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## A LEGISLATIVE FRAMEWORK FOR COMBATING DOMESTIC MINOR SEX TRAFFICKING

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### I. BACKGROUND

Domestic minor sex trafficking is the commercial sexual exploitation of America's children through prostitution, pornography, and sexual performance within U.S. borders.<sup>1</sup> "It is the 'recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act' whe[n] the person is . . . under the age

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<sup>1</sup> LINDA A. SMITH ET AL., SHARED HOPE INT'L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN iv (2009) [hereinafter NATIONAL REPORT], *available at* [http://www.sharedhope.org/Portals/0/Documents/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf).

of [eighteen] years.”<sup>2</sup> When considering the crime of domestic minor sex trafficking, the age of the victim is the critical issue; there is no requirement to prove that force, fraud, or coercion was used to secure the victim’s actions.<sup>3</sup> In fact, the law recognizes the effect of psychological manipulation by the trafficker, as well as the effect of the threat of harm that traffickers (pimps) use to maintain control over their young victims.<sup>4</sup> Experts estimate that at least one hundred thousand American juveniles each year are victimized through prostitution in America.<sup>5</sup>

### A. *The Business of Sex Trafficking*

In the market of sex trafficking, there are sellers (traffickers), buyers (johns), and products (victims).<sup>6</sup> Demand presented by the buyers drives the criminal business of sex trafficking.<sup>7</sup> Demand is predominantly created by men who seek to purchase sex or sexual entertainment, with knowledge that—or without regard to whether—the sexual acts are being performed by persons who have been subject to force, fraud, or coercion, or by those who are underage.<sup>8</sup> Demand causes sex trafficking to occur in countries around the world.<sup>9</sup>

Sex trafficking is driven by demand for the array of commercial sex acts that are performed<sup>10</sup> and how they are advertised.<sup>11</sup> Traffickers

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<sup>2</sup> *Id.* (quoting 22 U.S.C. § 7102(9) (2006)); *see also* § 7102(8)(A) (defining the sex trafficking of a minor as a “[s]evere form[] of trafficking in persons”).

<sup>3</sup> *See* § 7102(8)(A) (setting forth a strict liability standard for children under eighteen).

<sup>4</sup> *See* 18 U.S.C. § 1591(c)(2) (2006).

<sup>5</sup> NATIONAL REPORT, *supra* note 1, at 4 (quoting DVD: Prostituted Children in the United States: Identifying and Responding to America’s Trafficked Youth (Shared Hope International and Onanon Productions 2008) (statement by Ernie Allen, National Center for Missing and Exploited Children) (on file with author)).

<sup>6</sup> SHARED HOPE INT’L, DEMAND: A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 7 [hereinafter DEMAND], available at <http://www.sharedhope.org/Portals/0/Documents/DEMAND.pdf>.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Janice G. Raymond, *Prostitution on Demand: Legalizing the Buyers as Sexual Consumers*, 10 VIOLENCE AGAINST WOMEN 1156, 1157–58 (2004); *see also* 18 U.S.C. § 1591(b)(1)–(2) (prescribing punishment for sex traffickers using “force, fraud, or coercion” or sex traffickers of children).

<sup>9</sup> *See* SUSAN SONG, YOUTH ADVOCATE PROGRAM INT’L, GLOBAL CHILD SEX TOURISM: CHILDREN AS TOURIST ATTRACTIONS 2 (2003), available at <http://www.yapi.org/rp/childsextourism.pdf>; CAPTIVE DAUGHTERS & THE INT’L HUMAN RIGHTS LAW INST. OF DEPAUL UNIV. COLL. OF LAW, CONFERENCE REPORT, DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING 66–67 (2003) [hereinafter CAPTIVE DAUGHTERS]; DEMAND, *supra* note 6, at 2.

<sup>10</sup> Raymond, *supra* note 8, at 1171–72 (2004).

move victim-products to the markets, assisted and facilitated by other actors in a myriad of ways.<sup>12</sup> As the demand increases, traffickers must increase the supply of victims. The buyer in this marketplace views the victim as a dehumanized product for immediate consumption and disposal. If buyers were not seeking commercial sexual services, then sex trafficking would cease to be a profitable venture.

Thus much like in a legitimate market, supply and demand for commercial sexual services are correlated. The supply of women and children in the sex industry serves as the fuel for this criminal slave trade and must increase to meet growing demand for sexual services throughout the world. Demand affects the market structure and the type of “product” made available. Evidence suggests that an increasingly younger product is sought due to buyers’ perceptions that younger victims are both healthier and more vulnerable.<sup>13</sup> This desire for sex with younger girls has led to large numbers of juveniles exploited through prostitution around the globe—indeed, these juveniles are sex trafficking victims as identified in the U.N. Protocol and the U.S. Trafficking Victims Protection Act of 2000.<sup>14</sup>

Research in the United States has pointed to juvenile girls as the primary victims of sex trafficking.<sup>15</sup> These are domestic minor sex trafficking victims—a subset of human trafficking victimization that requires a unique legislative response touching on a range of legal issues from criminal statutes to social services to civil remedies. Testimony by survivors of domestic minor sex trafficking consistently relate quotas imposed by their traffickers of ten to fifteen buyers daily.<sup>16</sup> These numbers add up to a staggering number of buyers of commercial sex acts from prostituted children. A response to this demand that recognizes the societal impact, together with a legislative framework that includes the

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<sup>11</sup> CAPTIVE DAUGHTERS, *supra* note 9, at 51–53 (explaining the effect of the Internet, commercial advertising, and word-of-mouth advertising on connecting the supply with the demand).

<sup>12</sup> *E.g.*, Janice G. Raymond & Donna M. Hughes, Sex Trafficking of Women in the United States: International and Domestic Trends 19–20 (Apr. 17, 2001) (unpublished report).

<sup>13</sup> DEMAND, *supra* note 6, at 15.

<sup>14</sup> *See generally* Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(2), 114 Stat. 1464, 1466 (codified as amended in 22 U.S.C. § 7101(b)(2) (2006)); Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) [hereinafter U.N. Protocol], available at [http://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch\\_XV\\_III\\_12\\_ap.pdf](http://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XV_III_12_ap.pdf).

<sup>15</sup> NATIONAL REPORT, *supra* note 1, at 8–9.

<sup>16</sup> *Id.* at 20.

criminalization of demand as its cornerstone, is critical to combating this social crisis.<sup>17</sup>

### *B. Culture of Tolerance*

A culture of tolerance surrounds the marketplace of commercial sexual exploitation. The culture of tolerance is derived from a country's history, ethnicity, religious practice, language, political and economic system, and other influences. Cultures of tolerance differ from country to country, and sometimes vary within countries or even cities, but the essence is the same: societal acceptance backed by political tolerance.<sup>18</sup>

One example of a culture of tolerance can be found in the truck stops across the United States.<sup>19</sup> Trucking routes are frequent markets for minor victims of sexual trafficking.<sup>20</sup> Where major highways intersect throughout the country, underage girls are made available for commercial sex with passing truckers.<sup>21</sup> These girls are derisively referred to as "lot lizards"—a label that allows the truckers and truck stop personnel to avoid confronting the reality of the commercial sexual exploitation of women and children.<sup>22</sup> The label also benefits the buyers who, in response to the lack of alarm within the trucking community, do not seem to be concerned about the possibility of being reported.<sup>23</sup> A December 2005 law enforcement operation at a Harrisburg, Pennsylvania, truck stop on Highway I-81 rescued over two dozen prostituted minors, the youngest just twelve years old from Toledo, Ohio.<sup>24</sup> Many truck drivers used the stop for easy sex, with the traffickers receiving \$40 from the buyers of sex with the girls.<sup>25</sup> Sixteen

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<sup>17</sup> See, e.g., CAPTIVE DAUGHTERS, *supra* note 9, at 105 (statement by Dr. Mohamed Mattar, Executive Director of the Protection Project of Johns Hopkins University School of Advanced International Studies) ("It is not enough that the law considers illegal the behavior of the customer of sexual services. . . . [T]he functional equivalent of the law must also recognize such behavior as unacceptable. By 'functional equivalent of the law,' I mean the traditions, the customs, the acceptable behavior of the people. The legal systems that 'tolerate' or 'accommodate' or 'normalize' the behavior of the customer must reconsider its policies, change the law, and enforce the law accordingly.").

<sup>18</sup> DEMAND, *supra* note 6, at 17.

<sup>19</sup> See *id.* at 91.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 91–92.

<sup>25</sup> *Id.* at 92.

pimps were arrested and indicted by the U.S. Department of Justice as conspirators for trafficking of women and children, among other crimes.<sup>26</sup>

### C. Violent Crime

The focus of efforts to combat sex trafficking through law enforcement action has traditionally been on the trafficker.<sup>27</sup> The trafficker is revealed as a violent psychopath.<sup>28</sup> However, the survivors of sex trafficking often speak of the violence they suffered at the hands of the buyer as well. In her research with adult women in prostitution, Melissa Farley described the violence that is so often part of the buyer's fantasy fulfillment.<sup>29</sup> Of 854 women interviewed in 9 countries, 71% were physically assaulted and 63% were raped during prostitution.<sup>30</sup> Another study of prostitution based in Oregon found that 84% of prostituted women were victims of aggravated assault, 78% were victims of rape, 53% were victims of sexual torture, and 49% were kidnapped.<sup>31</sup> A study of prostituted women in San Francisco found that 82% had been physically assaulted, 83% had been threatened with a weapon, and 68% had been raped while working as prostitutes.<sup>32</sup> Women in prostitution are subjected to violence by both buyer and seller on a regular basis.<sup>33</sup>

It is clear that sex trafficking must be combated through legislation in several key areas of law, each of which has many components necessary for the protection of children from commercial sexual exploitation, as well as the effective criminal enforcement to deter and punish the crimes.

Part II of this Article addresses the legislative gaps in the country, including problems involving the prosecution of sex trafficking cases. Part III of this Article addresses the necessary legislative framework to combat domestic sex trafficking, which include: (1) criminalization of domestic minor sex trafficking; (2) criminal provisions for demand (buyers); (3) criminal provisions for traffickers; (4) criminal provisions

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<sup>26</sup> See Press Release, U.S. Dep't of Justice, Justice Department, FBI, Announce Arrests Targeting Child Prostitution Rings in Pennsylvania, New Jersey, and Michigan, (Dec. 16, 2005), available at [http://www.usdoj.gov/opa/pr/2005/December/05\\_crm\\_677.html](http://www.usdoj.gov/opa/pr/2005/December/05_crm_677.html).

<sup>27</sup> See *infra* Chart accompanying notes 37–80 (outlining punishment for various trafficking-related offenses, all directed at the trafficker himself).

<sup>28</sup> NATIONAL REPORT, *supra* note 1, at 25.

<sup>29</sup> Melissa Farley, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2(3/4) J. OF TRAUMA PRAC. 33, 33–34 (2003).

<sup>30</sup> *Id.*

<sup>31</sup> Susan Kay Hunter, *Prostitution Is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91, 92–94 (1993).

<sup>32</sup> JESSICA ASHLEY, ILL. CRIMINAL JUSTICE INFO. AUTH., THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND YOUTH IN ILLINOIS 10 (2008), available at <http://www.icjia.state.il.us/public/pdf/ResearchReports/CSEC%202008%20ICJIA%20REPORT.pdf>.

<sup>33</sup> *Id.*

for facilitators (hotels, transports, websites etc.); (5) protective provisions for the child victims; and (6) law enforcement and criminal justice tools for investigation and prosecutions. A legislative framework in each state that contains the elements to accomplish these aims is needed.

## II. LEGISLATIVE GAPS

The average age a minor is first prostituted is about thirteen years old.<sup>34</sup> In one study of routes into prostitution, 41% of the women interviewed reported entering prostitution as minors.<sup>35</sup> The nexus between domestic minor sex trafficking and adult sex trafficking and prostitution is clear and points to the need to protect children, both to prevent their being trafficked for sexual exploitation and to provide the access to justice they require after a trafficking crime has been committed against them. Furthermore, the FBI Criminal Investigative Division admits

[w]e do not currently have a definitive number for the serious problem of child prostitution itself, although judges, police, and outreach workers report both the increase in the numbers and a decrease in the ages of the children involved. . . . Accurately quantifying the existing problem of victimized children (as opposed to 'at risk') is difficult for a variety of reasons. For example, in the case of children exploited through prostitution, many of the prostituted youth[s] are charged with some other offenses such as substance abuse; thus data that relies on crime reports masks the true prevalence of the problem.<sup>36</sup>

Establishing the legislative framework at the state level is critical to form the foundation for reform. It will assist in the application of consistent laws for the protection of children and the creation of a safe environment.

### *Prosecution as Deterrent*

The federal government has an array of laws to prosecute those who commercially sexually exploit children through prostitution and pornography. These laws provide strong sentences for maximum deterrence. (See the following table.)

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<sup>34</sup> NATIONAL REPORT, *supra* note 1, at 30.

<sup>35</sup> M. Alexis Kennedy et al., *Routes of Recruitment: Pimps' Techniques and Other Circumstances That Lead to Street Prostitution*, 15(2) J. OF AGGRESSION, MALTREATMENT & TRAUMA 1, 5 (2007), available at <http://alexiskennedy0.tripod.com/lab/id21.html>.

<sup>36</sup> Chris Swecker, Assistant Dir., Criminal Investigative Div., Address to the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission): Exploiting Americans on American Soil: Domestic Trafficking Exposed (June 7, 2005), <http://www.fbi.gov/news/testimony/exploiting-americans-on-american-soil-domestic-trafficking-exposed>.

| Federal law  | Minimum Sentence  | Maximum Sentence   |
|--|---|--|
| 18 U.S.C. § 2423(a):<br>Transportation of a<br>minor with intent for<br>minor to engage in<br>criminal sexual activity <sup>37</sup> | Ten years <sup>38</sup>   | Life <sup>39</sup>   |
| 18 U.S.C. § 2422:<br>Coercion and enticement<br>(using the mail or means<br>of interstate or foreign<br>commerce) <sup>40</sup>      | Ten years <sup>41</sup>   | Life <sup>42</sup>   |
| 18 U.S.C. § 1591:<br>Sex trafficking of<br>children or by force,<br>fraud, or coercion <sup>43</sup>                                 | Fifteen years<br>(child is under<br>fourteen or under<br>eighteen with force,<br>fraud, or coercion) <sup>44</sup>  | Life<br>(child is under<br>fourteen or under<br>eighteen with force,<br>fraud, or coercion) <sup>45</sup>      |
|  | Ten years<br>(child between<br>fourteen and<br>seventeen and no<br>force, fraud, or<br>coercion used) <sup>46</sup> | Life<br>(child between<br>fourteen and<br>seventeen and no<br>force, fraud, or<br>coercion used) <sup>47</sup> |

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<sup>37</sup> 18 U.S.C. § 2423(a) (2006).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> 18 U.S.C. § 2422(b) (2006).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> 18 U.S.C. § 1591 (2006).

<sup>44</sup> *Id.* §1591(b)(1).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* §1591(b)(2).

<sup>47</sup> *Id.*

|   |   |   |
|---|---|---|
| 18 U.S.C. § 2251:<br>Sexual exploitation of<br>children <sup>48</sup> | Fifteen years<br>(first sexual offense<br>involving minors) <sup>49</sup>                             | Thirty years<br>(first sexual offense<br>involving minors) <sup>50</sup>  |
|   | Twenty-five years<br>(one prior<br>conviction) <sup>51</sup>  | Fifty years<br>(one prior<br>conviction) <sup>52</sup>  |
|   | Thirty-five years<br>(two or more prior<br>convictions) <sup>53</sup>                                 | Life<br>(two or more prior<br>convictions) <sup>54</sup>  |
|   | Thirty years<br>(if caused the death<br>of the victim in the<br>course of the<br>crime) <sup>55</sup> | Life or death<br>penalty<br>(if caused the death<br>of the victim in the<br>course of the<br>crime) <sup>56</sup> |
| 18 U.S.C. § 2251A:<br>Selling or buying of<br>children <sup>57</sup>  | Thirty years <sup>58</sup>  | Life <sup>59</sup>  |

<sup>48</sup> 18 U.S.C. § 2251 (2006) (defining exploitation to include interstate or foreign transportation of minors for producing sexually explicit depictions; parental consent to producing sexually explicit depictions; receiving, buying, exchanging, displaying, distributing, producing, or reproducing sexually explicit materials; participation in sexually explicit conduct for the purpose of making visual depictions; or transporting advertisements for visual depictions of sexually explicit conduct with or by a minor).

<sup>49</sup> *Id.* § 2251(e).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> 18 U.S.C. § 2251A (2006).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

|   |  |  |
|---|--|--|
| 18 U.S.C. § 2252:<br>Certain activities related to material involving the sexual exploitation of minors <sup>60</sup> | Five years (trafficking in explicit material involving children, if first sexual offense involving minors) <sup>61</sup> | Twenty years (trafficking in implicit material involving children, if first sexual offense involving minors) <sup>62</sup> |
|   | Fifteen years (trafficking in explicit material involving children, if prior conviction) <sup>63</sup>                   | Forty years (trafficking in explicit material involving children, if prior conviction) <sup>64</sup>                       |
|   | None (possession of explicit material involving children, if first sexual offense involving minors) <sup>65</sup>        | Ten years (possession of explicit material involving children, if first sexual offense involving minors) <sup>66</sup>     |
|   | Ten years (possession of explicit material involving children, if prior conviction) <sup>67</sup>                        | Twenty years (possession of explicit material involving children, if prior conviction) <sup>68</sup>                       |

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<sup>60</sup> 18 U.S.C. § 2252 (2006).

<sup>61</sup> *Id.* § 2252(b)(1).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* § 2252(b)(2) (providing, however, that the offender would be fined as a minimum penalty).

<sup>66</sup> *Id.* (providing that this sentence may also be combined with a fine).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

|   |  |  |
|---|--|--|
| 18 U.S.C. § 2252A:<br>Certain activities related to material constituting or containing child pornography <sup>69</sup> | Five years<br>(trafficking in child pornography, if first sexual offense involving minors) <sup>70</sup> | Twenty years<br>(trafficking in child pornography, if first sexual offense involving minors) <sup>71</sup> |
|   | Fifteen years<br>(trafficking in child pornography, if prior conviction) <sup>72</sup>                   | Forty years<br>(trafficking in child pornography, if prior conviction) <sup>73</sup>                       |
|   | None<br>(possession of child pornography, if first sexual offense involving minors) <sup>74</sup>        | Ten years<br>(possession of child pornography, if first sexual offense involving minors) <sup>75</sup>     |
|   | Ten years<br>(possession of child pornography, if prior conviction) <sup>76</sup>                        | Twenty years<br>(possession of child pornography, if prior conviction) <sup>77</sup>                       |
| 18 U.S.C. § 1466A:<br>Obscene visual representations of sexual abuse of children <sup>78</sup>                          | Incorporates penalty structure of 18 U.S.C. § 2252A <sup>79</sup>  | Incorporates penalty structure of 18 U.S.C. § 2252A <sup>80</sup>  |

The capacity of federal law enforcement to investigate and prosecute cases of domestic minor sex trafficking, however, is limited. A study of federal prosecutions of commercial sexual exploitation of children (“CSEC”) cases—a category that includes several different types of crimes—across the country from 1998 to 2005 revealed that 52% of

<sup>69</sup> 18 U.S.C. § 2252A (2006).

<sup>70</sup> *Id.* § 2252A(b)(1).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* § 2252A(b)(2) (providing, however, that the offender would be fined as a minimum penalty).

<sup>75</sup> *Id.* (providing that this sentence may also be combined with a fine).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> 18 U.S.C. § 1466A (2006).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*, *invalidated by United States v. Handley*, 564 F. Supp. 2d 996, 1007 (S.D. Iowa 2008), although other federal courts have upheld the statute. *E.g.*, *United States v. Whorley*, 550 F.3d 326, 337 (4th Cir. 2008) (as-applied challenge).

cases involving prostitution of a minor presented to the U.S. Attorney's Offices were declined for prosecution.<sup>81</sup> Even considering that the overall caseload of federal prosecutors more than doubled during the eight-year timeframe of the study,<sup>82</sup> the 52% declination rate for cases involving prostitution of minors is still high when compared to other federal offenses, such as drug trafficking (15% declination rate), weapons charges (26% declination rate), or violent offenses (32% declination rate).<sup>83</sup> Although the number of prosecutions in cases involving child prostitution has steadily increased throughout the period studied, practitioners on the local, national, and international levels expressed concern that the number of prosecutions for buyers and traffickers was so much lower than for child pornographers.<sup>84</sup>

The problem is only partly due to the federal law enforcement capacity. Local law enforcement generally lacks the training and experience necessary to gather the evidence required to win a domestic minor sex trafficking prosecution,<sup>85</sup> leading to the declination of these insufficient cases.

One effective response is found in Kansas City, Missouri. A pioneering federal prosecutor in the Western District of Missouri, with the support of her office, has pursued buyers of commercial sex with children by working with the local human trafficking task force to plan and implement an operation designed to satisfy the evidentiary requirements of the Trafficking and Violence Protection Act (TVPA)—specifically Sections 1591(a) and 2422(b)—using the words “obtain” and “entice.”<sup>86</sup> This method has enabled them to charge, indict, and secure a number of convictions with mandatory minimum sentences of ten years' imprisonment for attempted domestic minor sex trafficking.<sup>87</sup>

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<sup>81</sup> KEVONNE SMALL ET AL., JUSTICE POLICY CTR, URBAN INST., AN ANALYSIS OF FEDERALLY PROSECUTED COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) CASES SINCE THE PASSAGE OF THE VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000, at 22 (2008).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 22 n.19 (citing BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, COMPENDIUM OF FEDERAL JUSTICE STATISTICS 2004, at 29 (2006)).

<sup>84</sup> *Id.* at 18, 20, 61.

<sup>85</sup> *See id.* at 15–16; *see also* Heather J. Clawson et al., ICF Int'l, Prosecuting Human Trafficking Cases: Lessons Learned and Promising Practices vii–viii (June 30, 2008) (unpublished report) (confirming that better training and resources would aid sex trafficking prosecutions on both the state and federal levels).

<sup>86</sup> 18 U.S.C. §§ 1591(a), 2422(b) (2006); *see* Press Release, Matt J. Whitworth, Office of the United States Attorney, W. Dist. of Mo., Final Defendant Pleads Guilty to Sex Trafficking of a Child (Dec. 18, 2009), *available at* <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

<sup>87</sup> 18 U.S.C. §§ 1591(b), 1594, 2422(b) (2006); Whitworth, *supra* note 86; *see also*, e.g., Indictment at 2, United States v. Oflyng, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009).

Recognizing this success, other U.S. Attorneys' Offices have shown interest in initiating similar task force operations in their districts.<sup>88</sup>

The federal laws and penalties are preferred avenues for prosecuting offenders of child sex trafficking—both buyers and sellers—but are not utilized as often as necessary to make prosecution a serious deterrent.<sup>89</sup> State laws need to serve as a deterrent to the crime by aligning with federal laws and making the penalties a serious threat. However, many states lack the legislative framework necessary to prosecute buyers and sellers of sex with minors.<sup>90</sup> Those with applicable laws often lack the stiff sentences of the federal system and thereby lose the deterrent value of the prosecutions.<sup>91</sup>

### III. LEGISLATIVE FRAMEWORK REQUIREMENTS

Recognizing that most of the gaps in responding to domestic minor sex trafficking must be addressed at the state level, a legislative framework must establish the basic policy principles required to create a safe environment for children. The steps necessary to create this safe environment include prevention of domestic minor sex trafficking through reducing demand, rescue and restoration of victims through improved training on identification, establishment of protocols and facilities for placements, mandating appropriate services and shelter, and incorporating trauma-reducing mechanisms into the justice system. Broken systems of response to victims must also be fixed to ensure that sexually exploited children are properly treated as victims and provided with remedies through the law to recapture their lives and their futures. Legislation designed to combat domestic minor sex trafficking must satisfy four primary policy concerns: “1) eliminating demand; 2) prosecuting traffickers; 3) identifying victims; and 4) providing protection, access to services, and shelter for victims.”<sup>92</sup>

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<sup>88</sup> See, e.g., Press Release, Office of the Att’y Gen. (Tex.), Attorney General Convenes Human Trafficking Prevention Task Force (Jan. 21, 2010), available at <https://www.oag.state.tx.us/oagnews/release.php?print=1&id=3202>; Press Release, United States Attorney’s Office, Dist. of Columbia, New York Man Sentenced to 210 Months (17 ½ years) in Prison for Transportation of Minors To Engage in Prostitution and Simple Assault (Oct. 30, 2009), available at [http://www.justice.gov/usao/dc/human\\_trafficking/pdf/MooreJermaine.pdf](http://www.justice.gov/usao/dc/human_trafficking/pdf/MooreJermaine.pdf).

<sup>89</sup> NATIONAL REPORT, *supra* note 1, at 13; see also RICHARD J. ESTES & NEIL ALAN WEINER, UNIV. OF PA., THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 168–69 (rev. 2002).

<sup>90</sup> See SHARED HOPE INT’L & AM. CTR FOR LAW & JUSTICE, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK: METHODOLOGY 5–6 (2010) [hereinafter PROTECTED INNOCENCE].

<sup>91</sup> NATIONAL REPORT, *supra* note 1, at 12–13.

<sup>92</sup> PROTECTED INNOCENCE, *supra* note 90, at 3–4. This analysis explains that research and policy reports are consistent in echoing the importance of addressing “the three P’s of prevention, protection[,] and prosecution.” Raymond & Hughes, *supra* note 12, at 91; accord THE TEXAS HUMAN TRAFFICKING PREVENTION TASK FORCE REPORT 2011 TO

### A. Criminalization of Domestic Minor Sex Trafficking

The federal trafficking-in-person statute provides an excellent model for state trafficking-in-person laws. In fact, most states have statutes against sex trafficking.<sup>93</sup> Within these statutes, however, there are variations in coverage; some do not cover the sex trafficking of minors.<sup>94</sup>

A critical aspect for an effective trafficking law for the prosecution of domestic minor sex trafficking is a separate provision specifying that minors under eighteen years of age exploited through commercial sex acts are *per se* victims of trafficking in persons. That is, even without proof that the defendant knew the minor's age and/or used force, fraud, or coercion to cause the minor victim's action, she is a victim of trafficking in person. Absent this provision, the unique dynamics of most domestic minor sex trafficking situations will make it difficult for prosecutors to produce evidence that the perpetrator knew the minor's age or used force, fraud, or coercion in securing the minor's actions.<sup>95</sup> Vagueness in definitions and narrow application will stymie application of the trafficking-in-persons law to situations of domestic minor sex trafficking.<sup>96</sup>

As long as some jurisdictions have human trafficking laws that are narrower or less harsh than other state or federal laws, traffickers will simply move to those more lenient jurisdictions.<sup>97</sup> Such havens for

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THE TEXAS LEGISLATURE 6, 11, 20 (2011) [hereinafter TEXAS REPORT]. Although prevention must address both the supply and demand of sex trafficking, most reports agree that the demand component receives unduly minimal attention. Raymond & Hughes, *supra* note 12, at 88, 94; TEXAS REPORT, *supra*, at 6; *see also* U.N. Protocol, *supra* note 14, at 5; DONNA M. HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF SEX TRAFFICKING 1–2 (2004). Protection requires correct identification of trafficked girls as victims rather than delinquents, TEXAS REPORT, *supra*, at 12, as well as provision of adequate shelter and services to facilitate victims' transition into stable lives. Raymond & Hughes, *supra* note 12, at 96–97. Finally, laws that criminalize child sex trafficking are toothless if traffickers are not rigorously and consistently prosecuted. Prosecution must be a law-enforcement priority. *Id.* at 94.

<sup>93</sup> US POLICY ADVOCACY TO COMBAT TRAFFICKING, CTR. FOR WOMEN POLICY STUDIES, FACT SHEET ON STATE ANTI-TRAFFICKING LAWS 1–3 (2010).

<sup>94</sup> *See, e.g.*, ALASKA STAT. §§ 11.41.360, .365 (2011) (missing any provision regarding the sex trafficking of minors); CONN. GEN. STAT. § 53a-192a (2010) (same); N.J. STAT. ANN. § 2C:13-8 (West 2011) (same).

<sup>95</sup> *See* MELISSA SNOW, SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: SALT LAKE CITY, UTAH 12 (2008); Mark J. Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Slavery*, 6 U. ST. THOMAS L.J. 9, 14 (2008); Jane Kim, Note, *Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride Industry*, 51 VA. J. INT'L L. 443, 445–46 (2011).

<sup>96</sup> AMY FARRELL ET AL., INST. ON RACE & JUSTICE, NE. UNIV., UNDERSTANDING AND IMPROVING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING 9–10, 22 (2008).

<sup>97</sup> PROTECTED INNOCENCE, *supra* note 90, at 5.

traffickers can include both lenient states and tribal lands, many of which are close to cities and already contain facilities such as casinos that may attract potential buyers.<sup>98</sup> Consistency and comprehensiveness will also ensure that prosecutors utilize the trafficking-in-persons statutes, rather than continuing to rely on sex offense or kidnapping laws to convict the traffickers and solicitation laws to convict the buyers.<sup>99</sup>

A comprehensive trafficking-in-persons law in each state can also solve the problem of identifying the victims of this crime. Misidentification of victims of domestic minor sex trafficking is a frequent and disturbing problem.<sup>100</sup> There are two primary ways this occurs. First, prostituted juveniles are often arrested with offenses related to their exploitation, such as theft or drug possession.<sup>101</sup> These are called masking charges and result in a skewed picture of the scope of the problem and lead to inappropriate responses to the victimization.<sup>102</sup> If a minor sex trafficking victim is mislabeled as a child prostitute, the trafficker will often be prosecuted under traditional state prostitution-related offenses, which tend to be more lenient for traffickers.<sup>103</sup>

Second, the perpetrators of commercially sexually exploited children may be prosecuted under statutes addressing sexual offenses, kidnapping, or abduction due to the lack of familiarity with a trafficking statute or the unwieldy character of the law. Prosecutors seeking justice for these children will utilize laws that may be easier to apply or are more frequently used in order to increase their chance of securing a conviction.<sup>104</sup> Unfortunately, this leaves the child victim without the proper label of trafficking victim with the rights and services that come with it. One example of a trafficking-in-persons law that gives special protection for victims of trafficking is Oregon's ORS § 30.867, which provides the right to civil action for damages against a victim of human trafficking and indentured servitude irrespective of the initiation or outcome of any criminal action.<sup>105</sup> Victims of these crimes can recover

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<sup>98</sup> *Id.*

<sup>99</sup> See JENNIFER BAYHI-GENNARO, SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: BATON ROUGE/NEW ORLEANS, LOUISIANA 2-3, 14 (2008); Adam Rhew, *Human Trafficking in Virginia Part II*, NBC29 (Nov. 24, 2010, 7:38 PM), <http://www.nbc29.com/story/13481974/human-trafficking-in-virginia-part-ii>.

<sup>100</sup> See NATIONAL REPORT, *supra* note 1, at 6; TEXAS REPORT, *supra* note 92, at 8.

<sup>101</sup> SNOW, *supra* note 95, at 27, 57; LINDA STRUBLE, SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: SAN ANTONIO, TEXAS 2-3 (2008).

<sup>102</sup> NATIONAL REPORT, *supra* note 1, at 50-51; Natalie M. McClain & Stacy E. Garrity, *Sex Trafficking and the Exploitation of Adolescents*, J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING, May 2010, at 4.

<sup>103</sup> NATIONAL REPORT, *supra* note 1, at 13.

<sup>104</sup> See BAYHI-GENNARO, *supra* note 99, at 2-3.

<sup>105</sup> OR. REV. STAT. §§ 30.867(1), 163.263, 163.264, 163.266 (2009).

damages for emotional distress, punitive damages, and attorney's fees.<sup>106</sup> The statute also gives victims six years to file a civil claim for damages.<sup>107</sup> These provisions are unique to trafficking victims; therefore, a child who has suffered a commercial sexual exploitation offense that is prosecuted under a law other than those listed in ORS § 30.867 will not enjoy these rights.<sup>108</sup> Furthermore, that child victim may be closed out of federally funded services for trafficking victims insofar as they exist due to the absence of the victims' record or status as such.<sup>109</sup>

A comprehensive, utilized state trafficking-in-persons statute will ultimately assist in the identification and proper treatment of the victims of trafficking and assist in the collection of data on the prevalence of the crime. In the absence of such a law, however, there is value in the existence of specific CSEC laws.<sup>110</sup> These laws should ideally reference the federal trafficking-in-persons law or the state trafficking law to bring the victims of these crimes the protections of the federal victim assistance services. Such laws should include criminalization of all forms of commercial sexual exploitation of children, including prostitution, pornography, and sexual performance.<sup>111</sup> The laws should also be written to reach both buyers of sex and the traffickers selling the child for such sex acts.<sup>112</sup>

### *B. Criminal Provisions for Demand*

Buyers of sexual services can be placed in three categories: situational, preferential[,] and opportunistic. The definitions of buyers commonly employed by those working in the area of commercial sexual exploitation of children (CSEC) include "situational" and "preferential" buyers. Situational buyers are defined as those who engage minors in commercial sex because they are available, vulnerable[,] and the practice is tolerated. Preferential buyers, such as pedophiles, have a sexual preference and shop specifically in the markets providing the preferred victim or service.

In the larger commercial sex market involving adults and minors[,] there is a third group of buyers [that] can be described as "opportunistic buyers." Opportunistic buyers are those who purchase

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<sup>106</sup> *Id.* § 30.867(2), (3).

<sup>107</sup> *Id.* § 30.867(4).

<sup>108</sup> *See id.* § 30.867(1); *cf.* TEXAS REPORT, *supra* note 92, at 8 (expressing concern that trafficking victims in Texas are not receiving the full rights and protections available to them under the law); Whitney Shinkle, *Protecting Trafficking Victims: Inadequate Measures?*, TRANSATLANTIC PERSPECTIVES ON MIGRATION, Aug. 2007, at Policy Brief #2, 4 (discussing inconsistencies in states' eligibility requirements).

<sup>109</sup> *See* ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., RL 34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 31–33 (2010).

<sup>110</sup> *See, e.g.*, IDAHO CODE ANN. § 18-1507 (2010).

<sup>111</sup> *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-705 (2011).

<sup>112</sup> *See infra* Sections III.B, III.C.

sex indiscriminately because they do not care, are willfully blind to the age or willingness of the [girl], or are unable to differentiate between adults and minors.<sup>113</sup>

From childhood, buyers are encouraged by the increased normalization of commercial sex in society to glamorize such activities and to dehumanize the women and children exploited, even to the point of expressing aggression toward the victims, as depicted in violent video games and pornography.<sup>114</sup>

Research in several countries revealed the following characteristics of buyers. In the Netherlands, a sex addiction counselor described most buyers as “situational buyers.”<sup>115</sup> These buyers

are usually married ([nine] out of [ten]), in their late [thirties] to early [forties], have children, hold a good job, and have an average to high I.Q. They have difficulty in maintaining relationships and focus heavily on their work. Many times they do not intend to endanger their current relationship with a wife or girlfriend, but are unable to stop the relationship with prostitution.<sup>116</sup>

Perhaps because prostitution is legal and readily available in the Netherlands, such buyers seem to have little difficulty compartmentalizing their solicitation of prostitutes from their everyday lives.<sup>117</sup> In the United States, buyers of commercial sex and perpetrators of sexual exploitation include all three types.<sup>118</sup> With the exception of ethnic brothels, which reportedly only cater to particular ethnicities, buyers are usually white, middle-aged males, using a variety of methods to locate commercial sex, including Internet searches, escort services, and information from close friends.<sup>119</sup>

Researchers in London interviewed 103 men who buy sex to determine what they know about the women they are using in prostitution.<sup>120</sup> Twelve percent of the men had used more than 130 women in prostitution.<sup>121</sup> At least a plurality reported purchasing sex 15

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<sup>113</sup> DEMAND, *supra* note 6, at 2; accord NATIONAL REPORT, *supra* note 1, at vi, 17.

<sup>114</sup> DEMAND, *supra* note 6, at 3; Laura J. Lederer, Remarks at the United States Capitol Visitors Center: Sex Trafficking and Illegal Pornography: Is There a Link? (June 15, 2010).

<sup>115</sup> DEMAND, *supra* note 6, at 67.

<sup>116</sup> *Id.* at 67–68.

<sup>117</sup> *Id.* at 68.

<sup>118</sup> NICOLE IVES, BACKGROUND PAPER FOR THE NORTH AMERICAN REGIONAL CONSULTATION ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (2001), available at <http://www.unicef.org/events/yokohama/regional-philadelphia.html>.

<sup>119</sup> DEMAND, *supra* note 6, at 91.

<sup>120</sup> MELISSA FARLEY ET AL., EAVES, MEN WHO BUY SEX: WHO THEY BUY AND WHAT THEY KNOW 7 (2009).

<sup>121</sup> *Id.* at 10.

times, although the numbers ranged from 1 to 2000.<sup>122</sup> A similar study of 113 men in Chicago revealed that the men interviewed had bought sex between 1 (4%) and 1000 times (3%).<sup>123</sup>

Data on the number of men engaging in commercial sex with trafficking victims (adults subject to force, fraud, or coercion, as well as minors) are lacking. A study from Georgia illustrates the demand presented in that state, providing some indication of the demand nationwide.<sup>124</sup> The study included a covert scientific survey of 218 men responding to advertisements for paid sex with girls.<sup>125</sup> Three escalated warnings were given to the callers seeking to buy sex with a “young” girl, each warning providing further information that the female was in fact under eighteen years of age.<sup>126</sup> Forty-seven percent of the men were undeterred by this information and were prepared to follow through with commercial sex with a minor.<sup>127</sup>

The research revealed that 7200 men commit 8700 commercial sex acts with juvenile girls each month in Georgia.<sup>128</sup> The study explains that 6% of these men are actively and explicitly seeking a girl under the age of eighteen.<sup>129</sup> In fact, a companion study, designed to quantify buyers’ demand for young girls advertised on the Internet, revealed that buyers preferred girls who were described as “young,” “just turned 18,” and “barely legal” at a rate of about 150% more than girls whose age were not specified.<sup>130</sup> The numbers from the Georgia study indicate that 28,000 men pay for sex with minor girls each year in Georgia, and nearly 10,000 of them are repeat buyers.<sup>131</sup> Thirty-four percent of the men seeking to purchase sex with a minor were under the age of 30, 44%

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<sup>122</sup> *Id.*

<sup>123</sup> RACHEL DURCHSLAG & SAMIR GOSWAMI, CHI. ALLIANCE AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 7, 9 (2008).

<sup>124</sup> THE SCHAPIRO GRP., MEN WHO BUY SEX WITH ADOLESCENT GIRLS: A SCIENTIFIC RESEARCH STUDY 1 (2009) [hereinafter GEORGIA STUDY].

<sup>125</sup> *Id.* at 4. According to the study, “young” is the term used by the men who participated in the study, and refers to “very young adult females,” as well as some girls under eighteen years old. THE SCHAPIRO GRP., CSEC DEMAND STUDY RESULTS: RESEARCH HIGHLIGHTS 2 (2009) [hereinafter CSEC DEMAND STUDY RESULTS].

<sup>126</sup> GEORGIA STUDY, *supra* note 124, at 11.

<sup>127</sup> *Id.* at 12.

<sup>128</sup> *Id.* at 9.

<sup>129</sup> *Id.* at 10.

<sup>130</sup> JUVENILE JUSTICE FUND, ADOLESCENT GIRLS IN GEORGIA’S SEX TRADE: AN IN-DEPTH TRACKING STUDY 8 (2008).

<sup>131</sup> CSEC DEMAND STUDY RESULTS, *supra* note 125, at 1.

were 30 to 39, and 22% were 40 or over.<sup>132</sup> The plurality (42%) of buyers of commercial sex was located in the northern suburbs.<sup>133</sup>

Prosecution of buyers of commercial sex is a strong deterrent that is under-utilized. In 2002, a reported 34% of prostitution arrests in the United States were of male purchasers—the rest were of women and children.<sup>134</sup> In 2005, Congress stated in its findings that eleven women used in commercial sex acts were arrested in Boston, nine in Chicago, and six in New York City for each arrest of a male customer in each respective city.<sup>135</sup> The legal fight against sex trafficking has not historically targeted the purchaser of sex. Even today, the purchase of sex is largely considered a “vice-crime,” rising only to the level of a misdemeanor, and is generally handled at the local level of law enforcement; this is often true regardless of the age of the victim.<sup>136</sup> Though some states have enacted laws that more harshly criminalize the purchase of sex with a minor,<sup>137</sup> many unfortunately have not.

The problem of demand has been recognized internationally as a danger to children. The Preamble of the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents finds that “[t]here is an insufficient focus on measures to reduce and eliminate the demand for sex with children and adolescents, and in some States inadequate sanctions against sexual abusers of children.”<sup>138</sup> The document calls on all members to “[a]ddress the demand that leads to children being prostituted by making the purchase of sex or any form of transaction to obtain sexual services from a child a criminal transaction under criminal law, even when the adult is unaware of the child’s age.”<sup>139</sup>

The demand for sex with children and adolescents is staggeringly high. Shared Hope International has found that

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> SHARED HOPE INT’L ET AL., REPORT FROM THE U.S. MID-TERM REVIEW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AMERICA 27 (2006).

<sup>135</sup> End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. § 2(a)(6) (2005).

<sup>136</sup> *See, e.g.*, OR. REV. STAT. § 167.007 (2009) (making the act of soliciting a prostitute a Class A misdemeanor, without an enhanced penalty if the person solicited is a minor); *see also* ALASKA STAT. § 11.66.100 (2011); ARK. CODE ANN. § 5-70-102 (2010); DEL. CODE ANN. tit. 11, § 1342 (2011); HAW. REV. STAT. § 712-1200 (2011).

<sup>137</sup> *See, e.g.*, WASH. REV. CODE § 9.68A.100 (2011) (making the act of soliciting a minor for prostitution a Class B felony).

<sup>138</sup> World Congress Against Sexual Exploitation of Children and Adolescents III, The Rio de Janeiro Declaration and Call for Action To Prevent and Stop Sexual Exploitation of Children and Adolescents 3 (2008).

<sup>139</sup> *Id.* at 7.

[c]hildren exploited through prostitution report they typically are given a quota by their trafficker/pimp of [ten] to [fifteen] buyers per night, though some service providers report girls having been sold to as many as [forty-five] buyers in a night at peak demand times, such as during a sports event or convention. Utilizing a conservative estimate, a domestic minor sex trafficking victim who is rented for sex acts with five different men per night, for five nights per week, for an average of five years, would be raped by [six thousand] buyers during the course of her victimization through prostitution.<sup>140</sup>

The crime statistics show that most of these buyers are likely to avoid punishment.<sup>141</sup> If faced with legal consequences, however, many men will choose not to buy commercial sex and the communities will understand that this crime will not be tolerated.

Men interviewed for a study on demand in London stated that the consequences that would deter them from using women in prostitution included the threat of being added to a sex offender registry; imprisonment; public exposure such as a billboard announcement, a newspaper notice, or an Internet webpage; or a letter to their family or employer.<sup>142</sup> The interviewees also cited increased fines, increased criminal penalties, suspension of driver's license, or car impoundment as deterrents if laws and penalties were actually enforced.<sup>143</sup> Men interviewed in Chicago identified similar deterrents to buying sex.<sup>144</sup>

In fact, of the 113 interviewees who purchased sex in Chicago, only 7% had ever been arrested for soliciting a woman in prostitution.<sup>145</sup> Although one man claimed to have been arrested twenty-five times, most of those who had been arrested had only been arrested once.<sup>146</sup> In London, only 6% of men surveyed had ever been arrested for soliciting prostitution.<sup>147</sup> The overwhelming majority of men who buy sex stated that more severe penalties for soliciting prostitution would deter them<sup>148</sup>—but this will only work if such laws are enforced.

One of the greatest challenges to apprehending and arresting buyers is the anonymity with which they are cloaked by the sex industry.<sup>149</sup> Traffickers intentionally limit the interactions between buyers and exploited girls so that the girls often know little to nothing

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<sup>140</sup> NATIONAL REPORT, *supra* note 1, at 20.

<sup>141</sup> *See, e.g.*, End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. § 2(a)(6) (2005).

<sup>142</sup> FARLEY ET AL., *supra* note 120, at 22.

<sup>143</sup> *Id.*

<sup>144</sup> DURCHSLAG & GOSWAMI, *supra* note 123, at 24.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> FARLEY ET AL., *supra* note 120, at 26.

<sup>148</sup> *Id.*

<sup>149</sup> NATIONAL REPORT, *supra* note 1, at 22.

about the true identities of their clients.<sup>150</sup> What little information the victims may acquire during their controlled encounters with the buyers is often lost from their memory due to the traumatic nature of sexual exploitation.<sup>151</sup> A standard check on the call records of cell phones found in the possession of arrested victims and traffickers may sometimes lead to positive identification of buyers.<sup>152</sup> But the effectiveness of this investigative technique is subject to the extent that the trafficker restricted interactions between himself, the victim, and the buyer.<sup>153</sup> Moreover, whereas pornography tends to leave a financial trail traceable to the buyer, prostitution is primarily conducted on a cash basis, leaving no trace of the commercial transaction between buyer and victim.<sup>154</sup> Coupled with the fact that buyers often employ aliases to conceal their true identities, investigators are left with negligible evidence of the men who purchase prostituted juveniles.<sup>155</sup>

A common gap in state laws is the right of a defendant to assert a defense of mistake of age.<sup>156</sup> This defense prevents prosecutors from bringing many cases of child sex trafficking to trial.<sup>157</sup> In Washington State, a 2010 legislation closed this loophole by adding the crime of commercial sex abuse of a minor to the list of crimes that do not permit a defense of mistake of age.<sup>158</sup> A much stricter affirmative defense of a bona fide attempt to ascertain the true age through checking government-issued identification can be asserted, however.<sup>159</sup> This type of legislation mitigates the risk a prosecutor takes in pursuing a case against a buyer and encourages more prosecutions of demand. Shifting the burden of proof from the child to the buyer is currently being debated in varying forms in other states.<sup>160</sup>

Ending demand will reduce the exploitation of vulnerable women and children. This will not be easy, as the commercial sex industry is a billion-dollar business. It was estimated that in Las Vegas alone in 2006, the sex industry and related activities, both legal and illegal (including

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* (citing SNOW, *supra* note 95, at 45).

<sup>155</sup> *Id.* (citing SNOW, *supra* note 95, at 45).

<sup>156</sup> *Id.* at 54.

<sup>157</sup> *Id.*

<sup>158</sup> S.B. 6476, 61st Leg., Reg. Sess. (Wash. 2010).

<sup>159</sup> *Id.*

<sup>160</sup> *See, e.g.*, D.C. CODE § 22-1834 (2010) (requiring only “reckless disregard of the fact that the person has not attained the age of 18 years”); *Fighting Juvenile Sex Trafficking*, PORTLANDONLINE.COM, <http://www.portlandonline.com/saltzman/index.cfm?c=54076> (last visited Apr. 7, 2011) (advocating changing Oregon laws to eliminate mistake of age as a defense for buyers of prostituted children).

lap-dancing, prostitution in strip clubs, commissions to taxi drivers, and tips to valets and bartenders for procuring women, etc.), “generate between \$1 billion and \$6 billion per year.”<sup>161</sup> Furthermore, juveniles are often mixed with adults in the commercial sex markets, according to a 2005 study in Atlanta.<sup>162</sup> The study, which researched the incidence of prostitution of juveniles in the city, found a high concentration of commercial sexual activity around adult entertainment venues, including strip clubs and sex shops.<sup>163</sup>

#### A Note on Legalization

The trend to tie morality to legal norms means that in countries where commercial sex is legal, sex for purchase loses its stigma. Legalization undoubtedly has freed many men from the stigma of buying commercial sexual services,<sup>164</sup> thereby increasing the demand for commercial sex; the number of women voluntarily entering the commercial sex market, however, has not increased.<sup>165</sup> In addition, a perception of legality or official tolerance of prostitution can result in increasing demand. A study done in London interviewing 103 men who buy sex demonstrated that in addition to buying sex in the United Kingdom, nearly one-half had bought sex outside the country as well.<sup>166</sup> In fact, they had traveled to a combined forty-two countries on six continents.<sup>167</sup> Not surprisingly, the most frequent destination was Amsterdam because, as they noted, prostitution is legal.<sup>168</sup>

In the United States, the perception that prostitution is legal in Las Vegas is widespread across the country and, despite the actual illegality,<sup>169</sup> leads to a demand for commercial sexual services. Sexually oriented entertainment pervades Las Vegas and results in the

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<sup>161</sup> MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 112–13 (2007).

<sup>162</sup> ALEXANDRA PRIEBE & CRISTEN SUHR, ATLANTA WOMEN’S AGENDA, HIDDEN IN PLAIN VIEW: THE COMMERCIAL SEXUAL EXPLOITATION OF GIRLS IN ATLANTA 22, 24 (2005).

<sup>163</sup> *Id.*

<sup>164</sup> FARLEY ET AL., *supra* note 120, at 11.

<sup>165</sup> DEMAND, *supra* note 6, at 62; Janice G. Raymond, *10 Reasons for Not Legalizing Prostitution*, PROSTITUTION RESEARCH & EDUC. (Mar. 25, 2003), <http://prostitutionresearch.com/ten-reasons.html> [hereinafter *10 Reasons*]; *see also* FARLEY ET AL., *supra* note 120, at 11 (noting that in Amsterdam, where prostitution is legal, women have to “service” more buyers each day than in London, where it is illegal).

<sup>166</sup> *See* FARLEY ET AL., *supra* note 120, at 11.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> DEMAND, *supra* note 6, at 95.

trafficking of women and, increasingly, children to the city to be used in the commercial sex industry to satisfy the sizeable demand.<sup>170</sup>

The trafficking of children into Las Vegas to satisfy the demand for commercial sex can be measured in the arrests of these same children. In Clark County, Nevada (which includes Las Vegas), prostitution charges against juveniles fill a judge's entire daily docket once a week.<sup>171</sup> In the span of just 20 months, 226 minors, who had come from all over the county, were brought before the court.<sup>172</sup> In early 2007, 12.8% of the girls committed to the Caliente Youth Center had been adjudicated for the misdemeanor offense of solicitation for prostitution.<sup>173</sup>

These numbers reflect the consequence of inflated demand for commercial sex. Traffickers inevitably include Las Vegas on any prostitution circuit through which they move their victim-products.<sup>174</sup> Legalization of prostitution is not the solution to the crime of sex trafficking as there simply are not enough adult women willing to make this a profession.<sup>175</sup> It is noteworthy that Amsterdam itself has recognized this to be a failed experiment and has been reducing the number of prostitution venues in the official Red Light District over the last three years.<sup>176</sup>

### C. Criminal Provisions for Traffickers

Trafficking-in-persons laws are critical to prosecuting sex traffickers. Many state laws continue to require proof of knowledge that force, fraud, or coercion was used in sexual services, even as applied to the trafficker to result in a trafficking conviction.<sup>177</sup> This requirement is difficult to meet in cases of domestic minor sex trafficking in which it is very common for traffickers to enslave girls through psychological bonding and perceived love.<sup>178</sup> As a result, girl victims of sex trafficking rarely believe they are victims—rather, many are typically convinced that the trafficker is their boyfriend.<sup>179</sup> Eliminating proof of force, fraud,

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<sup>170</sup> See M. ALEXIS KENNEDY & NICOLE JOEY PUCCI, SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: LAS VEGAS, NEVADA 8–9 (2007).

<sup>171</sup> NATIONAL REPORT, *supra* note 1, at 6.

<sup>172</sup> *Id.*

<sup>173</sup> KENNEDY & PUCCI, *supra* note 170, at 3. The Caliente Youth Center is the state detention facility that serves Las Vegas. *See id.*

<sup>174</sup> See Rachael Marcus, *Confessions of a Teenage Prostitute*, PORTLAND MERCURY, Sept. 3, 2009, <http://www.portlandmercury.com/portland/confessions-of-a-former-teen-prostitute/Content?oid=1623030>.

<sup>175</sup> DEMAND, *supra* note 6, at 62; *10 Reasons*, *supra* note 165.

<sup>176</sup> *Mayor Unveils Plan To Clean Up Amsterdam's Red-Light District*, CBC NEWS, Dec. 18, 2007, <http://www.cbc.ca/world/story/2007/12/17/amsterdam-district.html>.

<sup>177</sup> *E.g.*, LA. REV. STAT. ANN. § 14:46.2 (2010); N.M. STAT. ANN. § 30-52-1 (2010).

<sup>178</sup> NATIONAL REPORT, *supra* note 1, at 38.

<sup>179</sup> *Id.* at 38, 41.

or coercion in trafficking statutes is critical to reflect the reality of domestic minor sex trafficking.

In the absence of or inability to use a trafficking-in-persons statute, state prosecutors might look to other laws. The above-mentioned concerns with regard to using non-commercial sex offense laws to prosecute buyers<sup>180</sup> apply here as well. As discussed previously, laws related to prostitution of minors, while useful for prosecutions of traffickers without the heavy evidentiary burdens of the trafficking-in-persons law, often result in the victim being left without the designation of trafficking victim and therefore without access to the array of services and rights accorded to a trafficking victim.<sup>181</sup>

Traffickers often use control tactics beyond force or love to keep their young victims enslaved. One common method is to impregnate the girl, and then use her child as leverage to control the girl.<sup>182</sup> In the worst cases, these children are also prostituted by the trafficker-parent.<sup>183</sup> Laws that ensure a convicted trafficker-parent's parental rights be terminated are important to protect the victim and any children created through that exploitative relationship. State laws have rarely contemplated the importance of adding this crime to those that are grounds for termination of parental rights.<sup>184</sup> In addition, people who have been convicted of sex trafficking and commercial sex offenses

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<sup>180</sup> See *supra* Section III.B.

<sup>181</sup> See *supra* text accompanying notes 105–109.

<sup>182</sup> PROTECTED INNOCENCE, *supra* note 90, at 9.

<sup>183</sup> *Id.*

<sup>184</sup> Trafficking in persons is not specifically a ground for termination of parental rights in any state. See CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (2010). Several states have established promoting prostitution as grounds for termination of parental rights, but only if the offender's own child was the victim of that crime. *Id.* at 27, 43, 49. Similarly, most states allow for the termination of parental rights when the parent has committed certain offenses against children, but most of these provisions would require that the law recognize trafficked girls as child victims. *Id.* at 7, 10, 14–15, 17, 19–29, 32–37, 41–44, 46, 49, 52–54, 56, 58, 60. Other states have potentially applicable categories of offenses that would allow for the termination of parental rights. *Id.* at 8 (felony indicating unfitness), 16 (parent is a violent repeat offender or sexual predator), 19 (child was conceived through rape, or sexual abuse of a minor under sixteen), 23 (any felony resulting in imprisonment), 35 (unfitness due to lewd conduct), 39 (parent harmed the other parent), 45 (child conceived through rape), 48 (same), 53 (same), 49 (conviction for various sexual offenses), 51 (child conceived from a sexual offense resulting in conviction, unless the offense stemmed from a consensual encounter where both parties were between fourteen and eighteen years of age), 54–55 (conviction for various sex crimes against children or a sexual offense resulting in pregnancy), 56 (conviction of a crime indicating unfitness), 57 (conviction of a violent crime indicating unfitness), 59 (parent is a violent sexual predator, or child was conceived from a sex offense), 61 (parent has a pattern of sexual abuse that threatens the child or child was conceived in a sexual assault).

should be required to register as a sex offender to provide further protection of children in the community.<sup>185</sup>

#### *D. Criminal Provisions for Facilitators*

Facilitators are key components of child trafficking operations that are ignored by state trafficking laws.<sup>186</sup> Though not directly responsible for the sexual exploitation of the trafficking children, facilitators make such crimes possible by, for instance, funneling potential buyers to the trafficked children or by turning a blind eye to such activities.<sup>187</sup> Taxi services, hotels, and owners of adult entertainment venues are just a few common facilitators who participate in and benefit from child trafficking enterprises.<sup>188</sup>

Technology, most notably the Internet, is the most prevalent medium used to facilitate sex trafficking.<sup>189</sup> Prostitution is steadily moving off the streets, making it increasingly difficult to find the perpetrators and creating opportunities for technology-based facilitators of sex trafficking.<sup>190</sup> With the increase in demand and usage of the Internet, increasingly younger children can be sold on the Internet.<sup>191</sup> In addition to using the Internet to sell sex, images of sexual abuse, and sexual performance with minors,<sup>192</sup> traffickers recruit new victims through their MySpace accounts, Facebook accounts, and websites like online modeling employment agencies.<sup>193</sup> Over a two-year period, an 800% increase was seen in the number of children reporting that technology was used in some way to facilitate prostitution.<sup>194</sup>

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<sup>185</sup> See International Megan's Law of 2009, H.R. 1623, 111th Cong. (1st Sess. 2009); VT. CRIMINAL INFO. CTR., DEP'T OF PUB. SAFETY, VERMONT SEX OFFENDER REGISTRY RULES AND REGULATIONS 28 050 002-4 to -6 (2005).

<sup>186</sup> See Human Rights Council Res. 8/12, Special Rapporteur on Trafficking in Persons, Especially Women and Children (expressing concern that trafficking facilitators enjoy a "high level of impunity" and urging governments to penalize facilitators), available at [ap.ohchr.org/Documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_12.pdf](http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_8_12.pdf).

<sup>187</sup> NATIONAL REPORT, *supra* note 1, at 27.

<sup>188</sup> DEMAND, *supra* note 6, at 4, 98; NATIONAL REPORT, *supra* note 1, at 27.

<sup>189</sup> DEMAND, *supra* note 6, at 5.

<sup>190</sup> Natalie Pompilio & Jennifer Lin, *Shining Light on Seamy World of Escorts*, PHILA. INQUIRER, Aug. 14, 2005, at A01.

<sup>191</sup> See DEMAND, *supra* note 6, at 5, 17.

<sup>192</sup> See *id.* at 10, 19–20.

<sup>193</sup> ATHANASSIA P. SYKIOTOU, COUNCIL OF EUROPE, TRAFFICKING IN HUMAN BEINGS: INTERNET RECRUITMENT 21 (2007); Morgan Cook, *VISTA: Residents Walk To Raise Awareness of Human Trafficking*, N. COUNTY TIMES, Jan. 8, 2011, <http://www.nctimes.com/news/local/vista/article Sac79ea2-caaa-5753-8d94-5d6b1edee890.html>.

<sup>194</sup> Andrea Hesse, Alberta Children & Youth Servs., Remarks at the Shared Hope International National Training Conference on the Sex Trafficking of America's Youth (Sept. 15–16, 2008) (transcript on file with authors).

Online classified advertising websites have come under heavy criticism for their roles in facilitating prostitution of minors and adults. Craigslist was sued by Sheriff Thomas Dart of Cook County, Illinois, under a public nuisance theory, alleging that its maintenance of an adult services webpage was tantamount to facilitating prostitution.<sup>195</sup> Though dismissed,<sup>196</sup> the suit, along with strong pressure from state attorneys general across the country, led to the closure of the Craigslist adult services page in October 2010.<sup>197</sup> Subsequently, Backpage.com has reportedly picked up the advertisers of commercial sex with minors and adults, which has been reflected in its increased revenue since the closure of Craigslist's adult services page.<sup>198</sup>

Though little criminal action has been taken against the technology facilitators (or more traditional facilitators), law enforcement have quickly tried to employ the Internet tool in their search for traffickers and buyers. Before removing the adult services page on the website, Craigslist received regular requests from investigators for information on postings depicting suspiciously young females.<sup>199</sup> Facebook and MySpace are routinely monitored in law enforcement attempts to rescue child sex trafficking victims and arrest traffickers.<sup>200</sup> Law enforcement agencies study the Internet for evidence of child pornography and prostitution of children through chat rooms and other online media.<sup>201</sup> Laws are needed that specifically allow this type of investigation. Laws are also essential to encourage these investigations by providing protection for the investigators from prosecution for the very crime they are investigating.<sup>202</sup> They are also needed to prevent offenders from

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<sup>195</sup> Dart v. Craigslist, Inc., 665 F. Supp. 2d 961, 961, 963 (N.D. Ill. 2009).

<sup>196</sup> *Id.* at 970.

<sup>197</sup> Christopher Leonard, *Craigslist Shuts Down Adult Services Section*, THE TIMES OF TRENTON, Sept. 5, 2010, at A14; Stephanie Reitz, *Craigslist Removes Adult Services Listings from Global Sites*, SAN JOSE MERCURY NEWS, Dec. 21, 2010, at 2C.

<sup>198</sup> *Sex Ads: Where the Money Is*, CLASSIFIED INTELLIGENCE REPORT (Advanced Interactive Media Grp., LLC), Sept. 14, 2010, at 2–3; *Backpage Replaces Craigslist as Prostitution-Ad Leader*, AIM GRP. (Oct. 19, 2010), <http://aimgroup.com/blog/2010/10/19/backpage-replaces-craigslist-as-prostitution-ad-leader/>.

<sup>199</sup> See Scott Gutierrez, *Craigslist Sex Ads Reined In: 'Erotic Services' Posters Must Provide Phone Number, Credit Card*, SEATTLE POST-INTELLIGENCER, Nov. 7, 2008, at A1.

<sup>200</sup> Cf. Sharon Nelson et al., *The Legal Implications of Social Networking*, 22 REGENT U. L. REV. 1, 13 (2009) (stating that law enforcement "often use social networking sites in their investigations"); Karen Bune, *Smart Initiatives Tackle Sex Trade*, LAW OFFICER.COM (Jan. 3, 2011), <http://www.lawofficer.com/article/investigation/smart-initiatives-tackle-sex-t>.

<sup>201</sup> GRAEME R. NEWMAN, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, *Sting Operations*, at 8, 22 (Response Guides Ser. No. 6, 2007), available at [www.cops.usdoj.gov/files/ric/Publications/e10079110.pdf](http://www.cops.usdoj.gov/files/ric/Publications/e10079110.pdf).

<sup>202</sup> Cf. STAFF OF H. COMM. ON ENERGY AND COMMERCE, 109TH CONG., *SEXUAL EXPLOITATION OF CHILDREN OVER THE INTERNET 5–6* (Staff Rep. 2007) (suggesting that

using a defense that the “minor” they are interacting with online is actually an adult law enforcement officer or person acting at the direction of law enforcement in the investigation of a sexual exploitation crime.<sup>203</sup>

A web surveillance crawl commissioned by Shared Hope International investigated the use of the Internet for marketing sex tours through which men (predominantly) travel to engage in sex in locations where it is tolerated and even encouraged, and found the following:

Of the 63 erotic sex tour English[-]language websites identified through the extensive filtering process, 79% revealed U.S.-based IP addresses and offered packages in Venezuela, Costa Rica, the Dominican Republic, Jamaica, Cambodia, the Philippines, Thailand, Russia, Amsterdam and Mexico. Four of these sites offered marriage services as an additional option.<sup>204</sup>

Some hotels have taken an executive-level stance against child sex tourism and prostitution occurring on the premises.<sup>205</sup> For example, Carlson Companies, based in the United States, has signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, committing its large hotel and restaurant network to be vigilant against child sex tourism.<sup>206</sup> It is the only U.S.-based hotel chain to commit to the Code of Conduct to date, though a June 2010 scandal involving a brothel operating in a Hilton hotel in China has led that hotel company to consider adopting an internal code of conduct.<sup>207</sup> Empowering these institutions by bringing them into an alliance to combat human trafficking can be an effective tool. The official stances taken by the hotels, however, do not always trickle down to the lower level or auxiliary staff, who may continue to facilitate the exploitation of

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Internet Service Providers should be encouraged to search their networks and systems for child pornography images to help combat the problem, but that such efforts should be shielded from liability).

<sup>203</sup> See Christa M. Book, Comment, *Do You Really Know Who Is on the Other Side of Your Computer Screen? Stopping Internet Crimes Against Children*, 14 ALB. L.J. SCI. & TECH. 749, 765–66 (2004).

<sup>204</sup> See DEMAND, *supra* note 6, at 21.

<sup>205</sup> See, e.g., Jerilyn Klein Bier, *Hilton Working To Abolish Child Sex Trafficking*, NASDAQ.COM (Nov. 3, 2010, 2:04 PM), <http://community.nasdaq.com/News/2010-11/hilton-working-to-abolish-child-sex-trafficking.aspx?storyid=43329>.

<sup>206</sup> Code Members, *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*, THECODE.ORG, [http://www.thecode.org/index.php?page=6\\_3#USA](http://www.thecode.org/index.php?page=6_3#USA) (last visited Mar. 29, 2011) (listing Carlson Companies as a Code Member, showing that Carlson Companies encompass Radisson, Country Inns and Suites, Park Inn, Park Plaza, T.G.I. Friday's, and Carlson Wagonlit Travel). See generally *id.* (listing the six criteria of the Code).

<sup>207</sup> Bier, *supra* note 205.

women and children within the hotels and resorts.<sup>208</sup> Reasonable knowledge of sex trafficking occurring within a business venue or through a business activity should result in criminal liability on the part of the business.<sup>209</sup>

Many trafficking-in-persons statutes contain provisions that hold facilitators liable if they criminally assist or benefit from trafficking.<sup>210</sup> A small number of states have enacted laws specifically criminalizing sex tourism within their jurisdictions.<sup>211</sup> For example, in Washington State, it is a felony offense if:

[a] person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.<sup>212</sup>

This type of criminal law can provide a deterrent to those who would profit from the sex trafficking of minors.

#### *E. Protective Provisions for the Child Victims*

Laws to protect children after they have been exploited range from access to justice to access to services. It is important to understand the background of these children to determine how legislation must be designed or directed to assist them. Many of the youths found in commercial sexual exploitation are the runaways, homeless, and throwaways.<sup>213</sup> In 1999, nearly 1.7 million youths had run away from home or were forced out.<sup>214</sup> It has been estimated that these youths are

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<sup>208</sup> Fatima Khan, *Responsibility: How Human Trafficking Puts You in the Cross-Hairs*, BUS. TRAVEL EXECUTIVE, Mar. 2010, at 1, 2.

<sup>209</sup> See Camelia M. Tepelus, *Social Responsibility and Innovation on Trafficking and Child Sex Tourism: Morphing of Practice into Sustainable Tourism Policies?*, 8 TOURISM & HOSPITALITY RES. 98, 105–06 (2007) (noting that the Code lacks enforcement mechanisms and that signatories often fail to monitor the compliance of individual locations adequately).

<sup>210</sup> *E.g.*, GA. CODE ANN. § 16-5-46(g) (2011); MINN. STAT. § 609.322 (2010); MISS. CODE ANN. § 97-3-54.1(2) (2010); NEB. REV. STAT. § 28-831(3)(b) (2010); N.M. STAT. ANN. § 30-52-1(A)(3) (West 2010).

<sup>211</sup> *E.g.*, HAW. REV. STAT. § 468L-7.5(9), (10) (2010); MO. REV. STAT. § 567.087 (2011); WASH. REV. CODE. § 9A.88.085 (2011).

<sup>212</sup> WASH. REV. CODE. § 9.68A.102 (2011).

<sup>213</sup> DEMAND, *supra* note 6, at 86 (explaining that runaways have a high risk of sexual exploitation); accord ESTES & WEINER, *supra* note 89, at 68 (collecting sources discussing the risks faced by such children).

<sup>214</sup> HEATHER HAMMER ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, RUNAWAY/TROWNAWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS 2 (2002).

lured into prostitution within 48 hours of leaving home.<sup>215</sup> They often end up being involved not only in prostitution, but pornography and drug dealing as well.<sup>216</sup> Studies show that these runaways and throwaways constitute 75% of all juvenile prostitutes.<sup>217</sup> Legislation designed to respond to this group of children must recognize commercial sexual exploitation to effectively channel these victims toward appropriate legal responses.

Child protective services workers are often precluded from investigating cases of domestic minor sex trafficking, unless when committed by a family member, due to restrictive legal definitions of “abuse or neglect” and “caregiver” that define the parameters of their jurisdiction.<sup>218</sup> This, along with the criminal justice system’s habit of responding to a prostituted juvenile as a criminal, results in failure to treat such a child as one in need of protection and treatment.<sup>219</sup> Only a handful of states have attempted to correct these gaps through legislation, and with varying success.

The New York Safe Harbour for Exploited Children Act,<sup>220</sup> for example, resulted directly from the unfortunate outcome of a twelve-year-old girl who was charged with prostitution in *In re Nicolette R.*<sup>221</sup> This law prevents the criminalization of certain child sex trafficking victims by giving police the option of bringing the victim directly to a safe shelter specially designed for domestic minor sex trafficking victims; this option is only available for children under eighteen years old and requires the court to adjudicate them as persons in need of supervision rather than as a juvenile delinquent.<sup>222</sup>

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<sup>215</sup> Laura Crimaldi & O’Ryan Johnson, *Prostitution Lures the Desperate*, BOS. HERALD, Apr. 15, 2007, at 5.

<sup>216</sup> KELLY DEDEL, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, *Juvenile Runaways*, at 12 (Response Guide Ser. No. 37, 2006), available at [www.cops.usdoj.gov/files/RIC/Publications/e12051223\\_Juvenile.pdf](http://www.cops.usdoj.gov/files/RIC/Publications/e12051223_Juvenile.pdf).

<sup>217</sup> MARCIA I. COHEN, NAT’L ASS’N OF CNTYS. & THE UNIV. OF OKLA. NAT’L RES. CTR. FOR YOUTH SERVS., IDENTIFYING AND COMBATING JUVENILE PROSTITUTION: A MANUAL FOR ACTION 2 (1987).

<sup>218</sup> See, e.g., SHARED HOPE INT’L, REPORT CARD: PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK: WASHINGTON (2011) (In Washington, “[s]exual exploitation is a form of abuse or neglect allowing for child protective services involvement, though caregiver is defined as an adult in the home [that] might preclude the situation of a pimp in control of a minor”).

<sup>219</sup> See *infra* notes 230–233 and accompanying text.

<sup>220</sup> N.Y. SOC. SERV. LAW §§ 447-a to -b (Consol. 2011).

<sup>221</sup> 779 N.Y.S.2d 487, 487–88 (App. Div. 2004) (holding that a minor could be held delinquent for prostitution); see also Thomas Adcock, *Nicolette’s Story*, N.Y. LAW JOURNAL (Oct. 3, 2008), <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202424988298&slreturn=1&hbxlogin=1#>.

<sup>222</sup> See § 447-a; N.Y. FAM. CT. ACT § 732(b) (McKinney 2010).

The State of Washington enacted a bill in 2010 that amends a range of laws within the state code,<sup>223</sup> including the definitions that now define commercially sexually exploited children as children in need of services for purposes of bringing them within the protections of child welfare laws.<sup>224</sup> The state also provides for a discretionary direct referral to a secure residential facility for those in crisis operated under the Department of Social and Health Services for up to fifteen days, avoiding a criminal charge to hold a child safely from a trafficking situation.<sup>225</sup>

Most recently, Illinois's Safe Children Act<sup>226</sup> transfers jurisdiction over children arrested for prostitution from the criminal system to the child protection system.<sup>227</sup> The law facilitates the placement of sexually exploited children in temporary protective custody if necessary, which includes custody within medical facility or a place designated by the Department of Children and Family Services (it may be a licensed foster home, group home, or other institution), subject to review by the judge.<sup>228</sup> The law further specifies that "temporary protective custody" must not be in a jail or juvenile detention facility.<sup>229</sup>

Domestic minor sex trafficking victims can also be foreclosed from compensation for the crime committed against them in a number of ways. First, many state crime victims' compensation statutes contain eligibility criteria that pose as barriers to girls who have been commercially sexually exploited.<sup>230</sup> There is often a short time period for reporting the crime to law enforcement and for filing the application—both of which are unrealistic for many victims who have not identified their own victimization or the sustained resulting injuries.<sup>231</sup> Second, the determination that an applicant for compensation was complicit or actively engaged in the crime for which she now claims damages also acts as a common ineligibility factor.<sup>232</sup> Many domestic minor sex

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<sup>223</sup> S.B. 6476, 61st Leg., Reg. Sess. (Wash. 2010).

<sup>224</sup> WASH. REV. CODE § 13.32A.030 (2011).

<sup>225</sup> WASH. REV. CODE § 74.13.020(6) (2011); WASH. REV. CODE § 74.13.0311 (2011); WASH. REV. CODE § 74.13.034 (2011).

<sup>226</sup> H.B. 6462, 96th Gen. Assemb., Reg. Sess. (Ill. 2009); Art Golab, *No Prostitution Charges for Kids*, CHI. SUN-TIMES, Aug. 21, 2010, at 16.

<sup>227</sup> 720 ILL. COMP. STAT. 5/11-14 (2011).

<sup>228</sup> 325 ILL. COMP. STAT. 5/3 (2011).

<sup>229</sup> *Id.*

<sup>230</sup> See, e.g., LINDA A. SMITH ET AL., SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: CHILD SEX SLAVERY IN ARIZONA 13 (2010) [hereinafter ARIZONA] (describing hurdles to obtaining victim funds in Arizona); PROTECTED INNOCENCE, *supra* note 90, at 12 (explaining that statutes that consider the minor's involvement in the underlying crime are not beneficial and that minors should be identified as victims per se).

<sup>231</sup> ARIZ. ADMIN. CODE § R10-4-106(A)(4) (2008) (imposing a seventy-two-hour reporting time limit); N.C. GEN. STAT. § 15B-11(a)(3) (2010) (same).

<sup>232</sup> See ARIZ. ADMIN. CODE § R10-4-106(A)(3)(a) (2008).

trafficking victims appear complicit or even self-directed in their prostitution as they are psychologically bonded to their traffickers during the time of the exploitation.<sup>233</sup> It is critical for the protection of these victims that the law provides exceptions for eligibility factors and specifically identifies these youths as victims for purposes of receiving crime victims' compensation.

Additionally, civil remedies and asset forfeiture can both offset the ongoing costs for treatment and rehabilitation of victims of child sex trafficking. Laws ensuring access to civil remedies against both the traffickers and the buyers convicted of trafficking or commercial sexual exploitation of children are essential. Asset forfeiture also has the advantage of preventing the offender from keeping assets and property related to the commission of the crime or obtained through proceeds of the crime. Closely related to the civil remedies is the need for the extension (or elimination) of statutes of limitation for actions by a child sex trafficking victim, as she may need a long time to recover from psychological bonding with a trafficker and to recognize the damages she suffered adequately.<sup>234</sup>

*F. Law Enforcement and Criminal Justice Tools  
to Effectuate Investigation and Prosecutions*

Traditional investigation methods to capture buyers of prostitution involve the use of decoys—undercover police officers placed in prostitution zones to nab prospective johns.<sup>235</sup> This technique, however, cannot be used as effectively against those seeking sex with a minor because a minor cannot be legally placed as a decoy.<sup>236</sup> This creates a problem because, without decoys, police officers have to interrupt a commercial transaction with a minor while in progress to identify the buyer of sex with a prostituted child—a rare event.<sup>237</sup>

Laws specifically disallowing the defense that the person solicited was not a minor permit law enforcement to proceed with undercover operations to curb exploitation of children in street prostitution.<sup>238</sup> For

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<sup>233</sup> See COHEN, *supra* note 217, at 2 (explaining that young runaway girls seek affection from their pimps as the parents they never had).

<sup>234</sup> See PRIEBE & SUHR, *supra* note 162, at 29–30 (describing the various long-lasting effects of commercial sexual exploitation on children, including cognitive and developmental delays, post-traumatic stress disorder, conduct disorder, and borderline personality disorder).

<sup>235</sup> ARIZONA, *supra* note 230, at 28 (describing Arizona's Customer Apprehension Program and how Phoenix law enforcement uses female decoys to target buyers and arrest them).

<sup>236</sup> NATIONAL REPORT, *supra* note 1, at 21.

<sup>237</sup> *Id.* at 21–22.

<sup>238</sup> ARIZONA, *supra* note 230, at 28.

example, Arizona's code removes this defense for buyers and sellers of sex with minors, stating that "[i]t is not a defense to a prosecution . . . that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor."<sup>239</sup> Disallowing this defense in cases of online sexual exploitation and pornography would assist law enforcement in investigating these crimes as well.

Another investigative challenge lies in identifying the prostituted girl as a minor:

Age verification is made difficult by the widespread use of fraudulent identification provided to the girls by the traffickers/pimps to establish their age as an adult. The first arrest of a prostituted minor is critical for proper identification—if entered into the system as an adult, her identity is altered and subsequent arrests reinforce the false [adult] identity. Steps are being taken [to resolve this gap] by the FBI through the development of a database [that] is accessible more broadly to law enforcement in an attempt to improve information sharing [and prevent the misidentification of these children].<sup>240</sup>

One important way authorities can identify a trafficked minor is via the National Crime Information Center ("NCIC").<sup>241</sup> When a child goes missing, it is important that local law enforcement input information regarding the disappearance into the NCIC.<sup>242</sup> Given the frequency with which missing children become trafficking victims, it is critical that the disappearances of children who are in the custody of child welfare agencies be immediately reported not only to the local police, but also to the NCIC and the National Center for Missing and Exploited Children (NCMEC), and that each rescued domestic minor sex trafficking victim be checked against these reports to see if she can be confirmed as a missing child.<sup>243</sup>

One local initiative in Dallas is improving the identification of prostituted minors. The High Risk Victims & Trafficking Unit within the Dallas Police Department identified 189 cases of children who had run away from home four or more times in a single year, or who had repeatedly been victims of sexual abuse or exploitation, making them high-risk victims.<sup>244</sup> 119 of these children were prostituted youths.<sup>245</sup>

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<sup>239</sup> ARIZ. REV. STAT. ANN. § 13-3212(C) (2011).

<sup>240</sup> NATIONAL REPORT, *supra* note 1, at 22.

<sup>241</sup> PROTECTED INNOCENCE, *supra* note 90, at 15.

<sup>242</sup> U.S. DEPT OF JUSTICE, AMBER ALERT FACT SHEET: EFFECTIVE USE OF NCIC 1 (2005), *available at* <http://www.ncjrs.gov/html/ojjdp/amberalert/AMBERAlertNCICFactSheet.pdf>; PROTECTED INNOCENCE, *supra* note 90, at 15.

<sup>243</sup> PROTECTED INNOCENCE, *supra* note 90, at 15.

<sup>244</sup> NICOLE HAY, SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: DALLAS, TEXAS 11 (2008).

<sup>245</sup> *Id.*

Programs like this set out a standard that should be included in the legislative framework of any state.

#### CONCLUSION

An anti-trafficking legislative framework is the foundation for all efforts to combat domestic minor sex trafficking. It is the starting point for a holistic approach to ending domestic minor sex trafficking as well as all other forms of modern-day slavery. Anti-trafficking federal laws are comprehensive and contain severe penalties.<sup>246</sup> Many cases of child sex trafficking, however, are never presented to the federal prosecutors or, if they are, are declined for prosecution.<sup>247</sup> Therefore, it is essential that state laws are as comprehensive and severe in penalties as the federal laws to advance a full criminal deterrence program.<sup>248</sup> It is also important that all states elevate their criminal laws to a similar level to avoid migration of the crime to the more lenient states.<sup>249</sup> In accomplishing these legislative goals, the interconnectedness of the various laws that affect, or are affected by, domestic minor sex trafficking must not be overlooked. The many areas of law that are effective in cases of child protection and juvenile justice must be reviewed and considered for their impact on the legislative objectives.<sup>250</sup> Stronger legislation in all areas is a critical foundation to combat domestic minor sex trafficking.

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<sup>246</sup> See *supra* table accompanying notes 37–80.

<sup>247</sup> See *supra* text accompanying notes 81–85.

<sup>248</sup> See *supra* Part III.

<sup>249</sup> See *supra* text accompanying notes 97–99.

<sup>250</sup> See *supra* Part III.