UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD
ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD
PORNOGRAPHY

ALTERNATIVE REPORT
OF
THE CHILDREN'S STUDIES CENTER,
BROOKLYN COLLEGE OF THE CITY UNIVERSITY OF NEW YORK
ON
NEW YORK STATE MEASURES
GIVING EFFECT
TO THE OPTIONAL PROTOCOL

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prepared by the Children's Studies Center for Research, Policy and Public Service
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Foreword


The groundbreaking role of the Children's Study Center in the ongoing implementation of the Optional Protocol has been recognized by the United States Department of State in its January 22, 2010, Periodic Report on the Optional Protocol:

The interdisciplinary Children's Studies Center of Brooklyn College of The City University of New York is one example of the essential role of academic and non-profit institutions in developments in this area. Prompted by the Concluding Observations of the Committee, on February 6, 2009, the Center convened its Third Child Policy Forum of New York: Implementation and Monitoring of the Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Proceedings, together with the text of the Optional Protocol and the Committee's Concluding Observations have been published and are also available online at http://www.brooklyn.cuny.edu/pub/departments/childrenstudies/. The Forum reviewed the degree to which statutes, regulations, and programs of New York State serve to protect children and adolescents from sexual exploitation with a focus upon necessary law reform and mechanisms to implement and monitor the articles of the Optional Protocol. . . . The work of the Center, along with other non-governmental advocates, has been crucial in the adoption of new laws in the state of New York. The Safe Harbor for Sexually Exploited Youth Act, enacted September 25, 2008, made New York the first state in the nation to provide specialized services and safe housing for children who have been sexually exploited. Effective April 1, 2010, the Safe Harbor law allows for child victims of prostitution to defer criminal prosecution and instead petition for consideration as a person in need of supervision; the act also provides critical support and social services to child victims of prostitution. The New York Anti-Human Trafficking Act of 2007 (Ch. 74 of The Laws of 2007) created new crimes of sex and labor trafficking and facilitation of sex tourism, and established services for human trafficking victims. The Center's 2004 policy symposium Children and the Law in New York led directly to the drafting of legislation for an independent New York State Office of the Child Advocate; the legislation has passed the New York Assembly annually but

Postscript: The legislation for an Independent New York State Office of the Child Advocate was passed by both the New York State Senate and Assembly in June 2010. It was vetoed by Governor David Paterson. As stated in the “Periodic Report of the United States of America,” January 22, 2010, the Children’s Studies Center Policy Symposium on “Children and the Law in New York” of 2004 led to the drafting of this legislation, and the Children’s Studies Center worked with New York State legislators throughout the subsequent years.

From the outset, the concept of the independent New York State Office of the Child Advocate was synonymous with the concept “Child Ombudsman,” an office first established in Norway. We are aware of No. 18, “National Human Rights Institutions” in the Concluding Observations of the Committee of June 2008, which states: “While the Committee recognizes the difficulty in creating an independent agency at the federal level to monitor the implementation of the Optional Protocol, because most of the laws and services required are a state responsibility, the Committee is concerned that there is no agency such as an Ombudsman at the federal or state level to monitor the implementation of the Optional Protocol.” Had the New York State Independent Office of the Child Advocate come into effect, it could also have served as the agency to monitor the implementation of the Optional Protocol.

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More recently, in November 2011, the Children's Studies Program sponsored its 20th Anniversary National Consultation "Social Justice for Children: To End Child Abuse and Violence Against Children" with a website containing materials from that consultation at http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/conference. In the context of this National Consultation, the sexual exploitation of children represented one of the central themes. A striking outcome of this consultation has been Assembly Member William Scarborough’s plan to introduce New York legislation to establish a New York State Commission on Child Abuse and Violence against Children.
Introduction

We welcome this opportunity to report to the Committee on the Rights of the Child on measures giving effect to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the "Protocol"). This Alternative Report is limited to New York State law only.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, of the Convention on the Rights of the Child was ratified by the United States on September 14, 2002. That Protocol is not self-executing. Rather, it requires that states who are parties to the Protocol assess their legislation and enforcement activities and where necessary amend their laws and conform their activities to meet the minimum standards set out in the Protocol.

The following is an analysis of New York State statutes insofar as they deal with the subject matter of the Protocol. Where New York meets or exceeds the standards set out in the Protocol, that fact is indicated. Where New York either does not address a subject, or where New York law and regulation fail to meet the standards of the Protocol, the need for amendments or new legislation is indicated.

This analysis includes the text of relevant portions of the United States Understandings on the basis of which the Senate gave its advice and consent to the ratification of the Optional Protocol.

The purpose of this Alternative Report “On New York State Measures Giving Effect to the Optional Protocol” was to provide a first attempt to review the existing statutes of one state in the United States and to examine and monitor the degree to which they implement the Optional Protocol. It was undertaken in the hope that other states in the United States might use it in part as a model in their efforts to implement the Optional Protocol in future. It is also our understanding that other state parties with federal systems will be confronted with the challenge of how to implement and monitor the Optional Protocol on state levels.

Acknowledgments

We thank all those who have helped to make this Report possible. In particular, we thank Mary Foutz, Esq., the Legal Research Associate of the Children’s Studies Center, for her research and writing of the Report for the U.N. Committee on the Rights of the Child. We also thank Douglas Cox, Associate Law Library Professor at the City University of New York School of Law. We would like to thank the members of the staff of the Children’s Studies Center for their commitment and help over these last years to bring this Report into existence. Our thanks also go to the members of the New York State Legislature, and in particular to A.M. William Scarborough, former Chair of the Committee on Children and Families in the N.Y.S. Assembly, and A.M. Barbara M. Clark, member of this Committee. Our major debt of gratitude goes to the Oak Foundation of Geneva for welcoming this initiative and for their generous grant which made this entire initiative and Report possible. Finally, we want to thank Marta Santos Pais, the Special Representative of the U.N. Secretary-General on Violence against Children, for her unfailing support of our work at the Children’s Studies Center on behalf of the human rights of children everywhere.
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INFORMATION ON MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE PROTOCOL

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

1. This introductory paragraph does not set forth the specific duties of States Parties. Those duties, and the extent to which New York law complies with them, are discussed below.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

United States Understanding:
The United States understands that the term "sale of children", as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.

2. Before dealing with the specific definitions in Article 2, it should be noted that the Protocol has no definition of child. The definition in the Convention on the Rights of the Child is: a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

3. New York statutes do not use the term "child" generally; instead reference is made to "infancy." For purposes of civil obligations, such as contracts, a person is an infant until he reaches the age of 18 (General Obligations Law § 3-101(1)). For purposes of criminal liability, a person is an infant until he reaches the age of 16 (Penal Law § 30.00(1)).

4. The term "child victim" is used in the Crime Victims Board article of the Executive Law to refer to victims of crime who are under the age of 18 years (Executive Law § 621). However, in dealing with the age of a victim of a crime, New York does not uniformly treat all victims under 18 as child victims. The extent to which New York law covers victims under 18 will be discussed below with respect to each crime.

5. New York does not have a criminal statute dealing with the sale of children, and therefore there is no definition of that crime in New York statute law. New York court decisions state that the selling of children is contrary to public policy, but do not define that term. See, e.g., In the
Matter of the Adoption of Paul, 146 Misc. 2d 379, 550 N.Y.S.2d 815 (Fam. Ct. Kings County 1990), referring to "New York's well-established policy against trafficking in children." New York also criminalizes the "abandonment" of a child under the age of 14, Penal Law § 260.00, but that section does not expressly cover the transfer of a child from one party to another.

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

6. The use of a child in sexual activities is not defined by New York as "child prostitution." However, New York does criminalize the use of certain persons in sexual activities, under the terms "promoting prostitution," "patronizing a prostitute," and "use of a child in a sexual performance." The details of these crimes is discussed below, in Article Three.

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

United States Understanding:
The United States understands the term "child pornography", as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.

7. New York does criminalize this activity, under the term "Sexual performance by a child." The details of this crime are discussed below in Article 3.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:
   (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
       a. Sexual exploitation of the child;
       b. Transfer of organs of the child for profit;
       c. Engagement of the child in forced labour;

United States Understanding:
The United States understands that (A) the term "transfer of organs for profit", as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and (B) the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with
the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.

8. This Article 3(a)(i) indicates that the States Parties' duty to criminalize the sale of children applies when the child is sold for purposes of sexual exploitation, transfer of organs, or forced labor. It is clear that New York does not criminalize the sale of children.

9. However, New York criminalizes the three purposes for which the sale of children is prohibited by the Protocol. First, New York criminalizes the sexual exploitation of the child, as discussed below under the topics of child prostitution and child pornography. New York also criminalizes the sale of human organs in Public Health Law § 4307. That prohibition applies to any sale or transfer for valuable consideration of any human organ, and does not speak of child victims.

10. Finally, New York criminalizes forced labor in Penal Law § 135.35. That prohibition applies to any victim of force used to compel labor and does not speak of child victims.

11. When a child is sold for the purpose of the commission of any of these crimes, it appears that the sale itself may be treated as aiding in the commission of these crimes. Penal Law § 20.00 states that intentionally aiding in the commission of a crime is itself a crime. Further, the sale of a child could potentially constitute a crime under more general provisions, such as Penal Law §§ 260.00 and 260.10, which criminalize child abandonment and endangering the welfare of a child.

12. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That New York adopt a criminal statute expressly outlawing the sale of children.

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

United States Understanding
(A) Understanding Of Applicable International Legal Instruments".-The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").
(B) No Obligation To Take Certain Action.-The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(l)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.
(C) Understanding Of "Improperly Inducing Consent".-The United States understands that the term "improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means
knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.

13. The United States Understanding quoted above does not state the current situation, since the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Adoption Convention") was ratified by the Senate, and came into effect on April 1, 2008.

14. The Adoption Convention provides in Article 4 that an adoption shall take place only if the competent authorities in the state of origin have insured that all necessary consents have been given freely and have not been induced by payment or compensation of any kind.

15. New York statutes make it a crime to pay or accept compensation in connection with the adoption of a child, in Social Services Law §§ 374(6), 389(2). However, New York makes certain exceptions which allow the payment of medical costs, and the birth mother's reasonable and actual expenses for housing, maternity clothing, clothing for the child and transportation. Social Services Law § 374(6). These exceptions seem to be inconsistent with the Adoption Convention's prohibition on "payment or compensation of any kind."

16. Whether New York's exceptions to the rule against compensation in connection with adoption are actually inconsistent with the Adoption Convention may require research into the travaux preparatoires, which has not at this time been done.

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

17. New York defines "advancing prostitution" as any form of facilitating prostitution, including providing a person for purposes of prostitution. Penal Law 230.15. The degree of seriousness of the crime is increased with the decreasing age of the persons prostituted:

1. Under 19 Class D felony (Penal Law § 230.25)
2. Under 16 Class C felony (Penal Law § 230.30)
3. Under 11 Class B felony (Penal Law § 230.32)

New York therefore does comply with the requirements of the Protocol with respect to child prostitution, by creating a higher degree of offense for victims up to the age of 19 - a greater degree of protection than that required by the Protocol.

18. A proposed law before the New York State Assembly, A9804, Trafficking Victims Protection and Justice Act, if adopted, would create new offenses, including aggravated patronizing a minor for prostitution, and increase penalties for certain offenses against children. It would also require that any prosecution of a child for prostitution offenses be handled by Family Court rather than the criminal courts. The text of this proposed law appears at the end of the Legislative Annex.

19. New York also criminalizes two forms of forced prostitution. The offense of "sex trafficking", under Penal Law § 235.34, includes inducing a person to engage in prostitution by
threats or otherwise. That crime is not divided into degrees depending upon the age of the victim. The crime of "compelling prostitution," under Penal Law § 235.35, consists in using force or threats to cause a person under the age of 16 to engage in prostitution. Both the crimes of sex trafficking and compelling prostitution have the same penalty.

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

19. New York refers to child pornography as "sexual performance by a child." Producing and distributing child pornography are criminalized in Art. 263 of the Penal Law. §§ 263.01 et seq. The prohibitions against producing and distributing child pornography use a definition of "child" as a person under the age of 17.

20. The same article also provides that possessing child pornography is a crime if the child portrayed is under the age of 16.

21. Therefore New York does not entirely comply with the Protocol, as it does not protect all persons under the age of 18 from being used in child pornography.

22. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That the age of the victim in Article 263 of the Penal Law be raised to 18 throughout.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

23. New York's Penal Law complies with this requirement. Attempts to commit a crime are punishable under Penal Law § 110.00. Aiding or soliciting a crime are punishable under Penal Law § 20.00.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

24. This section appears to require that in every case in which a person under 18 is a victim of one of the crimes described above, the penalty shall be enhanced beyond that imposed when the victim is above 18.

25. New York does not meet this requirement in certain areas. Besides the area of child pornography, discussed above, there is no enhanced penalty for selling the organs of a child or for forced labor by a child. New York does meet this requirement as to the prohibition against child prostitution. New York's prohibition against using force to compel prostitution creates a
separate crime when the victim is under 16, but sets the same penalty for this crime whether committed against a child or an adult.

26. To conform New York law to the requirements of the Protocol, the following legislative changes are needed:

1. That the Public Health Law and Penal Law be amended to create new crimes of sale of the organs of a person under 18, and forced labor by a person under eighteen. These new crimes are to be classified as higher degrees of felony, with increased penalties.
2. That the Penal Law's provisions in 230.33 and 230.34 set forth a higher degree of felony for crimes of compelling and forcing prostitution committed against persons under 18.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

27. This section deals with the enforcement activities of the state, rather than the laws applicable.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

United States Understanding
(A) Understanding Of Applicable International Legal Instruments".-The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").
(B) No Obligation To Take Certain Action.-The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(l)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.

28. The United States Understanding quoted above does not state the current situation, since the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Adoption Convention") was ratified by the Senate, and came into effect on April 1, 2008.

29. The United States has enacted the Intercountry Adoption Act, P.L. 106-279, 114 Stat. 825. That law incorporates the provisions of the Adoption Convention. As a federal law, it preempts
any New York legislation on this subject, and therefore no New York legislation is needed to comply with this requirement of the Protocol.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

   (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

   (b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

30. This article deals with national matters, not those on a state level.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

31. This article deals with national matters, not those on a state level.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

32. This article deals with national matters, not those on a state level.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

33. The proceeds of felonies generally are subject to forfeiture under Civil Practice Law & Rules § 1311, which includes provision for the seizure of property used in the commission of a felony. In addition, New York has provisions for forfeiture of equipment used in the making of pornography, Penal Law § 410.00.

34. To the extent, then, that New York treats crimes under the Protocol as felonies, then, New York is in compliance with the Protocol. All the crimes under the Protocol are felonies in New
York, with one exception: the paying or accepting of money in connection with adoption is only a misdemeanor. However, a second or subsequent offense is a felony, which would seem to satisfy the requirements of the Protocol requiring seizure "as appropriate."

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

35. New York will enforce money judgements entered in foreign countries, Civil Practice Law & Rules § 5303. Foreign judgments that involve the seizure of goods must be sought in New York courts, under the procedural and substantive laws governing judgments in equity. These provisions appear to comply with the Protocol, which states that measures to execute these requests are subject to the provisions of New York's law.

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

36. New York has provisions for abating the nuisance of a house of prostitution, Public Health Law §§ 2320-2329, which permit the temporary or permanent closing of premises used for prostitution. It does not have any measures to temporarily close premises used to commit the offenses of sale of children or of child pornography, although such premises can be seized under Civil Practice Law & Rules § 1311.

37. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That Public Health Law § 2320 be amended to include in the premises subject to abatement as a nuisance any premises regularly used to commit the crimes of sale of children (as defined in a statute to be enacted) and of promoting, producing or distributing a sexual performance of a child, as defined by Article 263 of the Penal Law.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

38. New York recognizes the special needs of children as witnesses, by providing for closed-circuit television testimony of children under the age of 15, when appearing as witnesses in cases of rape or incest, Criminal Procedure Law, Article 65. No special procedure is provided in cases of the sale of children, child prostitution or child pornography.
39. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That the provisions of Article 65 of the Criminal Procedure Law be amended to extend its protection to victims under the age of 18, and to the crimes of sale of children, promotion of prostitution, and sexual performance by a child.

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

40. New York recognizes the rights of victims of all crimes to this information. The fair treatment guidelines for victims is described in Executive Law § 641. Those guidelines appear to comply with the requirements of the Protocol.

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

41. New York provides that the views of victims of certain violent felonies, and the families of child victims of those crimes, be taken into consideration by district attorneys, under Executive Law § 642. This provision should be extended to cover child victims of the crimes prohibited by the Protocol.

42. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That Executive Law § 642 be extended to cover victims of the sale of children, child prostitution, and child pornography.

(d) Providing appropriate support services to child victims throughout the legal process;

43. These services are now provided in some cases by New York's Crime Victims Board, which provides support services to crime victims generally. See Executive Law § 620 et seq. The services are provided to (1) victims who suffer physical injury due to crimes; and (2) victims of certain specified crimes who do not suffer physical injuries. The specified crimes include sex trafficking, but not any of the other crimes prohibited by the Protocol.

44. Under the provisions of the Safe Harbour for Exploited Children Act (the "Safe Harbour Act", which came into effect April 1, 2010), Title 8-A of the Social Services Law, victims of child prostitution, sexual trafficking, child pornography, and abused children will be assured of all necessary social services. Victims of the sale of children, who do not otherwise fall in any of these categories, are not presently entitled to these services.

45. To conform New York law to the requirements of the Protocol, the following legislative change is needed:
As part of legislation outlawing the sale of children in New York, provision shall be made to include the victims of such sale as persons entitled to the protections of the Safe Harbour for Exploited Children Act.

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

46. New York provides that the identity of victims of rape and child abuse are to be held confidential, Civil Rights Law § 50-b. This provision should be extended to victims of the crimes prohibited by the Protocol.

47. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That Civil Rights Law § 50-b be amended to cover victims of the sale of children, child prostitution, and child pornography.

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

48. The New York Crime Victims Board, under Executive Law § 621, provides for reimbursement of the reasonable costs of security devices, and relocation expenses, of certain victims. See the legislative proposal above with respect to enlarging the scope of the Crime Victims Board to cover victims of crimes prohibited by the Protocol.

49. Additionally, intimidation of witnesses is a crime punishable under Penal Law §§ 215.15-215.17.

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

50. New York provides guidelines providing for speedy disposition of cases involving victims of child abuse, Executive Law § 642-A(3). These provisions should be extended to victims of the offenses prohibited by the Protocol.

51. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That § 462-a(3) of the Executive Law be extended to cover victims of the sale of children, child prostitution, and child pornography.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

52. New York has specific evidentiary provisions with respect to determining the age of a person who appears in a sexual performance, to determine if that person was a child at the time of the performance, Penal Law § 263.25. That section allows for the wide reception of any form of proof determining the age of the person. Since the age of children who are victims of the other crimes can be determined directly, there is no need for additional legislation in this area for New York to comply with the Protocol.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

54. New York does not have any statutory provisions in this area. However, there are guidelines dealing with the treatment of victims of child abuse that call for a person supportive of the child to be present at all times during the child's testimony, Executive Law § 642-A(6). This provision appears to offer the child the opportunity to have his or her best interest considered.

55. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That section § 642-A(6) of the Executive Law be extended to cover victims of the sale of children, child prostitution, and child pornography.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

56. New York provides that victim assistance training, with special consideration to be given to child victims, be given at law enforcement training programs, Executive Law § 642. In addition, New York provides for special multi-disciplinary teams to work with victims of child abuse, Executive Law § 642-A(1). This provisions should be extended to victims of the offenses prohibited by the Protocol.

57. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That § 642-A(1) of the Executive Law be extended to cover victims of the sale of children, child prostitution, and child pornography.
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

58. This section requires policy decisions as to the most effective programs to protect the persons and organizations, depending on the actual reported need for such protections.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

59. Due process of law is guaranteed to the accused by the New York Constitution, Art. I, Sec. 6. New York complies with the Protocol in this area.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

60. This section requires policy decisions as to the most effective programs to prevent the crimes prohibited by the Protocol.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

61. This section requires policy decisions as to the most effective programs to educate the public on the crimes prohibited by the Protocol.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

62. New York provides for the welfare of victims of human trafficking generally in Social Services Law Article 10-D, §§ 483-AA et seq. Those services include referral to local social service agencies in case of victims under the age of 18.
63. New York also provides for the reimbursement of out-of-pocket and medical expenses for victims of certain crimes, by the Crime Victims Board, in Executive Law §§ 620 et seq. These expenses include counseling, as needed. A legislative proposal to extend the services of the Crime Victims Board to the victims of the crimes prohibited by the Protocol appears above.

64. The Safe Harbour Act, Social Services Law Title 8-A, discussed in paragraph 44 above, is aimed at providing appropriate services to victims of child abuse, child pornography and child prostitution. The services contemplated include counseling and therapeutic services, educational services, life skills services and planning services to successfully transition victims back to the community.

65. As discussed in paragraph 45 above, the benefits of the Safe Harbour Act should be extended to victims of the sale of children, to the extent that they are not already covered.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

66. New York law does not create any form of discrimination against child victims in seeking compensation for damage done to them. Crime victims generally have seven years from the date of the crime in which to commence an action for damages caused by it, Civil Practice Law & Rules § 213-b.

67. Persons under 18 have the benefit of tolling provisions under Civil Practice Law & Rules § 208, so that their right to bring a lawsuit will not expire before they reach the age of 18.

68. In addition, New York provides that restitution or reparations to crime victims may be ordered as part of the sentence, Penal Law § 60.27. Therefore New York complies with the Protocol.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

69. New York prohibits the advertising of sexual performances by a child, Penal Law Article 263. There appear to be no specific prohibitions against advertising prostitution, but the definition of "promoting prostitution" includes engaging in any conduct designed to facilitate an act of prostitution, Penal Law § 230.15. It appears, then, that New York effectively prohibits the advertising of child prostitution and pornography. The advertising of the sale of children should be expressly prohibited.

70. To conform New York law to the requirements of the Protocol, the following legislative change is needed:
That in adopting a statute criminalizing the sale of children, the activities prohibited shall include the advertising of such sale.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

71. This article deals with national matters, not those on a state level.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

72. This article does not impose any requirements on New York State.

Article 12
1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

73. This article does not impose any requirements on New York State. The present report is presented voluntarily, and not as a requirement of the Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

74. This article deals with national matters, not those on a state level.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

75. This article deals with national matters, not those on a state level.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States
Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

76. This article deals with national matters, not those on a state level.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

77. This article deals with national matters, not those on a state level.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

78. This article deals with national matters, not those on a state level.