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Domestic Sex Trafficking: A New Frontier for Megan's Law

INTRODUCTION

The trafficking of citizens for sexual exploitation has reached epic proportions¹. In 2005, the U.S. Department of Justice reported there were an estimated one-hundred to one-hundred and fifty thousand persons, many of them female minors, trafficked domestically for sexual purposes.² According to the U.S. Department of State, nearly three-hundred thousand U.S. citizens are at high risk of being trafficked into the sex industry.³

Megan's Law is the informal name given to a set of laws that govern the management of sex offenders in a community. Today, all 50 states have adopted versions of Megan's Law,⁴ all having similarly stated goals. One of those goals is to serve as a precautionary tool by alerting communities to the presence of convicted sexual predators within their neighborhoods, so that residents can take necessary measures.⁵ Accordingly, each state's Megan's Law requires sex offenders to register as a sex offender with local law enforcement and that local authorities notify the community of the presence of Megan Law registrants.⁶ Presently, many states fail to consider convicted sexual traffickers as sexual predators for the purposes of the Megan's Law registration

¹Human Khan, *Child Sex Trafficking Growing in the U.S.: I Got My Childhood Taken From Me*, ABC NEWS WASHINGTON (May 5, 2010) also available at <http://abcnews.go.com/US/domestic-sex-trafficking-increasing-united-states/story?id=10557194#.T2S5uxF8BbE> (Stating sex trafficking is "increasingly plaguing the United States.")

²Edward J. Schauer & Elizabeth M. Wheaton, *Sex Trafficking Into The United States: A Literature Review*, 31 CRIM. JUST. REV. 2, 146 (2006).

³U.S. Department of Justice Child Exploitation and Obscenity Section. (Nov 2009) available at <http://www.justice.gov/criminal/ceos/trafficking.html>; See also, National Center for Missing & Exploited Children. Human Trafficking Briefing by Ernie Allen. (21 July 2009) available at http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=4079 (Referencing a University of Pennsylvania study that estimates nearly 300,000 youth in the United States are at risk of being sexually exploited for commercial use.)

⁴See *Helman v. State*, 784 A.2d 1058, 1065 (Del. 2001) ("All fifty states, the District of Columbia and the federal government have adopted some form of statutory scheme commonly referred to as Megan's Law."); See also New Jersey National Institute of Justice, <http://www.nij.gov/topics/corrections/community/sex-offenders/about-megans-law.htm> (last visited April 12, 2012).

⁵Id.

⁶Rachel J. Rodriguez, Note, *The Sex Offender Under the Bridge: Has Megan's Law Run Smoke?* 63 RUTGERS L. REV. 1023, 1024-25.

requirement. And those that do only do so under limited circumstances, generally, when the victim being sexually exploited is a minor under a specific age.⁷ It is imperative for each state to revamp its Megan's Law legislation as it applies to sex trafficking. The current legislation addressing the sex trafficking epidemic does not provide enough safety for the public, nor does it effectively deter would-be offenders⁸. Additional legislation is needed, not to replace existing laws but to work hand-in-hand with them to prevent and ultimately eradicate the sex trafficking epidemic. The need for Megan's Law to apply to sex trafficking is apparent, and the present circumstances warrant it.

This paper proposes a new sex offender classification under Megan's Law. It argues that all convicted sex traffickers should be classified as sex offenders and therefore be mandated to comply with Megan's Law. By implementing this requirement convicted sex traffickers will have to register and obey Megan's Law requirements. This paper will argue that by appropriately classifying each convicted sexual trafficker as a sex offender, people in vulnerable neighborhoods will be better protected against sex trafficking. Namely, by residents being informed when a dangerous sexual trafficker moves into their area they can take appropriate precautionary procedures to protect themselves, relatives and neighbors. Moreover, if states under Megan's Law classified sexual traffickers as sex offenders, minors will be better protected, since under Megan's Law dangerous sexual offenders are criminally liable for associating with youths.⁹ Lastly, inmates who are in prison for sexual offenses are often singled out and treated

⁷ See Sandra Norman-Eady, Christopher Reinhart, and Peter Martine, *Statutory Rape Laws By State*, 0376 OLR Research Report (April 14, 2003) available at <http://www.cga.ct.gov/2003/olrdata/jud/rpt/2003-r-0376.htm> (for a complete list of each state's age requirement. "[Generally, [t]he age of consent varies by state, with most states, including Connecticut, setting it at age 16. The age of consent in other states ranges from ages 14 to 18."); Maine 17-A § 254 (1)(A) (Under the age of 15); Oklahoma § 21-1114 (under the age of 14).

⁸ See generally, RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE, AN ACTIVIST FINDS HER CALLING AND HEALS HERSELF*, (Harper Publication, 2011).

⁹ Samantha Imber, *CRIMES AND OFFENSES SEXUAL OFFENSES: PROHIBIT SEXUAL PREDATORS FROM RESIDING WITHIN PROXIMITY OF SCHOOLS OR AREAS WHERE MINORS CONGREGATE*, 20 GA. ST. U.L. REV. 100, 100(2003).

harshly by other prisoners due to their sex offender status.¹⁰ Thus, it is likely that classifying a sexual trafficker as a sex offender will also serve as a deterrent, since criminals do not want to be identified as a sex offender in prison due to the aforementioned treatment.¹¹ Part II of this essay will provide a brief history of the origin and purposes of Megan's Law. Part III, will review the domestic sex trafficking epidemic. In particular, this section will analyze current anti-trafficking laws and why they are ineffective. Finally, Part IV will outline the proposal for a new sex offender definition within Megan's Law designed to include sex traffickers. It will further examine how this new definition will complement current anti-trafficking legislation. This part will conclude that classifying sex traffickers as Megan's Law offenders will improve the reach of the law in dealing with the problem of sex trafficking and further the struggle against this terrible crime.

II. Background: The Making of Megan's Law

A. Origin and History

It is well known that Megan's Law was named after Megan Kanka, a seven-year-old girl from Hamilton Township, New Jersey. In the summer of 1994, Megan's neighbor Jesse Timmendequas lured her into his home to show her his new puppy.¹² Once she was inside his

(Forbidding any person required to register under the state's sex offender registry from living within 1000 feet of a childcare facility, a school, or an area where minors congregate.)

¹⁰ Deborah Ball, STIGMA OF SEX CRIMES IS ALIVE AND WELL IN PRISON SYSTEM, THE GAINESVILLE SUN, June 14, 2005, ("Inmates who are in prison for offenses other than sex crimes also say that the prison hierarchy is unkind to sex offenders") available at <http://www.gainesville.com/article/20050614/LOCAL/50613059?p=3&tc=pg>.

¹¹ See, e.g., *Holden v. Hirner*, #10-3656, 2011 U.S. App. Lexis 23953 (8th Cir.) (A sex offender, arrested for failing to report his new address, was attacked in the county jail's protective custody pod. after inmates discovered he was a sex offender).

¹² See, e.g., Rose Corrigan, *Making Meaning of Megan's Law*, 31 LAW & SOC. INQUIRY 267, 267 (2007). ("On July 29, 1994, in Hamilton Township, New Jersey, Jesse Timmendequas invited seven-year-old neighbor Megan Kanka to his house to see his new puppy."); Jan Hoffman, *New Law Is Urged n Freed Sex Offenders*, N.Y. TIMES, August 4, 1994 available at <http://www.nytimes.com/1994/08/04/nyregion/new-law-is-urged-on-freed-sex-offenders.html?ref=megankanka> (Reporting Jesse Timmendequas, "liked to show his new puppy to neighborhood children.")

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home he tried to touch her in a sexual manner¹³. After Megan refused¹⁴, he brutally raped and murdered her¹⁵. Unknown to Megan's parents or the community, Timmendequas had twice before been convicted of sexual assaults.¹⁶

After the death of their daughter Megan's parents began to advocate and mobilize supporters for legislative change in sex offender laws.¹⁷ According to Richard Kanka his daughter would have still been alive "had he been aware of [the Timmendequas] record."¹⁸ Consequently, Megan's family and supporters alike campaigned for communities to be informed whenever a sex offender moved into a neighborhood. A few months after the Kankas collected over 400,000 signatures on a petition requesting stricter, proactive sex offender laws¹⁹, New Jersey legislators responded with the enactment of Megan's Law.²⁰ Megan's Law requires all persons who have been convicted of serious sex offenses to register with local authorities and in turn requires local authorities to notify communities of said offender's residence.²¹

B. Defining the Sex Offender

¹³ State v. Timmendequas, 773 A.2d 18, 23 (N.J. 2001).

¹⁴ Id.

¹⁵ *Suspect Confessed in the Murder of a 7-Year-Old, Prosecutors Say*; N.Y. TIMES, August 2, 1994.

([Timmendequas] pulled [Megan] into his room, strangled her with a belt then sexually assaulted her.)

¹⁶ William Glaberson, *Stranger on the Block – A Special Report; At Center of "Megan's Law" Case, a Man No One Could Reach*, N.Y. TIMES, May 28, 1996, at A1 ("[Timmendequas] had pleaded guilty twice before to sexually assaulting small children [and in 1981] a judge had labeled him a "compulsive, repetitive sexual offender.") available at <http://www.nytimes.com/1996/05/28/nyregion/stranger-block-special-report-center-megan-s-law-case-man-no-one-could-reach.html?scp=1&sq=A%20Special%20Report;%20At%20Center%20of%20%93Megan%92s%20Law%92%20Case,%20a%20Man%20No%20One%20Could%20Reach&st=cse>. (Last visited May 1, 2012).

¹⁷ Id.

¹⁸ Id.

¹⁹ Megan's Law Home Page, www.megans-law.net/Megans-Law.asp (last visited April 12, 2012). ("[After the death of their daughter] Megan's parents, Maureen and Richard Kanka, had gathered more than 430,000 signatures, and 89 days after Megan's disappearance the first state law that mandated active community notification was signed into law, New Jersey's Megan's Law.

²⁰ See Id. (In October of 1994, New Jersey Legislators signed into law N.J.S.A. 2C:7-1 "Megan's Law.")

²¹ See Center for Sex Offender Management, U.S. Department of Justice, *Legislative Trends in Sex Offender Management* 1, 2 (2008), available at <http://www.csom.org/pubs/legislativetrends.pdf>.

Whether someone is considered a sex offender depends on the state he or she calls home.²² Generally the term is used to describe a person who has committed a sexual offense. What constitutes a sex crime varies from state to state.²³ Nonetheless, most people labeled as sex offenders have been found guilty of crimes of a sexual nature, such as rape, sexual assault, statutory rape, or child sexual molestation.²⁴ Additionally, some states classify a person convicted of promoting the prostitution of a child as a sex offender.²⁵ However, some sex offenders simply violated a law contained in a sexual category. For example, in New Jersey, an offender convicted of public urination is considered a sex offender and mandated to comply with Megan's Law.²⁶

As another example, consider Alabama's sex offender registration law, which grants broad discretion by requiring registration for "generally any act of sexual perversion" and not just specifically enumerated crimes.²⁷ Even the enumerated crimes are questionable: in Alabama, one must register as a sex offender for displaying an obscene bumper sticker, defined as one describing "sexual or excretory" functions, or for engaging in any type of deviant sexual intercourse, which effectively criminalizes any type of homosexual intercourse.²⁸

Both New York and New Jersey label defendants who have been convicted of the false imprisonment of a child other than their own as a "sex offender" - even when the crime involved

²² Rachel J. Rodriguez, Note, *The Sex Offender Under the Bridge: Has Megan's Law Run Amok?* 62 RUTGERS L. REV. 1023, 1034 (2010).

²³ *Id.*

²⁴ See, e.g., N.J. STAT ANN. § 2C: 7-2(b)(1) (West 2005 & Supp. 2010)

²⁵ See supra note 7.

²⁶ See, Steve Chapman, *A False Remedy for Sex Offenders* (August 18, 2011) available at http://townhall.com/columnists/stevechapman/2011/08/18/a_false_remedy_for_sex_offenders/page/full/ (Last visited April 14, 2012).

²⁷ ALA. CODE § 13 A-11-200(b) (LexisNexis 2005).

²⁸ *Id.* § 13 A-12-131.

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absolutely no conduct or motivation of a sexual nature.²⁹ Nationwide, at least thirteen states require sex offender registration for public urination, thirty-two for indecent exposure-type offenses, and twenty-nine (including New Jersey) for consensual sex between teenagers.³⁰ It is worth noting that federal law mandates lifetime registration for only the most serious crimes, but in at least seventeen states, offenders have to register for life - no matter how minor the offense.

C. Proliferation

State law enforcement agencies were keeping track of sex offenders long before the death of Megan Kanka. In 1947 California enacted the first sex offender registration statute.³¹ Similarly, Washington, the first state to mandate a sex offender community notification provision, did so in 1990.³² Moreover, in 1994 then President Clinton signed into law the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (“Wetterling Act”),³³ which required all states to create a sex offender databases by 1997 or face possible loss in federal criminal justice funding.³⁴ The Wetterling Act served as a tool for law enforcement agencies and government entities to disclose and share sex offenders’ information amongst one another. Although, the act did not mandate a community notification provision, it granted states the discretion to implement such a requirement as long as the states’ purpose in doing so was to further protect its citizens.³⁵

²⁹ Ofer Raban, *Be They fish or Not Fish: The Fishy Registration of Nonsexual Offenders*, 16 WM. & MARY BILL OF RTS. J. 497, 507 (2007) (Noting that Megan’s Law requires anyone convicted of “child kidnapping of a minor, except by a parent and false imprisonment of a minor, except by a parent” to register as a sex offender.)

³⁰ Joseph J. Fischel, *Transcendent Homosexuals and Dangerous Sex Offenders: Sexual Harm and Freedom in the Judicial Imaginary*, 17 DUKE J. GENDER L. & POL’Y 277, 287 (2010).

³¹ Sex Offender Registration and Exclusion Information, California Department of Justice, <http://www.meganslaw.ca.gov/sexreg.aspx> (Last visited April 15, 2012).

³² See WASH. REV. CODE ANN. §§ 4.24.550, 9A.44.130 to .140 (West 2005).

³³ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101(f)(1) to (f)(2), 108 Stat. 1796, 2042 (1994) codified as amended at 42 U.S.C. § 14071 (g)(1) to (g)(2) (2006)).

³⁴ *Id.*

³⁵ *Id.*

Even though New Jersey was not the first state to enact sex offender registration or community notification legislation, its Megan's Law has influenced and served as a model for many states and federal sex offender laws. Within one year of New Jersey's enactment of Megan's Law, twenty-two other states followed its model mandating both sex offender registration and community notification.³⁶ Additionally, the federal government amended the Wetterling Act in 1996 to mandate community notification.³⁷ Today all states and the District of Columbia have adopted a version of New Jersey's Megan's Law with a similar purpose.³⁸

D. The Federal Sex Offender Law

Since 1994, when they were originally enacted, Federal sex offender registry laws have undergone many amendments. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("Wetterling Act") enacted in 1994 sets out the minimum requirements for state sex offender programs.³⁹ Specifically, the Wetterling Act requires a person convicted of certain crimes against children and sexually violent crimes, including "any conduct that by its nature is a sexual offense against minors" to register with appropriate state agencies.⁴⁰

i. Walsh Act and Sex Offender Registration and Notification Act

³⁶ Alan R. Kabat, *Scarlet Letter Sex Offender Databases and Community Notification: Sacrificing Personal Privacy for a Symbol's Sake*, 35 AM. CRIM. L. REV 333 (1998), 359-61.

³⁷ Amended Section 170101(d) of the *Violent Crime Control and Law Enforcement Act of 1994* (42 U.S.C. § 14071(d)); See also Office of the Inspector General, *Evaluation and Inspections Report I-2009-001* ("[The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act...] require[s] states to establish a community notification system... to enable citizens to receive information about registered sex offenders."

³⁸ *Smith v. Doe*, 538 U.S. 84, 90, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003).

³⁹ Jennifer D. Hill, *The Teen Sexting Dilemma: A Look at How Teen Sexting Has Been Treated in the Criminal Justice System and Suggested Responses for Arizona*, 4 PHOENIX L. REV. 561 (2010), 573.

⁴⁰ 42 U.S.C. §14071 (2006).

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Congress enacted the Walsh Act on July 27, 2006.⁴¹ Title 1 of the Walsh Act contains the Sex Offender Registration and Notification Act (“SORNA”) and the Federal Failure to Register as a Sex Offender statute.⁴² The stated purpose of the Walsh Act is “[t]o protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child victims.”⁴³ To achieve this purpose SORNA established “a comprehensive national [sex offender registration] system...”⁴⁴

SORNA classifies a sex offender into one of three tiers depending on the severity of the underlying offense⁴⁵ with one being the least severe.⁴⁶ The frequency and minimum duration of registration is determined by tier. Tier I offenders would be required to register annually for fifteen years; Tier II offenders, every six months for twenty-five years, and Tier III offenders, every three months for life.⁴⁷ “SORNA is essentially an effort by Congress to close the loopholes in previous sex offender registration legislation and to standardize registration across the states.”⁴⁸

In addition to establishing a national sex offender registry SORNA increases the amount of information sex offenders must provide when they register. For example, under SORNA an

⁴¹ See National Conference of State Legislatures, *NCSL Summary P.L. 109-248 (HR 4472)* available at <http://www.ncsl.org/issues-research/justice/hr4472-adam-walsh-child-protection-and-safety-ac.aspx> (last visited April 15, 2012).

⁴² See 18 U.S.C. § 2250(a)

⁴³ P.L. 109-248.

⁴⁴ 42 U.S.C. § 16901.

⁴⁵ See Officer of Justice Programs, United States Department of Justice, *The National Guidelines for Sex Offender Registration and Notification*, page 21 available at http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf (“Section 111(2)-(4) of SORNA defines three “tiers” of sex offenders. The tier classifications have implications in three areas: (i) under section 115, the required duration of registration depends primarily on the tier; (ii) under section 116, the required frequency of in person appearances by sex offenders to verify registration information depends on the tier; and (iii) under section 118(c)(1), information about tier I sex offenders convicted of offenses other than specified offenses against a minor may be exempted from website disclosure.”).

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ *United States v. Ditomasso*, 552 F. Supp. 2d 233 (D.R.I. 2008).

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offender is required to include his or her residence, place of employment and if a student, school, whereas under the Wetterling Act an offender only had to disclose principal place of residence.⁴⁹ SORNA provides states with a minimum sex offender information requirement,⁵⁰ however states can require as much information as they see fit.⁵¹ Some states have required sex offenders to provide the following: names, dates of birth, and Social Security numbers (including any of the above used in an alias); addresses for a primary residence and any temporary residence of more than seven days; email addresses, instant messenger client screen names, and any other Internet identifiers; employment information, including typical travel route(s); a vehicle description, driver's license number, and license plate number; and a physical description of the offender, photograph, fingerprints and DNA information. Additionally, the information gathered under SORNA is required to be published online on the local sex offender registry website.⁵² Akin to Megan's Law, SORNA criminalizes the sex offender for failing to comply with the SORNA registry terms and conditions.⁵³

E. Judicial Interpretation of Megan's Law & Sex Offender Registration Notification Act

Courts have generally viewed Megan's Law and similar sex offender notification legislations to be valid and necessary as a matter of public safety.⁵⁴ As we have pointed out, Megan's Law legislation is generally broadly drafted to achieve a state's goals of protecting its citizens from sexual predators. As a result, courts tend to read and interpret these statutes in a

⁴⁹ Megan's Law, Pub. L. No. 104-145, § 170101(d), *110 Stat. 1345* (1996) (codified as amended at 42 U.S.C. § 14071(e) (2006)).

⁵⁰ *The National Guidelines for Sex Offender Registration and Notification*, supra note 43.

⁵¹ *Id.*

⁵² Office of the Inspector General, *Review of the Sex Offender Registration and Notification Act*, Evaluation and Inspections Report I-2009-001, (December 2008); available at <http://www.justice.gov/oig/reports/plus/e0901/results.htm>

⁵³ See 18 U.S.C. § 2250(a) (2006) (making it a crime for anyone who "knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act").

⁵⁴ See, e.g., *Helman v. State*, 784 A.2d 1038, 1075 (Del. 2001) ("The purpose of the sex offender registration and notification statutes is to protect the public from the danger and propensity for recidivism of convicted sex offenders")

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broad manner favoring the goal of wide protection. For example, in *Smith v. Doe*, the Supreme Court of the United States was called upon to determine the constitutionality of an Alaskan sex offender act requiring sex offenders who were convicted and had completed their sentence prior to its enactment to register as sex offenders.⁵⁵ In *Smith*, convicted sex offenders argued that Alaska's requirement that they obey a law that was created after their convictions violated the Constitution's *ex post facto* prohibition.⁵⁶ The Court acknowledged that typically such a requirement would be contrary to the Constitution but, focusing on the legislature's intent, it upheld the act because, according to the Court, "protecting the public from sex offenders" was the "primary governmental interest of the Act" and therefore a valid state action.⁵⁷

Additionally, in the *Matter of Registrant T.T.*, the N.J. Supreme Court stated "Megan's Law extends beyond purely sexual offenses"⁵⁸ and consequently rejected the defendant's argument that since his offense lacked sexual motivation it was outside of the Megan's Law scope.⁵⁹ The court reasoned that since the defendant's act was within the legislations intent of Megan's Law, Megan's Law was applicable to him irrespective of his lack of sexual motivation.⁶⁰ This holding directly illustrates that courts are willing to look beyond the impact Megan's Law may have on an offender and interpret a law broadly to achieve a state's goal of protection.

⁵⁵ *Smith v. Doe*, 538 U.S. 84, 89 ("We must decide whether the registration requirement is... prohibited by the Ex Post Facto Clause [of the United States Constitution].

⁵⁶ *Id.* at 91 (Stating respondents brought action seeking to declare Alaska's Sex Registration unconstitutional "as to them under the Ex Post Facto Clause of Article I, § 10, cl. 1, of the Constitution."

⁵⁷ *Id.* at 93("Nothing on the face of the statute suggests that the legislature sought to create anything other than a civil... scheme designed to protect the public from harm." (quoting *Kansas v. Hendricks*, 521 U.S. 346, 362 (1997))). By concluding the Act was intended to protect the public and not to punish sex offenders the Court did not have to look any further into the law to see if it violated the *ex post facto* clause. *Id.* at 92-93; See also *Id.* at 102 (holding that the presence of a deterrent purpose does not render legislation "criminal" and to find it was such would "undermine the Government's ability to engage in effective regulation." (quoting *Hudson v. United States*, 522 U.S. 93, 105 (1997))).

⁵⁸ See *In re T.T.*, 188 N.J. 321, 333 (N.J. 2006)

⁵⁹ *Id.*

⁶⁰ *Id.*

III. Domestic Sex Trafficking

A. Defining Sexual Trafficking:

Sexual trafficking has been defined in various ways. According to federal law, sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act.”⁶¹ Additionally, Congress has defined a commercial sex act as any sex act in which anything of value is given or received by any person.⁶²

B. Scope of Domestic Sex Trafficking

The United States is the second largest market in the world (after Germany) for the trafficking of women and children for purposes of sexual exploitation.⁶³ Currently sex trafficking is one of the largest⁶⁴ and most profitable criminal operations in the world.⁶⁵ According to the United Nations Office on Drugs and Crime, sexual trafficking is the most common type of exploitation suffered by trafficking victims.⁶⁶ Both academic and governmental research has estimated that one hundred thousand children are trafficked for sexual purposes annually in the United States⁶⁷ and that three hundred thousand youth are currently at risk of being trafficked for sexual exploitation.⁶⁸ Trafficking for sexual exploitation is, for the most part, trafficking for

⁶¹ 22 U.S.C. § 7102(9).

⁶² 22 U.S.C. § 7102(3).

⁶³ Edward J. Schauer, *Sex Trafficking Into the United States: A Literature Review*, 31 CRIM. L. REV. 2 (2006), 146.

⁶⁴ http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking (Last visited March 12, 2012).

⁶⁵ http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking (Last visited March 12, 2012).

⁶⁶ Karen D. Breckenridge, *Justice Beyond Borders: A Comparison of Australian and U.S. Child-Sex Tourism Laws*, 13 PAC. RIM. L & POL'Y J. 405, 408 (2004).

⁶⁷ <http://www.polarisproject.org/human-trafficking/overview>

⁶⁸ TENNESSEE BUREAU OF INVESTIGATION & VANDERBILT CENTER FOR COMMUNITY STUDIES, *Tennessee Human Sex Trafficking and Its Impact on Children and Youth*, (2011) available at <http://www.tbi.tn.gov/documents/FINALTNHumanSexTraffickingStudyColorrev.pdf>. (“In the United States, there are approximately 200,000 to 300,000 children who are at risk of being exploited for sex commercially every year.”)

prostitution.⁶⁹ Lastly, it is worth noting that the majority of women and girls do not freely choose to be in prostitution, or seek out opportunities to enter the sex industry.⁷⁰

i. Who's At Risk of Being Trafficked

Women and children represent the majority of sex trafficking victims⁷¹ and are therefore most susceptible to being trafficked. There are many conditions that indirectly facilitate recruitment of women into the sex industry, making women vulnerable to trafficking and sexual exploitation. Several victims report circumstances of poverty, economic desperation and disadvantage, and the lack of a sustainable income.⁷² It is not sufficient, however, to say that poverty is a precipitating factor. With many women it was poverty that was preyed upon by recruiters, traffickers and pimps.⁷³ Studies have also shown that pimps prey on youth at the mall.⁷⁴ For example, one Minnesota study identified Mall of America as “one of the largest pimping grounds in the state”⁷⁵ where pimps would recruit and prey on suburban and rural teens who hung out there.

Pimps also recruit women in the clubs. They befriend women, create emotional and or chemical dependencies, and then convince them to earn money through prostitution. Recently,

⁶⁹Carol J. Gomez, Donna M. Hughes, Janice G. Raymond, *Sex Trafficking of Women in the United States, International and Domestic Trends*, page 25(March 2001)

⁷⁰ Id. 51

⁷¹ Id.

⁷² Because sexual trafficking is relatively new within the United States there is not much statistical research done on its victims.

⁷³ See, e.g., Janice G. Raymond and Donna M. Hughes, *Sex Trafficking of Women in the United States, International and Domestic Trends*, COALITION AGAINST TRAFFICKING IN WOMEN (2001), page 89, (Stating the “reason why many women end up in prostitution is economic and the result of past sexual exploitation.”)

⁷⁴ Suzanne Smalley, ‘*This Could Be Your Kid*’ Law Enforcement Is On Alert: Teen Prostitution Is Flourishing Nationwide. The Girls Are Younger, The Trade Is More Violent--And, Increasingly, The Teenagers Come From Middle-Class Homes. A NEWSWEEK EXCLUSIVE. (August 17, 2003) available at <http://www.thedailybeast.com/newsweek/2003/08/17/this-could-be-your-kid.html>. (Last visited April 30, 2012). (“...pimps are increasingly targeting girls at the local mall”).

⁷⁵ See, supra, note 69 at page 52.

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in Jersey City, New Jersey a pimp was arrested for promoting prostitution.⁷⁶ Later on it was discovered that Pimp Prince, kept the ladies addicted to drugs to ensure that they would not be able to afford their addiction if they ever decided to leave him.⁷⁷ In *Girls Like Us*, Rachel Lloyd described an instance when a teen came to her and told her about the time her “boyfriend” got her drunk and then took her to a strip club and had her dancing for money. Soon after the girl told her he would have her sleep with men for money. Before the girl knew it she was prostituting every day and mandated to bring money home to her “boyfriend.”⁷⁸

ii. Mediums Used to Promote Sex Trafficking

Traffickers also use a variety of legitimate businesses like strip clubs/ go-go bars, massage parlors, modeling studios, and escort services to promote sex trafficking.⁷⁹ Additionally, a significant number of victims are trafficked through the Internet.⁸⁰ Websites such as craigslist.org, backpage.com and similar social media sites have been under the government’s radar as websites frequently used to promote prostitution.⁸¹

Authorities in New Jersey have found strip clubs and massage parlors to be major prostitution venues.⁸² According to one official police report “New Jersey has more [strip clubs] than any other state in the country, with over 300 in the urban areas; approximately 200 to 300 massage parlors... and thousands of residences and other discreet front locations that house

⁷⁶ Ron Zeitlinger, *Jersey City pimp ‘Prince’ pleads guilty, faces 20 years in prison* (April 2, 2010) available at http://www.nj.com/hudson/index.ssf/2010/04/jersey_city_pimp_prince_pleads.html (last visited April 15, 2012).

⁷⁷ Edecio Martinez, *Cops: Jersey Pimp King Had Throne in Living Room, Women as Sex Salves* (August 10, 2009), available at http://www.cbsnews.com/8301-504083_162-5155592-504083.html (Last visited May 11, 2012).

⁷⁸ See, generally, supra note 8.

⁷⁹ See, http://www.humantrafficking.org/combat_trafficking (Last visited May 12, 2012)

⁸⁰ Amanda Kloer, *The Internet’s Role in Human Trafficking* (September 20, 2009); available at <http://news.change.org/stories/the-internet-s-role-in-human-trafficking> (Last visited May 12, 2012). (“...the Internet is one of the largest facilitators of sex trafficking in the world.”)

⁸¹ Mark Latonero, Human Trafficking Online, *The Role of Social Networking Sites and Online Classifies*, CENTER ON COMM. LEADERSHIP & POL’Y (September 2011), page 13.

⁸² See, Supra, note 69 at page 35; See also Susan Hunter, *AIDS IN AMERICA*, (Palgrave Macmillan Publishing 2005), page 116.

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prostitution venues.⁸³ Due to this and New Jersey's proximity to New York City, Philadelphia and Delaware, many traffickers can easily move victims across state lines to promote prostitution without coming to the attention of law enforcement. North Jersey is a crossroads for most of the types of human-trafficking networks that are active in the United States, experts say.⁸⁴ The region's transportation network, the presence of organized crime and corruption, and pockets of deep poverty, high wealth and diverse immigrant communities all make the region prime territory for traffickers.⁸⁵

a. Strip Clubs

Stripping is often a first step into prostitution.⁸⁶ Generally, strip clubs lure in young women to work as bartenders and servers, however once employed they are often pressured into prostitution in order to make more money for themselves and the club.⁸⁷ The U.S. Department of Health and Human Services reports stripping among the several activities into which trafficking victims are forced.⁸⁸ Similarly, the Polaris Project, an anti-trafficking non-profit, listed strip clubs as one of the many likely venues where trafficking victims can be found.⁸⁹ According to the Polaris Project, trafficking victims in strip clubs "may be forced to provide commercial sex to the club patrons" by a pimp or other controller.⁹⁰

⁸³ Id.

⁸⁴ Id.

⁸⁵ http://www.northjersey.com/news/104228124_New_Jersey_is_crossroads_in_sordid_work_of_human_trafficking.html (Last visited May 1, 2012).

⁸⁶ Carol J. Gomez, Donna M. Hughes, Janice G. Raymond, *Sex Trafficking of Women in the United States, International and Domestic Trends*, page 58(March 2001).

⁸⁷ Id.

⁸⁸ http://www.acf.hhs.gov/trafficking/about/fact_sex.pdf (Last visited May 12, 2012).

⁸⁹ <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/hostessstrip-clubs> (Last visited May 10, 2012).

⁹⁰ Id.

More recently, in Queens, New York, a law enforcement human trafficking operation led to the arrest of twenty people at Gallaher's strip club.⁹¹ The charges included trafficking, racketeering, extortion and immigration and marriage fraud.⁹² According to authorities women were forced to "dance in various strip clubs in the city" and were required to earn at least one-hundred dollars every night....⁹³

The government has acknowledge that strip clubs are often used as a "feeder" business for sex trafficking and in an attempt to minimize sex trafficking in strip clubs have teamed with the Association of Club Executives ("ACE National"), a trade group of U.S. strip clubs to stop sex trafficking.⁹⁴ This initiative engages strippers and club staff with local and federal law enforcement to teach them how to effectively recognize, report, and rescue victims.⁹⁵

b. Prostitution

Trafficking for sexual exploitation is, for the most part, trafficking for prostitution. Domestic trafficking is, for the most part, trafficking for prostitution.⁹⁶ The average victim in the United State enters prostitution before his or her fourteenth birthday.⁹⁷ Traffickers rely on local and existing sex industries, to promote prostitution.⁹⁸ Recently, local and federal law enforcement have noticed that an increasing amount of organize crime organizations and gangs

⁹¹ <http://sunnysidepost.com/2011/11/30/gallahers-strip-club-caught-up-in-human-trafficking-operation/> (Last visited May 1, 2012).

⁹² <http://nyulocal.com/city/2011/12/09/gambino-and-bonnano-crime-families-recruit-sex-workers-for-strip-clubs-in-new-york/> (Last visited May 12, 2012).

⁹³ Id.

⁹⁴ <http://acenational.wordpress.com/2011/09/17/strip-club-association-partners-with-feds-to-combat-sex-trafficking/> (Last visited May 14, 2012).

⁹⁵ Id.

⁹⁶ See, Chuck Neubauer, *Most human trafficking related to prostitution, Forced labor makes up remainder, report says*, THE WASHINGTON TIMES (April 28, 2011) available at <http://www.washingtontimes.com/news/2011/apr/28/most-human-trafficking-related-to-prostitution/> (Last visited May 10, 2012).

⁹⁷ <http://abcnews.go.com/US/domestic-sex-trafficking-increasing-united-states/story?id=10557194#.T3iL3DF8BbE> ("The average age of entry for female prostitutes in the United States is between 12 and 14 years old")

⁹⁸ See, supra note 69, at page 25

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are involved in domestic sex trafficking.⁹⁹ This should be of no surprise, considering, domestic sex trafficking is more profitable and less risky than selling drugs.¹⁰⁰ However, what may be of surprise is that gangs are preying on girls from some of the wealthiest areas in the United States.

Contrary to popular belief domestic sex trafficking is prevalent in wealthy rural communities. Northern Virginia is one of the wealthiest areas in the United States and is also home to a recent FBI teenage sex trafficking investigation. Federal prosecutors recently charged five young men with trafficking teenage girls in Northern Virginia.¹⁰¹ Allegedly, these five men are members of a Fairfax, Virginia affiliate of the Crips gang and were trafficking teenage girls for gang profits. According to the prosecutor the accused ringleader lured girls in by approaching them at “high schools, metro stations, and on the street, as well as contacting them through social media sites like Facebook.”¹⁰²

Additionally, the other gang members would flatter teens about their appearance and ask them if they would like to make a lot of money. Afterwards they coerce the teens into prostitution through the use of violence and drugs. In one instance, when a seventeen year old tried to back out after she found out she was being recruited for prostitution, a gang member brutally “slammed her head against the window of a vehicle, [then slashed her left forearm with a knife and gang members raped her to teach her a lesson.]”¹⁰³ According to the U.S. Attorney overseeing this matter “[t]he girls recruited were girls who lived at home with their parents... [and] [m]any of the victims in this case were girls from good homes, in good neighborhoods.”¹⁰⁴

⁹⁹ Id.

¹⁰⁰ Bill Silverfarb, *Human traffickers targeted*, The Daily Journal San Mateo County (January 12, 2012) (“For traffickers, commercial sexual exploitation of children is both less risky and more profitable than selling drugs.”) available at http://www.smdailyjournal.com/article_preview.php?id=226493.

¹⁰¹ <http://abcnews.go.com/US/gang-members-arrested-alleged-suburban-teen-prostitution-ring/story?id=16046155#.T3iS3DF8BbF>.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

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c. Internet

The United States is home to the Internet-based pornography business, a medium that has opened up new opportunities for traffickers to exploit victims.¹⁰⁵ Video conferencing technology allows real-time transmission of events to essentially anywhere in the world. One of the first uses of this technology was the live transmission to buyers of girls being sexually abused.¹⁰⁶ There is currently an online market for prostitution through the use of Craigslist and other Websites.

The Internet is the biggest forum used for underage sex trafficking in the United States, specifically a website called Backpage.com is responsible for the majority of prostitution ads in the states.¹⁰⁷ Backpage.com is an online division of the Village Voice Media, a reputable New York City newspaper company.¹⁰⁸ According to AIM Group, a trade organization, Backpage.com has “[seventy percent] of the market for prostitution ads.”¹⁰⁹

On March 29, 2012, Washington became the first state to enact an age verification for sex-ad law when Governor Chris Gregoire, signed Senate Bill 6251 (“SB 6251”) to help prevent sex trafficking.¹¹⁰ SB 6251 criminalizes the advertisement of underage girls for sex without first verifying their ages.¹¹¹ Under SB 6251 websites like Backpage.com could be exposed to criminal sanctions if its site promotes underage girls for sex and if the girls are actually underage. It is currently uncertain if this law will withstand First Amendment and or other Constitutional challenges; only time will tell...

¹⁰⁵ David R. Hodge, *Sexual Trafficking in the United States: A Domestic Problem with Transactional Dimensions*, NAT'L ASS'N OF SOC. WORKERS (2008), 147.

¹⁰⁶ <http://abcnews.go.com/US/domestic-sex-trafficking-increasing-united-states/story?id=10557194>.

¹⁰⁷ <http://www.smh.com.au/business/financiers-and-sex-trafficking-20120401-1w6gh.html>.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ <http://www.npr.org/local/stories/KPLU/149647872>.

¹¹¹ Id.

C. Correlation Between Adult and Children Victims

A large number of adults trafficked for sexual purposes have been trafficked since youth. “The average age a minor is first prostituted is about thirteen years old.”¹¹² In one study of routes into prostitution, a sociologist found that over forty percent of the women interviewed reported entering prostitution as minors. The nexus between adult and youth domestic sex trafficking and adult and youth prostitution is clear and points to the need of stricter laws to prevent this epidemic. Considering the majority of traffickers that traffic adults also traffic youth and since the majority of adults who are trafficked for sexual purposes were victimized as youth, trafficking laws should treat traffickers equally regardless of the victims’ age.

D. Fedreal, State and Local Law Enforcements Response to Sex Trafficking

a. Federal Government

In 2000 Congress passed the Trafficking Victims Protection Act (“TVPA”).¹¹³ The enactment of the TVPA represents the first acknowledgement by the United States that it has a human trafficking problem.¹¹⁴ Prior to its passage, the trafficking of persons was thought of as only an international problem and not a domestic one. The law provides a three-pronged approach that includes prevention, protection, and prosecution.¹¹⁵ “The TVPA was reauthorized through the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, and 2008.”¹¹⁶

¹¹² Linda A. Smith and Samantha Healy Vardaman, *Domestic Human Trafficking Series: A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U.L. REV. 265, 270 (2011).

¹¹³ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in various sections of the U.S.C.)

¹¹⁴ See, Sally Terry Green, *Protection for Victims of Child Sex Trafficking in the United States: Forging the Gaps between U.S. Immigration Laws and Human Trafficking Laws*, 12 UC DAVIS J. OF JUV. L. & POL’Y 309, 313 (2009).

¹¹⁵ Id.

¹¹⁶ <http://www.polarisproject.org/resources/state-and-federal-laws>.

Under the TVPA, sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”¹¹⁷ In accordance with the TVPA a trafficking victim may be eligible for government healthcare, housing, and financial assistance.¹¹⁸ However, only victims of “severe forms of trafficking” are eligible for benefits under the TPVA.¹¹⁹ Severe trafficking is defined as:

1. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
2. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹²⁰

a. Difficulties Implementing TVPA

Trafficking-in-persons laws are critical to prosecuting sex traffickers. In order to find a trafficker liable for trafficking a state must generally prove knowledge that force, fraud or coercion was used in sexual services.¹²¹ This requirement is difficult to meet in cases of domestic sex trafficking and especially in cases where the victim is a minor because it is very common for traffickers to enslave victims through psychological bonding and perceived love.¹²² As a result, girl victims of sex trafficking rarely believe they are victims; rather, many are

¹¹⁷ 22 U.S.C. §7102(9) (2000) available at <http://www.law.cornell.edu/uscode/text/22/7102> (Last visited March 20, 2012).

¹¹⁸ *Id.*

¹¹⁹ 22 U.S.C. §7105(B)(1)(a) available at <http://www.law.cornell.edu/uscode/text/22/7105> (Last visited March 20, 2012).

¹²⁰ 22 U.S.C. §7102(8) (2000) available at <http://uscode.house.gov/download/pls/22C78.txt> (Last visited March 21, 2012).

¹²¹ *Id.*

¹²² See *supra*, *GIRLS LIKE US*.

typically convinced that the trafficker is their boyfriend.¹²³ Moreover, since it is extremely difficult to prove these elements many sex traffickers escape serious criminal liability.¹²⁴

As a case in point, in 2001 a joint investigation by the INS, FBI, and Anchorage Police Department lead to the discovery of a sex trafficking ring operating out of the Crazy Horse strip club in Anchorage, Alaska.¹²⁵ Specifically, seven Russian females' ages sixteen to thirty, were recruited to come into the U.S. to perform traditional Russian Folk dances.¹²⁶ However, once the Russian females arrived in the U.S., their visas and identification were confiscated from them and they were forced to strip at the Crazy Horse.¹²⁷ While the women initially protested, the physical abuse and starvation they endured, coupled with a desire for self-preservation, they acquiesced to the demands of stripping and involuntary labor.¹²⁸ Despite having strong evidence to support anti-trafficking charges, the prosecutors agreed to drop the most serious charges after an investigation showed that the ladies may have known prior to leaving Russia that they would be required to dance in the nude.¹²⁹ One of the U.S. citizens escaped totally criminal liability and the other two were charged and convicted of visa fraud and violations of the Mann Act.¹³⁰ The two that were convicted under the aforementioned charges were sentenced to eighteen months and forty-eight months in a federal prison.¹³¹ In light of this case, one could reasonably conclude the TVPA's requirements contribute to the difficulties associated in convicting would-

be sex traffickers allowing many to escape serious criminal liability. c. Local Legislation

¹²³ Linda Smith and Samantha Healy Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U.L. REV. 265, 284 (2011).

¹²⁴ Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Day Slavery*, 12 MICH. J. GENDER & L. 87, 109 (2005). ("Often, prosecutors enter plea agreements under other lesser criminal statutes because there are high standards of proof in showing "severe forms of trafficking" to predicate relief under the TVPA.")

¹²⁵ See, Id. 103.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id. 104 to 106.

¹²⁹ Id. 106.

¹³⁰ Id. 106 to 107.

¹³¹ Id. 107.

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Currently only twenty-eight states have anti-trafficking legislation.¹³² Highly populated states like New York and New Jersey that are known for their commercial sex industries are among the states that have anti-trafficking legislation.¹³³

In 2007 New York legislators passed N.Y. Penal Law Section §230.34, an anti sex trafficking provision of the Penal Law.¹³⁴ A person is liable under this law to conviction of a Class A felony if he or she intentionally advances or profits from prostitution by:

- (1) providing the victim with certain drugs¹³⁵; (2) making material false statements;¹³⁶ (3) withholding or destroying government identification documents; (4) requiring repayment of a debt;¹³⁷ (5) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in prostitution by making that person fearful of one of eight actions or consequences against him or her.¹³⁸

Unlike, the majority of states with anti-trafficking laws N.Y. Penal Law Section §230.34 does not criminalize the victims, instead it states the victim “shall not be deemed an accomplice.¹³⁹” Additionally, the statute established a statewide trafficking taskforce and criminalizes travel service providers who sell services for the purpose of prostitution.¹⁴⁰

¹³² See http://www.humantrafficking.neu.edu/responses/state_human_trafficking/ (Listing all states and whether it has an anti-trafficking legislation)

¹³³ Id.

¹³⁴ S.B. 5902, 228th LEG., REG. SESS. (N.Y. 2007), chaptered on June 6, 2007

¹³⁵ N.Y. PENAL LAW §230.34(1), relating to drugs, is more detailed in the “Sex Trafficking” provision than in the “Labor Trafficking” provision at N.Y. Penal Law §135.35(1).

¹³⁶ N.Y. PENAL LAW §230.34(2), relating to the use of fraud, has no counterpart in the “Labor Trafficking” provision

¹³⁷ N.Y. PENAL LAW §230.34(4), relating to repayment of a debt, does not require a “systematic ongoing course of conduct with intent to defraud such person” as required in the “Labor Trafficking” provision at N.Y. Penal Law §135.35(2).

¹³⁸ See N.Y. PENAL LAW §230.34, Appendix B.

¹³⁹ Id.

¹⁴⁰ Id.

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New Jersey passed N.J.S.2C:34-1, its anti-trafficking legislation, in 2005.¹⁴¹ Under N.J.S.2C:34-1 a person convicted of human trafficking [for the purposes of engaging in sexual activity is guilty of a first degree criminal offense and can be imprisoned for up to twenty years without parole or a life sentence with the possibility of parole after twenty years.¹⁴² Unlike the federal TVPA, N.J.S.2C:34-1AB 2730 grants all trafficking victims the ability to receive any available benefits or services. On January 17, 2012 New Jersey enacted an addition to N.J.S.2C:34-1.¹⁴³ Under this new act victims that are minors are protected from being prosecuted for prostitution.¹⁴⁴ The purpose of this law is to ensure that victims are not treated as criminals but rather as survivors of a crime.

Despite having these laws both New York and New Jersey have prosecuted very few people since the laws went into effect. As of 2009, New York State had only convicted one person for sex trafficking out of eighteen arrests.¹⁴⁵ According to the New York Times “the situation is not very different for New Jersey.”¹⁴⁶ Nationally less than half of the people arrested for trafficking were convicted.¹⁴⁷ Prosecutors in both states have blamed a lack of training as a contributing factor to the poor arrest and conviction numbers.¹⁴⁸

IV. Proposal

A. Expanding the Meaning of Sex Offender

¹⁴¹ See Center for Women Policy Studies, *Fact Sheet on State Anti-Trafficking Laws from US PACT [Policy Advocacy to Combat Trafficking] A Program of the Center for Women Policy Studies* December 2008, page 8.

¹⁴² Id.

¹⁴³ <http://www.judiciary.state.nj.us/legis/P.L.%202011,%20c.195%20-%20Promotes%20diversion%20of%20juveniles%20charged%20with%20prostitution.pdf>. (Last visited March 25, 2012).

¹⁴⁴ Id.

¹⁴⁵ Joseph Berger, *DESPITE LAW, FEW TRACKING ARRESTS*, NY TIMES (December 4, 2009) available at

¹⁴⁶ Id.

¹⁴⁷ See e.g., Id. (Stating out of 419 people arrested for trafficking in the U.S. 196 received criminal penalties)

¹⁴⁸ Id.

There is currently a need for states to recognize and acknowledge that promotion of prostitution and sex trafficking are sex offenses. A framework must be established to appropriately classify those responsible for promoting prostitution and sex trafficking as sex offenders under Megan's Law. Pimps, recruiters, and traffickers are those who supply the sex industry with women, men or children and who control the victim on a day-to-day basis and are therefore responsible for this epidemic. It is therefore imperative that recruiters, traffickers and pimps be considered sex offenders, thereby requiring him or her to comply with Megan's Law. Requiring said offenders to obey Megan's Law requirements is likely to reduce the amount of domestic sex victims, since Megan's Law criminalizes many of the tools pimps, recruiters, and traffickers use to recruit and promote prostitution and sex trafficking.¹⁴⁹ As aforementioned in section III, pimps, recruiters, and traffickers alike use the Internet, social media websites, and befriending children as means to operate and promote prostitution and trafficking; all of which are considered illegal under Megan's Law. Moreover, if a convicted sex offender used any of the abovementioned means he or she will automatically face criminal liability and all the prosecution would have to prove is that he or she violated Megan's Law, which is a lot easier to prove than trafficking itself.

B. Why Megan's Law is the Appropriate Methodology

Megan's Law criminalizes the use of mediums traffickers use to promote trafficking and employs the visible apparatus of community notification to efface the kinds of harm sex trafficking brings. Since the inception of Megan's Law's its purpose has been to serve as a precautionary tool by warning communities of sexual predators within their neighborhoods that way residents can take necessary steps to safeguard their families and community. People who

¹⁴⁹ Id.

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have been convicted of sex trafficking and commercial sex offenses are the types of sexual predators Megan's Law was enacted to protect against and therefore Megan's Law should be applicable to said criminals.

Furthermore, as examined and discussed in the preceding section, the existing federal anti-trafficking laws do not do enough to protect communities against the scourge of human trafficking and currently too many states are without their own anti-trafficking laws. In contrast, all 50 states and the District of Columbia have enacted a version of Megan's Law. Therefore, by applying Megan's Law to convicted traffickers all states will be better protected against traffickers regardless of whether the state has enacted an anti-trafficking law.

C. Applying Megan's Law to sex trafficking

a. Offender Restrictions

i. Internet

In 2007 research concluded that over 70% of all American homes have Internet access, regardless of their economic status; however for families with an annual income of at least seventy-five thousand, that number increased dramatically to above ninety-five percent.¹⁵⁰ Since its development the number of daily Internet users has steadily increased.¹⁵¹ Likewise, the reason people use the Internet has steadily increased. Some of the reasons include, reading the news online, shopping, blogging, using social networking websites and communicating with friends and colleagues via instant messaging.

¹⁵⁰ *Households using the Internet in and outside the home, by selected characteristics: Total, Urban, Rural, Principal City*, 2007, Nat'l Telecomm. and Info. Admin., available at http://www.ntia.doc.gov/files/ntia/publications/table_householdinternet2007.pdf (Last visited May 13, 2012).

¹⁵¹ *Internet Usage in the United States, Executive Summary*, NAS Insight, available at http://www.nasrecruitment.com/docs/white_papers/Internet_Usage_United_States.pdf ("The use of the Internet has steadily increased across all demographic groups in the United States.")

Although, most use the Internet for good, some use it for illegal activity. For example, sex traffickers, pimps and recruiters have been capitalizing on the Internet more frequently in the commission of their acts.¹⁵² The Internet affords these criminals a certain level of invisibility and unlimited access to children and potential victims. Additionally, the Internet has previously been described as a "nearly perfect medium for offenders seeking children for sex."¹⁵³ Recognizing that sex offenders tend to use the Internet to prey on the innocent, states have adopted Internet restrictions for sex offenders through their Megan's Law legislation.

Currently, federal courts are split as to how restrictive Internet restriction can be,¹⁵⁴ nonetheless it appears that all permit states to enact some sort of restriction as long as the purpose is to protect the community. In light of courts universally accepting a limitation of sex offenders' use of the Internet under Megan's Law, courts are likely to also accept limiting the use of convicted sex traffickers, especially since today the Internet is often used as a trafficking tool to promote prostitution.¹⁵⁵

V. Conclusion

Domestic sex trafficking is a national epidemic that negatively impacts every state and the entire United States. Currently, over one-hundred thousand citizens are domestically trafficked annually for

¹⁵² See, e.g., Jazmine Ulloa, *Sex Traffickers Prove Hard to Catch as they Move Online*, THE STATESMAN, (March 14, 2012) available at <http://www.statesman.com/news/local/sex-traffickers-prove-harder-to-catch-as-they-2238335.html> ("...sex trade is no longer mostly girls hanging around dark city corners looking for business, experts said. It is a multibillion-dollar enterprise that has expanded to hundreds of thousands of women advertising — or being forced to advertise — their services on countless online classified ads, teen dating and social networking sites.")

¹⁵³ Michael Medaris and Cathy Girouard, *Protecting Children in Cyberspace: The ICAC Task Force Program*, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Juvenile Justice Bulletin (January 2002) available at <https://www.ncjrs.gov/pdffiles1/ojjdp/191213.pdf>

¹⁵⁴ See, *United States v. Ristine*, 335 F. 3d 692, 695-96 (8th Cir. 2003) (holding a wholly banned on Internet use, was not an abuse of discretion); See, e.g., *United States v. Sofksy*, 287 F. 3d 122, 126 (2nd Cir. 2002) (rejecting ban on Internet use except as permitted by probation officer under extreme situations)

¹⁵⁵ Linda Smith and Samantha Healy Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U.L. REV. 265, 287

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sexual purposes¹⁵⁶ and the problem is rapidly growing. Today, more than two-hundred thousand citizens are at high risk of being sexually trafficked within the United States.¹⁵⁷ The current legislation addressing the sex trafficking epidemic is inadequate. Thus, additional legislation is needed, to help complement the current anti-sex trafficking laws. Megan's Law is the appropriate apparatus needed to work hand-in-hand with current anti-sex trafficking legislation to help prevent and eradicate this epidemic. However, before Megan's Law can be used as a tool to combat sex-trafficking, each state must first revamp its Megan's Law legislation as it applies to sex-traffickers. Specifically, each state must classify all convicted sex traffickers as sex offenders and thereby require sex traffickers' to comply with Megan's Law. Indeed, by states properly classifying sex traffickers as Megan's Law offenders, communities will be better protected against sex trafficking. Moreover, this classification will improve the laws reach in dealing with the problem of sex trafficking and further the struggle against this horrific crime. Therefore, it is imperative for all states to classify convicted sex traffickers as sex offenders under Megan's Law.

¹⁵⁶ See supra note 2.

¹⁵⁷ See supra note 3.