript{37} The definition of "prohibited sexual conduct" added such activites as masturbation,
bestiality, "sado-masochistic abuse," and "lewd exhibition of the genitals." \textit{Id.}
\textsuperscript{38} 18 U.S.C. § 2423(a)(2) (Supp. 1985). The law defines "commercial exploitation" as
"having as a direct or indirect goal monetary or other material gain." 18 U.S.C.
§ 2423(b)(3) (Supp. 1985).
\textsuperscript{39} Non-commercial sexual abuse comprises a substantial amount of child sexual abuse.
In many of the sex rings studied in Belanger, \textit{Typology of Sex Rings Exploiting Children},
in \textit{Child Sex Rings}, supra note 10, at 51, 78–79, the children were not actually prostitu-
ted in a commercial sense, although they were often transported interstate and used in
pornography. Although the broad "immoral purpose" clause of § 2421 may cover such
conduct with regard to girls, that section does not apply to boys. \textit{See} 18 U.S.C. § 2421
\textsuperscript{40} \textit{Sentences Imposed Chart}, supra note 21.
\textsuperscript{41} 18 U.S.C. §§ 2251–2253 (1978). For a collection of reprints of the most influential
articles in the popular press leading to passage of the Sexual Exploitation Act, see
\textit{Protection of Children Against Sexual Exploitation, Hearings Before the Subcomm. to
Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary, 95th Cong., 1st
Sess.} 121–58 (1977) [hereinafter cited as \textit{1977 Senate Hearings}].
traffic in child pornography. The Act was a response to the Senate Judiciary Committee’s finding that “[c]hild pornography and child prostitution have become highly organized, multimillion dollar industries that operate on a nationwide scale.”

Before it was drastically changed by the passage of the Child Protection Act of 1984, the Sexual Exploitation Act regulated both the production and distribution of child pornography, but only in a limited way. Its provision related to producing pornography prohibited using “minors” for the production of any visual or printed medium depicting “sexually explicit conduct” if the work was, or the perpetrator knew or had reason to know the work would be, transported in interstate or foreign commerce. The distribution provision prohibited mailing, transporting, or receiving through mail or interstate or foreign commerce, “for the purpose of sale,” any obscene work depicting a “minor” engaging in “sexually explicit conduct.”

Although the language of the Sexual Exploitation Act may have appeared far-reaching, its scope was actually severely restricted in several key ways. The Act defined “sexually explicit conduct” to include sado-masochistic abuse, but only if such abuse occurred “for the purpose of sexual stimulation.” Yet sado-masochistic abuse harms the child regardless of whether the viewer of the abuse is sexually stimulated. Thus, defining the prohibited material from the standpoint of the viewer, rather than

---

42 In addition, the Sexual Exploitation Act also revised the Mann Act. See supra text accompanying note 34.
43 S. Rep. No. 95-438, 95th Cong., 1st Sess. 5 (1978) quoted in Ferber, 458 U.S. at 749. (“Such magazines depict children, some as young as three to five years of age . . . . The activities featured range from lewd poses to intercourse, fellatio, cunnilingus, masturbation, rape, incest and sado-masochism.”). Id. at 749. The prevalence of pornographic materials was fully supported by testimony at Congressional hearings. See, e.g., Subcommittee on Crime Hearings, supra note 7, at 117 (statement of Michael Snedec) (producer-distributor admitted to having made $5–7 million in his own “kiddie porn” operation); id. at 43 (statement of Dr. Judianne Denson-Gerber) (estimating that traffic in child pornography included some 264 different “kiddie porn” magazines); Child Pornography: Sickness for Sale, Chicago Tribune, May 15, 1977, reprinted in 1977 Senate Hearings, supra note 41, at 131; It’s Easy to Buy Child Pornography, Chicago Tribune, May 18, 1977, reprinted in id. at 134–35.
45 Id.
46 The definition includes all simulated or actual “normal” and “deviate” sexual intercourse, bestiality, masturbation, sado-masochistic abuse and “lewd exhibition” of the genitals or pubic area of any person. 18 U.S.C. § 2252(2)(C)–(E) (1978).
from the harm done to the child, left many sexually abused children unprotected by the Act.

Under the terms of the Act, "production" encompassed an equally wide variety of acts, including producing, directing, manufacturing, issuing, publishing, and advertising, but only if motivated by "pecuniary profit." Similarly, the distribution provision was restricted to acts with "the purpose of sale." By restricting its application to child pornography produced or distributed for financial gain, the Act left child pornography made for the personal use of the pedophile or for trading with other collectors beyond its reach. Evidence indicates, however, that the motive for using children in pornography is frequently personal rather than monetary in nature. The non-commercial nature of much child pornography, in combination with the difficulties of assembling clear proof of a "profit" motive, proves hopelessly frustrating to federal law enforcement officials in their enforcement of the Sexual Exploitation Act.

Furthermore, in this section of the Act, "minors" only included children under the age of sixteen. Because of this definition, the Act’s pornography provision offered less protection than its prostitution provision, which applied to youths until age eighteen.

\[49\] Id.

\[51\] See 1977 Senate Hearings, supra note 41, at 62 (statement of Michael Snoed, summarizing Chicago Tribune Investigatory Findings Relating to Incidence of Child Pornography and Prostitution in Chicago) ("People who are involved in this business . . . love taking pictures of their victims. They point with pride, the more youthful, the better. They say, 'Look at this, 3 years old, 5 years old. Look what I did.' Sometimes these pictures are swapped with other friends and they show up in magazines and journals.").

Given the conclusion of this witness that "[h]undreds of thousands" of children were involved in child pornography, id. at 59, it seems obvious that only a very few of those children were photographed commercially. See Belanger, supra note 39, at 79 (32 of 38 child pornography rings studied were either strictly or partially producing materials for personal use). See also Exploited and Missing Children: Hearing Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary, 97th Cong., 2nd Sess. 39 (1982) (statement of Dana E. Caro, Inspector-Deputy Asst. Dir., Criminal Investigative Div., F.B.I.) ("largest percentage of child pornography available in the United States today was originally produced for . . . self-gratification . . . and was not necessarily produced for any commercial purposes") (hereinafter cited as 1982 Senate Hearing); id. at 47 (statement of Charles P. Nelson, Asst. Chief Postal Inspector, Office of Criminal Investigations) ("The bulk of child pornography traffic is non-commercial.").

\[52\] See 1982 Senate Hearing, supra note 51, at 39 (statement of Dana E. Caro) (F.B.I. enforcement of Act "seriously impaired" by pecuniary interest requirement); id. at 47 (statement of Charles P. Nelson) ("only a handful of [the Postal Service's] non-commercial cases have been prosecuted federally").


Perhaps the most severe restriction on the scope of the Sexual Exploitation Act was the language limiting its distribution provisions solely to those materials that were classified as "obscene."55 Like the provision applying the Act to sado-masochistic abuse only when such abuse occurs for the purpose of sexual stimulation,56 the obscenity provision is defined from the standpoint of the viewer. Without this restrictive definition, the Act could have reached even non-obscene sexually explicit depictions of children.57 The Act, thus, could have been an extremely powerful addition to existing legislation. Nonetheless, since federal statutes already prohibited the mailing,58 importation,59 broadcasting,60 or transportation61 of obscene matter, the Sexual Exploitation Act, with the obscenity restriction, added nothing new but the possibility of longer prison sentences for those dealing in obscene matter involving children.62 The federal anti-obscenity provisions existing before the Sexual Exploitation Act continued to be the mainstay of federal attacks on child pornography distribution:63 as of November, 1983, only twenty-eight people had been indicted under the distribution provisions of the Sexual Exploitation Act.64

3. The Child Protection Act of 1984

In New York v. Ferber, the Supreme Court held that "[t]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance."65 After that decision, political pressure to expand the federal role in

57 In New York v. Ferber, 458 U.S. 747 (1982), the Supreme Court squarely upheld the New York statute, N.Y. PENAL LAW § 263.15 (McKinney 1980), prohibiting the production or distribution of sexually explicit visual depictions of children, whether or not the depictions were legally "obscene" under Miller v. California, 413 U.S. 15 (1973).
62 Thus, under 18 U.S.C. § 1461 (1984), the penalty for mailing obscene matter is 5 years imprisonment and/or $5,000, while under the Sexual Exploitation Act of 1977 the penalties were set at 10 years and/or $10,000. 18 U.S.C. § 2251(c) (1978).
63 See 1982 Senate Hearing, supra note 51, at 47 (statement of Charles P. Nelson).
protecting children from pornographers rose dramatically.\textsuperscript{66} Congress responded by passing the Child Protection Act of 1984.\textsuperscript{67} That Act rewrote the Sexual Exploitation Act and filled in its most egregious gaps by eliminating the obscenity requirement,\textsuperscript{68} and deleting the "for pecuniary profit" and "for the purpose of sale" language.\textsuperscript{69} The Child Protection Act also raised the age limit for children protected from depiction in pornography from sixteen to eighteen,\textsuperscript{70} thus ending the inconsistency with juvenile prostitution provisions.

In addition to remedying the problems of the Sexual Exploitation Act, the Child Protection Act added several new provisions. The Act criminalized the reproduction of child pornography for distribution in interstate or foreign commerce,\textsuperscript{71} and added sexual exploitation of minors to the list of offenses subject to federal investigation through court-approved wiretapping.\textsuperscript{72} Furthermore, the Act included comprehensive criminal and civil forfeiture provisions which could be used to confiscate perpetrators' instruments used in, and profits derived from, sexual exploitation of minors.\textsuperscript{73}

In contrast to the Sexual Exploitation Act, the Child Protection Act added crucial weapons to the arsenal of law enforcement

\textsuperscript{66} See H.R. REP. No. 98-536, \textit{supra} note 64, at 493. For example, after an article containing photographs of faces of children used in pornography encouraged readers to write to their representatives to urge the passage of a more rigorous anti-child pornography law, 80,000 letters were sent to members of Congress. See \textit{Innocence for Sale: Follow-up Report, LADIES HOME J., August}, 1983, at 42 (discussing Rooney, \textit{Innocence for Sale: A Special Report on Child Pornography, LADIES HOME J. April}, 1983, at 79).


\textsuperscript{73} Pub. L. No. 98-292, § 6 (amending 18 U.S.C. § 2252 (1978)).
officials. During the first eight months the Child Protection Act was in effect, the Justice Department reported nearly as many child pornography indictments as it had reported during the preceding seven years.\textsuperscript{74}

4. Racketeer Influenced and Corrupt Organizations Act

The Racketeer Influenced and Corrupt Organizations Act\textsuperscript{75} (RICO) provides an additional means of prosecuting organized juvenile prostitution. RICO’s most prominent provisions impose criminal sanctions\textsuperscript{76} for participation in an “enterprise”\textsuperscript{77} which “affects” interstate commerce\textsuperscript{78} and which involves or is predicated upon a “pattern”\textsuperscript{79} of “racketeering activity”\textsuperscript{80} involving specified crimes. The provisions of the Mann Act,\textsuperscript{81} most significantly the proscription of the transportation of minors for use in prostitution or “prohibited sexual conduct,”\textsuperscript{82} are among the federal crimes included in RICO.\textsuperscript{83}

\textsuperscript{74} Child Pornography and Pedophilia: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 99th Cong., 1st Sess. 103–04 (1985) (statement of Victoria Toensing, Dep’y Asst. Att’y General, Criminal Div.) (63 of 132 defendants indicted from 1978 to 1985 were indicted after May 21, 1984, effective date of Child Protection Act). In December of 1985, six men were arrested after they were indicted by a federal grand jury on charges of violating the Child Protection Act of 1984 by mailing or receiving child pornography. Charged with counts of receiving magazines displaying children engaging in sexually explicit acts, they face a maximum possible sentence of 20 years of imprisonment and fines up to $500,000. Many of the children in the pornographic materials were between eight and ten years old and some were even younger. New York Times, December 10, 1985, at A29, col. 1.


\textsuperscript{76} 20 years imprisonment, $25,000 fine and/or forfeiture of defined property. 18 U.S.C. § 1963(a) (1984).


\textsuperscript{80} “Racketeering activity” is defined as any act or threat involving certain specified state crimes, or any act indictable under certain sections of the United States Code, or any act involving bankruptcy fraud, fraud in the sale of securities, or specified drug offenses, or any of certain specified federal crimes including bribery, embezzlement, extortion, or obstruction of justice. 18 U.S.C. § 1961(1) (1984).


\textsuperscript{83} 18 U.S.C. § 1961(1) (1984). It should be noted, however, that the interstate transportation of child pornography is not a predicate offense under RICO.
While in theory RICO provides federal prosecutors with an additional weapon against interstate prostitution rings involving minors, in practice the value of RICO appears to be extremely limited. Unlike the complex "enterprise" common to RICO prosecutions, juvenile prostitution typically operates as a sole proprietorship without external financing. A single pimp, rather than an organization, generally controls one or several girls. For this reason, prosecutions for "promoting" juvenile prostitution under the Mann Act will usually be just as effective as those under RICO.

B. Current Preventive and Remedial Statutes

1. The Runaway and Homeless Youth Act

While the statutes discussed above allow the criminal prosecution of those involved in child prostitution or pornography, the problem of child sexual abuse also requires measures to prevent such abuse and provide aid to those children already victimized. Since homeless and runaway children are the single population

---

84 RICO prosecutions frequently involve the corruption of large scale enterprises such as labor unions. See, e.g., "On the Waterfront": RICO and Labor Racketeering, 17 AM. CRIM. L. REV. 341 (1980).

85 See, e.g., BADOLEY REPORT, supra note 6, at 1058 (Canadian survey shows female juvenile prostitutes are "seldom controlled by large-scale highly organized prostitution rings . . . . Generally, a pimp either worked with one girl (38.2%) or had a small number of girls in his employ (52.7%)."). In contrast, child pornography is often produced in well-organized multi-perpetrator "sex rings." See Belanger, supra note 39 at 51, 74 (30.9% of child sex rings studied were "syndicated," involving a "well-structured organization" for recruiting children and producing child pornography.).

86 One exception to this rule might occur with respect to syndicated child sex rings, where young children are placed into prostitution by older persons misusing their roles in legitimate organizations such as schools or youth groups to obtain access to children. As long as the organization's activities can be shown to affect interstate commerce, and the employee misuses the organization for purposes of promoting juvenile prostitution, the requisite nexus of the defendant's activities to an "enterprise" would seem to be present, thus permitting prosecution under RICO. See 18 U.S.C. § 1962(c) (1984).

87 Federal prosecutors, however aggressive, will never reach the scene of sexual exploitation until after the exploitation has occurred. At that point, the victim's family and society may benefit from law enforcement zeal, but the victim usually will not. The prosecution of one's sexual exploiters presents a no-win situation for the child victim. Not only may acquittal be accompanied by a profound sense of guilt for having provided insufficient evidence, but a successful conviction may provoke extreme feelings of guilt for having betrayed one's intimate companions. See Schoettle, Child Exploitation: A Study of Child Pornography, 19 J. AM. ACAD. CHILD PSYCHIATRY 289, 297 (1980).
group at highest risk of sexual exploitation by prostitution, \footnote{See, e.g., Badoglio Report, supra note 6, at 982 (in Canadian survey almost a third of male and female adolescent prostitutes had relied on prostitution for money when they ran away); Enablers, Inc., Juvenile Prostitution in Minnesota 23–24, 37, 52 (1978) (two-thirds of female teenage prostitutes were runaways just before or at the time they started prostitution); S. Harlan, L. Rodgers & B. Slattery, Male and Female Adolescent Prostitution: Huckleberry House Sexual Minority Youth Services Project 27–34 (1981) (75% of female adolescent prostitutes who had contacted Huckleberry House, a shelter for youths in San Francisco, first started prostituting when they were runaways in need of money) (hereinafter cited as Huckleberry House Project); New York City Human Res. Admin., Juvenile Prostitution: A Suggested Program Response 5 (1983) (at second largest such program in New York, 30% of runaway adolescents acknowledged involvement in prostitution); Silbert & Fines, supra note 5, at 485 (96% of juvenile prostitutes surveyed were runaways). Similarly, surveys of runaway and homeless youths show that a substantial percentage turn to pornography for survival. See Rabun, Combating Child Pornography and Prostitution: One Country's Approach, in Child Sex Rings, supra note 10, at 187–200 (36% of runaways admitted involvement in prostitution and 15% acknowledged involvement in pornography).} programs aiding those children may be one of the best lines of defense against commercial child sexual abuse.

No federal statute is of more theoretical importance to these needs for direct aid and prevention than the Runaway and Homeless Youth Act. \footnote{42 U.S.C. §§ 5701, 5702, 5711–5716, 5731, 5732, 5751 (1983 & Supp. 1985). For a description of how the sex-murders of 27 teenage boys in Houston in 1973 by Dean Corll and his companions led to the passage of the Runaway Youth Act, see K. Woodson, Weeping in the Playtime of Others 80, 89–90 (1976).} The centerpiece of this Act is the establishment of “runaway houses” throughout the country to shelter runaway and homeless youths and provide crisis intervention services. Under the Act’s aegis, the federal government, in fiscal year 1985, spent $23.25 million to fund, in part, 274 runaway and homeless youth programs, a national runaway hotline, a dozen coordinated networks of runaway programs, and research and demonstration projects focused on strengthening youth centers and their capability to address increasing numbers of homeless and runaway youths. \footnote{1985 Oversight Hearing, supra note 1, at 14–15 (statement of Dodie Livingston, Comm’r, Admin. for Children, Youth and Families, Dept. H.H.S.). Federal funds are allocated according to the youth population of each state. Id. at 14.} In 1984, an estimated 60,500 youths used the programs’ shelter services, while 305,500 received non-shelter services and 250,000 called the hotline. \footnote{Id. at 15.} Of youths taken into residence, only seven percent “returned to the streets”; the rest were placed in “positive living arrangements” or returned home. \footnote{Id. at 15.}
Although these results are encouraging, other evidence reveals that the Act's programs have reached only a tiny fraction of youths likely to be forced into juvenile prostitution: of all homeless and runaway youths, no more than six percent received shelter in federally funded programs.\textsuperscript{93} Indeed, at least 10,000 youths, and probably as many as twice that number, were turned away in 1985 from runaway programs because the shelters lacked space or were considered inappropriate for the youths' needs.\textsuperscript{94}

Two provisions of the Act limit the ability of these programs to reach greater numbers of homeless and runaway youths. First, in order to create a family-like environment, the Act places a twenty-bed limitation on the capacity of every funded house.\textsuperscript{95} Although the Act's intent to provide small, rather than large, runaway houses is appealing, this limitation, in combination with current levels of funding,\textsuperscript{96} virtually guarantees that thousands of

\textsuperscript{93} Compare id. at 15 (60,500 youths sheltered) with Office of Inspector General, Dept. of Health and Human Services, Runaway & Homeless Youth: National Program Inspection 4-5 (1983) (number of runaway and homeless youth estimated at 1.1 million annually) [hereinafter cited as National Runaway Inspection]. See Oversight Hearing On Runaway and Homeless Youth Programs: Hearing Before The Subcomm. on Human Resources of the House Comm. on Education and Labor, 97th Cong., 2d Sess. 3 (1982) (statement of Eleanor Chelimsky, Director of Institute for Program Evaluation at U.S. General Accounting Office) [hereinafter cited as 1982 Oversight Hearing] ("the program is thus a small effort, involving only a tiny fraction of the Nation's youth and only 3 to 6 percent of the Nation's runaways.").

\textsuperscript{94} Nat'l Network of Runaway and Youth Services, To Whom Do They Belong? A Profile of America's Runaway and Homeless Youth and the Programs That Help Them 11 (1985) [hereinafter cited as National Network Study]. See generally National Runaway Inspection, supra note 93, at 11-12 (discussing how different shelters serve "first-runners" while others serve "street kids").

\textsuperscript{95} 42 U.S.C. \$ 5712(b)(2) (1978).

\textsuperscript{96} Unfortunately the federal government currently authorizes only $23.25 million annually to programs under the Act. See 1985 Oversight Hearing, supra note 1, at 15 (statement of Dodie Livingston). This is merely an 11.6\% increase in constant dollars over the authorization level in 1974 of $10 million. Only 78\% ($18.1 million) of the current appropriations are actually spent on funding shelters, see 1985 Oversight Hearing, supra note 1, at 15, which means that in constant dollars, federal funding for shelter care has in fact declined 4\% since 1978 (when it was $11 million).


Furthermore, the Act contains no requirement or incentive for state or local governments to commit resources of their own to establishing resources for homeless children and runaways. See 1985 Oversight Hearing, supra note 1 at 52-53 (statement of Dick Moran, Exec. Dir. Miami Bridge, Miami, Fla.). The average runaway shelter, however, usually is able to attract funding from the private and voluntary sectors as well as from state and local governments; thus, in 1981, federal funding comprised only about one-third of the average program's budget. See 1982 Oversight Hearing, supra note 93 at 25,
runaway children will remain on the streets.\textsuperscript{97} Furthermore, current regulations under the Act limit an individual’s stay in a shelter to a maximum of fifteen days.\textsuperscript{98} The fifteen-day limit results in many homeless teenagers being returned to the street with no alternatives but crime or prostitution.\textsuperscript{99} Such a limit also restricts the abilities of individual programs to explore program formats which require longer-term stays.\textsuperscript{100}

The fifteen-day limit not only impedes the Act’s ability to prevent sexual exploitation, it also partly accounts for the federal runaway program’s inability to provide substantial resources for teenagers already involved in prostitution or pornography. These youths need longer-term shelter and counselling, along with vocational, educational, medical and legal services;\textsuperscript{101} fifteen days is simply not sufficient to meet their substantial needs.

Furthermore, because of their location, the shelter programs often fail to meet even the crisis needs\textsuperscript{102} of youths involved in prostitution and pornography. While these youths require shelters

---

\textsuperscript{97} (statement of Clarence Hodges, Comm’r, Admin. for Children, Youth, and Families);
\textsuperscript{98} Problems of Runaway Youth, Hearing Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. 77 (1982) (statement of Sister Barbara Whelan) (1981 income of Bridge Over Troubled Waters, a Boston runaway program, consisted of 20% federal funding; 30% state funding; 26% United Way and local organizations; 24% foundations, corporations, trusts and individuals) (hereinafter cited as Runaway Youth Hearing).
\textsuperscript{99} For example, the metropolitan area of Los Angeles has only four federally funded programs. See Family and Youth Services Bureau, Admin. for Children, Youth and Families, U.S. Dept. of Health and Human Services, Runaway and Homeless Youth, FY 1984 Annual Report to Congress App. A (1984) (hereinafter cited as 1984 Runaway Report). Of the thousands of teen runaways [who] pour into Los Angeles each year . . . [t]he vast majority end up on the streets. They have no money, no employable skills and no place to go. They are naive, desperate, and easy prey—prey to the pimps, the ‘chicken hawks,’ the whole underground of exploitation, rape, physical violence, prostitution, and a dead end.” Lee, supra note 5, at 93.
\textsuperscript{94} 45 C.F.R. § 1351.1(p) (1982).
\textsuperscript{95} A study by the General Accounting Office in 1982 found that only a few runaway shelters provided the longer term shelter care that homeless youths (as opposed to runaways with families to whom they can return) require; most shelters provided 15 days or less. 1982 Oversight Hearing, supra note 93, at 7 (statement of Eleanor Chelmisky, Dir. Inst. for Program Evaluation, G.A.O.). To circumvent the 15-day limit, shelter directors are forced to play the game they term “shelter ping-pong,” “shelter drift,” or the “shelter circuit.” National Runaway Inspection, supra note 93, at 11.
\textsuperscript{100} Nevertheless, some programs currently allow youths to stay beyond the 15-day limit in defiance of the regulations. See 1982 Oversight Hearing, supra note 93, at 7 (statement of Eleanor Chelmisky).
\textsuperscript{101} D. Weisberg, supra note 6 at 244–47.
\textsuperscript{102} Id. at 243. (“These crises range from emotional distress and depression to drug overdoses, criminal arrest, and the murder of a friend.”).
near areas where the abuse occurs,\textsuperscript{103} federally funded runaway shelters are rarely located near such "combat zones."\textsuperscript{104} Technically, the Act requires each runaway shelter to be "located in an area which is demonstrably frequented by or easily reachable by runaway youth",\textsuperscript{105} a recent survey of service providers in the federal runaway system, however, revealed overwhelming hostility to such sites, based on fears of danger to staff and residents, as well as concern about the lures of street life.\textsuperscript{106} Even if shelters were better located, however, some youths still would be inhibited from using them because of the close ties between shelters and the juvenile justice and social service systems—systems from which many youths have fled.\textsuperscript{108}

2. The Missing Children's Assistance Act and the Missing Children Act

Since runaway and other missing children are vulnerable to abuse by prostitution and pornography,\textsuperscript{109} federal statutes that aid the search for missing children play an important role in preventing and remediying sexual exploitation. In 1984, the Missing Children’s Assistance Act\textsuperscript{110} created the National Center for Missing and Exploited Children, which established a national toll-free hotline for exchange of information concerning missing children. The Center also operates a national resource center to provide information and technical assistance regarding missing

\textsuperscript{103} Id. at 239–40, 243. \textit{Contra National Runaway Inspection, supra} note 93, at 12 (discussing the controversy as to whether urban shelters should be located in combat zones where street kids congregate or in safer parts of the city).

\textsuperscript{104} In the Boston metropolitan area, only one runaway program receiving federal funding in fiscal year 1984—the Bridge Over Troubled Waters—was located in the downtown area. 1984 \textit{Runaway Report, supra} note 97.

\textsuperscript{105} 42 U.S.C. § 5712(b)(1).

\textsuperscript{106} \textit{National Runaway Inspection, supra} note 93, at 12.

\textsuperscript{107} \textit{See Enablers, Inc., supra} note 88, at 49–50; \textit{National Network Study, supra} note 94, at 11; D. Weisberg, \textit{supra} note 6, at 239–40; 1982 \textit{Oversight Hearing, supra} note 93, at 6.

\textsuperscript{108} \textit{See Huckleberry House Project, supra} note 88, at 27, 29 (21% of male runaways who came to Huckleberry House had run away from group homes and 50% of females had "run" from foster, group or relatives’ homes, institutions, and juvenile justice facilities).

\textsuperscript{109} \textit{See supra} note 88.

and exploited children.\textsuperscript{111} In addition, the Missing Children’s Assistance Act requires the Office of Juvenile Justice and Delinquency Prevention to conduct periodic national studies to establish the incidence of reported disappearances, abductions, and recoveries of children.\textsuperscript{112}

In addition to those services provided under the Missing Children’s Assistance Act, the Missing Children Act\textsuperscript{113} permits the Federal Bureau of Investigation’s National Crime Information Center to accept entries\textsuperscript{114} regarding “missing persons”\textsuperscript{115} from parents, guardians, and next of kin, whenever local law enforcement officials fail or refuse to make an entry for a missing child.\textsuperscript{116} Although missing children who have parents actively searching for them may not be those most vulnerable to prostitution or pornography, the Missing Children Act does help insure that parents can exert pressure on authorities to search for lost children, exploited or not.

\section*{II. AGENDA FOR CHANGE}

The continued prevalence of prostitution and pornography,\textsuperscript{117} and the devastating effects of such exploitation on children are

\begin{itemize}
\item[(\textsuperscript{111})] For a description of the goals of the National Center for Missing and Exploited Children, see Howell, \textit{Behind the Tragedy There’s Hope, in the New National Center for Missing and Exploited Children}, 39 PATHOLOGIST 58 (1985).
\item[(\textsuperscript{112})] 42 U.S.C. § 5773(b) (Supp. 1985).
\item[(\textsuperscript{114})] 28 U.S.C. § 534(a)(3) (Supp. 1985). The National Crime Information Center (NCIC) is authorized to collect information that would be useful in locating missing children.
\item[(\textsuperscript{116})] 28 U.S.C. § 534(a)(3) (Supp. 1985). Although the NCIC had long collected names and other relevant information regarding missing persons, access to that clearing house (either to give or receive information) was restricted to federal, state and local law enforcement personnel until 1982. The new law also affords parents, guardians, and next of kin the right to confirm that an entry into the computer was actually made. \textit{Id}.
\end{itemize}
clear.\textsuperscript{118} The importance of a federal role in the area seems equally unquestioned: the traffic in children knows neither state nor national boundaries.\textsuperscript{119} Although Congress has several times in recent history addressed the issue of sexual exploitation of children, existing legislation is not commensurate with the severity of the problem.

This section proposes statutory and programmatic reforms aimed at increasing the effectiveness of criminal law enforcement against perpetrators of commercial sexual exploitation, strengthening direct programs to help children avoid or escape sexual abuse, and improving the ability of victims to win compensation from those who injured them. In view of the budgetary and political pressures Congress faces, these proposed reforms are limited to improving existing legislative schemes rather than creating entirely new statutory frameworks.

\textit{A. Criminal Statutes}

1. Inclusion of Child Pornography in RICO

Although transporting minors for the purpose of prostitution or other "prohibited sexual conduct" is included among the substantive offenses cognizable by RICO,\textsuperscript{120} the federal statutes pro-

\textsuperscript{118} See Badgley Report, supra note 6, at 1045 ("The ingrained pattern of exploitation, disease, and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings."); Schoettle, supra note 87, at 296-97 (involvement in child pornography may lead to "psychic trauma" and "[m]assive acute anxiety"). See also Ferber, 458 U.S. at 738, n.9 ("It has been found that sexually abused children are unable to develop healthy affectionate relationships in later life, have sexual dysfunctions, and have a tendency to become sexual abusers as adults.").


International exploitation of children recently has been documented in the work of investigators commissioned by UNICEF. These investigators found evidence of "child sex package tours" offered to Japanese, European, and American men for travel to Asian destinations for the purpose of engaging in sex with local child prostitutes. One of their sources indicated that at least 2,000 male children are engaged in prostitution in Colombo, Sri Lanka. \textit{Id.} at 23 (testimony of Kenneth J. Herrmann, Jr. Defense for Children International, USA). See also \textit{id.} at 17 (testimony of John Kelly, Deputy Asst. Sec. of State for European Affairs, Dept. of State) ("child pornography is a worldwide problem" and "there is still a large amount of such material exported from the Netherlands and Denmark to the United States.").

hbiting production or distribution of child pornography in interstate commerce are not. Since child pornographers frequently misuse their roles in legitimate youth organizations to obtain access to children, child pornography offenses are particularly appropriate for prosecution under RICO, which was designed to prevent criminal enterprises from infiltrating legitimate organizations.

Congress seems likely to rectify this omission in the near future. Several bills currently under consideration propose bringing the child pornography statutes under RICO, and the Senate Subcommittee on Juvenile Justice has held a hearing to consider one of them. Furthermore, the fact that the last Congress brought federal obscenity prohibitions within RICO suggests that Congress may be willing to make further additions to the list of predicate offenses. The relatively small step of amending RICO to include child pornography offenses would vastly increase prosecutorial ability to pursue the organized "kiddie porn" rings that typify the industry.

---

121 See Belanger, supra note 39, at 74-75 (38.2% of child pornographers involved with sex rings had access to children by means of their occupations); O'Brien, supra note 5, at 13-14, 79-81 (1983). See also Sexual Exploitation of Children: Hearings before the House Subcomm. on Crime of the Comm. on the Judiciary, 95th Cong., 1st Sess., 74-75 (1977) (statement of Robert F. Leonard) (child pornography thrives on the misuse of respectable roles within legitimate organizations providing service to children; the roster of "kiddie porn" purveyors includes scoutmasters, probation officers, summer camp operators, ministers and priests).

For descriptions of some recently uncovered child pornography rings see The Mother of Kiddie Porn, Newsweek, January 23, 1984, at 70 (an alleged $500,000 per year mail-order business in child pornography); Officials Say Florida Inmate Ran Child Porn Ring, St. Petersburg Times, July 22, 1983, at I (international child pornography ring allegedly operated from a Florida state prison); United States v. Langford, 688 F.2d 1088, 1097 (7th Cir. 1982).

In addition, because child pornography is often produced in "syndicated" sex rings, it may be appropriate for inclusion in RICO. See supra note 85.


126 Nonetheless, the expansion of RICO has been criticized. See Quinn & Bograd, RICO is Backfiring, 14 BRIEF 19 (Summer, 1985). Such criticism, however, is not directed at the inclusion of child pornography within RICO.
2. Age Limit of Protection

The Child Protection Act remedied a serious anomaly of the Sexual Exploitation Act by raising the age limit of children protected by its pornography provisions from sixteen to eighteen, the same age limit used in its prostitution provisions. It is not clear, however, that even eighteen should be the appropriate age limit under the Child Protection Act and the Mann Act. Although eighteen-year-olds can vote and be drafted, a number of federal and state laws in a variety of contexts continue to use twenty-one as the age of majority. Recent federal statutes require states to raise the drinking age to twenty-one in order to continue to receive federal highway funding, and federal laws use twenty-one rather than eighteen as the legal age of adulthood for Medicaid and criminal punishment. State laws and courts often use twenty-one as the age until which parents, public schools and prisons are obligated to provide specific services for children. The Supreme Court has implied that there are no constitutional barriers to using twenty-one as the age for entry into adulthood.

The risks attending prostitution, whether on the street or in a pornographic movie studio, merit raising to twenty-one the age

---

128 U.S. Const. amend. XXVI.
132 18 U.S.C. § 3575(a) (1970) (youths under 21 excluded from increased sentences for "dangerous special offenders").
133 See, e.g., N.Y. DOMESTIC RELATIONS LAW, § 32. (Consol. 1979) (parents liable for support of children under 21).
134 See, e.g., N.Y. EDUCATION LAW, § 3202. (Consol. 1985) (person under 21 who has not received a high school diploma is entitled to attend public school without paying tuition).
136 In addition, states with legalized gambling bar persons under 21 from casino gambling. N.J. STAT. ANN. § 9:17 B-1(c) (West Supp. 1985) and N.J. REV. STAT. § 463.350 (1985).
137 See Stanton v. Stanton, 421 U.S. 7, 12, 18 (1975) (Utah statute mandating parental support until 18 for girls and 21 for boys unconstitutional as violation of equal protection; Court would leave to Utah the decision whether to use 18 or 21 as the line of adulthood for both sexes).
138 Paid employment of "models" in making sexually explicit, non-simulated films has been found to be a form of promoting prostitution, unprotected by the First Amendment.
limits of federal statutes criminalizing the use of minors in commercial sex. Juvenile prostitution is typified by physical and emotional abuse from pimps and customers, drug abuse, and venereal diseases. Half of juvenile girls involved in prostitution become pregnant by age twenty—thirty percent of them more than once. The severity of these harms suggests that producers of commercial sex should not be given the oppor-


139 In addition to protecting youths from the dangers of prostitution, a change in the age limits of the Mann Act and the Child Protection Act from 18 to 21 would dramatically improve the ability of law enforcement officials to enforce these laws. The use of decoys—officers masquerading as prostitutes or customers—is crucial to police enforcement of prostitution laws. C. WINCK & P. KINSIE, THE LIVELY COMMERCE 213–17 (1971); see Lee, supra note 5, at 299–305. Yet because it would be unconscionable to use youths under age 18 for that purpose, the government is denied that weapon in attacking sexual exploitation of children. Cf. Use of Youth as Decoy Shocks Kentuckians, N.Y. Times, Sept. 17, 1984, at B16, col. 1 (documenting the outraged reaction to one actual case of a 16-year-old youth working as a police prostitution decoy). If the age limit under such laws were raised to 21, police would have the discretion to use 19 or 20 year old decoys when necessary.

140 Such a statutory change can be easily justified, however, only in the context of commercial sex. Once a youth has reached age 18 he or she is free under the law of every state to engage in consensual sexual activity not involving prostitution. For a partial description of current statutory rape laws, see Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 492 n.6 (1981) (Brennan, J., dissenting).

Some would argue that regulations restricting the distribution (but not production) of pornography using 18–21 year old actors should include an affirmative defense for works with serious literary, artistic, political or scientific value. Compare Justice Brennan’s concurring opinion in Ferber, 458 U.S. at 776 (such a defense necessary even for pornography using young children) with Justice O’Connor’s concurring opinion in that same case, 458 U.S. at 774–75 (such a defense not necessary because unrelated to purpose of protecting performers).

141 See D. BRACEY, BABY PROBE: PRELIMINARY PROFILES OF JUVENILE PROSTITUTES 37–39 (physical abuse); see also Lee, supra note 5, at 142 (emotional abuse).

142 See BADGLEY REPORT, supra note 6, at 1027 (60% of girls and 21% of boys assaulted by tricks; 63% of all in sample had at least once been physically assaulted by tricks, pimps, other prostitutes, drug dealers or police while working the street); ENABLERS, INC., VICTIMIZATION OF STREET PROSTITUTES, 7 VICTIMOLOGY 122, 127 (1982) (65% of street prostitutes reported being physically abused or beaten by customers an average of 4.3 times).

143 See BADGLEY REPORT, supra note 6, at 1022 (many Canadian juvenile prostitutes increased their use of illegal drugs as they became more deeply involved in “the life” on the street); P. GOLDSTEIN, PROSTITUTION AND DRUGS 66 (1979) (84% of street prostitutes in New York City survey were heroin addicts).

In addition, prostitutes will likely experience “psychological paralysis,” a feeling that they have lost all sense of control over their lives. Silbert & Pines, supra note 142, at 131. Victims of child pornography also experience psychic trauma and role confusion. See Schoettle, supra note 87, at 96–97.

144 BADGLEY REPORT, supra note 6, at 1024 (majority of Canadian juvenile prostitutes contracted sexually transmitted diseases).

145 ENABLERS, INC., supra note 88, at 87.
tunity to employ youths under age twenty-one even if the youths "consent." With unemployment rates among young adults at staggering levels, many are not in the position to make a fully rational choice about "employment" in prostitution. Such a choice should not even be presented to them.

B. Prevention and Relief Statutes

Most of the recent Congressional attention to the problem of child sexual abuse has focused on strengthening criminal sanctions, particularly those applicable to production and distribution of child pornography. Yet criminal prosecutions in and of themselves provide no relief to victims of sexual exploitation, and criminal prohibitions do not address the social and economic factors—above all those causing the annual flight or exile of tens of thousands of children to a precarious life on urban streets—that make the young vulnerable to sexual exploitation. No government action against sexual exploitation, however well conceived and enforced, will succeed without providing clear alternatives for youths already exploited and those likely to become exploited. Consideration of possible changes in federal criminal statutes, therefore, should be accompanied by legislative initiatives designed to provide direct help to those children already victimized and protection for children at risk of falling into prostitution or pornography.  

146 In 1983, 23.3% of all male youths and 21.3% of all female youths in the labor force aged 16 to 19 were unemployed. U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 394 (1985).
147 See supra note 87.
148 See supra note 88.
149 Because of increased demands for austerity in federal budget, advocates for additional expenditures for children’s programs must explain where they expect Congress to find the money. One possible solution is the creation of a federal Children’s Tax, with proceeds irrevocably reserved to fund children’s services. The idea is similar to the designation of taxes on employees and employers under the Federal Insurance Contributions Act (26 U.S.C. §§ 3101, 3111 (1979 and Supp. 1985)) for sole use by the Social Security system. See 42 U.S.C. §§ 401(a), 401(b) (1983) (earmarking employment taxes for the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund).
Several states have already begun the momentum toward this revenue reform by establishing special taxes to fund efforts against child abuse and neglect. See, e.g., CALIF. HEALTH AND SAFETY CODE § 10605(b) (West Supp. 1986); CALIF. WELFARE AND INST. CODE, § 18966 (West Supp. 1986) (tax on birth certificates used for Children’s Trust
1. Increased Assistance to Runaway and Homeless Youth

Current federal programs are reaching few of the youths trapped on the street by homelessness or broken family ties. The two most critical aspects of assistance to those youths are crisis intervention and long-range services, both of which require shelters. The most obvious route to establishing such a combination of emergency and ongoing help is through the federal Runaway and Homeless Youth Act. The shelter network established under that Act could be substantially expanded, first, by the addition of outreach and "open intake" crisis shelters in areas frequented by street youth, and second, by longer-term programs, modeled on existing programs specializing in rehabilitation of young prostitutes. Statutory and regulatory limits on capacity and duration-of-stay would have to be adjusted to accommodate this continuum of services. In order not to jeopardize the success of existing programs, however, the expansion of services must be accomplished with the understanding that the statutory goal of small, family-like settings must be relinquished only when necessary. Thus, limits on capacity and duration of stay could be abandoned at crisis shelters in areas having both too high a demand for services to be accommodated by the current

---

150 See supra note 93.
151 See supra text accompanying notes 101 and 102.
152 Although outreach and nonresidential services are available for juvenile prostitutes, see D. Weisberg, supra note 6, at 240–47, these youths are most desperate for food and a safe place to sleep. See Huckleberry House Project, supra note 88, at 43, 45 (83% of male juvenile prostitutes requested crisis housing—by far the highest service requested).
154 See M. BENJAMIN, JUVENILE PROSTITUTION, A PORTRAIT OF "THE LIFE," MINISTRY OF COMMUNITY AND SOCIAL SERVICES, TORONTO, CANADA 127 (1985); D. WEISBERG, supra note 6, at 243. See supra text accompanying notes 115 to 120.
155 See supra note 6, at 248–57.
156 See supra text accompanying note 95.
157 See supra text accompanying note 98.
shelter system, and too low a supply of immediate, appropriate 
social service programs to which youths could be referred. 

Such an ambitious system of assistance would necessarily be 
expensive, at least by the standards of current funding levels.  
Yet it is important to note that federal funding for runaway and 
homeless youth programs has actually declined as a percentage 
of the gross national product since 1974.  Even if quadrupled, 
current expenditures on these programs would still amount to 
less than ten percent of annual expenditures on public juvenile 
correctional facilities. An expenditure of one hundred million 
dollars, which amounts to one hundred dollars per runaway, does 
ot seem an unreasonable target.

2. Strengthening Child Abuse Reporting Requirements

According to recent statistics, approximately sixty percent of 
female prostitutes and forty-four percent of male prostitutes were 
sexually abused as children. Many prostitutes consider the 
sexual abuse they suffered during childhood to have significantly 
influenced their decision to enter “the life.” Yet one study 
showed that only thirty-seven percent of sexually abused children 
ever told anyone about the abuse. Furthermore, when a child 
does attempt to tell her or his parents, the adults frequently either 
do not believe the child, or blame her or him for the abuse. When suspected child abuse is reported to child protection agen-

---

158 See supra note 96.
159 Although federal runaway expenditures increased 11.6% from 1974 to 1984, see supra note 96, the gross national product in constant dollars rose 23% from 1974 to 1983. U.S. DEPT. OF COMMERCE, supra note 146 at 432, 466 (1985).
160 The federal government currently authorizes only $23.25 million annually to runaway and homeless youth programs. See supra note 96. In comparison, during 1982, $1.1 billion were spent simply on operating costs for public institutions for juveniles, with an average per capita operating cost of $21,900. U.S. DEPT. OF COMMERCE, supra note 146, at 182 (1985).
161 See Silbert & Fines, Early Sexual Exploitation as an Influence in Prostitution, SOCIAL WORK, July-Aug. 1983, at 285, 286 (female prostitutes); D. WEISBERG, supra note 6, at 48 (male prostitutes).
162 Silbert & Fines, supra note 161, at 288.
163 Id. at 286.
164 Id. at 287 (12% showed sympathy to the victim; 45% voiced anger toward the abuser; 32% showed hostility toward the victim; 26% responded in disbelief; and 9% were ashamed of the victim).
cies, however, the agencies must pursue such reports to determine their validity. In addition, these agencies may provide support services which are essential for children to recover from the effects of the abuse and which may help prevent children from becoming involved in prostitution and pornography. Thus, mechanisms for the reporting of child abuse are an integral component of programs to ensure that victims of child sexual abuse receive needed support services.

The federal government has played a significant role in establishing state mandated reporting systems for incidents of child abuse. The Child Abuse Prevention and Treatment and Reform Adoption Act requires that states receiving federal funds for child protective services must establish certain child abuse reporting procedures. The mandated reporting procedures are limited, however, because the Act, on its face, requires the reporting of child abuse only when such abuse is perpetrated by the person who is responsible for the child's welfare. As a result, states have the discretion to exclude from their definition of reportable child abuse children who are used in pornography or prostitution by nonfamily members. Amending the Child Abuse Prevention and Treatment and Adoption Reform Act to include sexual exploitation of children by anyone would force all states that receive federal funding to require the reporting of non-familial abuse as well. Such an amendment also would allow researchers and

---

167 Id.
169 This is especially important for child prostitution and pornography, which often occurs outside the family environment. See, e.g., A. Russell & C. Tragmin, supra note 2, at 16, 94, 107 (2.8 children per 100,000 were sexually abused by a nonrelative in 1979; 11.4 in 1982. Comparable rates for sexual abuse by all types of offenders were 9.2 per 100,000 children in 1979, and 13.8 in 1982.); Finkelhor and Hotaling, Sexual Abuse in the National Incidence Study of Child Abuse and Neglect: An Appraisal, 8 CHILD ABUSE AND NEGLECT 23, 26 (1984) (probable that non-family abuse actually constitutes a majority of all abuse).

In addition, this amendment would require reports of non-parental familial abuse which state laws may not recognize. See, e.g., Matter of Case, 120 Misc. 2d 100, 465 N.Y.S.2d 417 (Fam. Ct. Oneida Co. 1983) (court dismissed child abuse charge predicated on sexual abuse of a girl by her 19-year-old brother, as he was not "acting in loco parentis" and "legally responsible" for her).
child protective professionals to collect relevant information concerning non-familial sexual abuse.\textsuperscript{170}

\section*{C. Private Civil Action by Victims}

A federal private right of action for children used in pornography or prostitution would allow at least some victims of sexual exploitation the opportunity to obtain compensation for their injuries. Two types of proposals currently before Congress offer frameworks for private rights of action in federal courts against the sexual exploitation of children. Both proposals deserve careful attention as they are the reforms under current discussion with the greatest potential for use by the private bar on behalf of sexually victimized children.

\subsection*{1. RICO Civil Actions}

RICO not only offers criminal sanctions for the predicate offenses it recognizes,\textsuperscript{171} it also grants a private right of action for victims of those crimes.\textsuperscript{172} Under the civil remedies provisions of RICO, a victim can sue for treble damages plus attorneys' fees and the cost of the suit.\textsuperscript{173} Thus, the proposals to amend RICO

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{170} Finkelhor and Hotaling, \textit{supra} note 169, at 26–27 (limitations of defining sexual abuse as acts committed by "a parent substitute or other adult caretakers"; such a definition precludes accurate research). Because the definitions of child abuse vary from state to state, there is a lack of standardization in data gathering. \textit{See}, \textit{e.g.}, S. O'Brien, \textit{supra} note 5, at 17.
\item \textsuperscript{172} 18 U.S.C. § 1964(c) (1970) ("Any person injured in his business or property by reason of a violation of § 1962 of this subchapter may sue therefore in . . . district court . . . ").
\item \textsuperscript{173} Id. In addition, federal prosecutors may be able to obtain equitable relief to bar further distribution of material obtained through sexual exploitation under 18 U.S.C. § 1964(b), although the statute probably would not allow a child to bring a suit for such equitable relief. \textit{See} Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275 (1985) (discussion of legislative history of RICO remedies indicating that injunctive relief was limited to actions by the United States). Under § 1964(b), in any action brought by the United States, the court may at any time enter restraining orders pending final determination. 18 U.S.C. § 1964(b) (1970).
\end{enumerate}
\end{footnotesize}
to include child pornography offenses\textsuperscript{174} could offer an effective means for granting compensation to victims of child pornography.\textsuperscript{175}

Including child pornography as a predicate offense under RICO, however, will not provide a viable private right of action for victims unless the language governing its civil remedies provision is slightly modified as well. The current limitation of damages to those resulting from injury to a person’s “business or property”\textsuperscript{176} effectively precludes lawsuits by children who have been injured in a profoundly personal way—through sexual exploitation. Only if the scope of recoverable damages is expanded to include personal injuries suffered from sexual exploitation will those victims be able to receive compensation under this statute.\textsuperscript{177} Because personal injury damages often are not available under state law rights of action,\textsuperscript{178} personal injury damages for sexually exploited children should be included in RICO’s civil remedies provisions. Furthermore, both the seriousness of the injury involved and the importance, recognized by the Supreme

\textsuperscript{174} See supra text accompanying notes 120–26 (discussing proposals).


\textsuperscript{177} Both of the Senate bills currently pending on this issue allow recovery of damages for personal injury under U.S.C. § 1964(c) (1970). See S. 625, 99th Cong., 1st Sess. (1985), at § (b); S. 985, 99th Cong., 1st Sess. (1985), at § 4. Neither of these bills, unfortunately, would redress personal injuries suffered by children involved in prostitution. This single-minded emphasis on helping child pornography victims is as misguided as the provision of RICO that makes child prostitution, but not pornography, a predicate offense. See supra text accompanying notes 120–26.

\textsuperscript{178} Although state laws on invasion of privacy may provide a remedy for victims of sexual exploitation, courts, on occasion, have been unwilling to sustain private actions by children if their parents consented to the activity. See, e.g., Falloona v. Hustler Magazine, 607 F. Supp. 1341 (D.C. Tex. 1985), appeal docketed, No. 85-1359 (5th Cir. 1985) (child whose nude pictures appeared in Hustler had no right to revoke mother’s consent to publication of the pictures and to collect damages from Hustler). The District Court in Falloona denied that the pictures constituted “child pornography,” see id. at 1343 n.4, although at least one picture shows the plaintiff-child holding her vagina open for the camera, an act that certainly constitutes “lewd exhibition of the genitals,” one example of pornography under \textit{Ferber}. See 458 U.S. at 747 (1982). See also \textit{Sheilds v. Gross}, 58 N.Y.2d 338 (1983) (dismissing Brooke Shields’ effort to stop publication of nude, highly eroticized pictures taken of her at age 10 with her mother’s consent).
Court in *New York v. Ferber*,¹⁷⁹ of preventing sexual exploitation and abuse of children suggest that a civil remedy under RICO is appropriate.¹⁸⁰

2. Special Statutory Right of Action

While an adaption of the cumbersome structure of RICO to fit the claims of sexually exploited children could offer these victims some relief, the magnitude of the problem also warrants the establishment of a wholly independent statutory right of action for victims of federal child-pornography offenses. A bill currently before Congress adopting this approach¹⁸¹ would allow victims both to recover treble damages for physical injury, emotional distress, or property damage, and to obtain equitable relief.¹⁸² Unlike RICO, the bill does not require a showing of a “pattern” of conduct and the existence of an “enterprise.”¹⁸³ Instead, the bill provides for expedition of these civil actions¹⁸⁴ and, at the court’s discretion, closure of the proceedings to the public¹⁸⁵ in order to make prosecution less stressful for victims and their families. Although Congress may be more willing to amend RICO than to create an entirely new cause of action, the advantages of this latter approach make it a political battle worth fighting.¹⁸⁶

¹⁸² See id. at § 4, (amending 18 U.S.C. § 2255 (1984)). Allowing victims to sue for equitable relief is an advantage this proposal may claim over the similarly motivated efforts to amend RICO. See supra note 173.
¹⁸³ See id. at § 4 (amending 18 U.S.C. § 2255 (1984)).
¹⁸⁴ See id. at § 4, (amending 18 U.S.C. § 2255 (1984)).
¹⁸⁶ Feminists who oppose pornography may support S. 1187, in part because it creates a private right of action for persons of all ages who have been coerced into pornography, and makes such coercion a federal crime. S. 1187, § 2, 99th Cong., 1st Sess. (1985)
CONCLUSION

In the last decade, Congress has made significant strides in addressing the problems of sexually exploited children. The Sexual Exploitation Act\textsuperscript{186} and the Child Protection Act\textsuperscript{187} strengthened existing criminal statutes concerning child prostitution and pornography, while the Runaway and Homeless Youth Act\textsuperscript{188} created shelter and other relief services for runaway and homeless youths. In addition, the Missing Children’s Assistance Act\textsuperscript{189} and the Missing Children Act\textsuperscript{190} aid the search for missing children—the youths vulnerable to sexual exploitation. Yet much remains to be done: child pornography and prostitution continue to be major industries in this country,\textsuperscript{191} shelter and support services reach only a small number of the youths who need them,\textsuperscript{192} and sexually exploited children lack the means to demand compensation from their abusers.\textsuperscript{193}

For reasons of political pragmatism, this Article has offered proposals to fortify existing legislation rather than to create entirely new statutory frameworks. Although these proposals would

\footnotesize{(amending the Child Protection Act of 1984, 18 U.S.C. § 2251 (1984). For example, feminist anti-pornography activist Catharine MacKinnon indicated her general support for S. 1187, but urged that it be broadened to include sexual discrimination as a constitutional basis for its enactment. Letter from Catharine MacKinnon to Senator Spectre (July 4, 1985) (on file at Harv. Women’s L.J.). For discussions of the feminist positions on pornography, see Case Comment, Pornography and the First Amendment: American Booksellers v. Hudnut, 9 Harv. Women’s L.J. 153 (1986); Book Review, 9 Harv. Women’s L.J. 215 (1986). See also Dworkin, Against the Male Flood: Censorship, Pornography and Equality, 8 Harv. Women’s L.J. 1, 24–28 (1985) (model anti-pornography statute). In its decision overturning the “Indiana Ordinance” drafted by MacKinnon and Dworkin, the Seventh Circuit specifically declared that “[w]ithout question a state may prohibit fraud, trickery, or the use of force to induce people to perform—in pornographic films or in any other films,” American Booksellers Ass’n v. Hudnut, 771 F.2d 323, 332 (7th Cir. 1985), aff’d mem., 54 U.S.L.W. 3560 (U.S. Feb. 24, 1986), and that under the principles of Perber the state might be able to “restrict or forbid dissemination of the film in order to reinforce the prohibition of the conduct.” Id. The “Indiana Ordinance” was struck down because its definition of “pornography” was tied to a single “viewpoint”—the subordination of women—and so, unlike S. 1187, was not content neutral. Id.)

\textsuperscript{191} See supra notes 5 and 43.
\textsuperscript{192} See supra text accompanying notes 93 and 94.
\textsuperscript{193} See supra text accompanying note 147.
redress the omissions and shortfalls of the current statutes, they are necessarily limited by the parameters of those statutes. Congress has yet to legislate in this area to the full extent of its powers. Because the Commerce Clause\textsuperscript{194} gives Congress power to regulate acts related to child prostitution or pornography whenever those acts are intertwined with interstate commerce,\textsuperscript{195} and because many acts associated with juvenile prostitution and the production of child pornography involve such commerce,\textsuperscript{196} Congress has the ability to move forcefully against the sexual exploitation of children, if it chooses to do so.\textsuperscript{197}

Yet even the most forceful legislation will not be able to fully redress the problems of sexually exploited youths. One counselor who has worked with street youths involved with prostitution described their needs in simple terms: "They came to the Center in search of food, shelter, medical care, clothing. But, most of all they were in search of caring."\textsuperscript{198} For caring, they must look elsewhere—but legislation must, at least, help to end their search for bed and board.

\textsuperscript{194} U.S. CONST. art. i, § 8.

\textsuperscript{195} The Supreme Court has acknowledged broad Congressional power to regulate sexual conduct intertwined with interstate commerce. See Cleveland v. United States, 329 U.S. 14 (1946) (upholding conviction of polygamy for transporting one of his wives across state lines); and Roth v. United States, 354 U.S. 476, 492–93 (1957) (upholding constitutional challenge to Wisconsin's obscenity statutes). Moreover, the federal power to legislate with regard to the "public health, morals or welfare" extends not simply to criminal prohibitions against actual interstate travel or shipment of goods, but to any activity which Congress reasonably concludes affects interstate commerce. See United States v. Darby, 312 U.S. 100, 114, 117–26 (1941). See also Katzenbach v. McClung, 379 U.S. 294 (1964) (Civil Rights Act of 1964 applied to restaurant despite absence of evidence that interstate travellers were served, based merely on the restaurant's purchase of a substantial amount of food from out of state); and Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (Commerce Clause permits federal regulation of labor conditions even among workers employed by city and state governments).

\textsuperscript{196} For example, juvenile prostitutes often travel great distances to operate in such convention capitals as New York and Los Angeles, and then attract out-of-town customers. See ENABLERS, INC., supra note 88, at 78–81. Similarly, child pornography is produced with photographic equipment purchased in the normal course of interstate commerce, and is then widely circulated among different states. See ILLINOIS LEGISLATIVE INVESTIGATING COMM'N, SEXUAL EXPLOITATION OF CHILDREN: A REPORT TO THE ILLINOIS GENERAL ASSEMBLY 37–65 (1980) (description of "underground network" of child pornography, which consists primarily of mail-order operations).

\textsuperscript{197} For example, Congress might act to regulate the interstate travel by pimps to recruit prostitutes, or by customers who travel to use their services. Producing "kiddie porn" movies with equipment purchased in the course of interstate commerce might also be regulated.

\textsuperscript{198} T. ABLE-PETTENSON, CHILDREN OF THE EVENING II (1981).