

County of Santa Clara

Office of the District Attorney

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TO: Police Chiefs of Santa Clara County

FROM: District Attorney Jeff Rosen and San Jose Police Chief Larry Esquivel

RE: Proposed Law Enforcement Protocol to Address Commercially and Sexually Exploited Children (CSEC)

DATE: August 2014

I. PURPOSE OF THIS PROTOCOL

The term Commercially Sexually Exploited Children (CSEC) refers to children and adolescents who have been victims of a range of crimes of a sexual nature, including:

- Recruiting, enticing, harboring, transporting, providing, obtaining, and/or maintaining a minor for the purpose of sexual exploitation;
- Exploiting a minor through prostitution;
- Exploiting a minor through survival sex (exchanging sex/sexual acts for money, shelter, food, drugs);
- Using a minor in pornography; and
- Exploiting a minor by having her or him perform in sexual venues (e.g. peep shows or strip clubs).¹

Government and non-profit agencies within Santa Clara County are in the process of developing expanded services, programs, protocols, and protections to address the needs of CSEC.

This protocol is intended to provide guidance to patrol officers in their initial contact with a CSEC.

Separate protocols will govern further investigations by law enforcement;² investigations and provision of services by the County Social Services Agency and the County Probation Department; and provision of services by community-based organizations.

¹ *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, Institute of Medicine and National Research Council (2013) at p. 2.

² See Santa Clara County Child Abuse Protocol (2008), pp. 20-24 (hereafter "Child Abuse Protocol") and the Santa Clara County Human Trafficking Protocol (2011), pp. 21-23.

II. GOALS

The U.S Department of Justice convened a Committee on the Commercial Sexual Exploitation and Sex Trafficking of Minors, which adopted the following fundamental guiding principles:³

1. Commercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against children and adolescents.
2. Minors who are commercially sexually exploited or trafficked for sexual purposes should not be considered criminals.
3. Identification of victims and survivors and any intervention, above all, should do no further harm to any child or adolescent.

In accordance with these principles, it is the general policy and practice of the District Attorney's Office not to prosecute minors for prostitution, as these minors are victims of extreme trauma and sexual exploitation, not criminals.⁴

As set forth in the Human Trafficking Protocol previously adopted by the Police Chief's Association, law enforcement's primary concern is keeping these children safe and holding their traffickers accountable.⁵

The goal of this protocol is to ensure that CSEC who are identified by law enforcement are treated as victims and routed to appropriate placements, and that any evidence that can be used to prosecute traffickers is collected.

III. PROTOCOL

A. Responding to the Needs of CSEC and Identifying an Appropriate Placement

1. Initial Contact

When an officer comes into contact with a CSEC, the officer must decide whether to:

- Release the child to lawful custodian.
- Take the youth into temporary protective custody and call Department of Family and Children Services (DFCS) to initiate the Joint Response Protocol;
- Take the youth to Valley Medical Center because he or she is in need of immediate medical care and/or has consented to an exam by the Sexual Assault Response Team (SART);⁶

³ *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, Institute of Medicine and National Research Council at p. 3.

⁴ In the rare circumstance that a minor is engaged in trafficking of other minors, the District Attorney's Office may pursue prosecution.

⁵ *Human Trafficking Protocol*, Santa Clara County Police Chiefs' Association (2011), p. 17 (hereafter "Human Trafficking Protocol").

- Or, in rare cases, arrest the minor and take him or her to Juvenile Hall because:
 - (A) There is a warrant for the minor arrest;
 - (B) The officer has probable cause to believe the minor has committed a crime unrelated to his or her commercial sexual exploitation for which arrest is appropriate under the Santa Clara County Booking Protocol; or
 - (C) The minor is in immediate danger of physical violence, no appropriate non-criminal alternative placement is available, and the minor has committed a crime for which she or he can be detained in Juvenile Hall.

In all cases, the officer will inform the CSEC victim that, as a victim of sexual exploitation, he or she has a right to a sexual assault advocate. If the CSEC consents, the officer will call the CSEC Hotline at (877) 363-7238 to arrange for an advocate to assist the CSEC.⁷

2. Determining whether to take the youth into temporary or protective custody

An officer has authority to take CSEC youth into temporary custody if the officer has reasonable cause to believe the minor could be deemed a dependent or ward of the court, or the child has been abducted.

Dependent of the Court

Under Welfare and Institutions Code section 300 *et seq.*, an officer may take a child into temporary custody without a warrant for the following reasons:

- (1) The officer has reasonable cause to believe the minor is a victim of abuse and neglect as described in Section 300 and the minor has an immediate need of medical care, the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. Minors fall within Section 300 if they are victims of commercial sexual exploitation and their parents or guardians failed to or were unable to protect them from exploitation.⁸
- (2) The officer has reasonable cause to believe the minor is a dependent of the court and has violated an order of the juvenile court or left any placement ordered by the court.⁹
- (3) The minor is found in any street or public place suffering from any sickness or injury which requires treatment.¹⁰

⁶ See SART Protocol. Law enforcement must notify the local victim counseling center whenever a victim of sexual assault is transported to a hospital for a medical evidentiary or physical examination. Penal Code § 264.2(b)(1).

⁷ Like other victims of sexual assault, CSEC have a right to a victim's advocate. See Penal Code § 679.04.

⁸ *Id.* §§ 300(b)(2), 305; *In re Brittney C.*, D045167, 2005 WL 1774491 (Cal. Ct. App. July 28, 2005).

⁹ *Welf. & Inst. Code* § 305.

¹⁰ *Id.*

Ward of the Court

Under Welfare and Institutions Code section 600 *et seq.*, an officer may take a child into temporary custody without a warrant for the following reasons:

- (1) The officer has reasonable cause to believe the minor is a person described in Section 601 or 602 of the Welfare and Institutions Code.¹¹ This includes minors who are habitually truant, disobedient, or violate curfew,¹² and those who have committed a crime.¹³
- (2) The minor is a ward of the court and has violated an order of the juvenile court or left any placement ordered by the court.¹⁴
- (3) The minor is found in any street or public place suffering from any sickness or injury which requires treatment.¹⁵

Abducted Child

An officer may also take a child into protective custody if:

- (1) It reasonably appears to the officer that a person (e.g. a trafficker) is likely to conceal the child, flee the jurisdiction with the child, or, by flight or concealment, evade the authority of the court;¹⁶
- (2) There is no lawful custodian available to take custody of the child;¹⁷
- (3) There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child; or¹⁸
- (4) The child is an abducted child.¹⁹

In exercising his or her discretion regarding whether to take a minor into temporary or protective custody, the officer should consider the minor's age; need for immediate medical care; prior or current child welfare involvement; and risk of exposure to further abuse or exploitation.

A CSEC in custody can be searched by law enforcement,²⁰ and evidence of sexual exploitation or other abuse can be collected (e.g. a cell phone a trafficker may use to communicate with the CSEC).

¹¹ *Id.* § 625.

¹² *Id.* § 601.

¹³ *Id.* § 602.

¹⁴ *Id.* § 625.

¹⁵ *Id.*

¹⁶ Penal Code § 279.6(a).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See In re Ian C.*, 87 Cal. App. 4th 856 (2001).

An officer should only arrest a CSEC victim and take him or her to Juvenile Hall if:

- a) There is an outstanding arrest warrant for the CSEC;
- b) The CSEC has committed a crime unrelated to sex trafficking for which arrest is appropriate under the Santa Clara County Booking Protocol; or
- c) The minor is in immediate danger of physical violence, no appropriate non-criminal alternative placement is available, and the minor has committed a crime for which she or he can be detained in Juvenile Hall.

3. Releasing the Youth to an Appropriate Agency or Placement

After taking the minor into temporary or protective custody, the officer must then decide whether the minor should be released to DFCS, Probation, or a community based organization.

First, an officer should determine whether the CSEC is a dependent or ward of the juvenile court, either through dispatch or by directly contacting the DFCS at (408) 299-2071 or the Santa Clara County's Juvenile Probation Department (JPD) at (408) 278-5820.

If the CSEC is a dependent, the officer should consider DFCS's advice as to whether the minor should be taken to the DFCS Receiving Center, to an identified foster care or group home, or to another DFCS-authorized placement.²¹

If the CSEC is a ward of the juvenile court, the officer should consider JPD's advice as to whether the minor should be released, brought to Juvenile Hall, or taken to an alternate placement.²²

If the CSEC youth is *not* a dependent or a ward, the officer may choose between the following options:

- a) Release the child to a lawful custodian, unless it reasonably appears that the release would cause the child to be endangered, abducted, or removed from the jurisdiction;²³
- b) Request a joint response by DFCS, transfer custody of the child to the responding social worker, and prepare a Juvenile Contact Report (JCR);²⁴
- c) Release the child to a community-based organization serving CSEC youth;²⁵ or
- d) In rare cases, arrest the minor and take him or her to Juvenile Hall.

²¹ Welf. & Inst. Code §§ 307, 307.5.

²² *Id.* § 626.

²³ *Id.* §§ 307(a), 626(a); Penal Code § 279.6(b)(1).

²⁴ Welf. & Inst. Code §§ 307(c), 306, 626(b); Penal Code § 279.6(b)(2).

²⁵ Welf. & Inst. Code § 307.5, 626(b). A list of the organizations serving CSEC youth is available at [INSERT INFO].

B. Building a case against the victim’s trafficker

“[V]ictims and survivors may be distrustful of law enforcement, may not view themselves as ‘victims,’ or may be too traumatized to report or disclose crimes committed against them.”²⁶ A minor victim’s inability or unwillingness to provide information to law enforcement or to identify him or herself as a victim are often directly connected to and caused by the trauma she or he has experienced. Regardless of whether minor is willing or able to participate in investigation; the minor will be treated as a victim.

In investigating suspected sexual exploitation of children, officers should follow the response and investigation procedures outlined in the Human Trafficking Protocol.²⁷

²⁶ *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, Institute of Medicine and National Research Council at p. 2.

²⁷ Human Trafficking Protocol, pp. 15-21.