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Punishing Pimps and Johns: Sex Trafficking and Utah's Laws

I. INTRODUCTION

According to the U.S. Department of Justice, human trafficking is the “second fastest growing criminal industry—just behind drug trafficking.”¹ Sex trafficking accounted for 83% of all reported human trafficking incidents.² By some estimates, there are hundreds of thousands of victims of commercial sexual abuse in the United States, including “an estimated 250,000 children ages 10 to 17.”³ While many people recognize that sex trafficking is a problem in Asia and other parts of the world, some people do not realize that sex trafficking is also a major problem in the United States. Further, contrary to some misconceptions, not only are foreigners being trafficked into the United States for the purposes of sexual slavery, but American citizens are also being coerced into sex slavery.⁴

Human trafficking can be highly profitable. Estimates indicate that trafficking brings \$32 billion annually to the United States, and that a trafficker can make “between \$4,000 and \$50,000 per person trafficked, depending on the victim’s place of origin and destination.”⁵

1. Brooke Axtell, *Selling American Girls: The Truth About Domestic Minor Sex-Trafficking*, FORBES (Dec. 13, 2012), <http://www.forbes.com/sites/shenegotiates/2012/12/03/selling-american-girls-the-truth-about-domestic-minor-sex-trafficking/> (“The sex-trafficking of U.S. children is America’s dirty, little secret.”).

2. See SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 19 (Columbia Univ. Press, 1st ed. 2010).

3. Laurel Bellows, *Breaking the Shackles: More Must be Done to End Human Trafficking and Help Victims*, A.B.A. J. (Sep. 1, 2012, 4:50 AM), http://www.abajournal.com/magazine/article/breaking_the_shackles_more_must_be_done_to_end_human_trafficking_and_help_v/.

4. Melissa Snow, *Salt Lake City Assessment: Identification of Domestic Minor Sex Trafficking Victims and Their Access to Services*, SHARED HOPE INT’L 3–4 (2008) http://sharedhope.org.gravitatehosting.com/Portals/0/Documents/SaltLakeCity_PrinterFriendly.pdf [hereinafter “Salt Lake City Assessment”].

5. *Human Trafficking’s Dirty Profits and Huge Costs*, INTER-AMERICAN DEVELOPMENT BANK (Nov. 2, 2006), <http://www.iadb.org/en/news/webstories/2006-11-02/human-trafficking-dirty-profits-and-huge-costs,3357.html> (“Despite the shocking statistics, people trafficking

However, for sex trafficking to be a profitable endeavor, there must be a demand.⁶ Utah, like most states,⁷ does not adequately deter those that fuel the industry: those that purchase the sex, frequently called johns.⁸

Estimates indicate that for every john arrested for attempting to buy sex, there are up to 50 women arrested for prostitution.⁹ Too often, states prosecute and punish the women and children who have been victimized while leaving the johns either unprosecuted or with disproportionate punishments.¹⁰ Therefore, as demand remains uninhibited, more pimps coerce more women and children to enter prostitution, and the trafficking continues. To combat the problem, states should focus more resources on prosecuting and punishing the purchasers and suppliers of sex trafficking.

While there are conflicting views on prostitution with some advocating for its legalization and regulation and others favoring absolute criminalization, this Article will not address that issue. Instead, it will focus on the problem of women being forced into prostitution and then coerced into staying, also known as sex trafficking. This Article will focus specifically on what Utah can do to improve its approach to sex trafficking, in light of actions taken by other states and nations. Part II of this article provides background and definitions of sex trafficking and the players involved. Part III discusses the legal history of the criminalization of sex trafficking. Part IV talks about incidents of sex trafficking in Utah. Part V discusses the current laws against sex trafficking in Utah. Part VI then provides recommendations for how

is a crime that still has not captured the attention of the public or made it to the top of political agendas in the region. Very few cases even make it to the courts.”).

6. Donna M. Hughes, *The Demand: Where Sex Trafficking Begins at the Pontifical Gregorian University “A Call to Action: Joining the Fight Against Trafficking in Persons”* Conference 1 (June 17, 2004), available at http://www.uri.edu/artsci/wms/hughes/demand_rome_june04.pdf.

7. Throughout this paper, the term “states” refers to individual states in the United States of America and not independent nations.

8. Hughes, *supra* note 6.

9. Leslie Bennetts, *The John Next Door*, NEWSWEEK (July 18, 2011, 1:00 AM), <http://www.thedailybeast.com/newsweek/2011/07/17/the-growing-demand-for-prostitution.html>.

10. Hughes, *supra* note 6 (“Until recently, the supply side of trafficking and the conditions in sending countries have received most of the attention of researchers, NGOs, and policy makers, and little attention was paid to the demand side of trafficking.”).

Utah could change its laws to better focus on demand, treat victims as victims, and better combat the problem.

II. BACKGROUND AND DEFINITIONS

Sex trafficking is not just prostitution, which is engaging in sex with someone for payment,¹¹ but is the enslavement of unwilling people who are coerced into a condition for sexual exploitation.¹² Many so-called prostitutes, however, entered the field not by choice, but were trafficked into the industry and kept there through physical and emotional coercion.¹³ Sex trafficking is a crime with three parties: the victim, the person using force, fraud, or coercion to make the victim engage in sex acts for payment, and the third party paying for sex.¹⁴ If the victim is a child, no fraud or coercion is required.¹⁵

In addition to an understanding of the legal definition of sex trafficking, it will be useful to have an understanding of the victims, the purchasers, and the traffickers.

11. Katia Hetter, *Fighting Sex Trafficking in Hotels, One Room at a Time*, CNN FREEDOM PROJECT (March 1, 2012), <http://www.cnn.com/2012/02/29/travel/hotel-sex-trafficking>.

12. *Human Trafficking*, UNITED NATIONS OFFICE OF DRUG AND CRIME, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Nov. 25, 2013).

13. See generally JUHU THUKRAL ET AL., URBAN JUSTICE CENTER, BEHIND CLOSED DOORS: AN ANALYSIS OF INDOOR SEX WORK IN NEW YORK CITY (Sex Workers Project at the Urban Justice Center, 2005), www.sexworkersproject.org/downloads/BehindClosedDoors.pdf (last visited Nov. 25, 2013).

14. Hetter, *supra* note 11.

15. *Id.* (“Escort ads posted online don’t obviously state that sex with children is being sold . . . but customers who want children know to look for words like ‘fresh,’ ‘candy’ and ‘new to the game.’ The underage victims are often runaways and victims of sexual abuse who are vulnerable to pimps promising modeling jobs, money, food and drugs.”); *Immigration Remedies for Trafficking Victims*, HOMELAND SECURITY (Sept. 23, 2011), http://www.dhs.gov/files/programs/gc_1270569897006.shtm (defining sex trafficking as: “Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18 years of age; or 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 subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.”).

A. Victims

At the federal level, a victim of trafficking has been defined as a person subjected to either sex trafficking¹⁶ or a severe form of trafficking in persons.¹⁷ Women and children are the most common victims of sex trafficking, but men are trafficked as well.¹⁸ Many studies have been done about the demographics of sex trafficking victims. For example, the U.S. Department of State has indicated that approximately 80% of human trafficking victims are women and girls, and up to 50% of victims are minors.¹⁹ One study indicates that the gender breakdown is far more biased against women, finding that 99% of all sex trafficking victims were female.²⁰ Furthermore, the majority of human trafficking victims are under the age of twenty-five, and one quarter of the victims are under the age of seventeen.²¹ The average age that women enter into prostitution is between twelve and thirteen,²² and “[o]ne

16. 22 U.S.C. § 7102(9) (2012) (The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.).

17. *Id.* § 7102(8) (The term “severe forms of trafficking in persons means—(A) 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 (B) 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 subsection to involuntary servitude, peonage, debt bondage, or slavery.”).

18. *Fact Sheet: Sex Trafficking*, INT’L JUSTICE MISSION (2010), <http://www.ijm.org/sites/default/files/resources/Factsheet-Sex-Trafficking.pdf>; Tracey Kyckelhahn, et. al., *Characteristics of Suspected Human Trafficking Incidents*, U.S. DEPT OF JUSTICE, 2007—08, at 8 (2009). The DOJ Human Trafficking Reporting System provides data on human trafficking incidents investigated between January 1, 2007 and September 30, 2008. *Id.* Data in the report represents a snapshot of the investigations opened by thirty-eight federally funded human trafficking task forces. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Prostitution*, WOMENSLAWS.ORG (June 21, 2012), http://www.womenslaw.org/simple.php?sitemap_id=148.

study found that 78% of adult prostitutes began prostitution as juveniles.²³ Therefore, many of those participating in prostitution are below the legal age of consent.

Trafficked women and children “often have backgrounds of poverty, illiteracy, civil strife and low social and political status. Traffickers exploit these conditions.”²⁴ Many studies have revealed that the majority of sex workers experienced sexual abuse as children.²⁵ “[E]ighty-five percent reported a history of incest, ninety percent a history of physical abuse, and ninety-eight percent a history of emotional abuse.”²⁶ This violence continues into the profession:

Eighty-five percent of prostituted women interviewed in Minneapolis-St. Paul had been raped in prostitution. Another study found that eighty percent of women who had been domestically or transnationally trafficked suffered violence-related injuries. Of 854 people in prostitution in nine countries, eighty-nine percent wanted to leave prostitution but did not have other options for survival.

Researchers have found that two factors are consistently associated with greater violence in prostitution: poverty and length of time in prostitution. The more customers serviced, the more women reported severe physical symptoms.²⁷

One study indicated that a woman lives an average of only seven years after she enters prostitution.²⁸ The women and children trafficked in sex work come from underprivileged circumstances and live

23. *Prostitution Statistics*, <http://www.hawaii.edu/hivandaids/Prostitution%20Statistics%20IL.pdf>.

24. Geneva Brown, *Women and Children Last: The Prosecution of Sex Traffickers As Sex Offenders and the Need for a Sex Trafficker Registry*, 31 B.C. THIRD WORLD L.J. 1, 6 (2011).

25. Melissa Farley, *Symposium: Sex for Sale: Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J. L. & FEMINISM 109, 113 (2006). (“[T]here is a significant peer-reviewed literature documenting the violence in prostitution. Familial sexual abuse functions as a training ground for prostitution. . . . Many studies lend support to this analysis. Seventy percent of the adult women in prostitution in one study said that their childhood sexual abuse led to entry into prostitution.”).

26. *Id.*

27. *Id.* at 114.

28. *Addressing Misconceptions: Prostitution*, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, http://g.virbcdn.com/_f/files/43/FileItem-150151-AM_Prostitution.pdf (last visited Nov. 25, 2013).

abused lives. This Article will argue that—considering the information that studies have revealed about sex trafficking victims—investigations, laws, and prosecutions should reflect these realities.

B. Johns

The individuals who buy commercial sex acts are referred to as “johns.”²⁹ Some of these johns are “unaware, ill-informed, or in direct denial of the abusive realities of sex trafficking situations as they exist within the broader sex trade.”³⁰ Other johns abuse the women and children that they purchase. Johns come from every walk of life, and include doctors, lawyers, and CEOs, as well as, construction workers, mechanics, and salesmen.³¹ They are rich, poor, young, and old, and many are married.³² Johns are overwhelmingly male, but the men purchase males as well as females.³³

Johns promote sex trafficking because they purchase the women and thus create a demand. Furthermore, while it is unlikely that many johns would actually ask for a trafficked woman, many johns ask for “something different,” which results in so called exotic women being trafficked in to fill the demand.³⁴ This Article will discuss how altering criminal investigations and prosecutions to put more of a focus on apprehending and punishing the johns will decrease sex trafficking and better protect victims.

C. Pimps

The traffickers are often referred to as pimps. Pimps perpetuate a culture where the victims are often subjected to violence, threats, false

29. See generally Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 295 (2012).

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

31. *Flush the Johns*, DAILY MAIL ONLINE, <http://www.dailymail.co.uk/news/article-2335855/Operation-Flush-Johns-Wives-families-react-Long-Island-prostitution-arrests.html> (last visited Nov. 25, 2013).

32. *Id.*

33. Bennetts, *supra* note 9.

34. Farley, *supra* note 25 at 119.

promises, manipulation, lies, and coercion.³⁵ The FBI, in an attempt to shift the paradigm on prostitution, issued a bulletin about sex trafficking and pimps, detailing the way women often get involved.³⁶ It stated that many women become involved in prostitution through a boyfriend transforming into a pimp.³⁷ Frequently, pimps look for vulnerable teenagers, in person or on the internet, gain the girl's trust through showing affection, giving gifts, and making promises of a better life or more opportunities.³⁸ Eventually, the "boyfriend" makes an offer that they go somewhere together for better opportunities and to escape their old lives.³⁹

Once the pimp has the girl relocated and isolated from her friends and family, the relationship turns abusive and he demands that she make money for him by prostitution.⁴⁰ Pimps use various methods to keep women working for them.⁴¹ Many prostitutes working for pimps speak of daily emotional and physical abuse, such as being beaten and told that no one would ever care for them after the things they had done.⁴²

One survivor tells of how she was 15 years old when she started dating an older man.⁴³ He would make her feel adored, and impress her friends by dropping her off for school in a brand new jaguar.⁴⁴ After a while, he offered to take her on a trip to Los Angeles, and she immediately agreed.⁴⁵ When they arrived, he took her to a street rampant with prostitution and told her that he wanted her to make some

35. *Id.* at 111.

36. Steven Marcin, *Prostitution and Human Trafficking: A Paradigm Shift*, FBI LAW ENFORCEMENT (Mar. 2013), available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2013/March/prostitution-and-human-trafficking>.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Jonathan Szkup-Valdez, *Chapters of the Survivor's Story: Liz Beth*, HUMAN TRAFFICKING: THE MODERN DAY EPIDEMIC (May 28, 2012) <http://humantraffickingthemoderndayepidemic.wordpress.com/>.

44. *Id.*

45. *Id.*

money.⁴⁶ Dropping her off alone in a city she had never been to, he told her not to call until she made some money.⁴⁷ Later that evening, her boyfriend called her back, and she told him that she had not made any money.⁴⁸ He came and picked her up, and that night, she received her first beating.⁴⁹ Her boyfriend had become her pimp; he was experienced and had run other girls, and he manipulated her.⁵⁰ She was routinely beaten in front of their neighbors.⁵¹ She was trapped with him for two years, stuck in prostitution, before she finally escaped.⁵²

III. LEGAL HISTORY

Of the three players in sex trafficking—the pimp, the john, and the prostitute—the traditional approach has been to set up police stings to arrest the prostitute.⁵³ The johns and the pimps traditionally go without punishment.⁵⁴ Some states and countries are moving away from the traditional approach as anti-trafficking advocates increase awareness of the role of pimps and johns in perpetuating sex trafficking.

A. Combatting Sex Trafficking Abroad

Women and children have been trafficked internationally for hundreds of years. Trafficking first became a political issue in the early 1900s when the International Agreement for the Suppression of the White Slave Traffic was drafted.⁵⁵ The international agreement, which was ratified by twelve nations, was intended to prevent sex trafficking.⁵⁶

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Hughes, *supra* note 6.

54. See George, *supra* note 29.

55. *Sex Trafficking*, WOMEN AND GLOBAL HUMAN RIGHTS, <http://www2.webster.edu/~woolfilm/trafficking.html> (last visited Nov. 25, 2013).

56. *Id.*

In 1949, the United Nations addressed the problem through the 1949 Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others.⁵⁷ By 2012, eighty-two countries were party to the convention.⁵⁸ The preamble of the convention states that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”⁵⁹

The United Nations recently provided a more detailed definition of human trafficking during the Convention Against Transnational Crimes in 2000.⁶⁰ The Convention defined trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs⁶¹

Some countries have since legalized prostitution, while still maintaining laws against sex trafficking.⁶² Although prostitution and sex trafficking have different definitions, legislators often attempt to pre-

57. *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, UNITED NATIONS TREATY COLLECTION (Apr. 23, 2013, 3:08 PM), http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-11-a&chapter=7&lang=en.

58. *Id.*

59. *Id.*

60. Ad Hoc Comm. on the Elaboration of a Convention Against Transnational Organized Crime, 55th Sess., Rep. on its 1st to 11th Sess., at 54–55, U.N. Doc. A/55/383 (Nov. 2, 2000).

61. *Id.*

62. Chelsea-Lyn Rudder, *Sex for Sale: Legalized Prostitution Hurts Human Trafficking Victims*, THE HUFFINGTON POST (Oct. 10, 2010), http://www.huffingtonpost.com/chelsealyn-rudder/sex-for-sale-legalized-pr_b_769779.html.

vent trafficking by legalizing, and thus regulating prostitution. However, the evidence suggests that legalizing prostitution increases sex trafficking. Countries that legalize prostitution experience an explosion of human trafficking inflows.⁶³

For example, the Netherlands legalized prostitution in 2000.⁶⁴ Advocates of legalizing prostitution hoped that it would allow for more regulation of sex trafficking, but instead, licensed brothels “became a magnet for human trafficking.”⁶⁵ The Netherlands legalized prostitution presuming that it would be better regulated and safe, but one report found that “80% of the women in the brothels in the Netherlands had been trafficked from other countries,” despite laws to the contrary.⁶⁶

Since lifting the ban on prostitution, eight different organizations have reported an increase in the number of victims trafficked.⁶⁷ Sex trafficking of children has also increased in Australian states that legalized prostitution as opposed to those that have not.⁶⁸ Even though countries that have legalized prostitution did not legalize sex trafficking, it increased as a result of the legalization of prostitution.⁶⁹ One source says that the Netherlands and Germany are considering repealing legal prostitution because of the increased trafficking and sexual violence in both legal and illegal prostitution.⁷⁰

In contrast, in 1999, Sweden passed legislation that criminalized the purchase of sex but decriminalized the selling of sex.⁷¹ The government officially stated that prostitution was a form of exploitation of

63. Thaddeus Balkinski, *Legalized Prostitution Significantly Increases Human Sex Trafficking: Study*, LIFESITENEWS (Dec. 12, 2012), <http://www.lifesitenews.com/news/legalized-prostitution-significantly-increases-human-sex-trafficking-study/>.

64. Rudder, *supra* note 62.

65. *Id.*

66. Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution*, 2003 J. OF TRAUMA 315, 316 available at <http://www.honourconsulting.com/pdf/raymond.pdf>.

67. One organization “estimates that the number of children in prostitution has increased by more than 300% between 1996 to 2001.” *Id.*

68. *Id.*

69. *Myths and Facts about Nevada Legal Prostitution*, NEVADA COALITION, <http://www.nevadacoalition.org/factsheets/LegliznFactSheet091707c.pdf> (last visited Nov. 12, 2013).

70. *Id.*

71. *Id.*

women and children.⁷² Sweden's rationale was that prostitution would exist so long as men buy and sell women and children, and therefore shifting the focus from the sellers to the buyers would better combat the social ill.⁷³

Under Sweden's "Sex Purchase Law," a conviction can result in fines or up to six months in prison, coupled with public embarrassment.⁷⁴ In a recent official report analyzing the success of the law, there were suggestions that these punishments are too lenient and should be doubled.⁷⁵ Pimps and brothel keepers are also prosecuted, but not the actual prostitutes.⁷⁶ Under the new law, they are viewed as victims.⁷⁷ The report also indicated that Sweden's approach has dramatically reduced trafficking.⁷⁸ The Swedish government estimates that since 1999, only two hundred to four hundred women and girls have been trafficked annually into Sweden for prostitution, as opposed to neighboring Finland, which reports fifteen thousand to seventeen thousand annually.⁷⁹ Sweden's success in dealing with the problem has persuaded other countries to follow suit; laws modeling Sweden's have recently passed in South Korea, Norway, and Iceland.⁸⁰

B. A Brief History of Trafficking and Prostitution Laws in the U.S.

About a century ago, the United States began passing laws on both the federal and state level in an attempt to prevent sex trafficking. Initially, in 1910, the United States passed legislation called the Mann Act, which was intended to prevent the transportation of a person across state or international lines for prostitution or other immoral

72. Bennetts, *supra* note 9.

73. Balkinski, *supra* note 63.

74. Karl Ritter, *Sweden Prostitution Law Attracts World Interest*, USA TODAY (Mar. 16, 2008), http://usatoday30.usatoday.com/news/world/2008-03-16-sweden-prostitution_N.htm.

75. *The Ban against the Purchase of Sexual Services. An evaluation 1999-2008*, SELECTED EXTRACTS OF THE SWEDISH GOVERNMENT REPORT SOU 2010:49, 9 (last visited Nov. 25, 2013) [hereinafter *The Ban*].

76. Brown, *supra* note 24, at 18-19.

77. *Id.*

78. *The Ban*, *supra* note 75.

79. Balkinski, *supra* note 63.

80. Bennetts, *supra* note 9.

purposes.⁸¹ In 1918, the Chamberlain-Kahn Act gave the government the power to quarantine women suspected of having a sexually transmitted disease.⁸² The law was intended to prevent the spread of STDs to U.S. soldiers.⁸³

In 1970, Nevada began regulation of houses of prostitution, and Nevada's first licensed brothel opened in 1971.⁸⁴ Nevada is the only U.S. state to allow legal prostitution. Under Nevada law, a county with a population under 700,000 is allowed to license brothels.⁸⁵ Currently only ten of Nevada's seventeen counties have licensed active brothels.⁸⁶ Even in the counties with legalized prostitution, trafficking is still illegal.

Prostitution is illegal in the other forty-nine states, and it is usually classified as a misdemeanor. Each state has the power to determine the legality of prostitution in that state, but federally, sex trafficking, defined as "the recruitment, harboring, transportation, provision, or obtaining a person for the purpose of a commercial sex act," is criminalized.⁸⁷ Louisiana is the only state in which convicted prostitutes may be required to register as sex offenders.⁸⁸

In 2000, the United States passed the Trafficking Persons Protected Act (TPPA), which directly addresses sex trafficking.⁸⁹ Subsection 14 of the Act states that existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and often fail to reflect the gravity of the offenses involved and

81. *Congress Passes Mann Act*, HISTORY (Jun. 25, 2013), <http://www.history.com/this-day-in-history/congress-passes-mann-act>.

82. MELISSA HOPE DITMORE, *PROSTITUTION AND SEX WORK*, 53-54 (2011).

83. *Id.*

84. Associated Press, *Nevada's Most Infamous Brothel, Mustang Ranch, Back In Business*, FOX NEWS (Aug. 5, 2007), <http://www.foxnews.com/story/0,2933,292166,00.html>.

85. NEV. REV. STAT. §244.345 (2012).

86. *Hard Times for Nevada's Legal Brothels*, ABC News, (Aug. 29, 2013) <http://abcnews.go.com/Business/nevada-brothel-industry-slump/story?id=20098496>.

87. 22 U.S.C. § 7102(9) (2012).

88. Nathan Koppel, *Louisiana's "Crime Against Nature" Sex Law Draws Fire*, WSJ BLOG (Feb. 16, 2011), <http://blogs.wsj.com/law/2011/02/16/louisianas-crime-against-nature-sex-law-draws-legal-fire/>.

89. 22 U.S.C. § 7101(b)(2) (2012).

bring traffickers to justice.⁹⁰ As no comprehensive law in the United States currently penalizes the range of offenses involved in trafficking schemes, many traffickers typically escape deserved punishment.⁹¹ Subsection 15 continues by saying that the seriousness of the crime is not currently reflected in sentencing guidelines.⁹² This results in penalties for convicted traffickers that are far too weak.⁹³

IV. SEX TRAFFICKING IN UTAH

A. Arrests and Incidents

In addition to foreigners being trafficked into the United States, American children are being forcibly trafficked into the sex industry.⁹⁴ Although trafficking is less common in Utah than in some other states,⁹⁵ it does exist, and it has been documented both in recent crime reports and the news.

Salt Lake City police officers have reportedly “spent a lot of time online posing as underage boys and girls” and have received hundreds of sexual solicitations.⁹⁶ Additionally, there are documented instances of sex trafficking in Utah. In 2009, the FBI reported 414 arrests in Utah for “Prostitution and Commercialized Vice,” 16 of which were

90. *Id.* § 7101(b)(14)-(15).

91. *Id.*

92. *Id.* § 7107(b)(15).

93. *Id.*

94. Salt Lake City Assessment, *supra* note 4.

95. See *A Serious Problem – Around the Globe and in the USA*, COALITION TO ABOLISH SLAVERY & TRAFFICKING, <http://www.castla.org/key-stats> (last visited Nov. 25, 2013) (describing which states have a significant problem in trafficking).

96. *Utah Police Unit Wants Better Grip on Prostitution*, ABC 4 UTAH (Jan. 10, 2013), http://www.abc4.com/content/news/top_stories/story/new-unit-will-fight-Utah-prostitution-differently/uWueYvG-SUyVIqZaPIWkkA.csp (The Police Chief said, “that’s the proof that prostitution is a big problem in Utah.”).

reported as minors.⁹⁷ The Department of Public Safety for Utah reported 525 total arrests, with 24 arrests of minors.⁹⁸ The following table shows the number of reported “Prostitution Offenses” incidents in 2009.⁹⁹

REPORTED PROSTITUTION OFFENSES IN 2009¹⁰⁰

Layton PD	46
Lindon PD	1
Midvale PD	2
Murray PD	1
North Ogden PD	1
Ogden PD	30
Provo PD	11
Salt Lake City PD	485
Salt Lake City County Sherriff	7
Sandy PD	5
South Salt Lake PD	5
St. George PD	3
Taylorsville PD	3
Utah County Sheriff	2
Weber County Sheriff	1
West Jordan PD	1
West Valley PD	2
Total	606

97. *Crime in the United States 2010: Arrests by State (table 69)*, F.B.I., U.S. DEP’T OF JUSTICE, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl69.xls> (last visited Nov. 25, 2013).

98. *Annual Report of Crime Statistics in Utah*, UTAH DEP’T OF PUB. SAFETY, BUREAU OF CRIM. INVESTIGATION, (2009), available at <http://publicsafety.utah.gov/bci/documents/2009.pdf>.

99. *Id.*

100. The table only lists the cities in Utah that had at least one reported incident of prostitution in 2009. Further, the available data does not distinguish between women who were trafficked and women who voluntarily engaged in prostitution, in part because current laws and policies in Utah do not emphasize the difference. But, while flawed, the data still provides an interesting insight into the sex industry in Utah.

Although throughout most of Utah there are few if any prostitution offenses accounted for in 2009, there were some offenses that involved minors,¹⁰¹ and as evidenced by aforementioned studies, it is likely that at least some women were prostituting themselves due to emotional or physical coercion.

In addition to the reported incidents and arrests, visiting craigslist.com, backpage.com,¹⁰² or various other websites also demonstrates the presence of prostitution in Utah.¹⁰³

B. In the News

Local Utah news also illustrates the existence of trafficking in Utah. On May 14, 2009, the *Daily Herald* published an article about a prostitution internet sting that resulted in nine men from around Utah being cited in Provo.¹⁰⁴ In that case, the police set up the sting for the demand side of prostitution, and indicated to the suspects that a woman would be in town.¹⁰⁵ Within a few hours, the nine men were arrested.¹⁰⁶ The police reported that “[t]he nine men came from as far north as Park City and as far south as Santaquin looking for sexual services They ranged in age from 22 to 58, from businessmen to blue-collar workers. Their names have not yet been released, and the

101. F.B.I., *supra* note 97.

102. Craigslist.com and backpage.com, like other similar sites, have taken heat for promoting prostitution, including underage prostitution, *see, e.g.*, Daniel Fisher, *Backpage Takes Heat, But Prostitution Ads Are Everywhere*, FORBES MAGAZINE (Jan. 26, 2013), <http://www.forbes.com/sites/danielfisher/2012/01/26/backpages-takes-heat-for-prostitution-ads-that-are-everywhere/>.

103. *See* Nicholas Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES, Mar. 17, 2012, at SR1, *available at* <http://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html> (“[T]here is plenty of evidence that under-age girls are marketed on Backpage. Arrests in such cases have been reported in at least 22 states.”); Snow, *supra* note 4 (describing Salt Lake City as a “hot spot” on the “western prostitution circuit,” a series of large western cities like Phoenix, Denver, and San Diego, that are regular stops for sex traffickers).

104. Janice Peterson, *Nine Utah Men Cited in Provo Prostitution Sting*, DAILY HERALD (May 14, 2009), http://www.heraldextra.com/news/local/nine-utah-men-cited-in-provo-prostitution-sting/article_0320c0bb-094c-5b65-b6da-3ce73a4c58b9.html.

105. *Id.*

106. *Id.*

men were sent on their way with a citation for patronizing a prostitute, a class B misdemeanor.”¹⁰⁷

In November 2009, KSL reported that the Utah Valley Special Victims Unit had a new focus: to root out prostitution and arrest those who go looking for it.¹⁰⁸ The unit reported that “in less than a year, the Utah Valley Special Victims Unit has arrested nearly fifty [people] in six undercover operations. Those arrested include a surgeon, a corporate attorney, and a BYU graduate student” and that in addition to cracking down on adult prostitution, the unit was particularly concerned with child prostitution.¹⁰⁹ Officers indicated that “the kids in these child prostitution circuits could be as young as 7 and 8 years old.”¹¹⁰

On November 30, 2012, the Salt Lake Tribune reported on a raid that captured a leader of a prostitution ring.¹¹¹ The article stated that the operation is part of a larger, international investigation into the illegal sex trade operated by undocumented immigrants, and “many of the girls being exploited by the ring. . . were juveniles”—some reportedly as young as fourteen.¹¹² At the time of the article, three men had been arrested, and ten young women, some of whom were in the United States illegally, were taken into custody.¹¹³ There were ten other girls believed to be in the ring but were unaccounted for.¹¹⁴

In March 2013, a sixty-seven year old man was charged with thirty-eight felony charges for running a prostitution ring out of his home.¹¹⁵ The man is accused of offering two teenage victims money and gifts in

107. *Id.*

108. Lori Prichard, *KSL 5 News Investigates Prostitution in Utah County*, KSL NEWS (Nov. 23, 2009), <http://www.ksl.com/?nid=&sid=8779114>.

109. *Id.*

110. *Id.*

111. Bob Mims, *Utah Raids Nab Alleged Leader in Prostitution Ring Based in Mexico*, THE SALT LAKE TRIBUNE (Nov. 30, 2012), <http://www.sltrib.com/sltrib/news/55377872-78/girls-ring-degree-investigation.html.csp>.

112. *Id.* (internal quotations omitted).

113. *Id.*

114. *Id.*

115. Jessica Miller, *67-Year-Old Utah Man Denies Running Prostitution Ring in His Home*, THE SALT LAKE TRIBUNE (Mar. 26, 2013), <http://www.sltrib.com/sltrib/news/56062731-78/bond-sex-counts-sexual.html.csp>.

exchange for sex with him and various other men.¹¹⁶ He is also accused of offering a twenty-four-year-old man money in exchange for sex with one of the teenagers.¹¹⁷ The accused allegedly bribed the girls and threatened the girls and their families if they did not have sex with men.¹¹⁸

Although sex trafficking may be less common in Utah than in larger, metropolitan areas, clearly, sex trafficking is a problem not just in other parts of the world, but in Utah as well.

V. CURRENT APPROACH IN UTAH

Utah's laws are not where they need to be to confront and eradicate the problem, although positive changes are being made. For example, the Salt Lake City Police Department recently unveiled a new unit that is "better designed to battle the underlying causes of prostitution."¹¹⁹ These changes are a necessary measure to combat an unacceptable situation.

In 2011, Shared Hope International, an organization working to eradicate sex trafficking,¹²⁰ gave Utah an "F" grade after a comprehensive study on existing state laws.¹²¹ The following year, Utah enacted some reform, and in 2012, the organization gave Utah a "D" grade.¹²² The grades demonstrate that there are key legislative deficiencies that must be addressed in order to effectively respond to the crime of domestic minor sex trafficking.

116. *Id.*

117. *Id.*

118. *Id.*

119. ABC 4 UTAH, *supra* note 96.

120. *Our Mission and Values*, SHARED HOPE INT'L (2013), <http://sharedhope.org/about-us/our-mission-and-values/>.

121. *Protected Innocence Challenge*, SHARED HOPE INT'L (2013), <http://sharedhope.org/what-we-do/bring-justice/state-by-state-grades>.

122. *Id.*

A. Current Laws in Utah

The Utah Code makes human trafficking for forced sexual exploitation a crime but requires the offender to use “force, fraud, or coercion” in the commission of the crime.¹²³ The Utah Code has several relevant provisions. Utah Code Ann. § 76-5-308(1) states:

An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a person through the use of force, fraud, or coercion by means of:

(a) threatening serious harm to, or physical restraint against, that person or a third person;

(b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government identification document;

(c) abusing or threatening abuse of the law or legal process against the person or a third person;

(d) using a condition of a person being a debtor due to a pledge of the debtor’s personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or

(e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process.¹²⁴

Section §76-5-308(2)(b) further states that “[h]uman trafficking for forced sexual exploitation includes all forms of forced commercial sexual activity including forced sexually explicit performances, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs, and forced exotic dancing.” The code makes human trafficking a second-degree felony.¹²⁵ It is arguable that this statute could be used against a buyer because it includes the

123. UTAH CODE ANN. § 76-5-308(1) (West 2013).

124. *Id.*

125. *Id.*; §76-5-309(4).

word “obtain;” however, because of the language of the statute, the buyer would need to use force, fraud, or coercion in committing the crime.¹²⁶ As such, it is unlikely that this statute can be used against buyers.

The Utah Criminal Code states that a person is guilty of prostitution when:

- (a) he engages in any sexual activity with another person for a fee;
- (b) is an inmate of a house of prostitution; or
- (c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.¹²⁷

The code states that prostitution is a class B misdemeanor, but that any person who is convicted twice under this section or a local ordinance is guilty of a class A misdemeanor.¹²⁸ Similarly, a person is guilty of patronizing a prostitute when:

- (a) [He] pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or
- (b) [He] enters or remains in a house of prostitution for the purpose of engaging in sexual activity.¹²⁹

The offense of patronizing a prostitute is always a class B misdemeanor.¹³⁰ Another law makes it a crime for a person to use the Internet to solicit minors to engage in any sexual activity.¹³¹ This includes prostitution, and therefore could be used to prosecute a buyer who uses the Internet to solicit minors for commercial sex acts.¹³² Restitution is not mandatory, but courts can order a convicted john to pay restitution

126. SHARED HOPE INT’L, *supra* note 121.

127. UTAH CODE ANN. § 76-10-1302.

128. *Id.*

129. *Id.*; § 76-10-1303.

130. *Id.*

131. *Protected Innocence Challenge: Utah Report Card 2012*, SHARED HOPE INT’L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_UT.pdf. [hereinafter *Utah Report Card 2012*] (last viewed Nov. 1, 2013).

132. *Id.*

to a victim.¹³³ Further, a person convicted of possessing child pornography or enticing a minor to engage in a sex act is required to register as a sex offender.¹³⁴

Additionally, the Utah Code states that: (1) A person is guilty of aiding prostitution [when he]:

(a)(i) solicits a person to patronize a prostitute;

(ii) procures or attempts to procure a prostitute for a patron; or,

(iii) leases or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or

(iv) provides any service or commits any act that enables another person to commit a violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation of this Subsection (1)(a); or

(b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).

(2) Aiding a prostitute is a class B misdemeanor.¹³⁵

Focusing more on trafficking, the law is narrowly defined to require the use of force, fraud, or coercion against the victim to cause him or her to engage in commercial sex acts, for a person of any age, including a minor child.¹³⁶ This likely excludes application to the actions of a buyer purchasing a commercial sex act if that buyer did not engage in force, fraud or coercion.

The Utah Code does criminalize the exploitation of prostitution.¹³⁷ A person is guilty of exploiting prostitution if he:

(a) procures an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

133. *Id.*

134. *Id.*

135. UTAH CODE ANN. § 76-10-1304.

136. *Id.* § 76-5-308(1).

137. *Id.* § 76-10-1305.

(c) transports a person into or within this state with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose;

(d) not being a child or legal dependent of a prostitute, shares the proceeds of prostitution with a prostitute pursuant to their understanding that he is to share therein; or

(e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business.¹³⁸

Exploiting prostitution is a third degree felony.¹³⁹ A person is guilty of aggravated exploitation of prostitution if in committing the act of exploiting prostitution, he "uses any force . . . or fear against any person, [or] the person procured, transported, or persuaded or with whom [he] shares the proceeds of prostitution is a child or is the spouse of the actor."¹⁴⁰ Aggravated exploitation of prostitution is a second degree felony.¹⁴¹

B. *A Changing Approach*

Traditionally, prostitution laws in the United States have focused on arresting the women involved.¹⁴² The FBI described the typical approach:

The response to street prostitution has been to arrest hookers. This approach was narrow in scope and usually did not involve the pimp. The standard procedure was for undercover officers to pose as customers, obtain a solicitation, and arrest the prostitute. They repeated the process often to incarcerate as many women as possible.

These tactics resulted in misdemeanor filings and a temporary relocation of the activity. Prostitution soon returned. This rebound resulted from new prostitutes arriving in the area. The new hookers and pimps had no idea what law enforcement efforts previously took place. The activity gradually increased until the police reacted and

138. *Id.*

139. *Id.*

140. *Id.* § 76-10-1306.

141. *Id.*

142. Marcin, *supra* note 36, at 32.

conducted another undercover operation. The cycle repeated itself.¹⁴³

Under this approach, prosecuting pimps is rare.¹⁴⁴ This approach had been going on for decades, but recently there has been a shift towards considering prostitutes as potential victims and identifying pimps as suspects.¹⁴⁵ The FBI has stated that “the top priority is to rescue these women and prevent them from returning to prostitution. The second priority is to pursue the trafficker.”¹⁴⁶ This new paradigm recognizes that when a woman is arrested, she gets out of jail and begins working again, or the pimp just finds a new woman. In states with laws that permit prosecuting the pimps, arresting the pimp has bigger results.¹⁴⁷

The American Bar Association has also recently indicated that there must be a paradigm shift to end sex trafficking, and particularly, more must be done to help victims.¹⁴⁸ ABA President Laurel Bellows stated that:

First, we must change attitudes about how human trafficking is viewed by law enforcement, the legal community and the public by asking: Who is a victim? And how is this crime perpetrated? Laws

143. *Id.*

144. *Id.* at 3 (Saying that under this approach, there were only three pimping and pandering arrests in one California town between 2008 and 2011, but under the new approach, “these cases now have a reputation for quality, thoroughness, and jury appeal.”).

145. *Id.* The FBI has implemented the new approach by instituting several tactics: 1) Remove the prostitutes by using undercover investigators to obtain a solicitation and then transport them to the police department; 2) Begin the transformation: at the department, officers remove the handcuffs and direct the women to a special interview room with victim advocates and an inviting atmosphere; 3) Rescue the victims: officers explain to the women that they rescued them and discuss the circumstances that led the victims to their situation; 4) Correct life course: officers collaborate with victim advocates to obtain help for the victims; 5) Collect the evidence: officers seek cooperation in building a case against the pimp; 6) Pursue the pimp: when they have sufficient evidence, officers seek out and arrest the pimp; and 7) Prosecute the trafficker; ABC 4 UTAH, *supra* note 96.

146. *Id.*

147. *Id.* For example, in California, pimping charges carry a minimum sentence of three years in state prison.

148. Bellows, *supra* note 3.

worldwide often criminalize prostitution and treat victims as criminals. But they do not hold accountable traffickers or those who support trafficking along the supply chain by selling, transporting or housing victims against their will. The ABA has fought trafficking by urging courts and police to screen for victim abuse and exploitation. We have encouraged lawyers to provide pro bono assistance to protect victims. But our work is far from complete.¹⁴⁹

While some states have embraced this more realistic view of sex trafficking and changed the way the crime is investigated and prosecuted, others lag behind. For example, Illinois recently published statistics stating that felony incarceration for women in prostitution has risen almost 1,000% since 1995,¹⁵⁰ and that women make up two-thirds of prostitution related arrests in Illinois.¹⁵¹ Illinois's laws have traditionally focused on prosecuting the women while neglecting those who create the demand.¹⁵²

The director of the Chicago Alliance Against Sexual Exploitation stated that for many years, johns have been able "to operate with complete impunity. . . . It's one of the reasons that men continue to buy sex. One john said that he'd been doing this for twenty years and this was the first time he had any contact with law enforcement."¹⁵³ Illinois, like many states, has realized that the traditional approach is flawed, and has begun a campaign to shift law enforcement's focus from the victims to the johns.¹⁵⁴

149. *Id.*

150. *Engaging Writers in Ending Sexual Exploitation and Harm*, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION 6, http://g.virbcdn.com/_f/files/2d/FileItem-242811-WritersToolkit.pdf, (last viewed on Nov. 25, 2013).

151. Greg Scott and Rachel Lovell, *A Critique of HB 6462, the "Illinois Safe Children Act"*, Research Brief 9, December 17, 2010, *available at* http://condor.depaul.edu/ssrc/documents/EndDemand_ILHB6462_Final.pdf (last viewed Nov. 25, 2013).

152. *Id.*

153. Claire Glass, *It's a Screwed-Up World When Prostituted Women Are Arrested More Often Than the Johns Who Abuse and Kill Them*, ALTERNET (Aug. 31, 2012), <http://www.alternet.org/gender/its-screwed-world-when-prostituted-women-are-arrested-more-often-johns-who-abuse-and-kill>.

154. *Id.*

Utah has begun to address several of these issues. In 2011, the Utah House of Representatives amended Utah's sexual solicitation statute.¹⁵⁵ Additionally, in 2012, the Utah Legislature made minimal amendments to §76-10-1304 (Aiding Prostitution).¹⁵⁶ These, together with other fairly recent amendments,¹⁵⁷ demonstrate that Utah legislators are concerned with sex trafficking. This is a positive development, but Utah needs to do more to focus investigative and prosecutorial efforts on the demand side of sex trafficking.

VI. RECOMMENDATIONS FOR UTAH

As of February 2013, all fifty states have laws criminalizing human trafficking.¹⁵⁸ Many of these state laws, however, do not distinguish between minors and adults, and the criminal investigations and prosecutions often focus more on victims than traffickers.¹⁵⁹ Examining state laws that effectively combat sex-trafficking (according to advocacy groups) provides a clearer direction for how Utah should adapt its current laws to more effectively combat sex trafficking. First, these laws focus on demand with penalties for soliciting sex, engaging in commercial sex acts with minors, etc. Second, effective laws encourage police to investigate and arrest traffickers and attach harsher penalties for promoting juvenile prostitution. Third, such state laws create incentives for treating prostitutes as victims rather than criminals, providing them with support and resources instead of booking them on misdemeanor charges.

155. Sexual Solicitation Amendments, Floor Debate on H.B. 121, 2011 Gen. Leg. Sess. (Utah 2011) (Statement of Rep. J. Seelig), <http://le.utah.gov/~2011/htmldoc/hbillhtm/HB0121S01.htm> (follow "Floor Debate Video and Audio Files" hyperlink, then follow "View" hyperlink next to "House day 29")(view using RealPlayer).

156. H.B. 276, Aiding Sexual Solicitation, 2012 Gen. Leg. Sess., <http://legiscan.com/UT/text/HB0276/id/555370/Utah-2012-HB0276-Amended.pdf>.

157. See generally UTAH CODE ANN. §§ 76-10-1302 to 1308 (West 2013); *Id.* §§ 76-5-308 to 401.1.

158. *Gov. Mead Signs Human Trafficking Bill into Law*, BILLINGS GAZETTE, Feb. 28, 2013, http://billingsgazette.com/news/state-and-regional/wyoming/gov-mead-signs-human-trafficking-bill-into-law/article_bef9c1b4-6047-5761-967a-560bfdbb912f.html.

159. SHARED HOPE INT'L, *supra* note 4.

A. Focusing on Demand

The biggest issue facing many state laws regarding sex trafficking is that they do not deter demand. For sex trafficking to be a profitable industry, there must be demand, and so long as there is a demand, sex trafficking will continue.¹⁶⁰ As previously mentioned, sex trafficking can be highly lucrative, and currently there is a high demand for it with a low risk of punishment for those that provide the women and those that purchase them.¹⁶¹

Unfortunately, many states, including Utah, “continue[] to ignore the link between the supply and demand of prostitution and human trafficking.”¹⁶² In 2008, Shared Hope International published a report on domestic minor trafficking victims in Salt Lake City and their access to assistance.¹⁶³ The report acknowledged Salt Lake City’s significant progress, but identified a variety of areas of improvement. For example, the report indicated that: “Buyers of sex acts from minors in Salt Lake City have not been punished. Law enforcement has been thwarted in its attempts to secure evidence sufficient to charge and prosecute buyers of commercial sex acts from children. Anonymity provided by the Internet creates investigative barriers for law enforcement.”¹⁶⁴ According to the report, only one investigation of a buyer resulted in a successful conviction.¹⁶⁵ As “[s]uccessful prosecutions of buyers . . . are critical to deterring demand,” more must be done to ensure successful investigations and prosecutions.¹⁶⁶

160. George, *supra* note 29, at 295, (“Without demand, the multibillion-dollar industry would not prosper or even exist.”); See generally Amanda Walker-Rodriguez, *The Crime Next Door: An Examination of the Sex-Trafficking Epidemic in the United States and How Maryland is Addressing the Problem*, 41 U. BALT. L.F. 43 (2010).

161. Walker-Rodriguez, *supra* note 160, at 60 (“Sex-trafficking has one of the highest profit margins and lowest risks to members of organized crime.”).

162. *Id.* at 54–55.

163. Snow, *supra* note 4.

164. *Id.* at 3.

165. *Id.*

166. *Id.*

Because traditional methods of dealing with prostitution focused on jailing the woman, the johns walked away free to continue purchasing sex with little or no recourse.¹⁶⁷ Unfortunately, “purchasers of commercial sex acts in the United States are rarely prosecuted.”¹⁶⁸ However, a recent study of men that buy sex found that a majority of them would stop if they knew that they would be publicly exposed.¹⁶⁹ In another study, a majority of buyers said paying “higher fines would dissuade them.”¹⁷⁰

As the johns are the economic catalyst behind the abuse that trafficked women and children face, laws must reflect this reality and create incentives for law enforcement to go after the johns. Further, laws must deter future sex trafficking by creating a disincentive for johns to continue to purchase sex through harsher punishments.

A few states have taken such steps. For example, California has gone beyond making prostitution illegal and has criminalized the purchase of sex acts.¹⁷¹ Under the California Penal Code, any person who procures another person for prostitution is guilty of a felony.¹⁷² The crime is punishable by three, four, or six years in prison.¹⁷³ While the statute is broad and criminalizes acts used to entice or solicit prostitution, it does not criminalize the act of selling sex.¹⁷⁴

Similarly, Illinois has laws that, following federal precedent, could be applied to buyers who obtain a minor for a commercial sex act.¹⁷⁵

167. Marcin, *supra* note 36.

168. Walker-Rodriguez, *supra* note 160, at 54 (“Studies accept that this is a result of the leniency of the prosecution system, not because the crime is being committed less frequently.”).

169. The Editorial Board, *The Men Who Buy—and Sell—Sex*, THE NEW YORK TIMES (Jul. 30, 2008), <http://theboard.blogs.nytimes.com/2008/07/30/the-men-who-buy-sex/>, (“For example, 79 percent said they would be deterred if there was a chance that their families would be notified. And a hefty 87 percent said that they would be deterred by the threat that the police might publish their photographs or names in the local paper.”).

170. Swanee Hunt, *Buyers of Sex Must be Held Accountable*, BOSTON GLOBE (Aug. 8, 2011), http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2011/08/08/buyers_of_sex_must_be_held_accountable/.

171. CAL. PENAL CODE § 266i (West 2013).

172. *Id.*

173. *Id.*

174. *See id.* §§ 266i & 266e; *Id.* §§ 266i(a)(3) & 309.

175. 720 ILL. COMP. STAT. § 5/11-14.1. *See also Protected Innocence Challenge: Illinois Report*

The statute also includes a means of prosecuting “buyers who use the Internet to solicit minors for illegal sex acts, which may include trafficking offenses.”¹⁷⁶ A buyer convicted of patronizing a minor is required to register as a sex offender.¹⁷⁷ In Missouri, state laws can be used to prosecute buyers who cause a minor to engage in commercial sex acts, and the law provides enhanced penalties for buying sex with minors under 18.¹⁷⁸ Convicted buyers of sex with minors are required to register as sex offenders.¹⁷⁹

However, Missouri has lenient penalties for purchasing sex acts with minors, carrying a maximum sentence of only one year for purchasing a commercial sex with a minor fifteen to seventeen years of age, and only four years for purchasing a commercial sex act with a minor under the age of fifteen.¹⁸⁰ Conversely, being convicted for possession of child pornography carries a maximum sentence of seven years.¹⁸¹ This oddity demonstrates that even in the more progressive states, engaging in commercial sex with a minor is still not being punished as harshly across the states as the federal Trafficking Persons Protection Act suggests it should be.¹⁸²

In addition to the examples of other states, Utah could look to international efforts. Sweden has criminalized the act of purchasing sex while simultaneously decriminalizing the act of selling it.¹⁸³ This

Card 2012, SHARED HOPE INT’L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_IL.pdf [hereinafter *Illinois Report Card 2012*].

176. *Id.*

177. *Id.*

178. *Protected Innocence Challenge: Missouri Report Card 2012*, SHARED HOPE INT’L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_MR.pdf. [hereinafter *Missouri Report Card 2012*].

179. *Id.*

180. *Id.*

181. MO. REV. STAT. §573.037 (2012).

182. 22 U.S.C. § 7106(a)(2)-(3) (2012) “[T]he government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault. . . [t]he government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.”

183. *See supra* Part III a.

unique approach has been extraordinarily successful in Sweden¹⁸⁴ and lawmakers here should consider this approach when amending state laws to better combat sex trafficking. This approach would help ease the burden on the system by reducing the need to investigate and prosecute the sellers of sex and permit the resources to be shifted to investigating and prosecuting the buyers. As this approach has been successful internationally, it could provide a progressive solution to combating trafficking in the United States as well.

Some critics suggest that criminalizing the demand side could potentially overtax the criminal justice system in terms of investigations, prosecutions, and the jails or worse, sex trafficking could just be driven further underground. While criminalizing the demand side has found success internationally and in other states, an alternate solution would be to legislate large fines in place of probation or jail time for those caught purchasing sex. This money could then be used to fund victim advocates and other resources to help women who have been trafficked. An article in the *Boston Globe* indicated that legislators in Boston are considering, “increasing maximum fines for purchasing sex from \$500 to \$5,000, setting a minimum fine of \$1,000, and calling clearly for the use of ‘john schools’, a one- or two-day first-offender education program.”¹⁸⁵ According to the research, these changes would significantly curb demand.¹⁸⁶

Since research indicates that in addition to sentencing offenders to jail time or probation, fines and public exposure could also deter the demand side of sex trafficking, Utah lawmakers should explore the options to determine what would be the most effective means of utilizing Utah’s resources to curb demand and thereby fight sex trafficking.

Regardless of whether a fine or jail time is attached, Utah should amend current statutes to unambiguously make purchasing commercial sex a crime. Additionally, Utah should amend or enact a law to

184. *Sweden’s Prostitution Solution: Why Hasn’t Anyone Tried This Before?*, WOMEN’S JUSTICE CENTER, http://justicewomen.com/cj_sweden.html, (last visited Nov. 25, 2013). (“In just five years Sweden has dramatically reduced the number of its women in prostitution. In the capital city of Stockholm the number of women in street prostitution has been reduced by two thirds, and the number of johns has been reduced by 80%.”).

185. Hunt, *supra* note 170.

186. *Id.*

specifically criminalize purchasing commercial sex acts with a minor. The penalties attached, whether in jail time or fines, should act as a deterrent against future demand. Further, investigative efforts in Utah should mirror the paradigm shift suggested by the FBI, focusing first on removing the victims providing help for them, and then focusing on investigating the johns and pimps.¹⁸⁷

B. Focusing on Traffickers

In addition to focusing on demand, to adequately prevent the abuse of women and minors, Utah must adequately investigate and prosecute the traffickers. Other states have already enacted such laws. For example, under the California Penal Code, pimping is punishable under the same statute that criminalizes the purchase of commercial sex acts¹⁸⁸ and is punishable by three, four, or six years in prison.¹⁸⁹ The law enables prosecution of offenders for promising or threatening violence and scheming, causing, inducing, persuading, or encouraging someone to become a prostitute.¹⁹⁰

Georgia is an example of a state where the law distinguishes between adults and minors, and traffickers face substantial penalties for trafficking a minor.¹⁹¹ Georgia's new law dramatically increased the punishment for minor sex trafficking from a one year sentence to a minimum of ten years in prison.¹⁹² Further, offenders can be fined up to \$100,000, and if the trafficker used coercion or deception to cause the minor to commit sex acts, the imprisonment is increased to twenty-five years to life in prison.¹⁹³

Similar to Georgia, many states are clearly criminalizing sex trafficking of a minor and increasing the penalties associated with minor

187. Marcin, *supra* note 36.

188. Cal. Penal Code § 266i (West 2013).

189. *Id.*

190. *Id.*

191. *Georgia Human Trafficking Law Receives High Marks in National Study*, ATTORNEY GENERAL OF GEORGIA (Dec. 7, 2012), <http://law.ga.gov/press-releases/2012-12-07/georgia-human-trafficking-law-receives-high-marks-national-study>.

192. *Id.*

193. *Id.*

sex trafficking.¹⁹⁴ For example, in Texas, sex trafficking of a minor and compelling prostitution of a minor are felonies punishable by five to ninety-nine years imprisonment and a possible fine up to \$10,000,¹⁹⁵ and in Florida, it is a first degree felony punishable by up to life in prison and a fine up to \$10,000 for a person to traffic a minor under eighteen, and up to life in prison and a fine up to \$15,000 when the victim is under fifteen.¹⁹⁶

These states appear to be in line with the FBI's new goals of first helping the victim and then prosecuting the pimp.¹⁹⁷ Large fines and significant jail time could be a deterrent to people trafficking minors for sex, and it also sends a message that Utah will not tolerate sex trafficking. It is appropriate to give pimps harsher penalties than johns because although the pimps would not be in business without the economic demand created by the johns, the pimps often knowingly engage in violent and coercive behavior against women and minors to keep them in the business.

One simple suggestion to improve Utah's sex trafficking laws would be to change the relevant statutes to criminalize commercial sex acts of minors even without a showing of force, fraud, or coercion. Utah's current law rightfully increases the penalties when a minor is used in a commercial sex act, but requires the showing of force, fraud, or coercion to qualify as a sex trafficking victim.¹⁹⁸ In a fifty state survey, thirty-one states and the District of Columbia have statutes that clearly identify minors as victims of sex trafficking without regard to force, fraud, or coercion.¹⁹⁹ This change would reflect the reality that

194. SHARED HOPE INT'L, *supra* note 4.

195. *Protected Innocence Challenge: Texas Report Card 2012*, SHARED HOPE INT'L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_TX.pdf, [hereinafter *Texas Report Card 2012*].

196. *Protected Innocence Challenge: Florida Report Card 2012*, SHARED HOPE INT'L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_FL.pdf; *See also* Missouri, Louisiana, Washington for more examples.

197. Marcin, *supra* note 36.

198. *Utah Report Card 2012*, *supra* note 131.

199. *Protected Innocence Challenge*, *supra* note 121. The states that clearly identify minors as victims regardless of fraud, force, or coercion are: Alaska, Arizona, North Dakota, Hawaii, Colorado, New Mexico, Nebraska, Louisiana, Texas, Oklahoma, Michigan, Kansas, Illinois, Tennessee, North Carolina, Florida, Kentucky, Mississippi, Iowa, Wisconsin, Minnesota, Delaware,

minors in the sex trafficking industry are victims, but more importantly, it would facilitate the prosecution of the pimps that traffic minors by alleviating the need to show force, fraud, or coercion.

In addition to amending laws so that they clearly criminalize and fairly punish pimping, police officers and prosecutors must have a paradigm shift. Even with adequate laws on the books, unless police officers choose to satisfactorily investigate the pimps, and prosecutors choose to take the cases to court, the pimps will likely continue to traffic. Therefore, Utah should offer trainings and create incentives for police officers and prosecutors to appropriately deal with these cases. Some states mandate law enforcement training on sex trafficking.²⁰⁰ Sometimes this training is offered in conjunction with similar issues such as domestic violence.²⁰¹ Other states offer but do not mandate such trainings.²⁰² In addition to state created trainings, there are organizations that provide trainings upon request to law enforcement, prosecutors, community advocates, and other related professionals.²⁰³

C. *Treating Victims as Victims*

Even with laws on the books that prosecute johns and pimps, it is possible to still treat victims of trafficking as criminals. Police and prosecutors must be educated as to the realities of sex trafficking. As this paper has discussed, the average age of a person entering prostitution

Connecticut, Massachusetts, Vermont, Rhode Island, New Jersey, Maryland, and the District of Columbia.

200. For example, Minnesota, Indiana, Texas, Tennessee, and New Mexico all mandate that law enforcement officers receive training on sex trafficking. SHARED HOPE INT'L, *supra* note 121; To see more specific examples of different states' training programs, look to New Mexico, *Human Trafficking*, NEW MEXICO ATTORNEY GENERAL, http://www.nmag.gov/the_office/border-violence-division/human-trafficking (last visited Nov. 25, 2013), or Texas, *Human Trafficking*, FORT WORTH POLICE, <http://www.fortworthpd.com/divisions/human-trafficking.aspx> (last visited Nov. 25, 2013). These are examples of how law enforcement and prosecutors are being educated on the issues.

201. *Id.*

202. *Id.* For example, California, Idaho, Illinois, North Dakota, Vermont, New York, and New Jersey.

203. *Do You Know Lacy?: Training Track Options*, SHARED HOPE INT'L, <http://sharedhope.org/what-we-do/prevent/training/do-you-know-lacy-training-track/> (last visited Nov. 25, 2013).

is around thirteen. The life of a prostitute is fraught with violence and abuse at the hands of both pimps and johns.²⁰⁴ Many women would leave if they could but come to believe they have no alternatives. Many scholars and critics of the current policies on sex-trafficking have urged legislators to adopt “a more victim-centered model for addressing trafficking.”²⁰⁵

Across the nation, there is a need for reform, by both changing the culture and the way that sex trafficking victims are viewed and by changing the laws and how victims are treated. Some states leading these reforms have passed laws prohibiting traffickers from asserting an affirmative “consent” defense when charged with trafficking minors.²⁰⁶ Ten states have passed such laws.²⁰⁷ Some prohibit a defense of consent for younger victims, such as victims under the age of twelve in Missouri or under the age of sixteen in Delaware, but most of those ten states have prohibited a consent defense for trafficking victims under eighteen.²⁰⁸ Preventing the consent defense sends a message that Utah will not tolerate sex trafficking of minors, and that under the law, minors are incapable of consenting to being trafficked. The prohibition seems more problematic when a seventeen-year-old is being trafficked by her slightly older boyfriend, but particularly for younger victims, the prohibition is consistent with the legal doctrine of consent.²⁰⁹

Another important measure some states have taken is to make minors immune from prosecution when they are being trafficked. Many

204. *Supra* Part II(B)-(C).

205. Jennifer A. L. Sheldon-Sherman, *The Missing “P”: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 PENN ST. L. REV. 443, 446 (2012); see also Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337 (2007); Joyce Koo Dalrymple, *Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451, 454 (2005). Although these articles are focused on international trafficking, the principles of treating victims as victims can also be applied to domestic trafficking.

206. See *Protected Innocence Challenge*, *supra* note 121.

207. Missouri, Louisiana, Kansas, South Carolina, Alabama, Indiana, Ohio, Minnesota, Delaware, and Maine. See *Protected Innocence Challenge*, *supra* note 121.

208. *Id.*

209. See, e.g., Charles A. Phipps, *Children, Adults, Sex, and the Criminal Law: In Search of Reason*, 22 SETON HALL LEGIS. J. 1 (1997).

state laws do not adequately distinguish between adult and minor victims of sex trafficking, and further, many states lack the resources and programs necessary to treat victims as victims instead of as criminals.²¹⁰ Salt Lake City lacks the specific programs necessary to adequately treat trafficking victims as victims. Children exploited through prostitution lack appropriate shelters and instead are detained with the general population of youth offenders in the juvenile detention facilities.²¹¹

Prosecutors have reported charging the victims with misdemeanors to make sure they will be held in the juvenile detention facility and then available to testify.²¹² Locking up victims with criminals creates the impression that the victim is a criminal, both in the victim's mind and to outside observers, and victims are "saddled with a dual status of victim and delinquent."²¹³ Inside the facilities, there are no victim's services beyond medical care, and victims being held in detention centers are not given access to counseling services.²¹⁴ By making minors immune from prosecution, this could be prevented.

For example, Utah lawmakers should make sex trafficking victims younger than sixteen immune from prosecution with a rebuttable presumption that sixteen- to eighteen-year-olds were coerced into prostitution, and thus should not be convicted of any related charges unless the presumption is rebutted. In a fifty state survey, forty-four states and the District of Columbia allow minors to be prosecuted, even when the victims are in their early teens.²¹⁵ Although only a few other states have made minors immune from prosecution,²¹⁶ this measure would help create the atmosphere of viewing minors that have become

210. Axtell, *supra* note 1, ("What happens to trafficked children in the U.S. when they are discovered by the police? Often they are arrested on prostitution charges, thrown into jail and treated like criminals, even though they are minors. Instead of receiving counseling in a safe, supportive residential facility, many are forced to endure the additional trauma of juvenile detention.").

211. Snow, *supra* note 4.

212. *Id.*

213. *Id.*

214. *Id.*

215. See SHARED HOPE INT'L, *supra* note 4. This is problematic because prosecutors then charge the minors with prostitution related offenses and put them in detention, treating children as criminals instead of victims.

216. *Id.*

involved in prostitution and trafficking as victims instead of criminals. Several states have taken this step. Under Illinois law, minor victims of sex trafficking are given a protective response and under the Safe Children Act, minors under eighteen that are arrested for prostitution offenses are immune from prosecution and are instead taken into protective custody.²¹⁷

In Texas, although the statutes are silent, case law has held that a child under the age of fourteen cannot be charged with prostitution.²¹⁸ In Michigan, minors younger than the age of sixteen are statutorily immune to prosecution.²¹⁹ In Connecticut, minors younger than sixteen are immune, and those ages sixteen to seventeen have a presumption of coercion.²²⁰ Tennessee, Minnesota, and Vermont have all made minors under age eighteen immune from prosecution.²²¹

Making minors immune from prosecution would clearly establish them as victims in the industry and would prevent the system from treating them by default as criminals and delinquents. This would also help ensure that instead of getting put into detention centers, the minors would be given treatment. In the alternative, Utah lawmakers could also make clear that victims of sex trafficking, while not immune from prostitution charges, have an affirmative defense that they can assert to avoid conviction. For example, New Jersey, New Hampshire, Massachusetts, Iowa, Louisiana, and Missouri²²² have statutorily created an affirmative defense to allow minors a defense against prosecution charges.

Another important measure to ensure that victims are treated as victims instead of criminals is to make sure that the victims receive proper treatment and care once they are picked up. A few states have

217. *Illinois Report Card 2012*, *supra* note 175.

218. *Texas Report Card 2012*, *supra* note 195.

219. *Protected Innocence Challenge: Michigan Report Card 2012*, SHARED HOPE INT'L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_MI.pdf (last visited Nov. 25, 2013).

220. *Protected Innocence Challenge: Connecticut Report Card 2012*, SHARED HOPE INT'L, http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_CT.pdf (last visited Nov. 25, 2013).

221. *Protected Innocence Challenge*, *supra* note 121.

222. *Id.*

mandated that minors must be taken to a safe house or other protective agency after they are picked up for a prostitution related offense, while other states simply have resources available to victims that request them.²²³ For example, Illinois requires a protective response for minor victims of sex trafficking, and minors that are arrested for prostitution are immune from prosecution and are instead taken into protective custody.²²⁴ Similarly, Missouri provides statutory procedures to identify human trafficking victims, and law enforcement must notify social services and juvenile authorities when a minor has been picked up for prostitution.²²⁵

Utah policy makers should determine what the best procedures and resources for minor sex trafficking victims in Utah are, but ensuring adequate care and treatment of minors is an important step in treating victims as victims instead of putting them in a juvenile delinquent center. Perhaps a viable solution would be having a policy to take victims to a domestic violence shelter or put them in the Department of Child and Family Service's care. A link between victims of trafficking and domestic violence resources would probably be the most practical solution to providing care and resources for those that have been trafficked, and law enforcement and related professionals could be trained to call advocates or take victims to domestic violence shelters.

D. Other Suggestions

In addition to focusing on the johns and pimps of sex trafficking and treating victims as victims through changing laws and policies, Utah policy makers could enact alternative solutions to both help prevent sex trafficking and to recognize its signs to provide an early intervention. Although this note does not discuss in depth any of the following proposed solutions, they may be worth incorporating with others solutions proposed by this Article.

223. *Protected Innocence Challenge*, *supra* note 121.

224. *Illinois Report Card 2012*, *supra* note 175.

225. *Missouri Report Card 2012*, *supra* note 178.

For example, junior high and high school teachers and administrators could receive training on sex trafficking victims and the accompanying signs in hopes of recognizing and preventing a minor from going missing in the first place.²²⁶ Schools could be made aware of resources to call or give the suspected victims if they believe something might be amiss. In more at-risk areas, in addition to educating the administration, schools could provide a training or education class on sex trafficking for the students, focused on how the teenagers themselves can recognize the signs of a trafficker and hopefully avoid the situation themselves. The students could also learn what to do if they suspect a fellow student is being trafficked.

VII. CONCLUSION

Sixty-four years ago, it was stated that sex trafficking “endanger[s] the welfare of the individual, the family and the community.”²²⁷ The purpose of this Article has been to argue for a new normative approach to sex trafficking laws and policies in Utah. It has argued that, similar to other international and domestic efforts, focusing on the demand side of sex trafficking through punishing the pimps and johns will better deter sex trafficking than the current approach that Utah legislators have taken. Although the available solutions vary from increased sentences, to fines, or public shaming, research indicates that criminalizing the purchase of sex will do more to prevent sex trafficking in Utah and thereby protect the women and children who are victimized by the industry. As some of Utah’s current statutes do not reflect the realities

226. *Human Trafficking of Children in the United States: A Fact Sheet for Schools*, US DEPARTMENT OF EDUCATION, <http://www.ctcaht.org/Documents/School%20ht%20factsheet.pdf>, (last visited Nov. 25, 2013) (“Sex traffickers target children because of their vulnerability and gullibility, as well as the market demand for young victims. The average age of entry into prostitution is 12 to 14 years old and traffickers (also called “pimps”) are known to recruit at schools and after-school programs.”).

227. *Convention*, *supra* note 57.

of sex trafficking, the suggestions in this article could provide an effective solution.

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