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Sex Trafficking of Minors in the United States: State Legislative Response Models

*Elizabeth LaMura**

I. Introduction

“[In the United States], [w]hen a little girl is sold by her impoverished family . . . runs away from home, or is lured by the false promises of a better life, and then imprisoned in a brothel and tortured if she resists -- that’s slavery. It is barbaric, and it is evil, and it has no place in a civilized world.”

- U.S. President Barack Obama¹

In the past decade, there has been a call to action for the United States to address “one of the greatest human rights causes of our time”—human trafficking.² Human trafficking is currently one of

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¹ President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012) [hereinafter Remarks by the President], *available at* <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

² *Id.*; see also Laurel Bellows, Op-Ed., *Victims of Human Trafficking Need Our Help*, STAMFORD ADVOC., Jan. 10, 2013, <http://www.stamfordadvocate.com/opinion/article/Op-Ed-Victims-of-human-trafficking-need-our-help-4184054.php> (discussing the American Bar Association’s (“ABA”) dedication to changing the way America’s justice system handles human trafficking, which has become “one of the largest organized criminal enterprises in the world.” Additionally, it is explained that the ABA will work on an “increased awareness” about this largely hidden issue which “will bring a shift in resources and policies that better reflect the realities of the crime”).

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the largest criminal enterprises in the world³ and provides an increasing source of profits for criminal organizations worldwide.⁴ A majority of states in the U.S. have enacted human trafficking laws to combat this criminal operation.⁵ There exists much variance in the laws from state to state,⁶ including the availability of victims' services.⁷ Additionally, most states have not enacted victim protection statutory frameworks.⁸ A study by Shared Hope International in 2012 found that eighteen states received a failing grade in their state trafficking laws.⁹ Even worse, in 2011, Congress allowed the Trafficking Victims Protection Act ("TVPA") to expire. The TVPA is still expired, but the Senate voted in favor of reauthorization of the Act in February 2013.¹⁰

³ Eric Goldschein, *Most US States Are Ignoring the World's Fastest Growing Criminal Enterprise*, BUS. INSIDER (Feb. 3, 2012), <http://www.businessinsider.com/most-us-states-are-ignoring-the-worlds-fastest-growing-criminal-enterprise-2012-2>.

⁴ U.S. DEP'T OF HEALTH & HUMAN SERVS., TRAFFICKING VICTIMS PROTECTION ACT OF 2000 FACT SHEET 1, http://archive.acf.hhs.gov/trafficking/about/TVPA_2000.pdf.

⁵ SHARED HOPE INT'L, PROTECTED INNOCENCE CHALLENGE: STATE REPORT CARDS ON THE LEGAL FRAMEWORK OF PROTECTION FOR THE NATION'S CHILDREN 27 (2012) [hereinafter PROTECTED INNOCENCE CHALLENGE], http://sharedhope.org/wp-content/uploads/2012/09/ProtectedInnocenceChallenge_FINAL_2012_wcover_web.pdf.

⁶ *Id.*

⁷ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 363 (2012) [hereinafter TRAFFICKING IN PERSONS REPORT], <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

⁸ *Id.*

⁹ See PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 12.

¹⁰ Editorial, *The Fight Against Modern Slavery*, N.Y. TIMES, Mar. 21, 2012, <http://www.nytimes.com/2012/03/22/opinion/the-fight-against-modern-slavery.html?r=0>; see also *Trafficking Victims Protection Act Passes Senate!*, ECPAT USA (Feb. 12, 2013), <http://ecpatusa.org/2013/02/trafficking-victims-protection-act-passes-senate/> (reporting the Senate's reauthorization of the TVPA and calling for the House of Representatives to follow suit); *S.1301: Trafficking Victims Protection Reauthorization Act of 2011*, OPENCONGRESS, <http://www.opencongress.org/bill/112-s1301/> (last visited Mar. 26, 2013) (showing the last action on the Reauthorization bill was a Judiciary Committee report on Nov. 17, 2011).

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Due to the wide variation in state legislation and the failure of Congress to re-enact the TVPA, it is essential for states to pass human trafficking laws that are similar to one another and to current federal law in order to prevent the movement of trafficking crimes to lenient states or tribal land.¹¹ Implementation of a uniform law across all states that similarly punishes traffickers, provides the necessary services to victims, and appropriately deters demand would eliminate ineffective statutory schemes and offer the greatest protection possible.

The prevalence of commercial sexual exploitation¹² of children in the United States highlights the importance of legislation on the issue of human trafficking.¹³ The sexual exploitation of children in our country is often an overlooked facet of human trafficking. Despite the classification of commercial sexual exploitation of children as a form of human trafficking under federal law, many states have failed to follow the federal example and still do not provide the appropriate protections and services for victimized children.¹⁴ Though the TVPA considers minors induced to perform commercial sex to be victims regardless of circumstance, as of December 2011, only eight states had passed laws consistent with this view.¹⁵

¹¹ See PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 27.

¹² "Commercial sexual exploitation" hereinafter encompasses various mediums of the commercial sex industry used for sexual exploitation of children, including but not limited to street prostitution, strip clubs, brothels, and pornography. Commercial sexual exploitation is also referred to as domestic minor sex trafficking. See LINDA A. SMITH ET AL., SHARED HOPE INT'L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN 4 (2009), http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf (explaining that "[c]hildren can be commercially sexually exploited through prostitution, pornography, and/or erotic entertainment").

¹³ See *id.* at iv (defining domestic minor sex trafficking as "child sex slavery, child sex trafficking, prostitution of children, commercial sexual exploitation (CSEC), and rape of a child").

¹⁴ POLARIS PROJECT, HUMAN TRAFFICKING LEGISLATIVE ISSUE BRIEF: SEX TRAFFICKING OF MINORS AND "SAFE HARBOR" (2010) [hereinafter HUMAN TRAFFICKING LEGISLATIVE ISSUE BRIEF], http://www.polarisproject.org/storage/documents/policy_documents/model%20laws/Issue_Brief_-_Safe_Harbor_7-23-2010.pdf.

¹⁵ See TRAFFICKING IN PERSONS REPORT, *supra* note 7, at 364.

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Part II of this Article provides an overview of the at-risk population of young children and the domestic sex trafficking of minors. Part III discusses federal legislation that protects minor sex trafficking victims. Part IV identifies essential factors, set forth by two non-profit organizations, Shared Hope International and the Polaris Project, which are essential to comprehensive domestic minor sex trafficking legislation. Lastly, Part V of this Article examines New York's current policies regarding the sex trafficking of children. This Article specifically utilizes current federal and New York state statutory frameworks as primary examples to achieve an all-encompassing approach. Additionally, this Article evaluates New York's current legal structure using the aforementioned factors, and its successes and failings are highlighted. New York has been instrumental in the formulation of progressive domestic minor sex trafficking laws around the country.¹⁶ Notably, in 2008, New York was the first state to pass a Safe Harbor law, protecting children from criminal prosecution for prostitution related offenses and requiring transfer of these cases to family court.¹⁷ New York is also labeled as one of the main human trafficking hubs in the United States.¹⁸ The high volume of human trafficking in New York signals the need for strong domestic sex trafficking laws to protect minors.

There remains a gap in New York's current statutory framework. Thus, where New York's law falls short, this Article calls for the implementation of statutory provisions as provided by Washington state. Washington state received the highest grade under the 2012 Polaris Project's rating methodology¹⁹ that rates states

¹⁶ See HUMAN TRAFFICKING LEGISLATIVE ISSUE BRIEF, *supra* note 14 (describing New York's 2008 Safe Harbor Act as a "watershed law [that] catalyzed passage of similar 'Safe Harbor' bills in other states during the 2010 session, including laws in Connecticut, Illinois and Washington").

¹⁷ *NY State Policy Project*, ECPAT USA, <http://ecpatusa.org/what-we-do/helping-children-in-america/ny-state-policy-project/> (last visited Mar. 30, 2013).

¹⁸ *Id.*

¹⁹ *Majority of States Actively Passing Laws to Combat Human Trafficking*, POLARIS PROJECT (Aug. 7, 2012), <http://www.polarisproject.org/media-center/news-and-press/press-releases/634-majority-of-states-actively-passing-laws-to-combat-human-trafficking>

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based on ten categories of laws critical to “combat[ing] human trafficking, punish[ing] trafficker, and support[ing] survivors.”²⁰ Additionally, in 2011, Shared Hope International gave Washington state an overall grade of “B,” along with four other states.²¹ Under the Shared Hope International grading methodology, no state received an “A.”²² In this Article, Washington state law will specifically be applied to improve victim identification procedures, provide victims with the option of a civil remedy and asset forfeiture, increase penalties for traffickers, and establish the posting of a national victim services hotline.

II. The Population & The Operation

There are a staggering number of children who are at risk for commercial sexual exploitation in the United States each year. This population of children shares common characteristics that make them more susceptible to becoming victims of sex trafficking. In addition, the high demand for these children in the commercial sex market creates high profits for traffickers. The complex internal structure of human trafficking operations makes combating the problem extremely difficult. Thus, before discussing progressive legislative reform for domestic minor sex trafficking, it is important to outline the population of children involved and the operation that makes human trafficking a profitable business in the United States.

A. The population

It is estimated that between 100,000 and 300,000 children are vulnerable to involvement in commercial exploitation in the United States each year.²³ This large number of children is correlated to the

²⁰ POLARIS PROJECT, HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?, at 1 (2012) [hereinafter HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?], <https://na4.salesforce.com/sfc/p/300000006E4SZ2vOAvBtmKICytWEBvS.6oLeE4k->.

²¹ See PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 12.

²² *Id.*

²³ POLARIS PROJECT, CHILD SEX TRAFFICKING AT-A-GLANCE: CHILD SEX TRAFFICKING IN THE UNITED STATES 1 (2011) [hereinafter CHILD SEX TRAFFICKING AT-A-GLANCE],

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high demand for commercial sexual exploitation of women and children in our country.²⁴ With some cities in the United States glorified as “sex tourism destinations,”²⁵ there are “thousands of strippers, prostitutes and other sex workers accommodating an endless stream of johns from around the country. Under-age girls (some as young as [ten] and [eleven]) are a significant part of that trade.”²⁶ Further, some children, as young as ages five and six, are coerced into performing sexual acts for their trafficker’s economic benefit.²⁷ The average age of entry into the commercial sex industry for children is between twelve and fourteen years old²⁸ and it is estimated that approximately eighty percent of prostitutes started working in the industry before they were eighteen years old.²⁹

Common characteristics among these child victims include a history of physical or sexual abuse, involvement in the child welfare system, a history of running away from home, homelessness, and drug addiction.³⁰ The vulnerability of these children makes them prime targets for pimps to control and force into the commercial sex

http://loveandlighttofreedom.org/uploads/Child_Sex_Trafficking__Polaris_Project-Jan_2012_.pdf; see also Tamar R. Birckhead, *The “Youngest Profession”*: Consent, Autonomy, and Prostituted Children, 88 WASH. U. L. REV. 1055, 1055 (2011) (suggesting that some studies show nearly 300,000 American children are at risk for commercial sexual exploitation).

²⁴ SMITH ET AL., *supra* note 12, at 26.

²⁵ A sex tourism destination is a place where a man or woman travels to engage in the commercial sexual exploitation of adults and children due to the destination’s poorly enforced laws regarding commercial sexual exploitation. See *CSEC Terminology: Child Sex Tourism*, ECPAT INT’L, http://www.ecpat.net/ei/csec_cst.asp (last visited Apr. 28, 2013).

²⁶ Bob Herbert, Op-Ed., *Bought and Sold*, N.Y. TIMES, Nov. 20, 2006, at A23, available at <http://www.nytimes.com/2006/11/20/opinion/20herbert.html>.

²⁷ INT’L CRISIS AID, SEX TRAFFICKING IN THE UNITED STATES 1 (2009) [hereinafter SEX TRAFFICKING IN THE UNITED STATES], <http://www.crisisaid.org/ICAPDF/Trafficking/traffickstats.pdf>.

²⁸ See CHILD SEX TRAFFICKING AT-A-GLANCE, *supra* note 23.

²⁹ See Birckhead, *supra* note 23, at 1061.

³⁰ SEX TRAFFICKING IN THE UNITED STATES, *supra* note 27; see also Birckhead, *supra* note 23, at 1060-61 (discussing the characteristics of child victims).

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industry.³¹ Once the trafficker identifies the needs of the child—including shelter, food, and the support of a family—the trafficker convinces the child that he can fulfill those needs.³² For example, in Dallas, Texas, two traffickers, a man and a woman, offered a twelve-year-old child a safe place to sleep, but “when the minor accepted the offer, the traffickers took her to a strip club and forced her to dance.”³³

This population of children shares common characteristics that create a higher risk for their victimization and commercial sexual exploitation. The vulnerability of these children and their need for love and support makes them easy targets for traffickers to coerce into the operation of human sex trafficking.

B. The operation

It is commonly believed that only adult women voluntarily work in the commercial sex industry, primarily in prostitution, to provide for themselves due to a lack of other survival options.³⁴ However, in 75 to 80 percent³⁵ of cases “[a] pimp traffics young women—and sometimes men—completely against their will by force

³¹ Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FBI L. ENFORCEMENT BULL., Mar. 2011, available at http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking (noting that “[traffickers] have an especially easy time establishing a strong bond with young girls. These perpetrators may promise marriage and a lifestyle the youths often did not have in their previous familial relationships. They claim they ‘love’ and ‘need’ the victim and that any sex acts are for their future together. In cases where the children have few or no positive male role models in their lives, the traffickers take advantage of this fact and, in many cases, demand that the victims refer to them as ‘daddy,’ making it tougher for the youths to break the hold the perpetrator has on them.”).

³² *Id.*

³³ See SMITH ET AL., *supra* note 12, at 38.

³⁴ JOE PARKER, HOW PROSTITUTION WORKS 11 (1998), <http://www.hawaii.edu/hivandaids/How%20Prostitution%20Works.pdf> (explaining that “[m]any people prefer to view prostitution as a ‘lifestyle choice,’ or even an ‘addiction’ to a lifestyle. . . . Society assumes that nothing can be done to help them, so there is no need to try. The pimps count on it”).

³⁵ Amy Fine Collins, *Sex Trafficking of Americans: The Girls Next Door*, VANITY FAIR (May 24, 2011), <http://www.vanityfair.com/politics/features/2011/05/sex-trafficking-201105>.

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or threat of force; this is human sex trafficking.”³⁶ In other words, a majority of young women are coerced into working in the commercial sex industry by some type of force or threat. Thus, the belief that only adult women are voluntarily involved is a myth. The terms “pimp” and “trafficker” are used interchangeably, because the federal definition of a human trafficker encompasses all individuals who profit from the commercial sexual exploitation of children.³⁷ A trafficker can be from any “social, ethnic, and racial group . . . [some are a part of] local street and motorcycle gangs, others are members of larger nationwide gangs and criminal organizations, and some have no affiliation with any one group or organization.”³⁸ The human sex trafficking operation is a complex web of lies, humiliation, sexism, and abuse.³⁹ Sex trafficking generally consists of a highly organized hierarchy of persons who control various stages and aspects of the trafficking. The hierarchy includes three main parts: the buyers who create the demand; the traffickers who provide the product; and the facilitators who offer the means with which domestic minor trafficking can take place.⁴⁰

The recruitment process is a highly calculated part of the trafficking operation. As discussed earlier, the trafficker identifies the needs of children with unstable family environments and inadequate support structures.⁴¹ The primary method of recruitment into domestic minor sex trafficking is for the trafficker to prey on the needs of these children by manipulating a loving relationship with the child.⁴² This relationship establishes trust and feelings of allegiance to the trafficker.⁴³ Then, during the course of the relationship, the trafficker “grooms”⁴⁴ the child for commercial sexual exploitation.⁴⁵

³⁶ See Walker-Rodriguez & Hill, *supra* note 31.

³⁷ See SMITH ET AL., *supra* note 12, at 7.

³⁸ Walker-Rodriguez & Hill, *supra* note 31.

³⁹ See *id.*

⁴⁰ See SMITH ET AL., *supra* note 12, at 16.

⁴¹ *Id.* at 38.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ “Grooming” is the process through which a trafficker prepares the victim to become involved in domestic minor sex trafficking. See *id.* at 38 (explaining that

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This “grooming” process was best explained by the book, *The Pimp Game*, which states:

You’ll start to dress her, think for her, own her. If you and your victim are sexually active, slow it down. After sex, take her shopping for one item. Hair and/or nails is fine. She’ll develop a feeling of accomplishment. The shopping after a month will be replaced with cash. The love making turns into raw sex. She’ll start to crave the intimacy and be willing to get back into your good graces. After you have broken her spirit, she has no sense of self value. Now pimp, put a price tag on the item you have manufactured.⁴⁶

After the trafficker entraps the young child, she becomes part of the organized operation that is the business of sex trafficking.⁴⁷ At the top of the hierarchy is the trafficker who is the primary controller of his “stable.”⁴⁸ Next in the hierarchy are the facilitators—including taxi drivers, corrupt authorities, adult sexual entertainment venue owners, and hotel workers—who enable the trafficker to transport, advertise, and “facilitate” the business.⁴⁹ Lastly, the woman commonly referred to as the “bottom bitch” “sits atop the hierarchy” of victims and is usually a victim herself who has been with the trafficker for the longest period of time.⁵⁰ The “bottom bitch” collects money earned by the victims, recruits new youth into trafficking, and handles all daily business for the trafficker.⁵¹

grooming practices involve the perpetrators spending “time slowly gaining the trust and affection of the youth as well as desensitizing the minor to the idea of sexual activity . . .”).

⁴⁵ *Id.* at 23.

⁴⁶ *See id.* (citing MICKEY ROYAL, *THE PIMP GAME: INSTRUCTIONAL GUIDE* 64-65 (1998)).

⁴⁷ *See id.* (describing the business and organizational aspects associated with trafficking).

⁴⁸ *Id.* at 24 (defining “stable” as “a group of prostituted girls under the control of a single trafficker or pimp”).

⁴⁹ *Id.* at 27.

⁵⁰ *Id.* at 24.

⁵¹ *Id.*

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Pervasive throughout the operation is the use of force, emotional control, manipulation, drugs, and financial dependence.⁵² Traffickers create financial dependence by prohibiting victims from attending school and seizing control of victims' assets and money.⁵³ In addition, traffickers often take victims' driver's licenses and birth certificates, leaving the youth with no ability to support themselves if they escape.⁵⁴ Some traffickers use physical and sexual violence, including gang rape, to keep the youths under the trafficker's control and force the victims to continue working in the sex industry.⁵⁵ In circumstances where the youths are addicted to drugs, the traffickers use their ability to withhold or supply drugs as a means of control.⁵⁶

As a result, these children are victims of the intricate and lucrative operation that is domestic minor sex trafficking. Utilizing a "trafficking victim-based model,"⁵⁷ the federal law and policy approaches the issue of domestic minor sex trafficking with a view of children as victims instead of criminals.⁵⁸ New York also employs this model in its statutory scheme that targets domestic minor sex trafficking.⁵⁹

III. Federal Policy & Legislation

In 2000, the TVPA was enacted,⁶⁰ dramatically changing federal policy on human trafficking. This legislation made a statement to the country and the world that, as President Barack Obama stated in

⁵² See Walker-Rodriguez & Hill, *supra* note 31.

⁵³ See SMITH ET AL., *supra* note 12, at 37.

⁵⁴ See Walker-Rodriguez & Hill, *supra* note 31.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ A "trafficking victim-based model" is one that, when employed by states, allows the establishment of domestic minor sex trafficking policies that view children as victims instead of criminals, enabling children to be protected instead of punished for prostitution-related offenses. See discussion *infra* Part III.A.

⁵⁸ Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235, 252 (2008).

⁵⁹ *Id.*

⁶⁰ Trafficking Victims Protection Act, 22 U.S.C.A. §§ 7101–7112 (West 2013).

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2012, “[o]ur people and our children are not for sale.”⁶¹ The TVPA of 2000 was the first comprehensive federal law to address both domestic and international human trafficking of men, women, and children.⁶² This important legislation, as well as the overall federal policy of treating children as victims within the context of domestic minor sex trafficking, should be referenced by states when creating new policies to effectively combat domestic minor sex trafficking.

In February 2013, the TVPA was added as an amendment to the Violence Against Women Act (“VAWA”) and passed with the VAWA in its entirety.⁶³ Reauthorization was essential to maintain high levels of protection for child trafficking victims, provisions of victims’ services, and strong punishments for child traffickers.⁶⁴ If the TVPA were not re-enacted, federal funding for victims’ services and law enforcement initiatives would have eventually run out.⁶⁵ In addition, Congress’ seventeen-month failure to reauthorize the TVPA illustrates the importance of a comprehensive state policy enacted by

⁶¹ See Remarks by the President, *supra* note 1.

⁶² See Schwartz, *supra* note 58, at 258 (stating that “[t]he TVPA technically can apply to domestic juvenile prostitutes taken into custody by state police officers”); see also TRAFFICKING IN PERSONS REPORT, *supra* note 7 (stating that the TVPA applies to both domestic and foreign adult and juvenile victims of human sex trafficking).

⁶³ *Breaking News: Violence Against Women Act and Trafficking Victims Protection Reauthorization Act Passed*, NOT FOR SALE (Feb. 28, 2013), <http://www.notforsalecampaign.org/news/2013/02/28/breaking-news-violence-against-women-act-passed/>.

⁶⁴ *Call Congress on January 11th: Human Trafficking Awareness Day*, ATEST: ALLIANCE TO END SLAVERY & TRAFFICKING (Jan. 3, 2013), <http://www.endslaveryandtrafficking.org/call-congress-january-11th-human-trafficking-awareness-day> (explaining that the failure to re-enact the TVPA “has left support for crucial programs that protect vulnerable men, women, and children, provide survivors with services, and prosecute human traffickers, in jeopardy. In short, it has weakened U.S. leadership in the fight against modern-day slavery and left millions of people vulnerable and millions enslaved.”).

⁶⁵ Jonathan Serrie, *Gridlock in Congress Stalls Anti-Human Trafficking Bill*, FOX NEWS (Oct. 2, 2012), <http://www.foxnews.com/politics/2012/10/02/gridlock-in-congress-over-human-trafficking/>.

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all states to ensure protective legislation remains in place despite possible federal inaction.⁶⁶

A. Federal legislation – the Trafficking Victims Protection Act (TVPA)

The TVPA establishes rights that child victims are entitled to under federal law, including the right to medical care, the right to protection if their safety is at risk, and the right to not be detained in facilities meant for perpetrators of crimes rather than for victims.⁶⁷ The right to protection is not only a right held by the victim, but also by the victim's family.⁶⁸

Under Section 1591 of the TVPA, the crime of sex trafficking of children does not require the prosecution to prove that the child has been forced, defrauded, or coerced to engage in commercial sex.⁶⁹ Essentially, this statutory framework creates an assumption that the child was forced, defrauded, or coerced to engage in commercial sex, and is therefore a victim of sex trafficking. The federal TVPA employs the “trafficking victim-based model” approach to juvenile prostitution⁷⁰ by creating “regulations to deal with girls detained for juvenile prostitution in the context of their status as trafficking victims, and thus their immunity from prosecution for sex-related crimes.”⁷¹ Accordingly, by viewing these

⁶⁶ The Model Penal Code can serve as an example of consistent comprehensive legislation enacted throughout all states. The Model Penal Code functions as a “national code” for criminal law and influenced the reformation of state criminal laws across the country. See PAUL H. ROBINSON & MARKUS DIRK DUBBER, AN INTRODUCTION TO THE MODEL PENAL CODE 1-2 (1999), <https://www.law.upenn.edu/fac/phrobins/intromodpencode.pdf>; see also *Publications Catalog: Model Penal Code*, A.L.I., http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=92 (last visited Mar. 30, 2013) (explaining that “[s]ince its promulgation, the [Model Penal] Code has played an important part in the widespread revision and codification of the substantive criminal law of the United States”).

⁶⁷ See SMITH ET AL., *supra* note 12, at 6.

⁶⁸ 22 U.S.C.A. § 7105(c)(1)(C) (West 2013).

⁶⁹ 18 U.S.C.A. § 1591(a)(2) (West 2013).

⁷⁰ See *supra* note 57.

⁷¹ See Schwartz, *supra* note 58, at 257.

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children as victims, the TVPA protects children instead of punishing them.

In addition, the TVPA does not require physical movement of a person between states for successful prosecution. It is true that under the TVPA, the prosecution has the burden of proving the crime was “in or affecting interstate or foreign commerce.”⁷² However, a victim does not need to cross state lines to prove the requisite effect on interstate commerce.⁷³ Thus, purely local activity can satisfy the interstate commerce element.⁷⁴

Under the TVPA, “[p]enalties for sex trafficking range up to life imprisonment with a mandatory minimum sentences of 10 years [imprisonment] for sex trafficking of minors and 15 years [imprisonment] for sex trafficking . . . of minors under age 14,”⁷² as well as a maximum fine of \$250,000.⁷³ These penalties are much greater than many of those at the state level.⁷⁴

⁷² See SMITH ET AL., *supra* note 12, at 5.

⁷³ *Id.*

⁷⁴ *Id.* This interstate commerce element of the TVPA will be discussed at a later point in this Article by outlining *U.S v. Evans*, the first intrastate domestic minor sex trafficking case successfully prosecuted under the federal TVPA. *United States v. Evans*, 476 F.3d 1176 (11th Cir. 2007).

⁷² See TRAFFICKING IN PERSONS REPORT, *supra* note 7, at 372; 18 U.S.C.A. § 1591(b)(1)-(2) (West 2013).

⁷³ 18 U.S.C.A. § 3571(b)(3) (West 2013).

⁷⁴ The following state statutes contain examples of penalties imposed on traffickers that are substantially below those provided for under the TVPA: (1) In Connecticut, commercial sexual exploitation of a minor is a Class C felony with a possible prison sentence of only one to ten years and a maximum fine of \$10,000. H.B. 5504, 2012 Leg., Reg. Sess. (Conn. 2012); CONN. GEN. STAT. ANN. §§ 53a-35a(7), 53a-41(3) (West 2013); (2) In California, human trafficking of a victim who is under eighteen years old is punishable by a prison sentence of four, six, or eight years and a possible fine of up to \$10,000. If the trafficking of a victim under eighteen involves a “commercial sex act,” the fine may be increased to a maximum of \$100,000. CAL. PENAL CODE § 236.1(c), (g)(1) (West 2013); (3) Lastly, in Wyoming, until July 2013, traffickers would only be prosecuted under the statute criminalizing promotion of prostitution. Under this statute, if the prostitute was under eighteen years old, the crime was classified as a felony with a maximum prison sentence of five years and maximum fine of up to \$5,000. WYO. STAT. ANN. § 6-4-103(a)(i), (b) (West 2012), *amended by* H.B. 133, 62d Leg., Gen. Sess. (Wyo. 2013).

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In addition to the TVPA, there are at least eight other federal statutory provisions that protect children from sexual exploitation.⁷⁵ When prosecuting traffickers, these federal laws can be used in combination with Section 1591 of the TVPA and can enhance the sentencing term because five of these statutes have maximum penalties of life imprisonment.⁷⁶ The transportation of a minor with the intent for the minor to engage in criminal sexual activity is punishable under U.S. Code Section 2423(a), with a possible sentence term of ten years to life in prison.⁷⁷ Under U.S. Code Section 2251, sexual exploitation of children is prohibited.⁷⁸ The exploitation of children involves the employment, use, inducement, coercion, or transportation of “any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct.”⁷⁹ This crime carries a sentence of fifteen to thirty years in prison for a first time violation.⁸⁰ Each subsequent violation of this section increases the sentencing term and can ultimately result in life imprisonment.⁸¹ Lastly, the selling or buying of children by any person, including a parent or legal guardian, for the purpose of the minor engaging in “sexually explicit conduct,” is punishable by thirty years to life in prison.⁸² Although some states have laws that provide protections in cases of domestic minor sex trafficking, the federal penalties are significantly higher and therefore more effectively deter and punish minor sex trafficking.⁸³

⁷⁵ See 18 U.S.C.A. § 2423(a) (West 2013); 18 U.S.C.A. § 2422 (West 2013); 18 U.S.C.A. § 1591 (West 2013); 18 U.S.C.A. § 2251 (West 2013); 18 U.S.C.A. § 2251A (West 2013); 18 U.S.C.A. § 2252 (West 2013); 18 U.S.C.A. § 2252A (West 2013); 18 U.S.C.A. § 1466A (West 2013).

⁷⁶ See SMITH ET AL., *supra* note 12, at 14.

⁷⁷ 18 U.S.C.A. § 2423(a).

⁷⁸ 18 U.S.C.A. § 2251.

⁷⁹ *Id.*

⁸⁰ 18 U.S.C.A. § 2251(e).

⁸¹ *Id.*

⁸² 18 U.S.C.A. § 2251A (West 2013).

⁸³ See SMITH ET AL., *supra* note 12, at 14.

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The federal policy and legislation covering domestic minor trafficking is comprehensive. It imposes harsh penalties on traffickers while maintaining a victim-centered approach to the problem. The effectiveness of the federal legislative framework is best illustrated through successful prosecutions invoking the aforementioned laws.

B. Successful prosecution under the TVPA

Between 2011 and 2012, the U.S. Department of Justice charged 120 defendants in human trafficking cases.⁸⁴ This represents a record-high number of cases in recent years.⁸⁵ The TVPA is vital to the continued prosecution of traffickers and the protection of victims. Two district court cases, *United States v. Robinson*⁸⁶ and *United States v. Evans*,⁸⁷ are examples of successful prosecutions of domestic child sex traffickers under the TVPA. These cases provide significant facts and circumstances surrounding issues that include intrastate applicability of the TVPA, mistake of age as no defense to domestic minor sex trafficking, and the gravity of sex trafficking offenses. In addition, these cases assist in understanding the complexity of domestic minor sex trafficking.

1. *United States v. Robinson*

Devon “Da-Da” Robinson (“Robinson”) was indicted on three counts of child sex trafficking under U.S. Code Section 1591. Only two of these counts proceeded to trial, both related to one child victim who was not named during the trial to protect her anonymity.⁸⁸ The child, Jane Doe, was a runaway in her early teens and had also dropped out of high school.⁸⁹ Jane Doe was seventeen years old when she met Robinson.⁹⁰ After becoming involved with Robinson, Jane Doe was arrested “several times for and convicted of

⁸⁴ *U.S. Attorney's Office, FBI and Yale Law School Host Human Trafficking Symposium*, U.S. ATTORNEY'S OFF.—DISTRICT CONN. (Apr. 12, 2012), <http://www.justice.gov/usao/ct/Press2012/20120412-3.html>.

⁸⁵ *Id.*

⁸⁶ *United States v. Robinson*, 702 F.3d 22 (2d Cir. 2012).

⁸⁷ *See United States v. Evans*, 476 F.3d 1176 (11th Cir. 2007).

⁸⁸ *See Schwartz, supra* note 58, at 268 n.163 (explaining that “under the TVPA, the federal government is able to conceal the [victims'] identities . . .”).

⁸⁹ *See Robinson*, 702 F.3d at 27.

⁹⁰ *Id.*

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prostitution in Queens, New York in 2008 and 2009.”⁹¹ Robinson would set up “dates” for Jane Doe, and profited from these acts of prostitution as well as from her work as a stripper.⁹² Phone calls made by Robinson to Jane Doe from various correctional facilities were admitted into evidence and illustrated Robinson’s abuse and control of Jane Doe and established the pimp or trafficker role that Robinson maintained in Jane Doe’s life.⁹³

Despite the fact that Jane Doe admitted to lying about her age and telling everyone, including Robinson, that she was nineteen years old, the district court convicted Robinson of sex trafficking of a minor and, on January 21, 2011, sentenced Robinson to 180 months in prison with five years of supervised release after time served.⁹⁴ The court explained that Robinson, “(1) knew that Jane Doe was under the age of eighteen, [and] (2) recklessly disregarded that fact.”⁹⁵ The appellate court recognized the district court’s detailed remarks during sentencing, stating that the:

[V]ery chilling, really, ownership of [Jane Doe] by the defendant and the threats . . . that he wasn’t kidding around when he said he was going to come home and beat her up, the evidence in the conversations themselves that he had done that in the past and she still came back, and the use of that control to force [men] on her, and I mean force That bundle of activity—the ownership of a person, the threatening, the physical abuse, forcing them to become a prostitute—is so much more worthy of . . . condemnation expressed in the form of jail time than most of the federal crimes we see.⁹⁶

⁹¹ *Id.*

⁹² *Id.* at 28.

⁹³ *Id.* at 28-29.

⁹⁴ *Id.* at 29.

⁹⁵ *Robinson*, 702 F.3d at 29.

⁹⁶ *Id.* at 39.

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The U.S. Court of Appeals, Second Circuit, upheld Robinson's conviction and sentence in November 2012.⁹⁷

The district court's acknowledgment of the gravity of Robinson's actions illustrates the distinct horrific nature of domestic minor sex trafficking cases and the importance of harsh penalties for traffickers. This case demonstrates that when courts are given statutory provisions that provide for severe punishments for traffickers, courts will impose them to the fullest extent. In addition, the district court's denial of Robinson's defense that he believed the victim was over eighteen years of age suggests that mistake of age is not a valid defense to the crime of domestic minor sex trafficking under the TVPA.

2. *United States v. Evans*

The TVPA does not require transportation of a child victim between states for a successful prosecution of a domestic sex trafficking case. In 2007, *U.S. v. Evans* was the first intrastate domestic sex trafficking case prosecuted under the TVPA.⁹⁸ Thus, *U.S. v. Evans* substantiated Congress's power to govern solely local trafficking actions through the TVPA.

Justin Evans ("Evans") and two co-defendants were indicted on charges, including child sex trafficking (18 U.S.C. § 1591(a)(1)) and coercion of a minor to engage in prostitution (18 U.S.C. § 2422(b)).⁹⁹ From December 2004 to May 2005, Evans arranged "dates"¹⁰⁰ for a fourteen-year-old girl who worked for him as a prostitute.¹⁰¹ The young victim would give Evans all the money that

⁹⁷ *Id.*

⁹⁸ See SMITH ET AL., *supra* note 12, at 15.

⁹⁹ *Evans*, 476 F.3d at 1177. The U.S. Code sections, 18 U.S.C.A. § 2422(b) (West 2013) and 18 U.S.C.A. § 1591(a)(1) (West 2013), require separate and distinct interstate commerce elements to be satisfied for successful prosecution. In *U.S. v. Evans*, the U.S. Court of Appeals' reasoning regarding the fulfillment of these interstate commerce elements by relatively local actions legitimized Congress's power to regulate intrastate domestic sex trafficking.

¹⁰⁰ "Date" hereinafter refers to the meeting of a victim and a buyer that is coordinated by the trafficker where the buyer pays value for the commercial sexual exploitation of the victim.

¹⁰¹ See *Evans*, 476 F.3d at 1177.

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she earned on her “dates.”¹⁰² Evans bought the victim a cell phone that he used to contact her concerning the “dates” he arranged for her.¹⁰³ Customers also contacted the girl on the same cellphone.¹⁰⁴ Evans supplied the girl with condoms for use on the dates.¹⁰⁵ “The condoms were usually Lifestyle brand, which are manufactured overseas, imported into Georgia, and then distributed throughout the United States.”¹⁰⁶ In February 2005, the child was diagnosed with AIDS and hospitalized.¹⁰⁷ Within a few days of the child’s release from the hospital, Evans had her resume work as a prostitute, which she continued until May 2005 when she was again hospitalized for AIDS treatment.¹⁰⁸

The district court held that “Evans’s conduct satisfied the ‘in or affecting interstate or foreign commerce’ element of [Section] 1591(a)(1) and the ‘using . . . any facility or means of interstate or foreign commerce’ element of [Section] 2422(b).”¹⁰⁹ The district court denied the defendant’s motion to dismiss and convicted Evans of the charges.¹¹⁰ In 2006, Evans was sentenced to twenty-three years and six months of imprisonment, followed by five years of supervised release.¹¹¹

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* It is important to note the significance of the use of Lifestyle brand condoms in this case. These condoms were provided by Evans to the victim and were manufactured outside of the United States. *Id.* at 1177. Because the condoms were used in the activities of the sex trafficking operation run by Evans, and they were made out of the U.S., the use of these condoms supports a finding that Evans’s activities affected interstate commerce for purposes of invoking the TVPA. *Id.* at 1179-80.

¹⁰⁷ *See id.* at 1177-78.

¹⁰⁸ *Id.* at 1178.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Human Trafficking Database of the Univ. of Mich. Law Sch., *United States v. Justin Evans*, UNITED NATIONS OFF. ON DRUGS & CRIME: HUM. TRAFFICKING CASE L. DATABASE [hereinafter Human Trafficking Database], <http://www.unodc.org/cld/case-law->

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Evans later appealed his conviction and challenged the constitutionality of Section 1591(a)(1), which discusses child sex trafficking, and Section 2422(b), which addresses coercion of a minor to engage in prostitution. Evans argued that the sections were unconstitutional “as applied to his purely local actions and the sufficiency of the stipulated facts to satisfy the jurisdictional interstate-commerce elements of the offenses.”¹¹² The Eleventh Circuit U.S. Court of Appeals affirmed Evans’s conviction, holding that despite all of Evans’s conduct taking place locally in Florida, his activities satisfied the interstate commerce elements of both statutory sections.¹¹³

Regarding Evans’s conviction for child sex trafficking under Section 1591(a)(1), the Eleventh Circuit U.S. Court of Appeals explained the expansive scope with which the Supreme Court has construed the power Congress maintains pursuant to the Commerce Clause to regulate activities substantially affecting interstate commerce.¹¹⁴ More specifically, “[t]he Supreme Court has interpreted this power broadly to include the power to regulate purely local activities that are part of an economic ‘class of activities’ that have a substantial effect on interstate commerce.”¹¹⁵ The appellate court held that the “in or affecting interstate commerce” element of the statute was satisfied because Evans’s enticement of the child to commit prostitution, “even though his actions occurred solely in Florida, had the capacity when considered in the aggregate with similar conduct by others, to frustrate Congress’s broader regulation of interstate and foreign economic activity.”¹¹⁶

Additionally, the court reasoned, “Evans’s use of hotels that served interstate travelers and distribution of condoms that traveled in interstate commerce are further evidence that Evans’s conduct

doc/traffickingpersonscrimetype/usa/2005/united_states_v._justin_evans.html?tmpl=old (last visited June 5, 2013).

¹¹² See *Evans*, 476 F.3d at 1177.

¹¹³ *Id.* at 1178, 1181.

¹¹⁴ *Id.* at 1178.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 1179.

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substantially affected interstate commerce.”¹¹⁷ The appellate court explained that Evans’s use of both landlines and cellphones alone was “sufficient to satisfy [Section] 2422(b)’s interstate commerce element” because “telephones and cellular phones are instrumentalities of interstate commerce.”¹¹⁸

These two cases serve as important examples of how the TVPA’s provisions are successfully applied to impose harsh penalties on defendants and to protect victims. The traffickers in these cases were punished with prohibitive prison sentences, ranging from fifteen¹¹⁹ to twenty-three years.¹²⁰ In addition, the courts maintained the victim’s anonymity during the court proceedings, which served to protect victims who were potentially at risk of retaliation or harm by their trafficker’s affiliates. Most importantly, *U.S. v. Evans* confirms Congress’s power to regulate intrastate domestic sex trafficking under the TVPA.

As illustrated by these cases, it is imperative that states enact comprehensive legislative responses to domestic minor sex trafficking to ensure the effective prosecution of traffickers and the protection of our children from commercial sexual exploitation and enslavement. Implementation of a uniform law across all states would eliminate ineffective statutory schemes and provide the greatest protection possible to our children. Also, states could begin to act as the primary avenue for prosecuting traffickers and protecting victims.

IV. Model State Policy & Legislation

Comprehensive uniform state legislation is essential for states to provide the best protection for child victims and combat the criminal operation of child sex trafficking domestically. All states should mirror the “trafficking-victim based model” employed by the

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1180-81.

¹¹⁹ *See Robinson*, 702 F.3d at 29.

¹²⁰ *See Human Trafficking Database*, *supra* note 111.

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federal TVPA,¹²¹ as well as the combined framework of existing New York and Washington state laws and use them as a guide for establishing comprehensive and effective legislation. Together, these frameworks fulfill the essential requirements for adequate state legislation and policy on domestic minor sex trafficking as set forth by Shared Hope International and the Polaris Project. These two organizations are at the forefront of advocating for successful human trafficking legislative reform and assisting lawmakers and advocates in the fight against human trafficking and slavery in the United States. Their main goal is to provide long-term solutions to the problem and eradicate slavery, both nationally and abroad.¹²² The Polaris Project and Shared Hope International provide services to trafficking victims, conduct research and publish articles on the issue, and lobby for progressive trafficking legislation at the federal and state levels.¹²³ States should coordinate their legislation with the suggestions of these organizations and align with their missions. This will allow states to establish corresponding policies throughout the nation.

In 2008, New York became the first state to enact a Safe Harbor law, creating family court alternatives for children instead of incarceration for prostitution-related offenses.¹²⁴ New York is a primary hub for human trafficking, both nationally and internationally;¹²⁵ therefore, it must simultaneously provide assistance to a large number of victims and combat a large number of criminal enterprises. Thus, the state's domestic minor trafficking policies are a primary example for all states. Further, Washington state was awarded the highest grade under the 2012 Polaris Project's

¹²¹ See *supra* note 57; see also discussion *supra* Part III.A (explaining the federal "trafficking-victim based model").

¹²² *About Polaris Project*, POLARIS PROJECT, <http://www.polarisproject.org/about-us/overview> (last visited Mar. 20, 2013); *Our Mission and Values*, SHARED HOPE INT'L, <http://sharedhope.org/who-we-are/our-mission-and-values/> (last visited Mar. 20, 2013).

¹²³ *About Polaris Project*, *supra* note 122; *Our Mission and Values*, *supra* note 122.

¹²⁴ See HUMAN TRAFFICKING LEGISLATIVE ISSUE BRIEF, *supra* note 14, at 1.

¹²⁵ See *NY State Policy Project*, *supra* note 17.

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rating methodology,¹²⁶ and in 2011, Shared Hope International gave Washington state, along with four other states, an overall grade of “B.”¹²⁷ Under the Shared Hope International grading methodology, no state has received an “A” to date.¹²⁸ Accordingly, where New York law fails to meet the standards set forth by Shared Hope International and the Polaris Project, Washington state law should be applied as a gap-filler.

A. The New York policy landscape

New York has numerous legal provisions to protect the victims of domestic minor sex trafficking.¹²⁹ In 2006, Mayor Bloomberg established an interagency Human Trafficking Task Force.¹³⁰ The Task Force coordinates the work of various agencies and reports on issues, including the status of human trafficking in the state, the availability of victim assistance programs, and “the progress of the state in preventing trafficking, protecting and providing assistance to victims of trafficking, and prosecuting persons engaged in trafficking.”¹³¹

In 2007, New York enacted the New York State Trafficking Act¹³² (“NY Trafficking Act”). The NY Trafficking Act was the first legislation in the state to define sex and labor trafficking as crimes within the New York Penal Code.¹³³ Additionally, New York maintains the New York’s Safe Harbor for Exploited Children Act

¹²⁶ *Majority of States Actively Passing Laws to Combat Human Trafficking*, *supra* note 19.

¹²⁷ PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 11.

¹²⁸ *Id.*

¹²⁹ ELIZABETH G. HINES & JOAN HOCHMAN, THE N.Y. WOMEN’S FOUND., SEX TRAFFICKING OF MINORS IN NEW YORK: INCREASING PREVENTION AND COLLECTIVE ACTION 17 (2012), http://www.nywf.org/wp-content/uploads/2012/08/NYWF_Sex-Trafficking-of-Minors1.pdf.

¹³⁰ N.Y. SOC. SERV. LAW § 483-ee (McKinney 2013).

¹³¹ N.Y. SOC. SERV. LAW § 483-ee(b)(1)-(7), (c); *see also* HINES & HOCHMAN, *supra* note 129, at 18 (describing the New York Human Trafficking Task Force).

¹³² N.Y. PENAL LAW § 230.34 (McKinney 2013). Because this Article is focused on the issue of sex trafficking, the New York labor trafficking statutory provision will not be discussed.

¹³³ *Id.*

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("Safe Harbor Act"), which was enacted in 2008.¹³⁴ This "watershed act"¹³⁵ was a catalyst for the subsequent passage of similar "Safe Harbor" bills in other states, including Connecticut, Illinois, and Washington.¹³⁶ The New York statute brings the federal "trafficking victim-based model" approach to juvenile prostitution to the state level.¹³⁷ New York's Safe Harbor Act treats children as victims by categorizing them as persons in need of special services ("PINS") instead of as criminals.¹³⁸

New York's Safe Harbor Act prevents child victims of commercial sexual exploitation from being prosecuted for prostitution; grants immunity from prosecution for prostitution if the victim is under eighteen years of age; and provides victims with specialized services.¹³⁹ There are three main provisions of the Act: "First, it defines, 'sexually exploited child'; Second, it mandates the creation of specialized social services for sexually exploited children; Third, it converts delinquency petitions charging sexually exploited children with misdemeanor prostitution offenses into PINS petitions."¹⁴⁰

¹³⁴ N.Y. SOC. SERV. LAW § 447-a (McKinney 2013) (defining the terms for the New York State Trafficking Act).

¹³⁵ See HUMAN TRAFFICKING LEGISLATIVE ISSUE BRIEF, *supra* note 14.

¹³⁶ *Id.*; see also CONN. GEN. STAT. ANN. § 53a-82 (West 2013) (Connecticut "Safe Harbor" bill); 720 ILL. COMP. STAT. ANN. 5/11-14(d) (West 2013) (Illinois "Safe Harbor" bill); WASH. REV. CODE ANN. § 13.40.070(7) (West 2013), *amended by* S.H.B. 1524, 63d Leg., Reg. Sess. (Wash. 2013) (Washington "Safe Harbor" bill).

¹³⁷ See Schwartz, *supra* note 58, at 237.

¹³⁸ *Id.*

¹³⁹ See HINES & HOCHMAN, *supra* note 129, at 18 (discussing the proposal of "Judge Jonathan Lippman, Chief Judge of the State of New York and Chief Judge of the Court of Appeals . . . to shift the adjudication of non-violent offenses among 16 and 17 year olds to family court – with rehabilitation, rather than punishment, being the ultimate goal"). Currently, "non-violent offenses committed by individuals aged 16 and above are tried in criminal court in New York State." *Id.* Thus, if a child is arrested for prostitution along with a non-violent offense, the child's case is tried in criminal court, "cutting these youth off from the referrals family court makes to much needed intervention services." *Id.* Judge Lippmann's proposal would significantly change this current statutory scheme and eliminate the "dangerous hole in the Safe Harbor legislation." *Id.*

¹⁴⁰ See Schwartz, *supra* note 58, at 261.

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However, New York's Safe Harbor Act allows a judge the discretion to divert family court PINS petitions back into criminal proceedings in numerous circumstances, including cases of repeat prostitution arrests, when children are uncooperative in court mandated treatment, or when there is a judicial determination that the child is not a victim of "severe trafficking"¹⁴¹ as defined by statute.¹⁴² This judicial discretion does not allow for the appropriate level of protection to child victims of sex trafficking. The judge should not have broad discretionary authority to label and prosecute a child victim as a prostitute, especially for repeat offenses.¹⁴³ The discretionary authority leads to inconsistent treatment of children within the system—some may be offered a second chance of rehabilitation at the time of re-arrest and some may not.¹⁴⁴ As studies suggest, it might take many attempts, if ever, for a young victim to escape the human trafficking operation.¹⁴⁵ Thus, it may be inevitable for the child victim to return to the trafficker and continue involvement in the sex trafficking organization, resulting in future arrests for prostitution-related offenses. This cyclical pattern does not seem to be considered under New York's current statutory scheme allowing for judicial discretionary authority when there are repeat offenses. Therefore, judicial discretionary authority should be eliminated from New York's statutory scheme.

The policies outlined above provide an overview of the evolution of New York's legal landscape, highlighting the state's main provisions surrounding domestic minor sex trafficking. The

¹⁴¹ A victim of a severe form of trafficking is defined as a person who is under eighteen years of age and (1) who is a victim of sex trafficking in which "a commercial sex act is induced by force, fraud, or coercion" or (2) who is transported or obtained for services and subjected to "involuntary servitude, peonage, debt bondage, or slavery." 22 U.S.C.A. § 7105(b)(1)(C) (West 2013); 22 U.S.C.A. § 7102(8) (West 2013).

¹⁴² N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2013); *see also* Schwartz, *supra* note 58, at 278 (discussing the issue of judicial discretion within the New York Safe Harbor Act).

¹⁴³ *See* HINES & HOCHMAN, *supra* note 129, at 11.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 15 (discussing the prevalence of traffickers or pimps re-victimizing youth).

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discussion of New York's statutory provisions will now be further expanded to evaluate the adequacy of the state's laws and policies utilizing the Shared Hope International¹⁴⁶ and Polaris Project¹⁴⁷ factors.

1. Shared Hope International

Shared Hope International, under its Legislative Framework Methodology, has identified "four primary policy issues [that] must be addressed to combat domestic minor sex trafficking: 1) eliminating demand; 2) prosecuting traffickers; 3) identifying victims; and 4) providing protection, access to services, and shelter for victims."¹⁴⁸ These four policy issues are discussed below and applied to New York's current policies as models for other states to follow when formulating legislative responses to domestic minor trafficking.

i. Eliminating demand: the John School Model

Shared Hope International identifies the elimination of demand for domestic minor sex trafficking as the first policy issue that must be addressed to adequately combat and dismantle the minor sex trafficking operation. Demand drives the need for the commercial sex industry and, in turn, is a significant factor in the sexual exploitation of our children.¹⁴⁹ However, buyers appear to go unrecognized as a "critical component" in the operation.¹⁵⁰ The individuals, who are the buyers of sex with children, whether they are classified as "preferential (pedophiles), opportunistic (thrill seekers), or situational (do not care how old the person being prostituted is)," are committing a serious crime for which significant punishment is appropriate.¹⁵¹ Anti-demand statutory provisions are vital and must

¹⁴⁶ SHARED HOPE INTERNATIONAL, <http://www.sharedhope.org> (last visited Mar. 30, 2013).

¹⁴⁷ POLARIS PROJECT, <http://www.polarisproject.org> (last visited Mar. 30, 2013).

¹⁴⁸ SHARED HOPE INT'L, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY 1 (2011) [hereinafter PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY], http://sharedhope.org/wp-content/uploads/2012/09/SHI_ProtectedInnocence_Methodology_FINAL.pdf.

¹⁴⁹ See SMITH ET AL., *supra* note 12, at vi.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

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be encompassed in laws surrounding the commercial sexual exploitation and abuse of minors and child prostitution.¹⁵² Ideally, state law would categorize the crime of buying sex with a minor as a form of domestic minor sex trafficking.¹⁵³

Most individuals are uninformed as to the connections between the commercial sex industry and the sex trafficking of children.¹⁵⁴ There is a failure to acknowledge that the buyer's creation of demand for commercial sex furthers the profitability of the domestic minor sex trafficking operation.¹⁵⁵ Buyers may often be "situational," meaning that they are unaware or do not care about the age of the individual being prostituted, and are often persons within communities who are highly regarded both personally and professionally, such as doctors, lawyers, politicians, brothers, and sons.¹⁵⁶ As a result of an inability to believe these individuals are capable of exploiting our children, society is hesitant to educate and inform these situational buyers about the realities of the commercial sex industry.¹⁵⁷ It is important, however, to get past the barrier of denial in order to help eliminate domestic minor sex trafficking.

In New York, "John Schools" have been implemented as part of local policy to deter buyers of sex by placing "the onus for solving the problem on the buyers, rather than on victims alone."¹⁵⁸ In

¹⁵² *Id.* at 20.

¹⁵³ *Id.*

¹⁵⁴ *Why Trafficking Exists*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview/why-trafficking-exists> (last visited Mar. 20, 2013).

¹⁵⁵ *Id.*

¹⁵⁶ See SMITH ET AL., *supra* note 12, at 17; see also Jacqueline Zimowski, *Rachel Lloyd Gives Forbes the Truth on Pimps, Johns, and Trafficking American Kids*, NO HUM. TRAFFICKING (Jan. 24, 2012), <http://nohumantrafficking.org/rachel-lloyd-gives-you-the-truth-on-pimps-johns-and-trafficking-american-kids/> (quoting Rachel Lloyd's statement that we have to see "johns as a part of the problem. People get that pimps are violent, but the idea that these regular men are villains . . . These are fathers and brothers and husbands, we know them, we work with them, we go home to them, and yet they're going out and buying girls and women for sex.").

¹⁵⁷ See Zimowski, *supra* note 156.

¹⁵⁸ See HINES & HOCHMAN, *supra* note 129, at 19.

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Brooklyn, New York, “Project Respect,” a John School, was initiated ten years ago by Brooklyn District Attorney Charles J. Hynes due to the increasing number of teenagers engaged in prostitution.¹⁵⁹ John School is also offered in at least six major cities, including San Francisco, Washington D.C., and Buffalo.¹⁶⁰ The John School classes aim to eliminate demand by building empathy among the buyers and educating them about the violence and abuse that is experienced by the youth working in the commercial sex industry.¹⁶¹ The classes offered at John School are for first-time offenders and are federally subsidized.¹⁶² Each class participant pays a \$350 fee and listens to speeches from law enforcement officials, prosecutors, ex-prostitutes, and advocates.¹⁶³ Also, the class attendees learn about the prevalence of young children involved in the industry.¹⁶⁴ After the buyer attends the class, the arrest is dropped from his record if he is not re-arrested for solicitation of a prostitute within a certain time period.¹⁶⁵

If a buyer decides not to participate in John School, he is criminally prosecuted for a Class B misdemeanor that holds a possible ninety-day prison sentence.¹⁶⁶ The recidivism rate for the John School in Brooklyn, New York has proven to be extremely low. “Out of 3,079 johns who have taken the class, only . . . [twenty-six] — fewer than [one] percent” have been subsequently arrested for the same crime.¹⁶⁷ The success of Project Respect has led other cities,

¹⁵⁹ Kristin Pisarcik, *Inside a Brooklyn “John School”*, ABC NEWS (Mar. 20, 2007), <http://abcnews.go.com/2020/story?id=4488623&page=1#.UOmd6uRWyuI>; Josh Saul, *Brooklyn’s ‘John School’ Teaches Men Dangers of Hookers*, N.Y. POST, May 7, 2012,

http://www.nypost.com/p/news/local/brooklyn/johns_scared_stiff_bfKd6FGzKVQmtdKqNhlhXI.

¹⁶⁰ See Pisarcik, *supra* note 159.

¹⁶¹ See HINES & HOCHMAN, *supra* note 129, at 19.

¹⁶² See Pisarcik, *supra* note 159.

¹⁶³ See Saul, *supra* note 159; see also Pisarcik, *supra* note 159 (listing the speakers who lecture to buyers in the John School classes).

¹⁶⁴ *Id.*

¹⁶⁵ See Saul, *supra* note 159.

¹⁶⁶ Pisarcik, *supra* note 159.

¹⁶⁷ See Saul, *supra* note 159.

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such as Philadelphia, to consider using it as a model for their programs.¹⁶⁸

Due to the John School's success, it proves to be an effective avenue for addressing the Shared Hope International policy requirement of deterring and eliminating demand for commercial sexual exploitation of minors. States should use the John School as an element for successful and effective legislative response to domestic minor sex trafficking.

ii. Prosecution

An additional tool in successfully addressing domestic minor sex trafficking in the United States is the prosecution of traffickers. Shared Hope International suggests that criminal statutory provisions for traffickers should include high penalties for child sex trafficking, similar to the federal level of punishment, as well as sufficient financial penalties for traffickers, such as asset forfeiture.¹⁶⁹ Because the driving force behind trafficking is the high profit that is received by the trafficker, significant levels of punishment and financial penalties are "critical to increasing criminal deterrence and disrupting criminal trafficking enterprises, as well as offsetting the cost of investigating, prosecuting and providing services to restore victims' lives."¹⁷⁰

In New York, for example, sex trafficking is defined as the intentional profiting from prostitution by doing any of the following acts: (1) providing the victim with drugs as outlined by statute; (2) making false statements or omissions to induce a person to engage in prostitution; (3) taking or destroying identification documents, including passports and immigration documents; (4) requiring prostitution as repayment of a debt; or (5) using any force or fearful scheme to coerce or compel a person to engage in prostitution.¹⁷¹ Sex

¹⁶⁸ *See id.*

¹⁶⁹ PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY, *supra* note 148, at 5-6.

¹⁷⁰ *Id.* at 8.

¹⁷¹ N.Y. PENAL LAW § 230.34(1)-(5) (McKinney 2013); *see also* Marihug Cedeño, Note, *Pimps, Johns, and Juvenile Prostitutes: Is New York Doing Enough to Combat the Commercial Sexual Exploitation of Children?*, 22 CORNELL J.L. & PUB. POL'Y 153, 168-69 (2012) (discussing N.Y. PENAL LAW § 230.34(1)-(5)).

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trafficking is classified as a Class B felony,¹⁷² which imposes a prison sentence not to exceed twenty-five years¹⁷³ and “a fine not to exceed five thousand dollars or double the amount of the defendant’s gain from the commission of the crime.”¹⁷⁴ However, this criminal state statutory provision is not close to the high level of punishment that is imposed by the federal TVPA, which provides for a maximum sentence of life imprisonment depending on the age of the victim.¹⁷⁵ Additionally, as is discussed later in this article, New York does not have a statutory provision for asset forfeiture.

iii. Identification of victims

Domestic minor sex trafficking victims are “notoriously hard to identify.”¹⁷⁶ These children often do not self-identify as victims due to fear of psychological abuse by the trafficker and the existence of trauma bonds that are developed during the process of victimization.¹⁷⁷ In addition to the lack of self-identification among this population of children due to the effects of “pimp-control,” these children also face immense shame and stigma, which makes them “hesitant to reveal their participation in these markets.”¹⁷⁸ An additional obstacle is that service providers who are not already working with domestic minor sex trafficking victims, including doctors, are cautious to identify children as victims of trafficking primarily because they are unaware of the available treatment and referral options.¹⁷⁹

“As a result of these and other factors that keep the problem hidden, many trafficked youth who come into contact with service providers and the legal system do so under cover of a variety of issues other than sex trafficking.”¹⁸⁰ In New York, these issues

¹⁷² N.Y. PENAL LAW § 230.34.

¹⁷³ N.Y. PENAL LAW § 70.00(2)(b) (McKinney 2013).

¹⁷⁴ N.Y. PENAL LAW § 80.00(1) (McKinney 2013).

¹⁷⁵ See TRAFFICKING IN PERSONS REPORT, *supra* note 7, at 361; *see also* 18 U.S.C.A. § 1591(b)(1), (2) (West 2013) (outlining the federal sentencing provisions for sex trafficking of a minor).

¹⁷⁶ See HINES & HOCHMAN, *supra* note 129, at 8.

¹⁷⁷ See SMITH ET AL., *supra* note 12, at 41.

¹⁷⁸ See HINES & HOCHMAN, *supra* note 129, at 8.

¹⁷⁹ *Id.* at 9.

¹⁸⁰ *Id.*

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include drug arrests, persons in need of supervision (“PINS”) petitions, truancy arrests, and domestic violence incidents.¹⁸¹ This leaves the process of identifying child victims primarily to community service agencies and law enforcement.¹⁸² It is:

[C]ritical for those likely to come into contact with the victims to have intake procedures, victim-centered questioning techniques, and training to properly identify these children as victims. In addition, these identification mechanisms, tracking methods, and protocols need to be inter-agency as well as intra-agency given that most human trafficking cases will involve a multitude of agencies and jurisdictions.¹⁸³

Research suggests, however, that important identification protocols are not in effect in the United States.¹⁸⁴ Specifically, in New York, the social service field currently “lack[s] any diagnostic [or] assessment tool that would allow clinical [or] intake staff at government agencies and social service institutions to more easily and consistently identify minors trafficked for sex.”¹⁸⁵ Also, New York public schools do not have policies that would enable teachers and staff to identify the warning signs that may indicate a student’s involvement in sex trafficking.¹⁸⁶

Further, in New York, like in other states, training of state agency staff is lacking. As mentioned earlier in this section, children involved in sex trafficking fail to self-identify as victims,¹⁸⁷ making it vital for the staff of organizations likely to come in contact with this population to be properly trained in victim identification. However, Shared Hope International discovered that there is minimal training related to child victim identification across the United States.¹⁸⁸ In

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See SMITH ET AL., *supra* note 12, at 45.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See HINES & HOCHMAN, *supra* note 129, at 9.

¹⁸⁷ See SMITH ET AL., *supra* note 12, at 45.

¹⁸⁸ *Id.*

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Shared Hope International's research, four of the ten locations assessed had "no specific protocol for identifying minors involved in commercial sexual activities."¹⁸⁹ In those locations that did have a specific identification procedure, it encompassed only one or two agencies while the larger community remained unaware, uninformed, and largely uninvolved in identification of the victims."¹⁹⁰

Despite New York's Safe Harbor law that provides for the training of child protective workers, "workers at agencies outside of child protective services are still not trained to identify sex trafficking of minors when it exists."¹⁹¹ These "outside" entities include government agencies, such as the Department of Homeless Services, the Department of Youth and Community Development, the Department of Education, as well as hospitals and foster care families.¹⁹² All states must establish both inter-agency and intra-agency training on identification of domestic minor sex trafficking victims because a majority of sex trafficking cases will involve several different agencies and jurisdictions.¹⁹³

iv. Victim protection and services

Lastly, Shared Hope International identifies state policy providing protection, access to services, and shelter for victims as an essential component for adequately combating domestic minor sex trafficking.¹⁹⁴ The plight of domestic minor sex trafficking victims is unique. These child victims suffer from both external threats of force from traffickers and those associated with the sex trafficking operation, as well as internal forces, including drug addiction and trauma bonds.¹⁹⁵ As a result, most trafficked minors often flee non-protective shelters.¹⁹⁶ In addition, traffickers regularly frequent "shelters or the neighborhoods where the shelters are located, in

¹⁸⁹ These four locations were: Fort Worth, Texas; New Orleans/Baton Rouge, Louisiana; San Antonio, Texas; and Clearwater, Florida. *See SMITH ET AL., supra* note 12, at 45 n.136.

¹⁹⁰ *See id.* at 45.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *See id.*

¹⁹⁴ *Id.*

¹⁹⁵ *See id.* at 58.

¹⁹⁶ *Id.* at 67.

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order to re-traffic or recruit their victims.”¹⁹⁷ Thus, protection and safety must be provided to child sex trafficking victims to prevent re-victimization and reengagement with traffickers, and to allow victims the opportunity to heal.

The creation of protective shelters for child victims is “critical for an effective strategy to combat domestic minor sex trafficking.”¹⁹⁸ The term “protective shelter” “refers to a facility with the ability to separate a victim from a trafficker [or] pimp and provide the victim a restorative home to stabilize, heal, and move toward independence.”¹⁹⁹ The lack of protective shelters for minor victims and the inappropriate or inaccessible services for child victims are prevalent throughout the country.²⁰⁰ This widespread lack of services and protective shelters is a primary reason for the re-victimization of minor victims.²⁰¹ As of 2009, only “five residential facilities specific to this population exist[ed] across the country.”²⁰² The New York Safe Harbor Act provides for the establishment of residential facilities for this population of minor victims.²⁰³

Domestic minor sex trafficking victims severely lack appropriate services. Experts have explained that the “trauma suffered by child sex trafficking victims [is] more severe than most

¹⁹⁷ *Id.*

¹⁹⁸ PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY, *supra* note 148, at 3.

¹⁹⁹ SMITH ET AL., *supra* note 12, at 67.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at vi. The five residential facilities are located in New York City, San Francisco, Los Angeles, Atlanta, and Dallas. One of these five residential facilities specific to victims of domestic minor sex trafficking, Girls Educational and Mentoring Services (“GEMS”), is located in New York, N.Y. and is “one of the largest providers of services to commercially sexually exploited and domestically trafficked youth in the US.” *Mission & History*, GIRLS EDUC. & MENTORING SERVS. (GEMS), <http://www.gems-girls.org/about/mission-history> (last visited Mar. 22, 2013). GEMS provides secure housing for up to thirteen children and offers services, including court advocacy and trauma-based therapy. *See id.*; *see also Our Services*, GIRLS EDUC. & MENTORING SERVS. (GEMS), <http://www.gems-girls.org/what-we-do/our-services> (last visited Mar. 22, 2013) (outlining the services provided at GEMS).

²⁰³ N.Y. SOC. SERV. LAW § 447-b (McKinney 2013).

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sexually-based trauma given the chronic nature coupled with the reinforced victimization from the community at large of buyers. Therefore, the services required for a child sex trafficking victim are unique.”²⁰⁴ In treating child sex trafficking victims, it is essential that service providers understand the nature of this trauma to ensure that these victims can be diagnosed and cared for appropriately.²⁰⁵ For example, these specialized services must focus on victim empowerment, breaking down the trauma bond between victim and trafficker, and providing victims with life consistency.²⁰⁶

The programs offered in New York serve as a promising model, particularly where victims are “referred to service providers through the following channels: law enforcement, the courts, peers, and outreach.”²⁰⁷ New York’s Safe Harbor Act provides appropriate services for minors who are arrested for prostitution and its related offenses.²⁰⁸ As a result, numerous children who would have been sentenced to serve time in a juvenile incarceration facility as punishment for a prostitution conviction are now referred to court-approved treatment programs.²⁰⁹ Many child advocates and policymakers see this process of referral as a substantial improvement, but there are still several challenges in the overall referral process. Outside of the judicial system there is a complete lack of formal referral structure.²¹⁰ There is no “official” protocol to handle the referral process for a minor victim over the age of fifteen, who is identified either by police or another agency.²¹¹ Protective shelters and services are provided on an informal basis, usually through personal connections of service providers.²¹² “The effectiveness of placement depends on the knowledge and quality of

²⁰⁴ See SMITH ET AL., *supra* note 12, at vi.

²⁰⁵ *Id.* at 68.

²⁰⁶ *Id.*

²⁰⁷ See HINES & HOCHMAN, *supra* note 129, at 10.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 11; see also *supra* Part IV.A (discussing the negative effects of the judge’s broad discretionary power to foreclose a child victim’s access to services and prosecute her criminally in all cases subsequent to her first arrest).

²¹⁰ See HINES & HOCHMAN, *supra* note 129, at 11.

²¹¹ *Id.*

²¹² *Id.*

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the social workers and others doing placement.”²¹³ Another obstacle to accessing services arises when a young adult reaches eighteen, when the only access option for support services is self-referral.²¹⁴ If a child victim has avoided arrest for her entire youth, she lacks a “path to service referral”²¹⁵ after she turns eighteen years old. Thus, New York fails to effectively implement a formal and organized referral process outside of the judicial system to ensure that all victims have equal access to services.

Due to the high number of child victims in the New York City area, most of the services and shelters are located in New York City and the surrounding boroughs.²¹⁶ In New York City, there are residence facilities as well as outpatient service facilities.²¹⁷ Many of these shelters and services provide the “holistic approach” (i.e., treatment of the whole person) and aim to treat child victims by considering the trauma bonds and physical necessities that are unique to this population.²¹⁸ New York City has only fifty residential beds for female child victims,²¹⁹ but the population in need of services is in the thousands.²²⁰ It has been noted that:

[T]his shortage of housing options for trafficked youth . . . [is] the most pressing need of service providers in the field . . . [L]ack of funding [is] seen as the main challenge to increasing available beds – though others also noted a lack of political and public will to get the job done.²²¹

In addition to the severe shortage of housing options for child victims, the safety and security of the residential facilities is

²¹³ *Id.*

²¹⁴ *Id.* at 12.

²¹⁵ *Id.*

²¹⁶ HINES & HOCHMAN, *supra* note 129, at 12.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at v.

²²⁰ *Id.*

²²¹ *Id.* at 14-15.

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concerning.²²² Traffickers often loiter near these residential facilities or group homes looking to regain contact with and control over victims.²²³ This poses a significant safety risk to the child victims attempting to recover in these facilities.²²⁴ One suggested solution to ensure the safety and security of these facilities is to relocate the facilities and isolate the girls outside of the metropolitan center of New York City to better eliminate the possibility of the facilities becoming “recruitment centers” for traffickers.²²⁵

Consideration of the four policy issues highlighted by Shared Hope International will assist states in formulating laws that effectively address the issue of domestic minor sex trafficking. When coupled with the Polaris Project categories, discussed below, all states will be able to implement a comprehensive legislative framework on the issue.

2. Polaris Project

The Polaris Project is a non-profit, non-governmental organization that produces state-level annual ratings, ranking each state's response to trafficking on a scale from one to four. Tier One is the best ranking and depends on the “presence or absence of 10 categories of state statutes that Polaris Project believes are critical to a comprehensive anti-trafficking legal framework.”²²⁶ The Polaris Project has identified ten categories of state laws that the organization “believes are critical to a comprehensive anti-trafficking legal framework.”²²⁷ The ten categories of laws include: 1) sex trafficking; 2) labor trafficking; 3) asset forfeiture for human trafficking and investigative tools for law enforcement; 4) training on human trafficking for law enforcement and provision of a human trafficking commission or task force; 5) posting a human trafficking

²²² *Id.* at 14.

²²³ *Id.* at 15.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?, *supra* note 20, at 1.

²²⁷ POLARIS PROJECT, NEW YORK STATE REPORT: STATE RATINGS 2012, at 1 [hereinafter NEW YORK STATE REPORT: STATE RATINGS 2012], *available at* <https://na4.salesforce.com/sfc/p/300000006E4SsqoELG4ZQUa4o50Tf916GU6RknrQ=>.

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hotline; 6) safe harbor - protecting trafficked minors; 7) lower burden of proof for sex trafficking of minors; 8) victim assistance; 9) access to civil damages; and 10) vacating convictions for sex trafficking victims.²²⁸ This Article will address nine of the categories that are relevant to the domestic commercial sex trafficking of children.²²⁹ In 2012, New York earned a top tier rating from the Polaris Project.²³⁰

States should utilize these categories to enact legislation and policy that will provide all of the necessary elements to adequately combat domestic minor sex trafficking. These factors offer an outline for states to follow when formulating domestic minor sex trafficking law and policy.

The Polaris Project's first category is "a statute that criminalizes sex trafficking."²³¹ As outlined above during the discussion of the Shared Hope International policy issues, New York has three statutes that define "human trafficking victims," define the crime of sex trafficking, and provide immunity from accomplice liability for victims in sex trafficking cases.²³²

In addition to a law that criminalizes sex trafficking, the Polaris Project requires statutory provisions for the protection of trafficked minors, also known as "Safe Harbor" acts.²³³ As discussed earlier, New York enacted the Safe Harbor Act in 2008. This Act defines "sexually exploited child," "safe house," and "community-based programs,"²³⁴ and establishes services to be provided to sexually exploited children.²³⁵ The statute states, in relevant part, that each local social service district must ensure that "a short-term safe house or another short-term safe placement such as an approved

²²⁸ *Id.* at 2.

²²⁹ Category 2, labor trafficking, will not be discussed since it is not within the scope of this Article.

²³⁰ HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?, *supra* note 20.

²³¹ *See id.* at 3.

²³² N.Y. SOC. SERV. LAW § 483-aa (McKinney 2013); N.Y. PENAL LAW § 230.34 (McKinney 2013); N.Y. PENAL LAW § 230.36 (McKinney 2013).

²³³ *See* HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?, *supra* note 20, at 3.

²³⁴ N.Y. SOC. SERV. LAW § 447-a (McKinney 2013).

²³⁵ N.Y. SOC. SERV. LAW § 447-b (McKinney 2013).

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runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community based program to serve sexually exploited children is available to children residing in [each] district.”²³⁶ In addition, the Safe Harbor Act provides for the availability of these services to all sexually exploited children “whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services . . . of the family court act . . . or through a referral from a local social services agency.”²³⁷

The Polaris Project highlights Investigative Tools and Training for Law Enforcement as two separate categories. The Polaris Project defines the category of Investigative Tools to incorporate statutes that amend “existing Racketeering (“RICO”) statutes to include the crime of human trafficking or authorizes the use of wiretapping by law enforcement in human trafficking investigations.”²³⁸ New York’s statutory framework allows law enforcement to use wiretapping and video surveillance in investigations that involve promoting prostitution in the first and second degree, as well as in labor trafficking cases.²³⁹ New York also has a statute that encourages law enforcement training in human trafficking issues.²⁴⁰

New York has established, by statute, a state Human Trafficking Task Force that is composed of government officials, community members, and social service agency staff.²⁴¹ The duties of the Task Force, as outlined in the statute, are to: (1) collect data on the status of human trafficking in the state; (2) identify programs at the federal and local level that provide services to victims; (3) consult with both government and non-governmental organizations to develop recommendations to prevent trafficking, prosecute traffickers, and protect victims; (4) build interagency collaboration;

²³⁶ See N.Y. SOC. SERV. LAW § 447-b(1).

²³⁷ See N.Y. SOC. SERV. LAW § 447-b(2).

²³⁸ See HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?, *supra* note 20, at 2.

²³⁹ See N.Y. CRIM. PROC. LAW § 700.05(8)(b), (h) (McKinney 2013).

²⁴⁰ See N.Y. SOC. SERV. LAW § 483-ee(b)(6) (McKinney 2013).

²⁴¹ See N.Y. SOC. SERV. LAW § 483-ee(a).

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and (5) evaluate the state's progress in preventing trafficking, prosecuting traffickers, and protecting victims.²⁴²

Further, New York's statutory framework creates a broad structure for victim assistance. The state established the New York State Response to Human Trafficking Program ("RHTP"), overseen by the New York State Office of Temporary and Disability Assistance, to ensure victims of sex trafficking have access to and receive the services that they need.²⁴³ The services offered to human trafficking victims include: "case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment . . . job training, and placement assistance."²⁴⁴ Lastly, New York allows sex trafficking victims to file a motion to vacate a judgment of conviction for loitering for the purpose of engaging in a prostitution-related offense if: (1) the victim was initially arrested for loitering for the purpose of engaging in a prostitution-related offense; and (2) the victim was not alleged to have been loitering for the purpose of patronizing a prostitute, promoting prostitution, or engaging in prostitution; and (3) participation in the offense was the result of being a victim of sex trafficking as defined under state law or the TVPA.²⁴⁵

New York does not have statutory provisions for the following Polaris Project categories: asset forfeiture and civil remedies for victims; the posting of a national hotline; or removing force, fraud, or coercion as a requirement for a successful prosecution alleging the sex trafficking of minors.²⁴⁶

B. Washington state: gap-filling provisions to supplement New York state's failings

Under the frameworks outlined by Shared Hope International and the Polaris Project, there are a number of categories where New York law does not provide appropriate legislative responses. In 2012,

²⁴² See N.Y. SOC. SERV. LAW § 483-ee(b)(1)–(4), (7).

²⁴³ See HINES & HOCHMAN, *supra* note 129, at 17.

²⁴⁴ See N.Y. SOC. SERV. LAW § 483-bb(b) (McKinney 2013).

²⁴⁵ N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2013).

²⁴⁶ See NEW YORK STATE REPORT: STATE RATINGS 2012, *supra* note 227, at 1.

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the Polaris Project gave Washington the highest rating of all states.²⁴⁷ In 2011, Shared Hope International awarded Washington an overall grade of “B.”²⁴⁸ Thus, this Article advocates for the implementation of Washington state statutory provisions as model gap-fillers for other states to further the formulation of comprehensive legislation that meets all necessary criteria as outlined by Shared Hope International and the Polaris Project.

1. Shared Hope International: policies for victim identification and penalizing traffickers

New York fails to address two of Shared Hope International’s key policy areas: (1) effective victim identification procedures; and (2) adequate criminal punishment and financial penalties for traffickers. As discussed earlier, victim identification and appropriate trafficker penalties are extremely important facets of addressing and combating domestic minor trafficking.

As reported in the U.S. Department of State’s Trafficking in Persons Report, “[f]ederal, state, and local law enforcement agencies face ongoing challenges in victim identification.”²⁴⁹ However, the report suggests, “more trafficking specific training to youth outreach and shelter programs would enable outreach workers to better identify and assist child trafficking victims.”²⁵⁰ The Washington Anti-Trafficking Response Network (“WARN”) offers “training and education for service providers, law enforcement, stakeholders and community groups”²⁵¹ to “increase victim identification, build community capacity to serve victims, and improve response to human trafficking in Washington State.”²⁵² Other organizations should employ a similar multidisciplinary response to victim

²⁴⁷ See HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012?, *supra* note 20, at 5.

²⁴⁸ See PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 11 (stating that under the Shared Hope International framework, as discussed earlier in this article, no states received the grade of an “A”).

²⁴⁹ See TRAFFICKING IN PERSONS REPORT, *supra* note 7, at 363.

²⁵⁰ *Id.*

²⁵¹ Services, WARN: WASH. ANTI-TRAFFICKING RESPONSE NETWORK, <http://warn-trafficking.org/services/> (last visited Mar. 21, 2013).

²⁵² About Us, WARN: WASH. ANTI-TRAFFICKING RESPONSE NETWORK, <http://warn-trafficking.org/about-us/> (last visited Mar. 21, 2013).

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identification. The need for more “trafficking specific training” requires more agencies willing to provide it. WARN provides an example of the types of agencies that can assist law enforcement and social service workers in effectively identifying and assisting domestic minor sex trafficking victims.

The Washington statute punishes human trafficking as a Class A felony with “imprisonment for 123 [to] 387 months and a possible fine up to \$50,000.”²⁵³ Additionally, promoting commercial sexual abuse of a minor is a Class A felony punishable by a lifetime prison sentence, a fine not to exceed \$50,000, or both.²⁵⁴ These penalties for traffickers are more severe than those under New York law. Further, unlike New York, Washington provides high financial penalties for traffickers, including asset forfeiture.²⁵⁵ The additional financial penalties, in combination with imprisonment and fines, can act as adequate deterrents and punishments for traffickers.

2. *Polaris Project: statutory provisions to further protect victims, post a national hotline, and provide victims with civil remedies*

The most significant failing of the New York Safe Harbor Act under the Polaris Project analysis is that the New York Act requires evidence of force or coercion to prosecute sex traffickers of minors²⁵⁶ as well as to provide minor victims with services.²⁵⁷ This policy severely fails the child victims. Washington’s statute defines commercial sexual abuse of a minor to include any of the following acts: (1) an individual pays a minor or third person for sexual act of

²⁵³ See WASH. REV. CODE ANN. § 9A.40.100(1)(a) (West 2013).

²⁵⁴ See WASH. REV. CODE ANN. § 9.68A.101(2) (West 2013) (defining the promotion of commercial sexual abuse of a minor as a Class A felony); WASH. REV. CODE ANN. § 9A.20.021(1)(a) (West 2013) (describing the maximum sentence under state law for Class A felonies).

²⁵⁵ See NEW YORK STATE REPORT: STATE RATINGS 2012, *supra* note 227, at 1 (noting the need for asset forfeiture in New York’s response to traffickers); POLARIS PROJECT, WASHINGTON STATE REPORT: STATE RATINGS 2012, at 3, available at <https://na4.salesforce.com/sfc/p/300000006E4Sh7NKQAkcpkDrI0YLXS9NIIWNv.us=>.

²⁵⁶ N.Y. PENAL LAW § 230.34 (McKinney 2013).

²⁵⁷ See Cedeño, *supra* note 171, at 175.

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minor; (2) an individual pays or promises to pay a minor or third person so that in return the minor will engage in a sexual act with the individual; (3) or an individual solicits or offers to engage in a sexual act with a minor and pay a fee in return.²⁵⁸ Washington's statute does not require the elements of "force, fraud or coercion" to prosecute an individual for sex trafficking of a minor.²⁵⁹ Thus, the Washington statute defining commercial sexual abuse of a minor should be used as a model and implemented as a gap-filler in other states.

In addition, New York fails to provide statutory provisions requiring the posting of a national hotline. National hotlines can be helpful to the successful prosecution of sex trafficking crimes and to provide victims with a number that they can call to gain assistance anonymously.²⁶⁰ The Washington statute permits "human trafficking informational posters" to be placed in rest areas' bathroom stalls.²⁶¹ "The posters may be in a variety of languages and include toll-free telephone numbers a person may call for assistance, including the number of the national human trafficking resource center . . . and the number for the Washington state office of crime victims advocacy."²⁶² The Polaris Project operates the National Human Trafficking Resource Center Hotline, which is available twenty-four hours a day, seven days a week.²⁶³ The hotline "received calls from about 10,000 individuals [in 2011], from every state in the union."²⁶⁴ The number of total calls to the hotline increased 64 percent from

²⁵⁸ WASH. REV. CODE ANN. § 9.68A.100(1)(a)-(c) (West 2013).

²⁵⁹ *See id.*

²⁶⁰ *Hotline Successes*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/hotline-successes> (last visited Mar. 21, 2013); *see also Hotline FAQs*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/hotline-faqs> (last visited Mar. 21, 2013) (explaining that all calls to the National Hotline are anonymous and confidential).

²⁶¹ WASH. REV. CODE ANN. § 47.38.080 (West 2013).

²⁶² *Id.*

²⁶³ Carrie Johnson, *10,000 People Called Human Trafficking Hotline in 2011*, NPR (June 12, 2012, 5:00 AM), <http://www.npr.org/blogs/thetwo-way/2012/06/12/154800249/human-trafficking-hotline-received-10-000-calls-in-2011>; *see also Hotline FAQs*, *supra* note 260 (providing the hotline's hours of operation).

²⁶⁴ Johnson, *supra* note 263.

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2010 to 2011.²⁶⁵ A spokesperson for the Polaris Project reported that this significant rise in the number of calls illustrates the growing problem of trafficking in the United States.²⁶⁶ About half of the cases involved U.S. citizens “with most of the calls emanating from California, Texas, Florida, and New York.”²⁶⁷ The National Hotline receives calls from individuals submitting tips and from people in crisis situations who are most often looking for a safe place to stay.²⁶⁸

Equally considerable failures by New York's statutory structure include the lack of an asset forfeiture provision and the lack of a civil remedy for victims. The enactment of asset forfeiture laws is vital to dismantling criminal human trafficking operations as well as adequately restoring the victim.²⁶⁹ Additionally, asset forfeiture laws ensure that assets derived from the human sex trafficking enterprise are not retained by a person or entity, such as a hotel, that is knowingly benefiting from sex trafficking.²⁷⁰

Washington's statutes contain an asset forfeiture provision and civil remedies for victims. Washington's statutory scheme provides for mandatory vehicle impoundment and states, in relevant part, that:

[u]pon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the

²⁶⁵ NAT'L HUMAN TRAFFICKING RES. CTR., POLARIS PROJECT, INCREASING AWARENESS AND ENGAGEMENT: STRENGTHENING THE NATIONAL RESPONSE TO HUMAN TRAFFICKING IN THE U.S., ANNUAL REPORT 2011: AN ANALYSIS OF CALL DATA FROM THE NATIONAL HUMAN TRAFFICKING HOTLINE 2 (2012), available at https://na4.salesforce.com/sfc/p/300000006E4S11Sv6mFa.D_CB10UueofejFjNL0=

²⁶⁶ *Id.*

²⁶⁷ Johnson, *supra* note 263.

²⁶⁸ *Id.*

²⁶⁹ PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 20; see also *DEA Programs: Asset Forfeiture*, U.S. DRUG ENFORCEMENT ADMIN., <http://www.justice.gov/dea/ops/af.shtml> (last visited Mar. 30, 2013) (describing the success of asset forfeiture in other trafficking contexts).

²⁷⁰ PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 20.

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person's vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car²⁷¹

Assets related to commercial sexual abuse of a minor, promoting sexual abuse of a minor, or promoting prostitution in the first degree, are subject to "seizure and forfeiture and no property rights exist in them."²⁷² Under Washington law, the following property is subject to seizure and forfeiture: (1) all conveyances; (2) "any property, contractual right, or claim against property"; (3) all proceeds traceable or derived from violation of the aforementioned Washington statutes; (4) "all books, records, research products and materials"; (5) "all moneys, negotiable instruments, securities, or other tangible or intangible property of value . . ."; and (6) "all real property, including any right, title, and interest in the whole of any lot or tract of land"²⁷³ The real or personal property subject to forfeiture under this statutory section "may be seized by any law enforcement officer of this state . . . [s]eizure of real property shall include the filing of a *lis pendens* by the seizing agency."²⁷⁴

Washington also provides child victims with a civil remedy. Under the Washington statute, children victims may personally file an action for a civil remedy if they have sustained any harm to themselves or their property as a result of minor sex trafficking as defined under state statute.²⁷⁵ Once liability is determined, the court may order the payment of actual damages sustained by victims, order forfeiture as restitution, or order "payment to the state general fund or anti-profiteering revolving fund . . . of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering."²⁷⁶ The civil proceeding must be "commenced within three years after discovery of the pattern of

²⁷¹ WASH. REV. CODE ANN. § 9A.88.140(2) (West 2013).

²⁷² WASH. REV. CODE ANN. § 9A.88.150(1)(a) (West 2013).

²⁷³ WASH. REV. CODE ANN. § 9A.88.150(1)(b)-(g).

²⁷⁴ WASH. REV. CODE ANN. § 9A.88.150(2).

²⁷⁵ WASH. REV. CODE ANN. § 9A.82.100(1)(a) (West 2013).

²⁷⁶ WASH. REV. CODE ANN. § 9A.82.100(4)(d), (f), (g).

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criminal profiteering activity . . . or within three years after the final disposition of any criminal charges relating to the offense, whichever is later.”²⁷⁷

V. Recommendations

The New York and Washington policies are helpful examples that can be employed by all states when structuring effective legislative and community responses to domestic minor sex trafficking. Through analysis and evaluation of both states' statutory framework, it is apparent that comprehensive policy and legislation on domestic minor trafficking requires policy makers to pursue two initiatives. First, lawmakers must aggressively employ a zero-tolerance policy when creating laws that penalize traffickers and when structuring programs to deter demand. Second, policy makers must remain sensitive to the child victims and utilize a victim-centered approach to ensure protection of children from criminal prosecution and the provision of appropriate services. All states should follow the factors highlighted by the Polaris Project and Shared Hope International when formulating legislation or filling in the gaps of current statutory frameworks.

A. Policy recommendations to deter buyers and penalize traffickers

Eliminating demand is a primary policy issue that must be addressed in order to adequately combat domestic minor sex trafficking.²⁷⁸ John Schools should be employed because they are effective methods of deterring buyers, focusing on education instead of punishment as a way of curbing demand. These schools provide information to individuals who may otherwise be unaware of the involvement of children in the commercial sex industry. Project Respect, a John School in Brooklyn, New York, had a recidivism rate

²⁷⁷ WASH. REV. CODE ANN. § 9A.82.100(7).

²⁷⁸ See PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY, *supra* note 148, at 1; *see also* SMITH ET AL., *supra* note 12, at vi (highlighting the inadequacy of current efforts to combat demand); *see also* discussion of eliminating demand *supra* Part V.A.i.a. (outlining demand and its impact on domestic minor sex trafficking).

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of less than one percent for those individuals who successfully completed the class.²⁷⁹ This low recidivism rate proves that John Schools are able to successfully educate buyers and cause a reduction in demand.

States should use high penalties for sex trafficking of minors as an additional tool in addressing the issue of domestic minor sex trafficking.²⁸⁰ Possible prison sentences, as well as financial penalties, must be as harsh as federal law.²⁸¹ For the crime of domestic minor sex trafficking, federal law provides for prison sentences ranging from ten to fifteen years to life depending on the age of the victim.²⁸² In addition, financial penalties must be high because the driving force behind the sex trafficking of children is the economic profit to the trafficker.²⁸³ Financial penalties should include possible fines, at least as high as \$50,000, as well as asset forfeiture upon arrest of the trafficker for the crime of sex trafficking of a child.²⁸⁴

Lastly, each state should establish a human trafficking task force that allows for interagency coordination and evaluation of the state's progress in addressing the problem of domestic minor sex trafficking.²⁸⁵ No one single agency has the ability to address and combat human trafficking alone.²⁸⁶ In addition, most human

²⁷⁹ See Saul, *supra* note 159.

²⁸⁰ See PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY, *supra* note 148, at 5-6.

²⁸¹ *Id.*

²⁸² See TRAFFICKING IN PERSONS REPORT, *supra* note 7, at 361; *see also* 18 U.S.C.A. § 1591(b)(1), (2) (West 2013) (outlining the length of possible prison sentences, based on the age of the victim, under these federal statutory provisions for domestic minor sex trafficking).

²⁸³ See PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 61.

²⁸⁴ See WASH. REV. CODE ANN. § 9A.40.100(1)(a) (West 2013); WASH. REV. CODE ANN. § 9.68A.101 (West 2013); WASH. REV. CODE ANN. § 9A.88.140 (West 2013), *amended by* S.H.B. 1291, 63d Leg., Reg. Sess. (Wash 2013); WASH. REV. CODE ANN. § 9A.88.150 (West 2013).

²⁸⁵ See N.Y. SOC. SERV. LAW § 483-ee (McKinney 2013).

²⁸⁶ THE ACTION GRP. TO END HUMAN TRAFFICKING & MODERN-DAY SLAVERY, RECOMMENDATIONS FOR FIGHTING HUMAN TRAFFICKING IN THE UNITED STATES AND ABROAD: TRANSITION REPORT FOR THE NEXT PRESIDENTIAL ADMINISTRATION 8 (2008), <http://www.freetheslaves.net/Document.Doc?id=96>.

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trafficking cases involve a number of jurisdictions and agencies,²⁸⁷ including law enforcement, the judicial system, and victim service organizations. It is important for these agencies to work together to improve the effectiveness of state responses to domestic minor sex trafficking.

B. Policy recommendations for the protection of victims

In order to effectively protect child victims of domestic sex trafficking, it is imperative for states to enact laws reflective of current federal policy that do not require proof of force, fraud, or coercion as necessary elements for the successful prosecution of those who traffic and exploit children under eighteen in the United States.²⁸⁸

Further, law enforcement officials, social service agency workers, and public school staff must be trained by local or national organizations to effectively identify domestic sex trafficking victims. Successful victim identification can allow for referral to appropriate services and protective shelters.²⁸⁹

There must be state policy to provide access to services and shelter for victims.²⁹⁰ These services should be established by statute and the state or federal government funding must be disbursed to support the development of the services.²⁹¹ Additionally, these services and protective shelters must offer the unique assistance that is necessary for this population of victims, including victim empowerment and breaking of the trauma bond between victim and trafficker.²⁹²

Each state should provide for the posting of a national hotline in all bathrooms of rest areas.²⁹³ The National Human Trafficking Resource Center Hotline, run by the Polaris Project, offers child

²⁸⁷ See SMITH ET AL., *supra* note 12, at 45.

²⁸⁸ See WASH. REV. CODE ANN. § 9.68A.100 (West 2013); *see also* 18 U.S.C.A. § 1591(a)(2) (West 2013) (exemplifying a current federal domestic minor trafficking law that does not require proof of force, fraud or coercion for prosecution).

²⁸⁹ See HINES & HOCHMAN, *supra* note 129, at 10.

²⁹⁰ See SMITH ET AL., *supra* note 12, at 45.

²⁹¹ See N.Y. SOC. SERV. LAW 447-b (McKinney 2013).

²⁹² See *id.*; SMITH ET AL., *supra* note 12, at 70.

²⁹³ See WASH. REV. CODE ANN. § 47.38.080 (West 2013).

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victims the opportunity to obtain information regarding availability of services and places to stay in their respective state.²⁹⁴ The posting of a national hotline also allows for the submission of anonymous tips, which may eventually lead to successful prosecution of traffickers and the subsequent freeing of victims.²⁹⁵

Lastly, a civil remedy must be available to victims for damages, as well as medical costs, that they have incurred due to their involuntary participation in the sex trafficking operation.²⁹⁶ The civil remedy is recommended due to the fact that criminal cases are often not pursued, leaving victims uncompensated.²⁹⁷ Civil remedies may include compensatory damages, punitive damages, or attorney's fees.²⁹⁸

VI. Conclusion

Congress as a whole continues to fail to reauthorize the TVPA. The Senate passed a reauthorization bill in February 2013, but to date the House has not passed such a bill. As such, the TVPA reauthorization is still not law today. This failure reflects poorly on our nation's attitude toward the enslavement of our children and underscores the importance for states to implement appropriate legislative responses to domestic minor trafficking. All states are capable of establishing policy that effectively combats domestic minor trafficking and adequately protects our nation's children from sexual exploitation.

Together, New York and Washington illustrate some of the best methods and policies to address the issue of domestic minor sex trafficking. Progressive legislative reformers and community advocates should use this Article's recommendations and examples to coordinate comprehensive legislative frameworks and to ensure the enactment of similar laws across the country.

²⁹⁴ See Johnson, *supra* note 263.

²⁹⁵ See *Hotline FAQs*, *supra* note 260; *Hotline Successes*, *supra* note 260.

²⁹⁶ See PROTECTED INNOCENCE CHALLENGE, *supra* note 5, at 22.

²⁹⁷ See *id.*

²⁹⁸ *Id.*