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Prevention Not Punishment: Child Victims of Sex Trafficking Must Be Treated Not Detained

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NOTE

PREVENTION NOT PUNISHMENT: CHILD VICTIMS OF SEX TRAFFICKING MUST BE TREATED NOT DETAINED

I. INTRODUCTION

The man who trafficked me was a close and trusted adult in my life. He was a part of my daily life. He had the responsibility to care for me. I was a child and had no choice but to trust him. He was a master manipulator. I became very close to him and feared him at the same time. Starting at a very young age he conditioned me through the use of physical, sexual, and psychological abuse to gain and maintain control over me. This is exactly why it was so hard to break free.¹

Withelma “T” Ortiz Walker Pettigrew, Rachel Moran, Windie Lazenko, Alyssa Beck, and countless other women and children share similar stories with Margeaux Gray.² They are a few of the women who decided to forgo anonymity to expose the real-life conditions some

1. *An Interview About Surviving Human Trafficking: Margeaux Gray*, OFF. ON WOMEN’S HEALTH (Oct. 2, 2016), <https://www.womenshealth.gov/blog/spotlight-margeaux-gray>. Margeaux Gray was first sex trafficked when she was five years old. *Id.* Thereafter, she was sold for her pimp’s profit as a victim of sex trafficking. *Id.* Currently, Gray uses her survivorship from the sex trade as inspiration to drive her work as an artist, public speaker, and advocate. *Id.* She serves on the Executive Committee of the National Survivor Network and is a member of the Louisville, Kentucky Human Trafficking Task Force. *Id.*; see Margeaux Gray, *Why Human Trafficking Is a Public Health Problem*, CNN (July 25, 2016, 11:11 AM), <https://www.cnn.com/2016/07/11/opinions/human-trafficking-health-margeaux-gray/index.html> (listing Margeaux Gray’s advocacy efforts to stop sex trafficking).

2. *Preventing and Addressing Sex Trafficking of Youth in Foster Care: Hearing Before the Subcomm. on Human Res. of the Comm. on Ways & Means*, 113th Cong. 30-31 (2013) [hereinafter *Hearing*] (statement of Withelma “T” Ortiz Walker Pettigrew from the Human Rights Project for Girls); *Former Stripper Takes on Sex Traffickers in North Dakota Oil Patch*, FOX NEWS (May 3, 2016), <https://www.foxnews.com/us/former-stripper-takes-on-sex-traffickers-in-north-dakota-oil-patch>; Michelle Miller, *Inside the World of Child Sex Trafficking and the High-Tech Approach to Saving Victims*, CBS NEWS (Mar. 9, 2019), <https://www.cbsnews.com/news/48-hours-live-to-tell-inside-the-world-of-child-sex-trafficking-and-ashton-kutchers-high-tech-approach-to-saving-victims>; Rachel Moran, Opinion, *Buying Sex Should Not Be Legal*, N.Y. TIMES (Aug. 28, 2015), <https://www.nytimes.com/2015/08/29/opinion/buying-sex-should-not-be-legal.html>.

children face in America and abroad.³ While they all suffered unique experiences as victims of child sex trafficking, some of these women also share a past as youth incarcerated for crimes relating to prostitution.⁴ Children across America are arrested and detained because twenty-five states allow the prosecution of children for prostitution, even though federal law considers these children victims of sex trafficking.⁵

As a fifteen-year-old girl, Withelma “T” Ortiz Walker Pettigrew was confined in a concrete cell.⁶ She was required to shower naked in front of prison guards daily.⁷ This re-traumatized her, as her physical confinement did not feel too different from the mental confinement she endured from her pimp.⁸ Pettigrew served time in prison after she was sold into the sex trafficking industry as a ten-year-old and was prostituted on the streets, in strip clubs, in massage parlors, and online.⁹ She lived in Nevada, a state where children¹⁰ under eighteen can be arrested for prostitution and funneled through the juvenile court system.¹¹ However, Pettigrew’s experience is not unique.¹² There are

3. See Malika Saada Saar, *The Myth of Child Prostitution*, CNN (July 29, 2015), <https://www.cnn.com/2015/07/29/opinions/saar-child-trafficking-united-states/index.html>.

4. MALIKA SAADA SAAR ET AL., CTR. ON POVERTY AND INEQUALITY AT GEORGETOWN LAW, *THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS’ STORY* 19 (2015) (highlighting Pettigrew’s story); Miller, *supra* note 2; Moran, *supra* note 2; *Former Stripper Takes on Sex Traffickers in North Dakota Oil Patch*, *supra* note 2.

5. SHARED HOPE INT’L, NATIONAL STATE LAW SURVEY: NON-CRIMINALIZATION OF JUVENILE SEX TRAFFICKING VICTIMS 1-3 (2018) (listing the states that criminalize child prostitution); see Victims of Trafficking and Violence Act of 2000, Pub. L. No. 106-386, § 103(8)(A), 114 Stat. 1464, 1470.

6. See SAAR ET AL., *supra* note 4, at 19.

7. *Id.* (excerpt in the report highlighting Pettigrew’s story).

8. Prison conditions can include solitary confinement and isolation. See *id.* at 14, 16, 19 (statement by Pettigrew that she was “re-traumatized” when forced to shower in front of prison guards).

9. *Hearing*, *supra* note 2, at 30 (statement of Pettigrew from the Human Rights Project for Girls); Nicki Rossoll, *Foster Care and Sex Trafficking Survivor Testifies on Hill*, ABC NEWS (Oct. 23, 2013), <http://abcnews.go.com/blogs/politics/2013/10/foster-care-and-sex-trafficking-survivor-testifies-on-hill>.

10. While this Note primarily shares stories of girls and women and uses the she/her pronouns, it is widely recognized that boys and transgender children are also victims of child sex trafficking. Heather J. Clawson & Lisa Goldblatt Grace, *Finding a Path to Recovery: Residential Facilities for Minor Victims of Domestic Sex Trafficking*, in *SEX TRAFFICKING OF MINORS: OVERVIEW, FEDERAL RESPONSE AND JUSTICE SYSTEM ISSUES* 137, 138 (Cara A. Saunders ed., 2015). However, girls are more frequently targets of sex trafficking. *Id.* Moreover, this Note will refer to laws and scenarios that affect both women and girls but will emphasize the impact these laws have on minor victims. See *infra* Part III.

11. NEV. REV. STAT. § 201.354(1) (2017) (stating prostitution is only legal in a “licensed house of prostitution” and not on the streets); NEV. REV. STAT. § 62C.240 (2015) (placing a child found prostituting herself under the supervision of the juvenile courts); *Hearing*, *supra* note 2, at 30-31 (statement of Pettigrew from the Human Rights Project for Girls).

12. See SHARED HOPE INT’L, PROTECTED INNOCENCE CHALLENGE TOOLKIT 2016 4 (2017)

countless minors who are also imprisoned for forced prostitution¹³—some younger than the state’s respective age of consent—and life for these children does not consist of playgrounds and Barbies but rather prison grounds and cell bars.¹⁴

While federal law deems children sold into sex trafficking as victims, twenty-five states punish children who are victims of sex trafficking because they are considered prostitutes under their respective state laws.¹⁵ Some states, such as Pennsylvania¹⁶ and California,¹⁷ have recently amended their sex trafficking and prostitution laws by granting immunity to children accused of prostitution. However, twenty-five states lack this immunity and lack updated and effective measures to combat sex trafficking.¹⁸ Although children are typically granted special protections under the law, the statutory difference between raping a child and paying to rape a child creates a national paradox in protecting American children.¹⁹ In states without prostitution immunity for

(stating one in five runaways are likely to become sex trafficking victims).

13. *Sex Trafficking of Minors in America*, UNITED NATIONS, <http://www.ungift.org/2017/09/17/sex-trafficking-of-minors-in-america.html> (last visited Nov. 18, 2019) (“The exact number of child victims of sex trafficking in America is undetermined due to a lack of scientific data and comprehensive research.”). Director of the Crimes against Children Research Center at the University of New Hampshire, David Finkelhor, stated that although the statistics regarding victims of sex trafficking are typically estimates, the issue is important and deserves attention. Rebecca Beitsch, *States Are Changing Prostitution Laws to Help Victims*, GOVERNING (Oct. 21, 2015, 2:10 PM), <http://www.governing.com/topics/public-justice-safety/more-states-separate-prostitution-sex-trafficking.html>. However, Finkelhor believes organizations approach the issue with “unjustified confidence” that they know the best approach. *Id.*

14. Although most children who engage in the sex trade do not consider themselves victims, this Note will follow federal legislation in using the term “victim” to represent sex trafficked children. Victims of Trafficking and Violence Act of 2000, Pub L. No. 106-386, §§ 103(8)(A), 103(13), 114 Stat. 1464, 1470, 1471 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); see ALEXANDRA LUTNICK, DOMESTIC MINOR SEX TRAFFICKING: BEYOND VICTIMS AND VILLAINS 2 (2016) (stating children do not see themselves as victims); SAAR ET AL., *supra* note 4, at 19; see also *Hearing*, *supra* note 2, at 31 (“[T]he most consistent relationship I ever had while in care was that of my pimp and his family.”).

15. Victims of Trafficking and Violence Act of 2000 § 103(8)(A). Pennsylvania’s law is not yet codified and thus not addressed in Shared Hope International’s 2018 chart. S.B. 554, 2017 Sess. (Pa. 2017); SHARED HOPE INT’L, *supra* note 5, at 3.

16. S.B. 554. (providing immunity to minor victims of sex trafficking).

17. The revised California statute states that prostitution offenses do not apply to children under the age of eighteen. CAL. PENAL CODE § 647(5) (Deering 2018) (amended in 2017 to exclude children from prostitution offenses). Rather, children found prostituting will be placed in the state’s temporary custody. *Id.*

18. SHARED HOPE INT’L, *supra* note 5, at 1-3.

19. In her opinion piece for CNN, Malika Saada Saar recounts stories of child sex trafficking victims and how the justice system failed them. Saar, *supra* note 3; see DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 16 (4th ed. 2010) (“The law views children as vulnerable, incapable and needing protection in some circumstances but as individuals with rights, decisionmaking [sic] capacity and personal responsibility in others.”). In her opinion piece for CNN, Saar recounts stories of child sex trafficking victims and how the

children, prostitution law trumps statutory rape law, thus deeming a child—who is statutorily unable to consent to a sex act—a prostitute, not a victim.²⁰ This difference is furthered by the fact that children under eighteen are typically below the requisite age to enter into contracts and, as minors, do not have the capacity to contract.²¹ As a non-legal person unable to enter into a consensual agreement to prostitute her body for her pimp, a child cannot logically be deemed a party to the crime.²²

This Note argues that states across the country should modernize outdated sex trafficking and prostitution laws to decriminalize the prostitution of children under eighteen.²³ States must replace these laws with statutory relief for minors who are victims of sex trafficking, such as by providing finances, safe homes, and trauma therapy.²⁴ In Part II, this Note compares the disparities between state and federal laws and lists current nongovernmental organization (“NGO”) campaigns against victim prosecution.²⁵ In Part III, this Note discusses the unique ways traffickers incentivize children to join the commercial sex trade and how the justice system fails to aid trafficked children.²⁶ In Part IV, this Note proposes that states instead adopt a rehabilitation program for exploited children to take advantage of instead of subjecting victims to

justice system failed them. Saar, *supra* note 3.

20. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1573-76 (2017) (listing each state’s respective statutory rape law, grouped per age of consent); *see also United States Age of Consent Map*, AGEOFCONSENT, <https://www.ageofconsent.net/states> (last visited Nov. 18, 2019) (listing the legal age of consent in each state). When asked about sex trafficking of minors, Robert J. Flores, the head of the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice, remarked, “[t]here’s a suggestion that this is a type of prostitution. It’s not. It’s really the commercialized rape of our children.” Jessica Lustig, *The 13-Year Old Prostitute: Working Girl or Sex Slave?*, N.Y. MAG. (Mar. 29, 2007), <http://nymag.com/news/features/30018>.

21. RESTATEMENT (SECOND) OF CONTRACTS §§ 12, 14 (AM. LAW INST. 1981). The Restatement of Contracts states that minors under the age of eighteen do not have the capacity to enter into contracts.

(1) No one can be bound by contract who has not legal capacity to incur at least voidable contractual duties. Capacity to contract may be partial and its existence in respect of a particular transaction may depend upon the nature of the transaction or upon other circumstances. (2) A natural person who manifests assent to a transaction has full legal capacity to incur contractual duties thereby unless he is (a) under guardianship, or (b) an infant, or (c) mentally ill or defective, or (d) intoxicated.

Id. The Restatement further defines infancy:

Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person’s eighteenth birthday.

Id.

22. *See id.*

23. *See infra* Part IV.A.

24. *See infra* Part IV.C.

25. *See infra* Part II.

26. *See infra* Part III.

imprisonment or neglect.²⁷ Lastly, Part V concludes this Note and reiterates that change is within reach; state laws can help children rehabilitate back into society after experiencing sexual exploitation.²⁸

II. FEDERAL AND STATE LAW DISPARITIES: CONFRONTING MODERN SEX TRAFFICKING

This Part discusses current state and federal sex trafficking and prostitution laws and the advocacy NGOs engage in to aid victims of sex trafficking.²⁹ Subpart A begins this Part by discussing how the federal government tackles the issue of sex trafficking,³⁰ while Subpart B discusses the disparities between state laws by comparing the states that have codified successful sex trafficking and prostitution laws to those that have not.³¹ Subpart B also delves into the lack of state rehabilitation programs for victims of sex trafficking.³² Subpart C discusses the advocacy efforts NGOs engage in to aid victims of sex trafficking.³³ Exploring federal and state laws and NGO practices allows policymakers to compare which strategies work and which do not.³⁴ Moreover, it allows this Note to propose a solution by analyzing the states which have codified effective policy and those that inadvertently cultivate a culture of neglect.³⁵

A. *Federal Sex Trafficking and Prostitution Legislation*

Human trafficking was first addressed in federal law after the Mann Act passed in 1910.³⁶ The Act was the first federal law that criminalized the interstate transportation of women and girls for commercial sex.³⁷

27. *See infra* Part IV.

28. *See infra* Part V.

29. For example, NGOs aid victims by providing shelters and other necessities, advocating for change, writing stories for the press to report on, and conducting studies. *See infra* Part II.C.

30. *See infra* Part II.A.

31. *See infra* Part II.B.

32. *See infra* Part II.B.

33. *See infra* Part II.C.

34. *See* SHARED HOPE INT'L, *supra* note 5, at 1-3.

35. *See infra* Part IV.

36. White-Slave Traffic (Mann) Act of 1910, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (2012)).

37. § 2, 36 Stat. at 825. The Mann Act was originally created to protect women of all ages from forced prostitution by broadly prohibiting the interstate transportation of women and girls for “immoral purposes.” *Id.* The law, named after Republican Congressman James R. Mann from Chicago, failed to address consent, which resulted in heavy litigation from women seeking redress from failed relationships. Kelli Ann McCoy, *Claiming Victims: The Mann Act, Gender, and Class in the American West, 1910-1930s*, 3, 65 (2010) (unpublished Ph.D. dissertation, University of California, San Diego). Moreover, the Mann Act was most commonly used to prosecute men for

Nearly a century later, the federal government revisited the issue of human trafficking when it passed the Victims of Trafficking and Violence Act in 2000.³⁸ The original Victims of Trafficking and Violence Act has been updated five times since its inception and is now known as the Trafficking Victims Protection Act (“TVPA”).³⁹ The original 2000 TVPA established sex trafficking as a federal crime and addressed the victimization of females sold into sex trafficking by defining females younger than eighteen as victims.⁴⁰ The law was initiated by the Committee on Foreign Relations, the Committee on International Relations, and the House and Senate Committees on the Judiciary.⁴¹ The primarily foreign-focused committees originally drafted the 2000 TVPA to aid victims of international human trafficking rather than focus on domestic cases.⁴² Although the law does not specifically address domestic sex trafficking, it still applies to those victims.⁴³ Recognizing the prevalence of domestic cases, Congress drafted an amendment to the TVPA to expand on domestic sex trafficking assistance in the 2005 rendition of the legislation.⁴⁴ The 2005 TVPA also initiated a rehabilitation plan, which provides residential assistance for

purchasing sex with underaged females. JAMES O. WINDELL, *LOOKING BACK IN CRIME: WHAT HAPPENED ON THIS DATE IN CRIMINAL JUSTICE HISTORY?* 225 (2015).

38. Victims of Trafficking and Violence Act of 2000, Pub L. No. 106-386, § 102, 114 Stat. 1464, 1466 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); see also *Current Federal Laws*, POLARIS, <https://polarisproject.org/current-federal-laws> (last visited Nov. 18, 2019) (describing the law and providing access to the five variations of the Trafficking Victims Protection Act).

39. See Trafficking Victims Protection Act of 2000, Pub L. No. 106-386, 114 Stat. 1464; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 177 Stat. 2875 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); Trafficking Victims Protection Reauthorization Act of 2013, H.R. 898, 113th Cong. §§ 301–02 (2013); Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393, 132 Stat. 5265 (2018) (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

40. Victims of Trafficking and Violence Act of 2000 § 103(8)(A). “Severe form of trafficking” is defined as “a commercial sex act” that “is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age.” *Id.*

41. § 103(1).

42. § 102.

43. See U.S. CONST. art I, § 8, cl. 3 (stating the federal government only has jurisdiction “[t]o regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes”); Victims of Trafficking and Violence Act of 2000 § 102(b)(12).

44. Trafficking Victims Protection Reauthorization Act of 2005 § 2. The 2003 TVPA was also implemented prior to the 2005 amendment, which allows sex trafficking victims to sue their traffickers and requires the Attorney General to produce an annual progress report for Congress. Trafficking Victims Protection Reauthorization Act of 2003 §§ 4, 6(a); see *Current Federal Laws*, *supra* note 38 (summarizing the 2005 TVPA shelter program).

juvenile trafficking victims.⁴⁵ Moreover, the 2005 TVPA established grants to assist local governments in investigating and combatting domestic minor sex trafficking cases.⁴⁶ The 2008 TVPA focused primarily on prevention, in part by requiring that some unaccompanied immigrant children from countries contiguous with the United States be screened as potential victims of sex trafficking.⁴⁷ Lastly, the 2013 and 2017 reauthorizations added clauses strengthening the TVPA's prior commitment to end sex trafficking by expanding its victim services budget and creating emergency task forces in highly susceptible areas.⁴⁸

Although the TVPA defines a victim as a minor under the age of eighteen,⁴⁹ the Supreme Court recently held that for "statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of sexual abuse of a minor requires the age of the victim to be less than 16."⁵⁰ Moreover, other federal laws define the sexual abuse of a minor, in part, as a person who knowingly engages in a sexual act with a minor under the age of sixteen.⁵¹ Thus, the federal government differs in its definition of a minor depending on whether sex trafficking was the means of sexual

45. Trafficking Victims Protection Reauthorization Act of 2005 § 102(b).

46. § 202.

47. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(2), 122 Stat. 5044, 5074 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

48. Trafficking Victims Protection Reauthorization Act of 2013, H.R. 898, 113th Cong. § 202 (2013); Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393, § 301, 132 Stat. 5265, 5271 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.). The 2013 version of the TVPA included a provision providing six annual federal grants awarding between \$1,500,000 and \$2,000,000 used to combat sex trafficking. § 202. The 2017 act granted \$77,000,000 to victim services. § 301.

49. Victims of Trafficking and Violence Act of 2000, Pub L. No. 106-386, § 102(b)(13), 114 Stat. 1464, 1471 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.) (defining a victim of sex trafficking as any person under the age of eighteen who was sex trafficked).

50. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1567-68, 1572-73 (2017). The Court's ruling in *Esquivel-Quintana* focused on whether the defendant, a non-citizen, could be removed from the United States under the Immigration and Nationality Act ("INA") after being convicted for statutory rape. *Id.* at 1567-68. The case depended on whether California's statutory rape law, which criminalizes sexual relations with minors under the age of eighteen, falls within the INA's consideration of an aggravated felony; in this case, the sexual abuse of a minor. *Id.* A conviction must be an aggravated felony in order to remove a non-citizen under the INA. *Id.* Since California's statutory rape law does not fit within the federal definition of a minor, the conviction was not considered an aggravated felony under the INA. *Id.* at 1568.

51. 18 U.S.C. § 2243(a)(1) (2012). The federal crime for sexual abuse of a minor defines minor as a person aged between twelve and sixteen. *Id.* (falling under the "special maritime and territorial jurisdiction of the United States or in a Federal prison"). Unlike state statutory rape laws, federal law grants the defendant an affirmative defense to prove he or she "reasonably believed that the other person had attained the age of 16 years." § 2243(c)(1).

abuse.⁵² In addition to the Mann Act and the TVPA, the federal government also created the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (“PROTECT Act”), which penalizes individuals who engage in sex tourism with children and establishes the Amber Alert System, a service which notifies the public when children go missing.⁵³

While federal sex trafficking laws influenced state laws to conform to their standards, the current sex trafficking-based federal laws are scarcely used in practical cases,⁵⁴ particularly because the federal government only has jurisdiction over sex trafficking cases that involve the transportation of victims across state lines.⁵⁵ Since most prostitution-related offenses are not proven to involve interstate travel, the federal government will rarely prosecute a child sex trafficking case.⁵⁶ Thus, the laws are deferred to the various state governments, all of which have drastically different perspectives on regulating prostitution and sex trafficking.⁵⁷

B. State Disparities in Modern America

When discussing the best option for laws regarding child prostitution, it is imperative to observe current prostitution laws in general.⁵⁸ While some states revamped their laws to include a clause providing immunity to minors in prostitution cases, twenty-five states have not.⁵⁹ Some states have not updated their prostitution laws since the TVPA’s inception.⁶⁰ These states have general prostitution prosecution laws without differences for minors, thus presuming that children are treated equally to adults.⁶¹ States that legalized immunity for prostituted minors only began establishing their own sex trafficking laws after the

52. Compare 18 U.S.C. § 2243(a)(1), and *Esquivel-Quintana*, 137 S. Ct. at 1572-73, with Victims of Trafficking and Violence Act of 2000 § 103(8)(A).

53. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-121, §§ 105, 301, 117 Stat. 650, 653-54, 660-61 (codified in scattered sections of 18 U.S.C.).

54. See Colleen Owens, *Funding Services for Human Trafficking Victims Is Imperative for Policing the Crime*, URB. INST.: URB. WIRE (June 14, 2013), <https://www.urban.org/urban-wire/funding-services-human-trafficking-victims-imperative-policing-crime>.

55. See U.S. CONST. art. I, § 8, cl. 3.

56. LUTNICK, *supra* note 14, at 9, 90 (arguing that while a majority of states view minors as co-conspirators, they should instead act as advocates for victims of sex trafficking).

57. SHARED HOPE INT’L, *supra* note 12, at 1, 21-26.

58. See SHARED HOPE INT’L, *supra* note 5, at 1-3; see *infra* Parts II.B.1-2.

59. SHARED HOPE INT’L, *supra* note 5, at 3.

60. For example, Idaho has not updated its prostitution statute since its 1977 inception. IDAHO CODE § 18-5613 (1977).

61. SHARED HOPE INT’L, *supra* note 5, at 3.

federal government established the 2000 TVPA.⁶² The states vary in how they combat sex trafficking.⁶³

1. States That Ban the Arrest of Minors for Prostitution

Twenty-five states and Washington, D.C.⁶⁴ codified statutes prohibiting the criminalization of minors for prostitution.⁶⁵ These states are Alabama, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming.⁶⁶ There are variations among these states' laws;

62. Owens, *supra* note 54.

63. SHARED HOPE INT'L, *supra* note 5, at 1-3.

64. D.C. CODE § 22-2701(d)(1)–(3) (2015) (stating a child “shall be immune from prosecution” and will be referred to an organization as a sex trafficking victim).

65. SHARED HOPE INT'L, *supra* note 5, at 3.

66. In Alabama, a minor is any person under the age of nineteen. ALA. CODE § 13A-6-151(5) (2018). The law states that minors do not need to prove they were coerced into sexual servitude. *Id.* § 13A-6-151(7)(a). The mistake of age is not a defense in Alabama. ALA. CODE § 13A-6-154 (2010). California's prostitution law does not apply to children under the age of eighteen. CAL. PENAL CODE § 647(5) (Deering 2018). The child will still be sent to court for the judge to determine whether the child has family to return to or whether the child should be placed in foster care. *Id.* (amended in 2017 to exclude children under eighteen from prosecution for prostitution related offenses). Connecticut law states that a person must be over the age of eighteen to be charged with prostitution. CONN. GEN. STAT. § 53a-82(a) (2016). Florida law states that it is illegal for a person over the age of eighteen to commit, or offer to commit, prostitution. FLA. STAT. ANN. § 796.07(2)(e) (West 2016). Georgia, updating its prostitution law recently, requires a person to be eighteen or older to be charged with prostitution. GA. CODE ANN. § 16-6-9 (West 2019). Illinois law states that a person under the age of eighteen is immune from prosecution for prostitution related offenses and shall be diverted to temporary protective custody. 720 ILL. COMP. STAT. 5 / 11-14(d) (2015). Indiana state law requires a person be at least eighteen years old in order to be charged with prostitution. IND. CODE § 35-45-4-2(a) (2018). Kentucky state law exempts minors under the age of eighteen from prosecution for prostitution. KY. REV. STAT. ANN. § 529.120(1) (West 2013). An officer who finds the trafficked minors must immediately write a report to the Cabinet for Health and Family Services, which will then investigate the child's situation. *Id.* § 529.120(2). In Michigan, a person aged sixteen or younger cannot be charged with prostitution. MICH. COMP. LAWS § 750.451(2) (2017). Additionally, it is presumed that a child under eighteen was coerced into engaging in prostitution by another person; however, “[t]he prosecution may overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense.” *Id.* § 750.451(6). A minor who fails to comply with court-ordered services will also be denied this presumption in court. *Id.* Minnesota codified a grant program to educate officers on how to combat juvenile prostitution. MINN. STAT. § 299A.71 (2000). Minnesota also established a tiered punitive approach in minor sex trafficking cases. MINN. STAT. § 609.324 (2016). Offenders who purchase a minor under the age of thirteen for sex are fined up to \$40,000. *Id.* § 609.324(a). Offenders who purchase a minor who is between the ages of thirteen and sixteen are fined up to \$20,000. *Id.* § 609.324(b). Offenders who purchase a minor between the ages of eighteen and sixteen are fined up to \$10,000. *Id.* § 609.324(c). Mississippi state law states that minors are immune from prosecution for prostitution and that the consent of a minor is not a defense in the conviction of an individual for sex trafficking. MISS. CODE §§ 97-29-51(3), 97-29-51(1)(d) (2013). Children in Montana are immune from prosecution for prostitution. MONT. CODE. ANN.

for example, Michigan⁶⁷ only prohibits the criminalization of minors under the age of sixteen.⁶⁸ Moreover, as a defense, Missouri⁶⁹ and West Virginia⁷⁰ demand that a minor prove she was coerced by a third party to engage in commercial sexual activity.⁷¹ Similarly, before New York

§ 45-5-709(1) (West 2017); *see* MONT. CODE ANN § 45-5-601(3)-(4) (West 2017) (punishing an individual who purchases a child under eighteen for prostitution with up to 100 years in prison and fines up to \$50,000, regardless of whether the offender was aware of the minor's age at the time of the offense). In Nebraska, a person under the age of eighteen is immune from prosecution for a prostitution-related offense. NEB. REV. STAT. § 28-801(5)(b) (2016). An investigation by the Department of Health and Human Services must begin within twenty-four hours after the officer takes the minor into custody. *Id.* New Hampshire state law states that minors under the age of eighteen shall not be subject to criminal prosecution or a juvenile delinquency proceeding for prostitution or related offenses. N.H. REV. STAT. § 645:2 (2018). A minor in North Carolina shall be immune from prosecution but will be taken into "temporary protective custody as an undisciplined juvenile." N.C. GEN. STAT. § 14-204(c) (2013). A minor in North Carolina is defined as any person under the age of eighteen. *Id.* § 14-203(2). North Dakota law states that a minor cannot be criminally liable for prostitution. N.D. CENT. CODE § 12.1-41-12(1) (2015); *see id.* § 12.1-29-03 (stating that only adults can be guilty of prostitution). An adult is defined as "an individual eighteen years or older." N.D. CENT. CODE § 12.1-41-01(1) (2015). Pennsylvania law states that a sexually exploited child under the age of eighteen is immune from prosecution. S.B. 554, 2017 Sess. § 3065(A) (Pa. 2017). Under Rhode Island law, a minor is defined as any person under the age of eighteen. 11 R.I. GEN. LAWS §§ 11-67.1-2(1),-15(a) (2017); 11 R.I. GEN. LAWS § 11-67.1-2(1) (2017). South Carolina state law defines sex trafficking, in part, as the "recruitment, harboring, transportation, provision, or obtaining of a person, [when] . . . the person performing the act is under the age of eighteen years." S.C. CODE § 16-3-2010(7) (2018). South Dakota state law recently increased the age required to be charged with prostitution from sixteen to eighteen years old. S.D. CODIFIED LAWS § 22-23-1 (2019). Tennessee state law states that individuals under the age of eighteen are immune from prosecution for prostitution as a juvenile or an adult. TENN. CODE. § 39-13-513(d) (West 2015). Instead, the minor will be given a human trafficking hotline number and be released to a guardian or care facility. *Id.* Utah state law requires officers to conduct an investigation, refer the child to the division of Child and Family Services, contact the child's guardian, and provide other required services to the child. UTAH CODE § 76-10-1302(3)(b) (2019). Moreover, the child cannot face delinquency proceedings for the offense. *Id.* § 76-10-1302(4). Vermont law states that a child under the age of eighteen is immune from prosecution for prostitution. VT. STAT. tit. 13, § 2652(c)(B) (2011). In West Virginia, a child charged with prostitution is presumed to be a victim of sex trafficking. W. VA. CODE § 61-14-8(a) (2017). Wyoming law states that human trafficking victims may have their charges vacated if their offense is deemed to have been a "result of having been a victim." WYO. STAT. §§ 6-2-708 (2013). Wyoming further deems minor human trafficking victims as "child[ren] in need," and "neglected" pursuant to the Child in Need of Supervision Act and the Child Protection Act. *Id.*; SHARED HOPE INT'L, *supra* note 5, at 1-3.

67. MICH. COMP. LAWS § 750.451(2) (2017) (stating a person sixteen years or older is guilty of a misdemeanor and may be imprisoned for less than one year, fined up to \$1,000, or both).

68. *Id.* This contradiction matches the disparities amongst the federal laws. *See supra* notes 50-51 and accompanying text.

69. MO. REV. STAT. § 567.020(5) (2019) (stating that it is a defense if a person younger than eighteen was acting under coercion).

70. While children are immune to prostitution offenses in West Virginia, they can still be charged with solicitation. W. VA. CODE § 61-14-8(a). In defense, a minor can argue that she was coerced into soliciting sex. *Id.*

71. SHARED HOPE INT'L, ELIMINATING THE THIRD PARTY CONTROL BARRIER TO IDENTIFYING JUVENILE SEX TRAFFICKING VICTIMS 2 (2015) (arguing that minors should not have

revamped its sex trafficking laws in August 2018, prosecutors were required to obtain victims' testimony stating they were forced or coerced into prostitution by a third party in order to prosecute the pimps.⁷²

2. States that Allow the Arrest of Minors for Prostitution

The states that continue to allow the prosecution of minors for sex trafficking are Alaska, Arizona, Arkansas, Colorado, Delaware, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Texas, Virginia, Washington, and Wisconsin.⁷³ In

to prove they were forced into prostitution as a defense to a prostitution charge, but rather that their status as minors should exempt them). The third party control requirement is particularly concerning because many children act without a pimp. LUTNICK, *supra* note 14, at 29 (stating that fifty percent of cisgender girls working in the sex trade have a pimp).

72. N.Y. PENAL LAW § 230.34-A(1) (McKinney 2018) (establishing the crime of sex trafficking a minor as intentionally obtaining profits from the sale of a person under the age of eighteen without requiring the child's testimony); Kirstan Conley et al., *Cuomo Announces Plans to Fix State's Weak Sex Trafficking Laws*, N.Y. POST (Apr. 19, 2018, 1:25 PM), <https://nypost.com/2018/04/19/cuomo-announces-plans-to-fix-states-weak-sex-trafficking-laws>.

73. Arkansas offers an affirmative defense for minors accused of sex trafficking, but does not offer immunity. ARK. CODE ANN. § 5-70-102(a)-(c) (West 2013). Although Colorado continues to prosecute minors for sex trafficking, Colorado passed a law in 2017 requiring police to screen prostituted children as possible victims of child sex trafficking. *Compare* COLO. REV. STAT. § 18-7-201(1) (1971), *with* COLO. REV. STAT. § 19-3-317 (2017). Minors in Hawaii will be charged with a petty misdemeanor for prostitution. HAW. REV. STAT. § 712-1200(3) (2019). Although Hawaii was the last state to criminalize sex trafficking, enacting the law in July 2016, Hawaii has recently passed legislation allowing victims to remove prior convictions for prostitution. *Id.*; see Casey Leins, *Hawaii Passes Law Protecting Sex Trafficking Victims*, U.S. NEWS (July 3, 2019, 1:33 PM), <https://www.usnews.com/news/best-states/articles/2019-07-03/hawaii-makes-it-easier-for-sex-trafficking-victims-to-erase-prostitution-convictions>. Iowa allows the county attorney to decide whether to file a delinquency petition or to refer the minor to the Department of Human Services. IOWA CODE § 725.1(b) (2015). Missouri law allows the prosecution of minors for prostitution but provides an affirmative defense for minors under the age of eighteen. MO. REV. STAT. §§ 567.020(1)-(5) (2019). Affirmative defenses are a first step for states by incrementally allowing more rights for minors forced into prostitution. Tessa L. Dysart, *The Protected Innocence Initiative: Building Protective State Law Regimes for America's Sex-Trafficked Children*, 44 COLUM. HUM. RTS. L. REV. 619, 694 (2013). A new law passed by the Missouri house will allow minors under the age of eighteen to petition the court to remove remaining penalties. H.B. 397, 100th Gen. Assemb. § 610.131(1) (Mo. 2019). Oklahoma's law includes a passage stating it is presumed that persons aged sixteen or seventeen were coerced into prostitution. OKLA. STAT. tit. 21, § 1029(C) (2016). However, the law considers children sold into sex trafficking as child prostitutes, not victims. *Id.* § 1029(A). In advancing victims' rights, Oklahoma recently approved a senate bill requiring human trafficking victims to be housed instead of detained. S.B. 1005 § 748(A)(1)-(3) (Okla. 2018). However, the bill does not grant minors immunity, therefore subjecting the minor to prosecution if she is not deemed a victim by the court. *Id.* Texas provides a defense to prostitution for minors, but not immunity. TEX. PENAL CODE § 43.02(C) (West 2019). For statutes pertaining to Alaska, Arizona, Delaware, Idaho, Kansas, Louisiana, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Virginia, Washington, and Wisconsin, see ALASKA STAT. ANN. § 11-66-100(a) (West 2017); ARIZ. REV. STAT. ANN. § 13-3214(A) (LexisNexis 2014); DEL. CODE tit. 11, § 787(g) (2019); IDAHO CODE § 18-5613 (1977); KAN. STAT. ANN. § 21-6419

Alaska, a victim can only escape criminal liability for prostitution if the minor cooperates with law enforcement and provides evidence that leads to the prosecution of a sex trafficker or other third party involved in the victim's sex trafficking.⁷⁴ Although Louisiana allows the prosecution of children for prostitution, the state allows a minor committing a first offense to file an informal adjustment agreement petition⁷⁵ if the child can prove that he or she was sexually exploited and will cooperate with service providers.⁷⁶ Moreover, while Texas does not provide a specific law prohibiting the criminalization of minors for prostitution, the Texas Supreme Court held that a child under fourteen cannot be prosecuted for prostitution.⁷⁷

Many states refuse to amend their prostitution laws because police require the cooperation of victims to aid in the arrest of human traffickers; there are, however, alternative strategies to locate traffickers which do not harm sex trafficking victims.⁷⁸ Idaho, for example, has not updated its prostitution law since 1977.⁷⁹ In these states, law enforcement pressures victims of sex trafficking to testify against their abusers by offering lowered sentences.⁸⁰ There are additional reasons

(West 2012); LA. CHILD. CODE ANN. art. 839(D)(1) (2013); LA. STAT. ANN. § 14:82(A) (2017); ME. STAT. tit. 17-A, § 853-A(1) (2013); MD. CODE ANN. CRIM. LAW § 11-301(c) (West 2010); MASS. GEN. LAWS ch. 272, § 53A(a) (2012); NEV. REV. STAT. § 201.354(1) (2017); N.J. STAT. § 2C:34-1(a)(1) (2013); N.M. STAT. ANN. § 30-9-2 (1989); N.Y. PENAL LAW § 230.00 (McKinney 1969); OHIO REV. CODE ANN. § 2907.21(A)(1)-(2) (LexisNexis 2011); OR. REV. STAT. § 167.007 (2018); VA. CODE ANN. § 18.2-346(A) (2014); WASH. REV. CODE § 9A.88.070 (2012); WIS. STAT. § 944.30(2m) (2013).

74. ALASKA STAT. § 11-66-100(c)(2)-(3).

75. LA. CHILD. CODE ANN. art. 839(D)(1)-(2) (2013). An informal adjustment agreement can be filed by a minor claiming that he or she was sexually exploited for prostitution in order to avoid delinquency proceedings. *Id.*

76. *Id.* § 839(D)(2).

77. TEX. PENAL CODE § 43.02(a); *In re B.W.*, 313 S.W.3d 818, 821, 826 (Tex. 2010) (holding that a child under the age of fourteen cannot consent to a sex act and therefore cannot be charged with prostitution).

78. See INST. OF MED. & NAT'L RES. COUNCIL, CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES: A GUIDE FOR THE LEGAL SECTOR 15 (2014) (stating that officers are successful when participating in undercover sting operations by reaching out to hotels and other venues where sex trafficking occurs). A conjunctive study between the National Research Council and the Institute of Medicine lists alternative strategies police can use to find and arrest sex traffickers, such as investigating journals logged by victims, tracking credit card statements, tracing phone calls, and checking online sex trade advertisements. *Id.* at 16. Some of these efforts require police to exert more energy than it would take to force a victim to provide information; however, these strategies eliminate punishment and emotional stress forced cooperation induces on victims. *Id.*; Owens, *supra* note 54.

79. IDAHO CODE § 18-5613 (1977).

80. Sarah Bendtsen, *Progress Without Protection: How State Laws Are Punishing Child Sex Trafficking Victims*, SHARED HOPE INT'L (June 13, 2018), <https://sharedhope.org/2018/06/progress-without-protection-how-state-laws-are-punishing-child-sex-trafficking-victims>.

why states face challenges in modernizing their legislation.⁸¹ First, some authorities believe victims always choose to engage in prostitution and therefore should be punished.⁸² Second, even states that decriminalized child prostitution may lack effective means to house or rehabilitate victims.⁸³ Third, some states have a facially bona fide reason for their laws, believing detention centers are the safest option for children,⁸⁴ while other critics simply believe there is no better option.⁸⁵ Fourth, some policymakers believe victims will avoid engaging in prostitution if they fear punishment, and without a punitive system, victims will refuse to accept help.⁸⁶

Moreover, while some states have enacted laws criminalizing domestic sex trafficking, states must pass a rehabilitation clause in tandem with their prostitution law.⁸⁷ Although the federal government granted funding through the TVPA for local rehabilitation programs, the funding is not sufficient; thus, some states must initiate their own programs to provide additional funding.⁸⁸ States are often pressured by the media into mandating criminal legislation resulting in increased financial pressures that affect the states' ability to balance their budgets.⁸⁹ For example, after the release of an in-depth sex trafficking report by the *New York Post*, the New York City Council expanded its sex trafficking victims' aid budget to provide victims with access to services.⁹⁰ Although a state can decriminalize child prostitution,

81. See DAVID FINKELHOR & RICHARD ORMROD, U.S. DEP'T OF JUSTICE, PROSTITUTION OF JUVENILES: PATTERNS FROM NIBRS 2 (2004).

82. Clawson & Grace, *supra* note 10, at 139.

83. Bendtsen, *supra* note 80.

84. *Id.*

85. Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL'Y BRIEF 67, 84 (2012).

86. However, the punitive system does not always work, in part because children do not always make the best choices. Bendtsen, *supra* note 80.

87. See Geist, *supra* note 85, at 89-90.

88. DEBORAH GIBBS ET AL., EVALUATION OF SERVICES FOR DOMESTIC MINOR VICTIMS OF HUMAN TRAFFICKING 1-2, 6-5, 6-6 (2015); see, e.g., *Tough Anti-Trafficking Laws Won't Be Effective Without Funds: Officials*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/human-trafficking-laws-in-us_n_6390846 (explaining how some states need to include substantial funding to support domestic victims, as federal funding is primarily used for foreigners trafficked into the United States).

89. Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 456, 478-79 (2006).

90. Yoav Gonen et al., *NY's Lawmakers Are Failing Sex Trafficking Victims in a Big Way*, N.Y. POST (Apr. 17, 2018, 10:08 PM), <https://nypost.com/2018/04/17/nys-lawmakers-are-failing-sex-trafficking-victims-in-a-big-way>. New York's state laws required prosecutors to prove that child sex trafficking victims were not willing participants. *Id.*; see Yoav Gonen et al., *Inside New York's Silent Sex Trafficking Epidemic*, N.Y. POST (Apr. 16, 2018, 2:50 AM), <https://nypost.com/2018/04/16/inside-new-yorks-silent-sex-trafficking-epidemic>. A few months

supplemental funding is necessary to help victims reintegrate back into society.⁹¹

C. NGOs' Ability to Aid Victims of Sex Trafficking

While the federal government claims children are always victims, never prostitutes, laws in twenty-five states allow the arrest of children as prostitutes.⁹² According to NGOs,⁹³ such as Rights4Girls, “there is no such thing as a child prostitute.”⁹⁴ While news articles and laws frequently refer to sex trafficking victims as “child prostitutes,” a movement has emerged to wipe out that term because it indicates that the child chooses, and is capable of making the decision, to pursue prostitution.⁹⁵ These NGOs maintain that children are always forced into prostitution, and states that believe otherwise are hypocritical because every state has codified a statutory rape law.⁹⁶ Some states allow the arrest of minors for prostitution even though the age of consent in those states is eighteen.⁹⁷ Through caselaw, Texas, for example, inconsistently

after this report was released, Governor Andrew Cuomo signed legislation eliminating the requirement. Yoav Gonen, *Cuomo Signs Sex Trafficking Legislation that Closes Loophole*, N.Y. POST (Aug. 15, 2018, 4:44 PM), <https://nypost.com/2018/08/15/cuomo-signs-sex-trafficking-legislation-that-closes-loophole>.

91. See *infra* Part IV.C.

92. Victims of Trafficking and Violence Act of 2000, Pub L. No. 106-386, § 103(8)(A), 114 Stat. 1464, 1470 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); SHARED HOPE INT’L, *supra* note 5, at 3.

93. *Nongovernmental Organization*, BLACK’S LAW DICTIONARY (10th ed. 2014). A nongovernmental organization is defined as “[a]ny scientific, professional, business, or public-interest organization that is neither affiliated with nor under the direction of a government.” *Id.* NGOs are frequently not-for-profit and aid government entities in supporting victims with advocacy, education, shelter, and funding. Marina Tzvetkova, *NGO Responses to Trafficking in Women*, GENDER & DEV., Mar. 2002, at 61-64.

94. *Campaign*, RIGHTS4GIRLS, <http://rights4girls.org/campaign> (last visited Nov. 18, 2019) (campaigning that children are never prostitutes, rather victims and survivors of child rape). Rights4Girls campaigns for policy changes in states that have ineffective protections for child victims of sex trafficking. *Id.*

95. *Id.*; see *supra* note 21 and accompanying text.

96. Compare *United States Age of Consent Map*, *supra* note 20, with SHARED HOPE INT’L, *supra* note 5, at 1-3. The age of consent in the United States ranges from sixteen to eighteen, however, twenty-five states allow the arrest of minors for prostitution regardless of their inability to consent to sex. Compare *United States Age of Consent Map*, *supra* note 20, with SHARED HOPE INT’L, *supra* note 5, at 1-3; see *Statutory Rape*, BLACK’S LAW DICTIONARY (5th pocket ed. 2016) (defining statutory rape as “[u]nlawful sexual intercourse with a person under the age of consent (as defined by statute), regardless of whether it is against that person’s will.”); see also *Campaign*, *supra* note 94 (advocating for statutory reformation and providing media with reports).

97. Compare *United States Age of Consent Map*, *supra* note 20, with SHARED HOPE INT’L, *supra* note 5, at 1-3. The age of consent in Arizona, Delaware, Idaho, Oregon, Virginia, and Wisconsin is eighteen, however, these states allow the arrest of children under eighteen for prostitution. *Id.*

indicates that a child under fourteen cannot sell sex; however, the codified age of consent in Texas is seventeen.⁹⁸

NGOs take various approaches in helping victims of sex trafficking, which vary from grading state law effectiveness to providing shelters.⁹⁹ This Note discusses the effectiveness of these campaigns and will later analyze which measures best aid child victims of sex trafficking.¹⁰⁰ Rights4Girls, The Hope Project, and Shared Hope International are three of the many organization that initiate unique strategies aimed at aiding child victims of sex trafficking.¹⁰¹ Rights4Girls acts as an advocacy group to petition changes in sex trafficking and prostitution laws.¹⁰² The group accomplishes this by executing studies intended to inform policymakers and journalists on the statistics of sex trafficking and by providing anecdotes from victims of child sex trafficking.¹⁰³ Rights4Girls is a national organization based in Washington, D.C. that petitions local and national government officials to change sex trafficking and prostitution laws.¹⁰⁴

The Hope Project is a nonprofit organization which provides services to survivors of sex trafficking, such as assisting girls in court, visiting girls in juvenile detention facilities, providing necessities such as clothing, and providing therapists and mentors to girls.¹⁰⁵ The organization is also in the process of opening a rehabilitation center in an undisclosed location to aid girls in their recovery by addressing physical, mental, emotional, and spiritual recovery.¹⁰⁶ However, the program is limited; it is currently aligned with only two therapists, and the organization is Christian-based, which may deter children of other

98. Compare *United States Age of Consent Map*, *supra* note 20, with SHARED HOPE INT'L, *supra* note 5, at 1-3, and *In re B.W.*, 313 S.W.3d 818, 821 (Tex. 2010) (stating that in Texas, children under fourteen cannot legally consent to sex).

99. *Campaign*, *supra* note 94; *Our Work*, HOPE PROJECT, <http://www.hopeprojectusa.org/our-work> (last visited Nov. 18, 2019); *What We Do*, SHARED HOPE INT'L, <https://sharedhope.org/what-we-do> (last visited Nov. 18, 2019).

100. See *infra* Part IV.C.

101. *Campaign*, *supra* note 94; *Our Work*, *supra* note 99; *What We Do*, *supra* note 99.

102. *Campaign*, *supra* note 94; *Mission and Objectives*, RIGHTS4GIRLS, <http://rights4girls.org/mission> (last visited Nov. 18, 2019).

103. Rights4Girls successfully campaigned the Associated Press to cease using the term "child prostitute" (and other variations of the term). *Stop Using the Term "Child Prostitute"*, CHANGE.ORG, <https://www.change.org/p/associated-press-stop-using-the-term-child-prostitute-2> (last visited Nov. 18, 2019) (stating the campaign obtained victory on April 6, 2016).

104. *Mission and Objectives*, *supra* note 102.

105. *Our Work*, *supra* note 99. Nonprofit is defined as "[u]sing whatever money is earned to help people, esp. through charitable causes, and not to generate any private financial advantage." *Nonprofit*, BLACK'S LAW DICTIONARY (10th ed. 2014).

106. *Our Work*, *supra* note 99.

faiths.¹⁰⁷ Similarly, the organization Girls Educational & Mentoring Services (“GEMS”), a New York-based nonprofit, assists children by providing safe homes but without emphasis on a particular faith.¹⁰⁸

Shared Hope International has a three-pronged approach in its goal to end sex trafficking: prevent, restore, and bring justice.¹⁰⁹ To accomplish these goals, the organization trains first responders to identify sex trafficking victims, creates campaigns to grab the attention of policymakers, journalists, and community leaders, and financially supports safe homes.¹¹⁰ The organization also annually “grades” every state based on their sex trafficking and prostitution laws and lists a timeline of how states’ laws have improved over the years.¹¹¹ There is an extensive network of other advocacy groups which also aid sex trafficking victims.¹¹²

III. CHILDREN ARE FUNNELED INTO A PUNITIVE SYSTEM RATHER THAN TREATED FOR TRAUMA

A majority of children sold through sex trafficking have experienced past abuse and stem from the welfare system.¹¹³ Prostituted children are often runaways seduced by the security and affection offered by sex traffickers.¹¹⁴ Furthermore, children may not be provided with the resources they need to escape their abusers; rather, they are imprisoned or ignored.¹¹⁵ In this Part, Subpart A discusses how children are coerced, stolen, and brought into the sex trafficking market.¹¹⁶ Subpart B discusses how human trafficking became one of the largest organized criminal activities in America and why law enforcement is

107. *Id.*

108. *What We Do*, GIRLS EDUC. & MENTORING SERV., <https://www.gems-girls.org/what-we-do> (last visited Nov. 18, 2019). *But see Our Work*, *supra* note 99 (stating that The Hope Project uses Christian therapists and mentors).

109. *What We Do*, *supra* note 99.

110. *Id.*

111. SHARED HOPE INT’L, *supra* note 57, at 4, 7, 20-26.

112. *See How to Help: Anti-trafficking Organizations Around the World*, CNN (Nov. 2, 2018, 8:43 AM), <https://www.cnn.com/2018/03/05/world/anti-trafficking-organizations-around-the-world/index.html> (listing organizations that work to end human trafficking).

113. Moran, *supra* note 2. Women who consent to practicing prostitution are primarily white middle-class women, while minorities are more likely to be forced into prostitution. SAAR ET AL., *supra* note 4, at 5; Moran *supra* note 2; Jini L. Roby & Melanie Vincent, *Federal and State Responses to Domestic Minor Sex Trafficking: The Evolution of Policy*, 62 SOC. WORK 201, 201, 202 (2017).

114. Roby & Vincent, *supra* note 113, at 201-02.

115. SAAR ET AL., *supra* note 4, at 5.

116. *See infra* Part III.A.

ineffective in combatting sex trafficking.¹¹⁷ Subpart C discusses the health concerns trafficked children incur and the services victims lack.¹¹⁸

A. *Victimization Stems from Vulnerability*

Children are easy targets for sex traffickers because of their vulnerability.¹¹⁹ Pimps who target children for prostitution have been described as “the most brilliant child psychologists on the planet” because they know that children are easily coerced and may not be believed by adults.¹²⁰ Children are evidently at risk of deception, persuaded to remain captive, and can struggle to escape sex trafficking.¹²¹

1. Children Are Susceptible to Deception

When picturing sex trafficking, people often imagine an older male pimp kidnapping and selling a runaway girl around the country.¹²² While this can be the case, each situation is unique and can be more complex.¹²³ First, many children are exploited because of their survival needs.¹²⁴ Although some children may have a home and a family, parents may neglect children’s needs by failing to provide basic necessities like food and water.¹²⁵ Traffickers can fill this need by supplying necessities in exchange for the child’s work.¹²⁶ Other children, acting as the providers for their siblings, are enticed by traffickers who provide monetary income.¹²⁷ In other cases, a victim can become emotionally bound to an older male pimp.¹²⁸ Despite this “love,” the pimp exploits the child’s trust and convinces her to engage in prostitution.¹²⁹ Children are more susceptible to emotional coercion when family members neglect to fulfill emotional needs.¹³⁰ Other reasons why children enter

117. *See infra* Part III.C.

118. *See infra* Part III.C.

119. SAAR ET AL., *supra* note 4, at 5.

120. Joan A. Reid, *Doors Wide Shut: Barriers to the Successful Delivery of Victim Services for Domestically Trafficked Minors in a Southern U.S. Metropolitan Area*, 20 WOMEN & CRIM. JUST. 147, 158 (2010) (quoting an unnamed child protective service provider).

121. *Id.*

122. LUTNICK, *supra* note 14, at 14.

123. *See id.*

124. Roby & Vincent, *supra* note 113, at 202.

125. LUTNICK, *supra* note 14, at 14-15.

126. *Id.*; *see* Roby & Vincent, *supra* note 113, at 202 (calling the exchange of sex for necessities “suival sex”).

127. *Id.* at 15.

128. *Id.* at 15-16.

129. *Id.* at 16.

130. *See id.*

the sex trade vary; some consider it an exciting lifestyle, while others are desperate to fund their drug addiction, often caused by traffickers.¹³¹ Unbeknownst to many, lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) minors are more likely than heterosexual minors to run away from home and engage in the commercial sex trade.¹³² Typically, LGBTQ children are at a higher risk of sex trafficking exploitation because they are marginalized by society.¹³³

Generally, victims need security and stable relationships.¹³⁴ Sex traffickers take advantage of this necessity by developing a “trauma-bond” with the victim—a form of Stockholm Syndrome.¹³⁵ As Harvey Washington, an incarcerated pimp, put it: “With the young girls, you promise them heaven, they’ll follow you to hell. It all depends on her being so love-drunk off of me that she will do anything for me.”¹³⁶ After incarceration, children are at risk of returning to their captors because of their emotional attachment to their pimp, their fear of retribution for getting caught, or the fallacy of necessity.¹³⁷ Some children are persuaded to return by the sense of belonging, while others desire the material benefits their traffickers provide.¹³⁸ Furthermore, pimps are perceived as protectors because, in some situations, they “save” victims from past abuse¹³⁹ and can be less dangerous than purchasers of sex.¹⁴⁰

131. *Id.* at 8, 19-20 (stating that some young women call the lifestyle “glamorous”).

132. *Id.* at 8, 17-18; *Sex Trafficking and LGBTQ Youth*, POLARIS PROJECT (June 2019), <https://polarisproject.org/resources/sex-trafficking-and-lgbtq-youth>.

133. *Sex Trafficking and LGBTQ Youth*, *supra* note 132 (stating that forty percent of homeless youth identify as lesbian, gay, bisexual, transgender, queer, or questioning).

134. Clawson & Grace, *supra* note 10, at 139.

135. *Id.* at 141. The “trauma-bond” is an unhealthy form of relationship a young victim of sex trafficking forms with her pimp that compels her to return to the trade out of a perceived love, fear, or necessity for the trafficker. *Id.* at 141 (defining Stockholm Syndrome as “an extreme form of PTSD otherwise most frequently seen in torture victims”).

136. Ian Urbina, *For Runaways, Sex Buys Survival*, N.Y. TIMES (Oct. 26, 2009), <https://www.nytimes.com/2009/10/27/us/27runaways.html>.

137. Clawson & Grace, *supra* note 10, at 141.

138. *Id.* “The Life” is a term that girls use to describe the glamorization of their life as a sex worker because of the material perks they receive from their traffickers. *Id.*

139. Geist, *supra* note 85, at 76-77.

140. *Id.* (citing a girl who was abused by men purchasing her for sex but treated kindly by her pimp).

2. Young Victims Often Cannot Escape

There are many factors that keep victims from escaping.¹⁴¹ Particularly, sex traffickers develop a trauma-bond in order to secure the victim's emotional attachment and prevent the victim from leaving.¹⁴² In addition, sex traffickers can use intimidation, such as threatening that the victim or the victim's loved ones will be injured if she attempts to escape.¹⁴³ This is particularly problematic for minor victims because children are more easily tricked.¹⁴⁴ Lying can also transcend into financial intimidation.¹⁴⁵ Traffickers can trick the victim into believing she, or her family members, owe a debt to the trafficker.¹⁴⁶ This "debt" can increase as the victim continues to rely on the trafficker for a place to stay, food, and other necessities that the trafficker provides.¹⁴⁷

B. Sex Trafficking Is a Successful Criminal Enterprise

Human trafficking is the fastest growing criminal enterprise in the world,¹⁴⁸ particularly because it is difficult to locate traffickers and identify victims.¹⁴⁹ Traffickers find groups of vulnerable children, trapped in either homelessness, prisons, or shelters, and funnel them from their desperate situations towards perceived protection.¹⁵⁰ Traffickers are successful because victim identification training for law enforcement is inadequate and the victims' placements frequently fail to actually provide beneficial aid.¹⁵¹ It is imperative to issue proper training

141. See Brittany Salinas, *Why Don't Victims of Trafficking Just Run Away?*, OPERATION UNDERGROUND RAILROAD (Mar. 31, 2018), <http://ourrescue.org/blog/dont-victims-trafficking-just-run-away>. Elizabeth Smart, a survivor of human trafficking, commented on why she did not leave her captor, stating, "[i]t's not because any one of us enjoys being hurt. It's not because any one of us enjoys being raped or kidnapped. It's because we do everything we can to survive, and there's reasons why we make those decisions." *Id.*

142. *Id.*

143. *Id.*

144. *Human Trafficking in the United States, Canada, and Latin America*, COVENANT HOUSE, <https://www.covenanthouse.org/homeless-issues/human-trafficking> (last visited Nov. 18, 2019).

145. Salinas, *supra* note 141.

146. *Id.*

147. *Id.*

148. Victims of Trafficking and Violence Act of 2000, Pub L. No. 106-386, § 102(b)(8), 114 Stat. 1464, 1467 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); LUTNICK, *supra* note 14, at 1.

149. Clawson & Grace, *supra* note 10, at 139 (stating that traffickers' use of the Internet makes it difficult to identify victims).

150. *Id.* at 140-41; Annie Kelly & Mei-Ling McNamara, *Modern Slavery: How We Exposed Deadly Sex Trafficking in US Prisons*, THE GUARDIAN (July 5, 2018, 1:51 PM), <https://www.theguardian.com/membership/2018/jul/05/the-trap-women-sex-trafficking-us-prisons-jails-documentary>.

151. Clawson & Grace, *supra* note 10, at 139.

for law enforcement because police are typically the first legal point of contact for sex trafficking victims.¹⁵²

1. Traffickers Are Expanding Their Ability to Recruit Sex Workers

Sex traffickers are successful in recruiting vulnerable women from various outlets, such as prison.¹⁵³ Traffickers are able to gain access to personal information about female inmates by searching through government websites to locate their court dates and bail prices.¹⁵⁴ Some states allow anyone—including traffickers—to pay off bail; the traffickers then threaten to send the woman back to prison unless she sells sex.¹⁵⁵ If traffickers are unable to pay bail, they send letters and money to women in prison to establish relationships.¹⁵⁶ Traffickers also target female inmates with drug addictions as a mechanism of control by providing them with drugs in exchange for work.¹⁵⁷ Additionally, traffickers infiltrate the sanctuaries used to escape trafficking: shelters.¹⁵⁸ Some traffickers are able to track down runaway children they previously sold into the sex trade by searching local shelters.¹⁵⁹ In other cases, traffickers simply recruit children by waiting outside the facility or by sending other victims into the facilities in order to recruit them as peers.¹⁶⁰

More recently, traffickers have adapted to technological advances and are adept at using social media to target children.¹⁶¹ In general, the Internet is playing an increasing role in trafficking minors.¹⁶² Traffickers

152. INST. OF MED. & NAT'L RES. COUNCIL, *supra* note 78, at 13.

153. Kelly & McNamara, *supra* note 150. Kate, whose name was altered in an article in *The Guardian*, stated she and other women were recruited while in prison to participate in the sex trade. *Id.* The person recruiting them was a convicted sex offender. *Id.*

154. Annie Kelly & Mei-Ling McNamara, *Revealed: How U.S. Sex Traffickers Recruit Jailed Women for Prostitution*, THE GUARDIAN (June 29, 2018, 2:00 PM), <https://www.theguardian.com/global-development/2018/jun/29/revealed-how-us-sex-traffickers-recruit-jailed-women-for-prostitution-the-trap>.

155. *Id.*

156. *Id.*

157. Moran, *supra* note 2. Rachel Moran—who was fourteen when she was first sex-trafficked—resorted to using cocaine to “dull the pain” of the psychological stress she endured. *Id.*; see Kelly & McNamara, *supra* note 150.

158. Clawson & Grace, *supra* note 10, at 140-41.

159. *Id.*

160. *Id.* at 141.

161. Gabrielle Fonrouge, *The Sick Tactics Sex Traffickers Use to Find Victims*, N.Y. POST (Apr. 17, 2018, 11:05 PM), <https://nypost.com/2018/04/17/how-sex-traffickers-hunt-for-victims-and-brainwash-them>. Interviews with FBI specialists, District Attorneys, and heads of NGOs revealed that traffickers often use social media to engage with children online. *Id.* These interactions allow sex traffickers to create online façades to act as the child's peer. *Id.*

162. VANESSA BOUCHÉ, THORN, SURVIVOR INSIGHTS: THE ROLE OF TECHNOLOGY IN

are able to disguise themselves by creating online profiles where they act as the minors' peers.¹⁶³ Other traffickers, however, do not hide their profession but rather use the Internet to communicate with children struggling with emotional issues in order to provide them with a perceived "better life."¹⁶⁴ Despite their illegality, sex trafficking advertisements are still present online despite their illegality.¹⁶⁵

2. Current Training for Police Officers Is Inadequate

Many states lack unified protocol for identifying victims.¹⁶⁶ Instead of training law enforcement on how to properly identify a child as a victim, many officers have the preconception that children choose to become sex workers and therefore should be subjected to criminal proceedings.¹⁶⁷ By focusing on arresting and prosecuting minors accused of prostitution, law enforcement wastes efforts that could be diverted to target pimps and people purchasing sex.¹⁶⁸ In addition, some states

DOMESTIC MINOR SEX TRAFFICKING 5 (2018). A survey commissioned by Thorn questioned 260 minor sex trafficking survivors from fourteen states about the role technology played in their recruitment. *Id.* The survey revealed that fifty-five percent of traffickers in 2015 utilized technology to initially contact victims. *Id.* at 6.

163. Fonrouge, *supra* note 161. Erin Williamson, a representative from the anti-trafficking organization Love 146 explained the tactic as follows:

It can be an individual who is on Facebook and is friend-requesting all of the students who say they attend a certain middle school. And then when one or two accept, they friend-request all of their friends and so on By the time they're friend-requesting a vulnerable youth, they have 30 mutual friends, and they seem that they're legitimate.

Id.

164. Yoav Gonen et al., *Sex Traffickers Are Using Social Media to Target Children*, N.Y. POST (Apr. 16, 2018, 2:14 AM), <https://nypost.com/2018/04/16/sex-traffickers-are-using-social-media-to-target-children>. Although posting advertisements regarding sex trafficking is illegal, there is such a high-volume of sex trafficking websites that federal and state human-trafficking task forces do not have the means to shut down every single website. *Id.*

165. Tom Jackman, *Trump Signs 'FOSTA' Bill Targeting Online Sex Trafficking, Enables States and Victims to Pursue Websites*, WASH. POST (Apr. 11, 2018, 11:41 AM), https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?utm_term=.fdef71708dab. In 2018, President Donald Trump signed the Stop Enabling Sex Traffickers Act ("SESTA") and the Allow States and Victims to Fight Online Sex Trafficking Act ("FOSTA") which amended the Communications Decency Act to exclude federal and state sex trafficking laws from the Act's Internet immunity from civil liability. *Id.*; Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, § 2, 132 Stat. 1253, 1253 (2018). When FOSTA passed, Backpage.com, an advertising website, shut down because the government had reason to believe the website knowingly accepted advertisements facilitating child sex trafficking. *Id.* Before it shut down, around 600 to 800 sex trafficking advertisements were posted on it every day. Gonen et al., *supra* note 164. State and federal task forces still struggle to locate and seize the numerous sex trafficking advertisements and websites posted daily. *See id.*

166. Clawson & Grace, *supra* note 10, at 139.

167. *Id.*

168. Geist, *supra* note 85, at 70, 80.

continue to allow the arrest of victims because officials believe victims will not cooperate with police to assist in the detainment of a perpetrator unless they are arrested and forced to comply.¹⁶⁹ Although it does not justify punishment, this can occur when children develop “trauma-bonds” and refuse to betray the closest person to a family member they have.¹⁷⁰ But, police training currently focuses on arresting victims rather than finding alternative paths to help victims depart from the sex trade.¹⁷¹

C. *What Happens to Victims of Sex Trafficking?*

Funneling children through the juvenile justice system has been proven ineffective and rehabilitation programs are found to be scarce and underfunded.¹⁷² In addition, shelters are generally unreliable and can actually serve as sources for sex traffickers to lure victims.¹⁷³ Children are subjected to various health related issues because of the abuse they endure and because they are unable to receive adequate shelter care.¹⁷⁴

1. Participation in the Sex Trade Can Permanently Damage a Child’s Health

There are many health-related issues associated with sex trafficking.¹⁷⁵ Children who are forced into sex trafficking typically experience mental and physical ailments.¹⁷⁶ Physically, children can be subjected to broken bones, bruising, malnourishment, sexually transmitted diseases, and medical issues associated with addictions.¹⁷⁷ These physical health issues often arise from beatings and rapes and are often left untreated.¹⁷⁸ Girls can also face pregnancy complications as a result of sexual assault.¹⁷⁹ In addition, pregnancy can be purposeful and

169. See SHARED HOPE INT’L, *supra* note 71, at 2-3; see Owens, *supra* note 54 (“35 percent of victims were arrested by law enforcement.”).

170. The trauma-bond is a relationship a victim of sex trafficking develops when the victim believes she is in love with her trafficker and therefore feels compelled to return to him. Clawson & Grace, *supra* note 10, at 141.

171. Geist, *supra* note 85, at 70, 80.

172. SAAR ET AL., *supra* note 4, at 12 (stating that imprisonment subjects girls to psychological and physical harm which re-traumatizes girls).

173. Clawson & Grace, *supra* note 10, at 141; see *infra* Part III.B.

174. Clawson & Grace, *supra* note 10, at 138.

175. *Id.*

176. *Id.*

177. *Id.*

178. U.S. DEP’T OF HEALTH & HUMAN SERV. ADMIN. FOR CHILDREN, YOUTH & FAMILIES, GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN & YOUTH IN THE U.S. 5 (2014) [hereinafter U.S. DEP’T OF HEALTH AND HUMAN SERV.].

179. Hanni Stoklosa et al., Commentary, *Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing*, 19 AMA J. ETHICS 23, 25 (2017) (“71.2 percent of 66 respondents reported at least one unwanted pregnancy during the period of their

used by sex traffickers to further a girl's trauma-bond.¹⁸⁰ Addictions can arise as a coping mechanism or created by a trafficker who coerces or forces a victim to use drugs in order to make the victim complicit.¹⁸¹

Mentally, children can experience post-traumatic stress disorder, extreme anxiety, self-harm, shame, guilt, and hopelessness.¹⁸² A mental health service in South London found that fifteen percent of trafficking victims who received services showed signs of schizophrenia and other similar disorders.¹⁸³ In fact, many sex traffickers advantageously choose to exploit children rather than adults because they are inherently easier to trick and are less able to defend themselves.¹⁸⁴ Moreover, children's beliefs are often altered due to sex trade involvement, such as by developing an inability to trust others.¹⁸⁵ Arrests enhance a child's distrust of law enforcement.¹⁸⁶ The culmination of physical, mental, and personality changes inflate the trauma victims already face.¹⁸⁷

2. The Problem with Shelters

Children who manage to avoid prosecution may end up either in shelters with inadequate services or back with their captors.¹⁸⁸ Currently, many homeless youth shelters have time restrictions, which makes it virtually impossible to help children receive the facilities they need before releasing them back on the streets.¹⁸⁹ Shelters are also poorly equipped to provide services geared towards sex trafficking victims because they receive an onslaught of children who are homeless for

exploitation . . . 55.2 percent of the 67 female survivors reported at least one abortion.”).

180. *Id.*

181. U.S. DEP'T OF HEALTH AND HUMAN SERV., *supra* note 178, at 6. Sixty-six percent of clients reported to an anti-trafficking service provider that drug use led to them being trafficked, while 84.3% of sex trafficking survivors nationwide reported that they used substances while trafficked. Stoklosa et al., *supra* note 179, at 26. The survey showed that over fifty percent of victims used cocaine, and about twenty-two percent used heroin. *Id.* (“Opioids in particular are an effective coercion tool for traffickers because they numb both emotional and physical pain.”).

182. Clawson & Grace, *supra* note 10, at 138-39.

183. Stoklosa et al., *supra* note 179, at 26.

184. Fanny Busuttill, *Child Prostitution*, HUMANIUM (Dec. 12, 2011), <https://www.humanium.org/en/child-prostitution>. Humanium is a nongovernmental organization that defends children's rights internationally. *Id.*

185. U.S. DEP'T OF HEALTH & HUMAN SERV., *supra* note 178, at 6.

186. TRAFFICKING VICTIMS ADVOCACY PROJECT, CRIMINALIZATION OF TRAFFICKING VICTIMS 2 (2015) (submission to the United Nations Universal Periodic Review of United States of America).

187. *Id.*

188. Clawson & Grace, *supra* note 10, at 139-41 (stating police lack unified protocols to identify victims and address their needs even though these victims often came in contact with case workers, school counselors, and shelter workers).

189. *Id.* at 140.

reasons superseding sex trafficking.¹⁹⁰ Moreover, juvenile detention centers are typically ineffective because they can cause a reemergence of trauma and act as a punishment rather than a remedy.¹⁹¹ In fact, detention centers can even act as breeding grounds for sex trafficking.¹⁹² Because shelters and detention centers are poorly equipped, victims are unable to secure the aid they require and can instead revert to the sex trade.¹⁹³

IV. STATES MUST DECRIMINALIZE CHILD PROSTITUTION AND PROVIDE VICTIMS WITH REINTEGRATION SERVICES

While it is apparent that the prostitution of children must be decriminalized, the law cannot simply evaporate with no alternative.¹⁹⁴ When police find prostituted children, they need to work alongside the children to provide rehabilitation services and assist in reintegration procedures.¹⁹⁵ States must provide trauma therapy, access to the community, education, and general support.¹⁹⁶ The best avenue for change is to require states to provide safe homes, affording children access to protection and enabling their ability to reenter society while under the supervision of a support team.¹⁹⁷ This Part discusses the best theories on how to decriminalize prostitution nationwide while instituting support systems with the goals of spotting trafficking, sheltering children, and restoring them.¹⁹⁸

Each Subpart in this Part discusses the distinct benefits and issues that may arise when implementing statewide systematic change.¹⁹⁹ In particular, this Part argues that, along with the decriminalization of minor prostitution, trauma therapy and safe homes are the optimal remedies to assist children in their quest to escape sex trafficking and

190. *Id.* (“Shelters are equipped for runaways; not trafficking victims.”).

191. SAAR ET AL., *supra* note 4, at 12; Clawson & Grace, *supra* note 10, at 140 (stating prisons often treat girls for the crimes they were arrested for, which are not necessarily prostitution related offenses, thus treatment plans fail to address the trauma these girls face).

192. Kelly & McNamara, *supra* note 150 (stating that women and girls are recruited to participate in sex trafficking with the promise of a better life after detention).

193. SAAR ET AL., *supra* note 4, at 9, 12.

194. *See id.* at 28-29.

195. *See id.* at 12, 26.

196. *See Our Work*, *supra* note 99 (listing ways for sex trafficking victims to receive aid). General support includes developing a shelter in an undisclosed location, creating a task force, implementing a mentor program, and providing legal assistance. *Id.*

197. *See* Jacqueline Gullede, *Ways to Help Sex Trafficking Victims in the U.S.*, CNN (July 23, 2015, 3:08 PM), <https://www.cnn.com/2015/07/15/world/iyw-how-to-help-victims-of-human-trafficking/index.html> (listing safe houses available to sex trafficking victims).

198. *See infra* Parts IV.A–C.

199. *See infra* Parts IV.A–C.

reintegrate back into society.²⁰⁰ However, before a state can implement a rehabilitation system, it must map alternative strategies to criminalization.²⁰¹ Subpart A discusses how to decriminalize the prostitution of minors by referencing model laws and comparing prostitution statutes in other countries.²⁰² Subpart B discusses how to raise awareness of sex trafficking, which will prepare those who are in proper positions to spot victims and intervene.²⁰³ Subpart C discusses how states can implement successful shelters for victims.²⁰⁴ There is no single solution to help children who are sex trafficked, but rather a systematic alteration in how victims are perceived and treated is required, in addition to a coalition created among local and federal governments, law enforcement, NGOs, medical professionals, and community organizations to help children heal.²⁰⁵

A. *The Prostitution of Minors Must Be Decriminalized*

Penalizing minors for prostitution by imprisoning them is an ineffective way to achieve states' goals of preventing future prostitution.²⁰⁶ Rather, the juvenile justice system fails to properly handle victims dealing with trauma, instead enhancing it.²⁰⁷ Therefore, a state must first spare victims from increasing their trauma and instead address it in a healthy and supportive environment.²⁰⁸ In order to decriminalize the prostitution of minors, states must implement successful policies from various regions.²⁰⁹

1. States Must Reclassify Victims and Require the Filing of Child Abuse Reports

The first step for states which continue to require victims to prove a third party forced the victim to commit prostitution is to abolish the third party-proof requirement altogether.²¹⁰ States must then follow the TVPA and decriminalize child prostitution by reclassifying prostituted minors

200. See *infra* Parts IV.A–C.

201. See *infra* Part IV.A.

202. See *infra* Part IV.A.

203. See *infra* Part IV.B.

204. See *infra* Part IV.C.

205. U.S. DEP'T OF HEALTH & HUMAN SERV., *supra* note 178, at 7.

206. Geist, *supra* note 85, at 74.

207. SAAR ET AL., *supra* note 4, at 5; Geist, *supra* note 85, at 74.

208. SAAR ET AL., *supra* note 4, at 5, 30-31.

209. See JENNA ANDRIANO, THE ADVOCATES FOR HUMAN RIGHTS, SEX TRAFFICKING AND PROSTITUTION: AN OVERVIEW OF FOUR LEGAL RESPONSE MODELS 3-4 (2015).

210. See SHARED HOPE INT'L, *supra* note 71, at 2. Some states continue to require third party proof even when the child is too young to consent to having sex. *Id.*

as victims.²¹¹ Reclassification is necessary to emphasize the importance of viewing children as victims rather than delinquents.²¹² After Suffolk County, Massachusetts, initiated a reclassification, child abuse referrals increased from seven from 2001–2003 to 400 from 2005–2010.²¹³

Moreover, when classifying prostituted minors as victims, states must define “minor.”²¹⁴ While it is ideal for states to consider prostituted children of the age eighteen and younger as victims of sex trafficking, it is difficult to justify if states do not consider eighteen-year-olds as minors under other laws.²¹⁵ Thus, the age chosen should be consistent throughout the state’s jurisprudence.²¹⁶ Particularly, states should adopt the age used in statutory rape laws because a younger age will contradict the states’ outlook on the protection of minors.²¹⁷ To stay consistent with most statutory rape laws and federal guidelines, most states should choose sixteen as their threshold, if not eighteen.²¹⁸

The main counter argument to decriminalization is that if children are not forced to comply with law enforcement, they will instead return to their traffickers.²¹⁹ Thus, the solution is to file a child abuse report, which will allow police to obtain custody of a child for the purposes of placing her in a safe home rather than prison.²²⁰ This report can then be

211. Victims of Trafficking and Violence Act of 2000, Pub L. No. 106-386, § 1593(c), 114 Stat. 1464, 1488 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.). The TVPA states, “the term ‘victim’ means the individual harmed as a result of a crime under this chapter, including . . . a victim who is under 18 years of age” *Id.*

212. Bendtsen, *supra* note 80.

213. Geist, *supra* note 85, at 89.

214. See CAROLYN COCCA, *JAILBAIT: THE POLITICS OF STATUTORY RAPE LAWS IN THE UNITED STATES* 2, 140 (2004).

215. See *United States Age of Consent Map*, *supra* note 20.

216. COCCA, *supra* note 214, at 2, 140.

217. See *id.* at 2 (explaining that statutory rape legislation varies from state to state with respect to a number of laws—for example, the age of consent, the mandatory age difference between perpetrator and victim, and the penalties imposed for violations).

218. See 18 U.S.C. § 2243(a)(1) (2012); *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1572-76 (2017); see also *United States Age of Consent Map*, *supra* note 20.

219. Ali Watkins, *She Ran Away from Foster Care. She Ended up in Handcuffs and Leg Irons*, N.Y. TIMES (Dec. 6, 2018), <https://www.nytimes.com/2018/12/06/nyregion/foster-children-arrest-warrants-nyc.html> (stating that sixteen-year-old Nevayah was arrested after informing her caseworker that she was going to take a bus to Ohio to live with her mother). Chanel Caraway, a spokeswoman for the Administration for Children’s Services (“ACS”), discussed the benefits of issuing warrants to arrest children, stating “[w]arrants can be helpful in locating children because they engage law enforcement resources.” *Id.* However, the ACS acknowledged that the practice can be problematic. *Id.* Caraway stated, “[ACS has] taken a number of steps to ensure that we only seek warrants in cases where they’re necessary.” *Id.* Betsy Kramer, the Director of Special Litigation at Lawyers for Children, commented on this practice, stating that “[i]t’s disturbing that New York does this. These are kids that have committed no crime, and it’s particularly disturbing because they’re the most vulnerable kids.” *Id.*

220. See DAVID FINKELHOR & RICHARD ORMROD, U.S. DEP’T OF JUSTICE, CHILD ABUSE

funneled to a team of service providers, such as victim advocates, child welfare workers, police officers, and representatives from community groups that shelter children and treat trauma.²²¹ The team effort will help screen victims of sex trafficking to assess how to best situate the child to address her needs.²²² The team is essential because many children are unaware that they are victims and may attempt to return to their pimp, who they see as their caretaker.²²³ Having a support team allows the child to strategize ways to leave her pimp—mentally and physically—and work towards recovery.²²⁴ In addition, while the team is in the best position to help the victim, police officers can work on the investigation aspect and focus solely on arresting pimps and purchasers of sex.²²⁵

It is imperative for states to use child abuse reports instead of police reports because arrest records can limit a victim's ability to secure a stable future.²²⁶ In addition to causing mental anguish, incarceration can prevent victims from obtaining future employment.²²⁷ Hindering employment opportunities can funnel victims back into a cycle of sexual abuse to prison, as they revert to the only profession they know: prostitution.²²⁸ In addition, arrest records make it difficult for trafficking victims to obtain housing and can hinder the immigration status of children petitioning to become United States citizens.²²⁹

REPORTED TO THE POLICE 1-2 (2001). Department of Justice representatives state that child abuse reports should be filed in every instance of abuse, not just when parents harm their children. *Id.* Safe homes are better equipped than prisons to target the types of trauma victims of sex trafficking face. *See Safe Housing Options*, OFF. FOR VICTIMS CRIME, <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/44-comprehensive-victim-services/safe-housing-options> (last visited Nov. 18, 2019).

221. *See* DARLENE LYNCH & KIRSTEN WIDNER, BARTON CHILD LAW AND POLICY CLINIC, EMORY LAW, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN GEORGIA: SERVICE DELIVERY AND LEGISLATIVE RECOMMENDATIONS FOR STATE AND LOCAL POLICY MAKERS 44 (2008).

222. *Actions DCF Takes When Child Abuse or Neglect Is Reported*, MASS.GOV, <https://www.mass.gov/info-details/actions-dcf-takes-when-child-abuse-or-neglect-is-reported#dcf-screening-of-child-abuse-or-neglect-reports-> (last visited Nov. 18, 2019). After receiving child abuse reports, law enforcement in Massachusetts conducts thorough screenings to locate outlets to funnel child abuse victims through. *Id.* The Department of Children & Families will gather information, review the child's history, and seek clinical consultation. *Id.*

223. *See* Clawson & Grace, *supra* note 10, at 141.

224. *See* LUTNICK, *supra* note 14, at 47, 56-57.

225. *See* Geist, *supra* note 85, at 91.

226. Eleanor Goldberg, *Sex Trafficking Victims Usually Can't Escape Prostitution Charges. This Lawyer's Working to Change That*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/sex-trafficking-prostitution-charges_n_7119474.

227. *Id.*

228. *Id.*; *see* SAAR ET AL., *supra* note 4, at 13.

229. SUZANNAH PHILLIPS ET AL., INT'L WOMEN'S HUMAN RIGHTS CLINIC, CLEARING THE SLATE: SEEKING EFFECTIVE REMEDIES FOR CRIMINALIZED TRAFFICKING VICTIMS 5 (2014).

2. The United States Can Use Other Countries as Inspiration but Not as Models

Some commentators of prostitution laws claim the best avenue to end underground prostitution is to adopt the Nordic Model, named because it was founded in Sweden and implemented in Norway, as well as Iceland, and Canada.²³⁰ Essentially, the law criminalizes purchasing sex but not the act of prostituting oneself.²³¹ After Sweden implemented the Nordic Model, the percentage of men purchasing sex dropped from approximately 13.6% to 8%.²³² Although the Nordic Model does not allow the prosecution of women for prostitution, it fails to address the women's or children's need for assistance.²³³ It also creates the presumption that it is acceptable for women to sell their bodies as long as they consent to the transaction.²³⁴ The United States can follow the Nordic Model's emphasis on harsh punishment for those who purchase sex; however, it should not legalize the selling of sex on the street because people who are found prostituting may not receive the intervention they need.²³⁵ This solution is particularly problematic because of the health and safety concerns associated with prostitution.²³⁶ The Nordic Model also limits the ability for police to question sex workers who may, unbeknownst to the officer, be minors.²³⁷

Two other models which tackle the problems associated with prostitution are (1) legal but regulated prostitution and (2) fully

230. Moran, *supra* note 2.

231. Max Waltman, *Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential*, 34 *WOMEN'S STUD. INT'L F.* 449, 449 (2011).

232. Statens Offentliga Utredningar [SOU] 2010:49 *The Ban Against the Purchase of Sexual Services. An Evaluation 1999-2008*, at 32 [government report series] (Swed.); Moran, *supra* note 2.

233. Moran, *supra* note 2. Rachel Moran, a sex trafficking survivor and founder of Survivors of Prostitution Abuse Calling for Enlightenment, International argues the United States should not adopt the Nordic Model and that men should receive harsher fines for purchasing sex, particularly because men who purchase sex, on average, are married college graduates with average incomes of \$120,000. *Id.* Moran argues those fines should be used to pay for victims' housing, counselling, and other needs. *Id.*

234. See Waltman, *supra* note 231, at 450, 463 (stating that courts and legislative bodies frequently presume that consent is present, ignoring the possible victimization of sex workers).

235. CHALLENGING THE INTRODUCTION OF THE NORDIC MODEL: THE SMART SEX WORKER'S GUIDE, GLOBAL NETWORK OF SEX WORK PROJECTS 12 (2018) (stating that the Nordic Model increases the social stigma against sex workers and fails to provide sex workers with the proper services to help them change their profession) [hereinafter CHALLENGING THE INTRODUCTION OF THE NORDIC MODEL].

236. Waltman, *supra* note 231, at 453 (stating that female sex workers have a higher risk of homicide: approximately 204 homicides are committed per 100,000 sex workers compared to 4 homicides per 100,000 men and women in standard occupations).

237. CHALLENGING THE INTRODUCTION OF THE NORDIC MODEL, *supra* note 235, at 6-7; INST. OF MED. & NAT'L RES. COUNCIL, *supra* note 78, at 14.

decriminalized prostitution.²³⁸ In New Zealand and parts of Australia, there are no prostitution regulations or penalties.²³⁹ The countries enacted legalized but regulated prostitution believing it would limit underground operations.²⁴⁰ However, when Victoria, Australia legalized prostitution under this theory, there was a 300% increase in illegal brothels, in part because there was a black market for underaged prostitution.²⁴¹ This Model also fails to establish a resource plan to provide medical care, housing, or rehabilitation programs for sex workers.²⁴² In countries that follow legalized but regulated prostitution, such as Austria, Brazil, and Germany, the government allows people to purchase and sell sex through voluntary prostitution, but only provides sex workers with protections in regulated brothels.²⁴³ However, this Model is often criticized by pro-decriminalization advocates because it impedes an individual's autonomy and is criticized by pro-criminalization advocates because it legalizes what some consider an immoral act.²⁴⁴

B. Increasing Exposure and Spotting Victims of Sex Trafficking

While many Americans recognize human trafficking is an international issue, they fail to realize that it is prevalent in America.²⁴⁵ In order to tackle the issue of domestic sex trafficking, people must

238. ANDRIANO, *supra* note 209, at 3.

239. *Id.*

240. *Id.*

241. BRENDA ZURITA, THE BEVERLY LAHAYE INST., CHILDREN IN PROSTITUTION 6 (2012).

242. ANDRIANO, *supra* note 209, at 3.

243. *Id.*

244. *Id.*; *Prostitution: Is There Anything Wrong with Selling Sex?*, BBC, <http://www.bbc.co.uk/guides/ztkpcdm> (last visited Nov. 18, 2019). Pro-decriminalization advocates argue that sex workers should be allowed to regulate themselves and choose their own venue to practice in. ANDRIANO, *supra* note 209, at 3; *Prostitution: Is There Anything Wrong with Selling Sex?*, *supra*.

245. Nicholas Kristof, *What About American Girls Sold on the Streets?*, N.Y. TIMES (Apr. 23, 2011), https://www.nytimes.com/2011/04/24/opinion/24kristof.html?_r=1. Nicholas Kristof, a human rights correspondent for the New York Times, criticized Americans for having a feigned sympathy for human trafficking victims:

When we hear about human trafficking in India or Cambodia, our hearts melt . . . But in the United States we see girls all the time who have been trafficked—and our hearts harden. The problem is that these girls aren't locked in cages. Rather, they're often runaways out on the street wearing short skirts or busting out of low-cut tops, and many Americans perceive them not as trafficking victims but as miscreants who have chosen their way of life. So even when they're 14 years old, we often arrest and prosecute them—even as the trafficker goes free.

Id. The United States is the one of the worst countries in the world for human trafficking and is the largest consumer of sex. Andrew Keiper & Perry Chiaramonte, *Human Trafficking in America Among Worst in World: Report*, FOX NEWS (June 23, 2019), <https://www.foxnews.com/us/human-trafficking-in-america-among-worst-in-world-report>.

become aware that it is occurs here.²⁴⁶ This can be achieved by increasing accurate media representation of victims, informing the general public of the issue, and training those in the best position to tackle the issue to spot signs of sexual trauma.²⁴⁷ There are many groups that are in keen positions to spot victimization.²⁴⁸ For example, as sex traffickers increasingly utilize technology to recruit victims of sex trafficking, tech companies must play a role in prevention.²⁴⁹ This list can be exhaustive; thus, this Note focuses on the key groups that have direct supervision over children as well as groups that impact society's ability to comprehend the complexities of the sex trafficking industry, such as journalists.²⁵⁰

1. Training Law Enforcement

Police must learn how to better spot human trafficking victims so they can divert victims to safe homes instead of placing them under arrest.²⁵¹ Some police forces are still unable to differentiate a consensual sex worker from a forced sex worker, which is how some victims end up imprisoned.²⁵² First, if an officer apprehends a minor sex worker, the officer must be trained to immediately understand, without contemplation, that the minor is a victim, not a sex worker.²⁵³ Second, law enforcement must be trained on how to detect sex trafficking victims.²⁵⁴ Although Delaware has yet to pass a law stating that prostituted children are victims of sex trafficking, the state police force recently underwent a major training operation to detect human trafficking violations and learn how to administer aid to victims.²⁵⁵ Following the passage of anti-trafficking legislation, the number of human trafficking reports in Delaware increased from six reports in 2015

246. Clawson & Grace, *supra* note 10, at 140.

247. BOUCHÉ, *supra* note 162, at 10.

248. *Id.*

249. *Id.*

250. *See infra* Part IV.B.1–3.

251. RICH WILLIAMS, SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD TRAFFICKING, NATIONAL CONFERENCE OF STATE LEGISLATURES 5, 8 (2017).

252. ROBERT MOOSSY, NAT'L CRIMINAL JUSTICE REFERENCE SERV., SEX TRAFFICKING: IDENTIFYING CASES AND VICTIMS 3 (2008).

253. *See id.*

254. INST. OF MED. & NAT'L RES. COUNCIL, *supra* note 78, at 13-15.

255. Taylor Goebel, *Sex Trafficking: Police Get Special Training to Spot It Early*, DELMARVA NOW (Oct. 9, 2018, 6:00 AM), <https://www.delmarvanow.com/story/news/local/delaware/2018/10/09/sex-trafficking-police-get-special-training-spot-early/1369477002>. Maryland State Police Corporal Officer Chris Heid estimates that out of the 2000 prostituted girls he encountered over eight years, five were consensual sex workers. *Id.*

to twenty-two reports in 2016.²⁵⁶ Training informs police how to properly draft victim reports to facilitate required services.²⁵⁷

2. Training Teachers

The most obvious people who can help identify symptoms of sex abuse are parents and other immediate family members; however, as previously discussed in Part III, a child's guardian can be neglectful or purposefully engage the child in sex trafficking.²⁵⁸ Therefore, when a guardian is unable or unwilling to help a victim of sex trafficking, other groups must also be aware of the signs sex trafficking victims exhibit in order to intervene.²⁵⁹

Teachers and other school officials are in the best position to intervene when verbally or observationally notified that a child is at risk of sexual servitude, particularly because children spend a significant amount of time in school.²⁶⁰ Thus, teachers, as mandatory reporters, must become adept at spotting abuse.²⁶¹ Rarely, notification of involvement manifests when a child confides in a teacher; rather, school officials must look out for other signs, such as unexplained absences, running away from home, discussing travel without parents, discussing an older boyfriend or girlfriend, or using sexual terminology outside age-specific norms.²⁶² While these signs are fairly unique to sex trafficking victims, there are many signs that can indicate involvement in the sex trade but

256. *Id.*

257. *See id.* (“We joke sometimes that most of what we do is not being a police officer. It’s being a social worker.”).

258. FINKELHOR & ORMROD, *supra* note 81; LUTNICK, *supra* note 14, at 14-15; *see supra* Part III.A.

259. U.S. DEP’T OF HEALTH & HUMAN SERV., *supra* note 178, at 2. For example, neighbors who observe suspicious activity are able to notify authorities. *Id.* A Memphis pimp was sentenced to twenty-seven years in prison for child sex trafficking after a neighbor called authorities to report suspicious activities occurring around his neighbor’s home. *Id.* at 2 n.5.

260. BOUCHÉ, *supra* note 162, at 10.

261. *Mandatory Reporting*, BLACK’S LAW DICTIONARY (10th ed. 2014). Mandatory reporting is defined as “[t]he statutory duty of certain people to inform an authority about certain activities that are or may be unlawful, such as financial, sexual, or other types of abuse.” *Id.*

262. *Risk Factors and Indicators*, NAT’L CTR. ON SAFE SUPPORTIVE LEARNING ENV’T, <https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/risk-factors-and-indicators> (last visited Nov. 18, 2019). A more detailed list of behavioral indications that a child is involved in the sex trade is listed on the National Center on Safe Supportive Learning Environment’s risk factors and indicators webpage. *Id.* It is imperative that officials know the proper signs to spot victims and do not assume trafficking is occurring based on arbitrary signs. Sarah Mervosh, *Cindy McCain Thought She Spotted Human Trafficking. But There Was No Crime, Police Say.*, N.Y. TIMES (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/us/cindy-mccain-human-trafficking.html> (stating that Cindy McCain incorrectly assumed a woman who was holding a child of a different ethnicity was a trafficker).

that could be initially perceived as broader issues.²⁶³ For example, showing physical or mental trauma, showing signs of addiction, a sudden appearance of tattoos,²⁶⁴ hyperarousal of anger or panic, frequent daydreaming, or sudden changes in attention to hygiene may be perceived as singular issues but can constitute signs of sex trafficking when one or more of these are present.²⁶⁵ Faculty-wide awareness of these signs can benefit victims because school officials can intervene while the child is still attending school.²⁶⁶

3. Media Exposure Causes Change

States that are pressured by the media are more likely to change the law.²⁶⁷ As a form of sensationalized entertainment, people tend to pay more attention to crimes reported by the media than purported in other mediums.²⁶⁸ In a study by the Glasgow University Media Group, the Group found that after a large influx of reporting on disability laws, audience members changed their perception on the importance of the laws.²⁶⁹ Thus, viewers are able to better retain information when watching repeat stories on the news.²⁷⁰ Utilizing media to purport a particular message can influence lawmakers to change outdated legislation, such as prostitution laws.²⁷¹

A recent example of media attention triggering change is the case of Cyntoia Brown, who was sentenced to life in prison after killing a man who purchased her for sex.²⁷² Brown was sixteen-years-old when she was first forced into prostitution and subsequently charged with murder.²⁷³ In her claim of self-defense, Brown stated she was afraid a

263. Geist, *supra* note 85, at 76, 78.

264. *Id.* at 76. Many pimps tattoo their names on victims as a form of branding. *Id.*

265. *Id.* at 78.

266. BOUCHÉ, *supra* note 162, at 10.

267. See Beale, *supra* note 89, at 456-57, 476-77.

268. *Id.* at 441, 456-57. Hosts of *The Michael Kay Show*, an ESPN sports show, along with other sport commentators, changed their focus from their regular sports coverage to discuss the legal issues of sex trafficking after Robert Kraft, the owner of the New England Patriots, was charged with soliciting prostitution. *The Michael Kay Show*, ESPN (Feb. 22, 2019), http://www.espn.com/espnradio/newyork/play/_/id/26057285. The hosts' discussion brought awareness to sex trafficking to an audience not typically exposed to the issue. *Id.*

269. Catherine Happer & Greg Philo, *The Role of the Media in the Construction of Public Belief and Social Change*, 1 J. SOC. & POL. PSYCHOL. 321, 326-27 (2013). When asked what the percentage of people receiving disability funds were receiving these funds fraudulently, people guessed a range of 10% to 70%, when the actual number was .05%. *Id.*

270. *Id.* at 321, 333.

271. Beale, *supra* note 89, at 456, 477.

272. Michel Martin, *Advocates Say Cyntoia Brown's Case Is Part of the 'Sexual Abuse-To-Prison' Pipeline*, NPR (Dec. 3, 2017, 6:53 PM), <https://www.npr.org/2017/12/03/567850542/advocates-say-cyntoia-browns-case-is-part-of-the-sexual-abuse-to-prison-pipeline>.

273. *Id.*

sex-buyer was going to kill her after she refused to have sex with him.²⁷⁴ Prior to this murder, she was sold as a sex trafficking victim and was repeatedly raped and abused by her pimp.²⁷⁵ After serving fourteen years behind bars, Governor Bill Haslam of Tennessee announced he would order an early release for Brown on the condition that she would stay on parole for ten years and serve fifty hours of community service.²⁷⁶ Brown's case caught the attention of community leaders, politicians, and high-profile celebrities who were able to petition Governor Haslam to grant Brown full clemency.²⁷⁷ Without the media frenzy, it would have been difficult for Brown to grab the Governor's attention.²⁷⁸ Likewise, spreading awareness through media campaigns can capture the attention of additional government officials, who can amend outdated prostitution laws.²⁷⁹

C. *Breaking the Trauma-Bond: Providing a Loving Home*

After decriminalizing the prostitution of minors, states must focus on creating legislation to address children's trauma.²⁸⁰ Thus, states must create statutes that will provide children with access to safe homes and trauma therapy.²⁸¹ This can be done by funding nonprofit organizations or creating state-sanctioned safe homes.²⁸²

274. *Id.*

275. *Id.*

276. Margaret Renkl, *An Act of Mercy in Tennessee*, N.Y. TIMES (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/opinion/cyntoia-brown-mercy.html> ("It's easy to understand why prosecutors at Cyntoia Brown's trial in 2006 saw this as a slam-dunk case. A prostitute, a robbery, the coldblooded murder of a sleeping man: How much nuance can there be in such a scenario? The jury apparently agreed, finding Ms. Brown guilty of first-degree murder and aggravated robbery. She was sentenced to life in prison."); Adam Tamburin & Anita Wadhvani, *Gov. Bill Haslam Grants Full Clemency to Cyntoia Brown, Sets Aug. 7 Release from Prison*, THE TENNESSEAN (Aug. 6, 2019, 11:52 AM), <https://www.tennessean.com/story/news/2019/01/07/cyntoia-brown-clemency-case-facts-story-bill-haslam/2267025002>.

277. Renkl, *supra* note 276; Kim Kardashian West (@KimKardashian), TWITTER (Jan. 7, 2019, 12:25 PM), <https://twitter.com/KimKardashian/status/1082327473684045824> (showing support for Governor Haslam's decision to grant Cyntoia Brown full clemency).

278. Renkl, *supra* note 276. The media's focus on Cyntoia Brown's story has not yet ended, as Netflix will adapt her story into a documentary. Mia Galuppo, *Netflix Acquires Criminal Justice Doc Centered on Cyntoia Brown*, HOLLYWOOD REP. (July 1, 2019, 9:11 AM), <https://www.hollywoodreporter.com/news/netflix-acquires-criminal-justice-doc-cyntoia-brown-1221992>.

279. See *supra* notes 89-90 and accompanying text.

280. Clawson & Grace, *supra* note 10, at 142, 151-52.

281. *Id.*

282. See *What We Do*, *supra* note 108.

1. State Laws Must Include Funding Clauses

It is virtually impossible for a law to be effective without providing a financial channel to tackle the issue.²⁸³ Imagine “a car without an engine, [or] a bicycle without tires.”²⁸⁴ While many states pass a framework law aimed at aiding victims, the law disregards its engine: the funding.²⁸⁵ For example, when Michigan passed its sex trafficking laws, it neglected to include a provision to provide new funding, which prevented the facilitation of aid to children who required adequate services.²⁸⁶ Without monetary support, children will be left homeless or back with their captors.²⁸⁷

States can diverge funding from juvenile detention centers to supply therapy treatments and safe homes.²⁸⁸ On average, it costs states \$407.58 per day for each youth residing in juvenile detention centers.²⁸⁹ New York taxpayer funds spend the most amount out of any state at \$966.20 per day per child.²⁹⁰ This puts the incarceration cost of a single child at \$352,663 per year.²⁹¹ States also spend, on average, \$5.7 billion per year imprisoning youth held for nonviolent crimes, including prostitution.²⁹² This funding can shift from detaining youth to funding programs advancing sex trafficking victims’ health and safety.²⁹³

Another primary solution is to move some of the funding from state detention centers to NGOs, which can create government-sponsored safe homes.²⁹⁴ In Texas, for example, the cost per day per detained child is about \$366.88, while the cost of supplying safe homes per day per child

283. *Research Without Funding*, AM. HEART ASS’N (June 10, 2013), <https://www.yourethecure.org/research-without-funding>.

284. *Id.* Although this statement is referring to medical research for heart health, the premise applies to all forms of research and advocacy. *Id.*

285. SAAR ET AL., *supra* note 4, at 28-30 (stating that the government neglects to properly fund child welfare programs, specifically programs emphasizing services for children who require trauma treatment and shelter).

286. *Tough Anti-Trafficking Laws Won’t Be Effective Without Funds: Officials*, *supra* note 88.

287. *Id.*

288. *See* Clawson & Grace, *supra* note 10, at 142, 153.

289. JUSTICE POLICY INST., *STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION* 2, 11 (2014) (discussing state costs for incarcerating youth and the impact these detention centers have on the states’ economies).

290. *Id.*

291. *Id.*

292. JUSTICE POLICY INST., *THE COST OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE* 1 (2009) (scripting statistics regarding the incarceration cost of youth in state prisons).

293. *Id.*

294. JUSTICE POLICY INST., *supra* note 289, at 27, 45 n.43; JUSTICE POLICY INST., *supra* note 292. States such as New York, Pennsylvania, California, and Wisconsin have redirected money from confinement facilities to incarceration alternatives. JUSTICE POLICY INST., *supra* note 289, at 27, 45 n.43; JUSTICE POLICY INST. *supra* note 292.

is approximately \$265.84.²⁹⁵ In Washington, D.C., FAIR Girls, a group that provides children with long-term housing, counseling, education, and mentoring, requires \$125 per day per child to perform these services, a significant fifty percent less than D.C. spends to keep a child behind bars.²⁹⁶

2. States Can Work with Community Groups to Create Safe Homes for Children

As stated in Part III, some children who are sex-trafficked can develop Stockholm Syndrome and become loyal to their captors.²⁹⁷ In addition, children return to their captors because traffickers may be the children's only provider of necessities or affection.²⁹⁸ In order to prevent children from returning to traffickers, children must receive incentives to escape, such as housing, food, sanitary products, and products for enjoyment.²⁹⁹ If a child is able to receive alternative forms of affection and necessities, such as the care of a foster family and a supply of food, she will be more likely to work with her team to permanently leave her captor.³⁰⁰

Moreover, safe houses designed specifically for victims of sex trafficking are more effective than subjecting children to general safe homes.³⁰¹ These safe homes must be situated in undisclosed locations and serve small populations of victims, as large units can overwhelm children and lack personalized care.³⁰² According to law enforcement and survivor testimony, a stay of eighteen months is ideal to help victims rebuild their lives and properly address their trauma.³⁰³

Some advocates argue that shelters have failed children in the past because they are targets for pimps.³⁰⁴ Additionally, many current shelters fail to adequately care for minors who suffer from the unique trauma sex

295. JUSTICE POLICY INST., *supra* note 289, at 11, 27, 45 n.43 (comparing the costs of different state-operated juvenile facilities).

296. *Id.*; Andrea Powell, *Children Who Are Prostituted Aren't Criminals. So Why Do We Keep Putting Them in Jail?*, WASH. POST (Dec. 5, 2014), https://www.washingtonpost.com/posteverything/wp/2014/12/05/child-prostitutes-arent-criminals-so-why-do-we-keep-putting-them-in-jail/?utm_term=.7963e8cc0a61.

297. *See supra* note 135 and accompanying text.

298. LUTNICK, *supra* note 14, at 14-16; Clawson & Grace, *supra* note 10, at 141.

299. Clawson & Grace, *supra* note 10, at 141 (stating that many traffickers entice girls by offering them luxury goods).

300. LUTNICK, *supra* note 14, at 14-16; Clawson & Grace, *supra* note 10, at 141, 151-52.

301. Clawson & Grace, *supra* note 10, at 140, 142 (stating that there must also be facilities available for young male and transgender victims of sex trafficking).

302. *Id.* at 140-41; *Our Work*, *supra* note 99.

303. Clawson & Grace, *supra* note 10, at 143.

304. *See Geist*, *supra* note 85, at 85.

trafficking victims face.³⁰⁵ Safe homes with undisclosed addresses which tend to the specific needs of sex trafficking victims will allow these victims to rehabilitate under proper supervision.³⁰⁶ The funding diverted from incarceration costs can help properly staff these centers and provide the children with the attention they need.³⁰⁷

Furthermore, states should look towards successful NGOs and adopt their programs.³⁰⁸ For example, GEMS provides services for commercially sexually exploited and domestically trafficked girls and young women.³⁰⁹ GEMS provides transitional and supportive housing, educational programs, and courtroom advocacy to assist girls trapped in the sex trafficking industry.³¹⁰ GEMS accepts referrals online in order to provide housing for girls.³¹¹ States should follow GEMS's approach in changing how sex trafficking victims are treated.³¹² In addition to shelter, victims need trauma therapy, leadership training, and professional guidance.³¹³ At the very least, states should provide the necessary funding to allow these groups to expand their work to reach as many victims as possible.³¹⁴

V. CONCLUSION

It is unjust to punish children who are victims of sex trafficking by imprisoning them after they are sold as sex workers.³¹⁵ While the federal government succeeded in creating laws that deem minors sold into the sex trade as victims, twenty-five states failed to follow suit and alternatively imprison prostituted children instead of providing treatment.³¹⁶ It is imperative that states work with the federal government and community groups to provide safe homes for children to live in as they transition back into society.³¹⁷ Without the support of the

305. GIBBS ET AL., *supra* note 88, at 4-18.

306. See SHARED HOPE INT'L, *supra* note 99; *Our Work*, *supra* note 99.

307. See JUSTICE POLICY INST., *supra* note 289, at 27, 45 n.43.

308. See *Our Mission*, GIRLS EDUC. & MENTORING SERV., <https://www.gems-girls.org/our-mission> (last visited Nov. 18, 2019).

309. *Id.*

310. *What We Do*, *supra* note 108.

311. *Id.*

312. See *id.*

313. *Our Story*, GIRLS EDUC. & MENTORING SERV., <https://www.gems-girls.org/our-story> (last visited Nov. 18, 2019).

314. See JUSTICE POLICY INST., *supra* note 289, at 27, 45 n.43.

315. See SAAR ET AL., *supra* note 4, at 12.

316. Victims of Trafficking and Violence Act of 2000, Pub. L. No. 106-368, §§ 103(8)(A), 103(13), 114 Stat. 1464, 1470-71 (codified as amended in scattered sections of 8, 18 and 22 U.S.C.); SHARED HOPE INT'L, *supra* note 5, at 3; Dysart, *supra* note 73, at 629; see *supra* Part II.A, Part II.C.

317. *Safe Housing Options*, *supra* note 220.

states, the “sexual abuse to prison pipeline” will continue and these children may be subjected to a life of neglect.³¹⁸

*Juliana Spano**

318. SAAR ET AL., *supra* note 4, at 5 (referring to the “sexual abuse to prison pipeline,” a term coined by the Human Rights Project for Girls report which discusses how girls are routed through the juvenile justice system because of their victimization and become more likely to return to prison).

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