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Creating a Safe Harbor for Florida's Children: An Overview of Florida's Legislative Evolution in Domestic Minor Sex Trafficking

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FLORIDA STATE UNIVERSITY LAW REVIEW



CREATING A SAFE HARBOR FOR FLORIDA'S CHILDREN:
AN OVERVIEW OF FLORIDA'S LEGISLATIVE EVOLUTION
IN DOMESTIC MINOR SEX TRAFFICKING

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CREATING A SAFE HARBOR FOR FLORIDA’S CHILDREN:
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DOMESTIC MINOR SEX TRAFFICKING

JANELLE ZABRESKY*

ABSTRACT

While the sex trafficking of minors is most commonly associated with children who are trafficked into America from other countries, in reality, thousands of minors are trafficked and sexually exploited domestically throughout rural and urban America. Due to the rise of user-post classified advertising websites, the solicitation of minors for sexual services over the Internet has become increasingly common. As a result, Domestic Minor Sex Trafficking (DMST) has rapidly progressed into a national epidemic, and its victims are in desperate need of state-specific legislation and services. Because the Internet has become a conduit for sexually exploiting minors, DMST can happen anywhere in America and can no longer go unacknowledged.

On the federal level, the Victims of Trafficking and Violence Protection Act acknowledges those under the age of eighteen as victims when engaged in commercial sex acts. Conversely, most states’ prostitution statutes fail to distinguish between adult and child prostitutes, and only a few states have enacted legislation that reflects the needs of sexually exploited children. Due to the prevalent nature of human trafficking in Florida, the Florida Legislature has been on the forefront in combatting DMST over the last eight years. Most recently, Florida addressed the unmet needs of DMST victims in the Safe Harbor Act of 2012, which provides shelter and counseling services to sexually exploited minors. Florida also passed a new human trafficking bill in 2012 that provides new judicial tools for prosecuting traffickers and intensifies criminal penalties for trafficking offenses. Although Florida is known as a central hub for DMST, victims of DMST have grown exponentially at a national level as a result of underage online prostitution postings on classified advertising websites. Unfortunately, because many states have not yet enacted legislation that identifies and protects sexually exploited minors who are prostituted, many DMST victims remain both unidentified and enslaved within our nation’s borders.

This Note critically examines Florida’s legislative evolution in DMST and identifies how other states, like California, Illinois, and Connecticut, have taken further legislative steps in protecting victims and preventing issues arising out of DMST by amending statutes involving prostitution, punitive damages, and advocate privilege. Considering the large role states play in identifying and protecting DMST victims and prosecuting their traffickers, it is imperative that other states take the same initiative as these states by enacting legislation that would assist and aid DMST victims and deter future traffickers by imposing strict criminal penalties and fines.

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I. INTRODUCTION

Domestic Minor Sex Trafficking (DMST) continues to be one of the most under-reported and under-identified forms of commercial sexual exploitation facing Florida's children.¹ DMST occurs when a United States citizen under the age of eighteen is recruited or obtained for the purpose of a commercial sex act.² The term "commercial sex act" has a broad interpretation that includes any sex act that is given in exchange for anything of value to the person performing it.³ Issues of sex trafficking traditionally have been stereotyped as offenses that occur predominately in third-world countries.⁴ However, this misconception fails to recognize that DMST occurs in the most unlikely areas in America, both urban and rural.⁵ Children are trafficked every day throughout the world, across the United States, and in Florida.⁶

Over a decade of research has classified DMST as a national epidemic and is considered to be one of "the most hidden form[s] of child abuse in the U.S."⁷ Because of DMST's hidden nature, a child can be recruited and trafficked into prostitution virtually anywhere: at a mall, outside of school, and even inside a school bus. In 2011, in Polk County, Florida, police arrested a school bus monitor for operating a

1. SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: CHILD SEX SLAVERY IN BROWARD AND DADE COUNTIES, FLORIDA 1 (2009), available at http://sharedhope.org/wp-content/uploads/2012/09/BrowardandDadeFlorida_printerfriendly.pdf.

2. Tyson Elliot, Statewide Human Trafficking Coordinator, Office of Refugee Servs., Fla. Dep't of Child. & Fams., Presentation by Florida's Center for Child Welfare: Domestic Minor Sex Trafficking (Sept. 8, 2011), available at centervideo.forest.usf.edu/summit11/sextraffic/sextraffic.html.

3. *Id.*

4. Sarah Primrose, Note, *Killing The Messenger: The Intersection Between Sex Trafficking, Planned Parenthood & the Marginalization of Youth Victims*, 22 U. FLA. J.L. & PUB. POL'Y 299, 300 (2011).

5. *See id.* (explaining the current culture of sex trafficking affects a wide variety of people, not just those who are poor or teenage runaways).

6. *See* Elliot, *supra* note 2; *See also* Tyson Elliott, *Domestic Minor Sex Trafficking*, FLA. DEP'T OF CHILD. & FAMS., 4-5 (Sept. 8, 2011), <http://centervideo.forest.usf.edu/summit11/sextraffic/Domestic%20Minor%20Sex%20Trafficking.pdf>.

7. *Study: Child Sex Abuse 'Epidemic' in U.S.*, CNN.COM (Sept. 11, 2001), <http://edition.cnn.com/2001/LAW/09/10/child.exploitation/index.html>.

juvenile prostitution ring called “Genuine Quality Entertainment.”⁸ It is alleged that the twenty-seven-year-old school bus attendant, Paul Aaron, forced his victims to perform sexual acts at area clubs.⁹ As a bus attendant, Aaron would allegedly target, solicit, and recruit vulnerable girls while on the job.¹⁰ Once he recruited the girls, he would write down their Social Security numbers at his home and then threaten to have them arrested if they tried to escape.¹¹ More shockingly, a uniformed police officer, who was one of Genuine Quality Entertainment’s most frequent customers, would allegedly listen to his radio dispatch while receiving oral sex from a fifteen-year-old victim.¹² Through the officer’s authoritative position, Aaron kept his victims under his control and prevented them from escaping by telling the girls that the officer would arrest them for being runaways.¹³

The shocking nature of the trafficker’s occupation in this case, further illustrates the fact that the most unlikely suspects can be traffickers, and any child can be recruited anywhere, at any time. Due to recent media coverage on the commercial exploitation of children, many people have incorrectly assumed that this issue is a new phenomenon.¹⁴ In actuality, the commercial exploitation of children has existed for centuries¹⁵ and has only recently been recognized as a form of human trafficking in the United States.¹⁶ It is estimated that roughly “40,000 of the estimated 1.6 million American runaway children are trafficked”¹⁷ and are predominately products of abusive homes.¹⁸ The majority of traffickers prefer victims who are easily coerced and controlled,¹⁹ making

8. Sonja Sharp, *Underage Sex Ring Run by Florida School Bus Monitor*, HUFFINGTON POST, http://www.huffingtonpost.com/2011/07/15/school-bus-monitor-cop-accused-in-sex-ring_n_899814.html (last updated Sept. 14, 2011, 6:12 AM).

9. See Dalia Dangerfield, *Update: Deputies Arrest Third Man in Prostitution Investigation*, CFNEWS13.COM, http://www.cfnews13.com/content/news/cfnews13/news/article.html/content/news/articles/ot/both/2011/07/16/Update_Deputies_arrest_third_man_in_prostitution_investigation.html (last updated July 16, 2011).

10. Sharp, *supra* note 8.

11. *Id.*

12. *Id.*

13. Dangerfield, *supra* note 9.

14. See generally Danielle Martinelli, *U.S. Media’s Failure to Set the Agenda for Covering Sex Trafficking*, 3 ELON J. UNDERGRADUATE RES. COMM. 102, 102, 104-06 (2012).

15. Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1058 (2011) (“Children have been prostituted for centuries, if not millennia.”).

16. See Regina Bernadin, *The Evolution of Anti-Slavery Laws in the United States*, 17 ILSA J. INT’L & COMP. L. 507, 509 (2011).

17. Primrose, *supra* note 4, at 300 n.7 (quoting Lindsay Strauss, Note, *Adult Domestic Trafficking and the William Wilberforce Trafficking Victims Protection Reauthorization Act*, 19 CORNELL J.L. & PUB. POL’Y 495, 506 (2010)).

18. See Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 112 (2008) (noting that most runaways leave abusive homes and turn to sex trade as a means of support from their traffickers).

19. See *id.* (discussing how traffickers employ tactics to keep the victims “scared, dependent, and motivated not to report their traffickers”).

vulnerable runaways the perfect victims. While runaways encounter the highest risk of being sexually exploited, they also run the risk of being misclassified and unidentified.²⁰

As one of DMST central hubs, Florida has spent the last eight years addressing this area of law through legislation and through mandating Human Trafficking Task Force in 2009.²¹ Initially, Florida's human trafficking legislation was considered a "work in progress."²² Since enacting its first statute on human trafficking, Florida has struggled with classifying DMST, resulting in statutory ambiguities and misclassifications. This Note will critically examine Florida's legislative evolution in DMST over the past eight years, highlighting its legislative improvements and identifying its weaknesses.

Although the Florida Legislature has made significant strides in addressing human trafficking, there are still legislative gaps in DMST laws that the Florida Legislature needs to address. Part II of this Note will provide the necessary foundation needed to understand DMST and the current misconceptions surrounding it.²³ It will also discuss Florida's most targeted victims and examine the factors that rank Florida as one of the top three human trafficking states in America.²⁴

Part III will discuss Florida's first law targeting human trafficking in 2004, four years after the emergence of the federal legislation in the Trafficking Victims Protection Act (TVPA).²⁵ It will also discuss how the Florida Legislature recognized the importance of training and victim care in human trafficking²⁶ and how, in 2008, the State conformed its criminal statutes with the TVPA "by clarifying that minors do not face the normal evidentiary burden of adult trafficking victims."²⁷ Furthermore, Part III will also examine and analyze the legislative gaps addressed by the Statewide Human Trafficking Task Force and how these key findings were utilized in the 2012 legislative bills addressed in Part IV.

20. See Birkhead, *supra* note 15, at 1060-63 (discussing the high rate of arrest of these children and the incomplete data surrounding the issue).

21. See FLA. STAT. § 787.06(1)(b) (2004) (amended 2006); see also Florida Statewide Task Force on Human Trafficking, ch. 2009-95, 2009 Fla. Laws 168.

22. FLA. STATE UNIV. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, FLORIDA STRATEGIC PLAN ON HUMAN TRAFFICKING 90 (2010), available at http://www.cahr.fsu.edu/sub_category/floridastrategicplanonhumantrafficking.pdf [hereinafter CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS].

23. See *infra* Part II.

24. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 106 ("Florida is third in the nation regarding the prevalence of human trafficking . . .").

25. See *infra* Part III.

26. See *infra* Part III.A.

27. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 92.

Part IV will address the two human trafficking bills that passed in the 2012 Florida legislative session: amendments made to acts relating to human trafficking which created stricter criminal penalties that are commensurate to human trafficking offenses,²⁸ and Florida's Safe Harbor Act,²⁹ which authorizes the delivery of sexually exploited children to short-term facilities where they are assessed for placement in a safe house.³⁰

Part V will examine the criminal and civil legislative gaps that still exist: for example, prostitution statutes that identify prostituted minors as criminals rather than victims and civil statutes that prohibit punitive damage awards to human trafficking victims.³¹ Currently, a minor is only considered a DMST victim if the sexual exploitation was facilitated by a third party, and even then, law enforcement has the discretion to arrest the minor if they have a prior record of prostitution.³² By comparing how other states have successfully addressed these legislative hurdles, Part V will analyze the variety of ways Florida and other states can implement these findings to better serve victims and reduce the prevalence of DMST throughout the nation.

Finally, Part VI will examine how DMST has become a national epidemic through the online sex trafficking of minors.³³ Because online trafficking has drastically increased the demand for DMST throughout the country, Part VI argues how imperative it is for every state engage in the same legislative initiative as Florida and the other states mentioned in this Note, in order to identify and protect DMST victims and deter future traffickers by increasing each state's criminal penalties.

II. BACKGROUND INFORMATION ON DMST

A. *Current Misconceptions of DMST*

A common misconception about human trafficking is that the term itself insinuates interstate movement.³⁴ On the contrary, the act of human trafficking does not require any human movement.³⁵ For example, a minor can be exploited out of her bedroom and still be classified as a victim of DMST without ever leaving her own home.³⁶ Another misconception specifically surrounding DMST is that law

28. See *infra* Part IV.B; see also Act effective July 1, 2012, ch. 2012-97, 2012 Fla. Laws 1090.

29. See Florida Safe Harbor Act, ch. 2012-105, 2012 Fla. Laws 1199.

30. See *infra* Part IV.A.

31. See *infra* Part V.

32. See Fla. H.R. Comm. on Health & Hum. Servs., HB 99 (2012) Staff Analysis 1,4 (Apr. 16, 2012).

33. See *infra* Part VI.

34. See Elliot, *supra* note 2.

35. *Id.* ("There does not have to be movement for [h]uman [t]rafficking to occur.")

36. *Id.*

enforcement must prove that force, fraud, or coercion was used against the victim in order to criminally prosecute the trafficker.³⁷ However, the TVPA specifically precludes minors from having to prove force, fraud, or coercion, even if they contend that they engaged in the commercial sex act willfully.³⁸ Although the TVPA recognizes all minors as victims when engaged in commercial sex acts, many states' prostitution statutes, like Florida's, fail to distinguish between adult and child prostitutes.³⁹ According to Florida's human trafficking coordinator, Tyson Elliot, all sexually exploited individuals under the age of eighteen should be considered victims of human trafficking.⁴⁰ Currently, one of the largest issues surrounding DMST is distinguishing DMST from prostitution; the key distinction between the two is that prostitution is voluntary.⁴¹

Due to the nature of the action and the minor's age, one would logically assume that a DMST victim would legally be unable to consent and thus could not be held criminally liable.⁴² However, there is widespread debate as to whether minors engaged in commercial sex acts should be held criminally accountable for their actions or whether states should exempt minors from prosecutions based on prostitution.⁴³ As a result of conflicting classification ideologies, many DMST victims remain unnoticed and unidentified. Rather than being classified as a DMST victim, many minors are misidentified as a "[c]hild prostitute, juvenile delinquent, sexually exploited youth, [or a] commercially sexually exploited youth."⁴⁴

Even after the enactment of the TVPA, the lack of human trafficking training amongst professionals likely to come into contact with

37. *Id.*

38. *Id.*; see generally Trafficking Victims Protection Reauthorization Act, 22 U.S.C. § 7102 (8)(A), (14) (2006) (establishing that the federal act does not require those younger than eighteen and involved in prostitution to show force, fraud, or coercion).

39. See FLA. STAT. § 796.07(4)(a) (2012); see also Fla. H.R. Comm. on Health & Hum. Servs., HB 99 (2012) Staff Analysis 2 (Apr. 16, 2012). The Florida Legislature defines prostitution without regard for the age of the person engaged in the act, criminalizing the minor's first offense for prostitution as a second-degree misdemeanor.

40. See Elliot, *supra* note 2 (discussing Elliot's opinion that DMST occurs when a U.S. citizen or permanent resident under eighteen years of age is engaged in a commercial sex act).

41. See Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 272 (2011).

42. See Adelson, *supra* note 18, at 108 (explaining how it is logically inconsistent for states to have rape statutes designating a minimum age requirement to consent to sex, but not have a minimum age requirement to consent to commercialized sex in their prostitution statutes).

43. See, e.g., *id.* at 125. Such arguments against criminalization of minor prostitution are that it "would render the state a haven for prostituted children, the pimps who prostitute them, and the johns who solicit their services," and "that decriminalizing . . . in one state rather than another would encourage pimps to flood that state, knowing that they could prostitute children with immunity since prostituted children rarely give up their pimps."

44. JOAN A. REID, SHARED HOPE INT'L, CLEARWATER ASSESSMENT: IDENTIFICATION OF DOMESTIC MINOR SEX TRAFFICKING VICTIMS AND THEIR ACCESS TO SERVICES, 65 (2008), available at http://sharedhope.org/wp-content/uploads/2012/09/Clearwater_PrinterFriendly.pdf.

DMST victims, especially law enforcement, also contributed to the misclassification of many DMST victims.⁴⁵ Even today, most states classify these minors as criminals who may be subjected to “arrest, detention, and prosecution, regardless of age.”⁴⁶ Fortunately, more states, including Florida, have amended their criminal statutes to recognize the mitigating circumstances when a third party facilitator is involved.⁴⁷ Florida has also created statutory mandates that require law enforcement training on human trafficking⁴⁸ to ensure more DMST victims are properly identified.

B. Florida, an Ideal State for Human Trafficking

Florida is known as being “a destination for tourists, transients, runaways, migrant workers, and organized crime,” which State Attorney General, Pam Bondi, credits as contributing to the widespread presence of human trafficking in the state.⁴⁹ Seeing as prostitution is a \$14.5 billion dollar industry in the United States,⁵⁰ Florida’s tourism and sex industry also make the state a top destination for the commercial exploitation of children.⁵¹ Next to labor trafficking, DMST is the second most prevalent human trafficking offense.⁵² Unfortunately, it is also the “most underreported and under-prosecuted human trafficking offense in Florida.”⁵³

The gravity of DMST in Florida should not be understated. According to a new study conducted by the Schapiro Group for the Women’s

45. *Id.* (discussing the lack of awareness regarding (DMST) among professionals who are likely to come into contact with victims, such as law enforcement to providers of children’s services due to the “sporadic and unsystematic methods of assessing minors for involvement in DMST, inconsistent labeling of DMST victims, little training in DMST, and infrequent tracking of DMST.”); see Birkhead, *supra* note 15, at 1059 (stating that the current legal framework allows law enforcement and courts to view prostituted youth as juvenile offenders regardless of age or extenuating circumstances).

46. *Id.*

47. See FLA. STAT. § 796.035 (2012); see also SHARED HOPE INT’L, THE PROTECTED INNOCENCE CHALLENGE: STATE REPORT CARDS ON THE LEGAL FRAMEWORK OF PROTECTION FOR THE NATION’S CHILDREN 69-74 (2011), available at http://sharedhope.org/wp-content/uploads/2012/10/PIC_ChallengeReport_2011.pdf.

48. See FLA. STAT. § 787.06(4), (5) (2011).

49. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 39.

50. SHARED HOPE INT’L, *supra* note 1, at 5.

51. See generally Linda Trischitta, *South Florida a Gateway for Child Sex Trafficking*, SUN SENTINEL (Feb. 2, 2012), http://articles.sun-sentinel.com/2012-02-02/news/fl-human-trafficking-experts-20120202_1_carmen-pino-gateway-for-human-trafficking-task-force (discussing how big ticketed events in Florida also generate a large demand for the child sex industry from the event’s crowds and stating “[k]ids do get trafficked into high profile areas where there are major sporting events [especially the 2010 Super Bowl], major music events or even the Academy Awards.”).

52. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 1-2 (finding that, although minors, especially runaways, constitute Florida’s second largest group of human trafficking victims, the actual crime of DMST is the most under-reported and under-prosecuted human trafficking in Florida).

53. *Id.* at 2.

Fund of Miami-Dade, there are more underage girls in Florida being sold for sex in a given month than “there are teen girls who died by motor vehicle accidents over three years.”⁵⁴ This is just one example that illustrates the criminal demand for prostituted minors in Florida. Unfortunately, the supply for this demand is occasionally met through the large influx of teenage runaways in Florida.⁵⁵ Surprisingly, this subclass of potential DMST victims can range from 30,000 to 40,000 at any time in Florida.⁵⁶ Because Florida is synonymous for being a polestar location for teenage runaways, this subclass of potential DMST victims are considered to be particularly “vulnerable to exploitation by pimps or to abuses in Florida’s adult entertainment industry.”⁵⁷

According to the U.S. Department of Health and Human Services, the average age of girls who enter into prostitution in the United States is between twelve and fourteen.⁵⁸ Studies have estimated that 450,000 children run away from their homes each year in the United States and, within the first forty-eight hours, one-third are recruited into prostitution.⁵⁹ An important study pioneered by the High Risk Victims and Trafficking Unit of the Dallas Police Department showed that habitual runaways are sixty percent more likely to be involved in domestic sex trafficking when the runaway had a history of sexual exploitation.⁶⁰ The majority of these teenage runaways are girls and products of physically, emotionally, and sexually abusive homes.⁶¹ Most of them are not motivated by lust or greed; they are lured by the promise of love by “johns” or their pimp.⁶²

54. SCHAPIRO GRP., ADOLESCENT GIRLS IN THE FLORIDA SEX TRADE 14 (2011) (emphasis omitted), available at <http://www.womensfundmiami.org/wp-content/uploads/2012/03/Womens-Fund-Trafficking-Final.pdf>.

55. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 2.

56. *Id.* at 2; see also FLA. DEP’T OF CHILDREN & FAMILIES, STATEWIDE HUMAN TRAFFICKING TASK FORCE IMPLEMENTATION REPORT (2011), [hereinafter IMPLEMENTATION REPORT] available at <http://www.dcf.state.fl.us/programs/humantrafficking/docs/2011ImplementationPlan.pdf> [hereinafter IMPLEMENTATION REPORT].

57. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 2; see also Linda Smith & Samantha Healy Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U. L. REV. 265, 292 (2011) (examining how “studies show that these runaways and throwaways constitute 75% of all juvenile prostitutes.”).

58. HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 8 (2009), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/index.pdf>.

59. Birkhead, *supra* note 15, at 1061.

60. See Smith & Vardaman, *supra* note 57, at 295 (citing NICOLE HAY, SHARED HOPE INT’L, DALLAS ASSESSMENT: IDENTIFICATION OF DOMESTIC MINOR SEX TRAFFICKING VICTIMS AND THEIR ACCESS TO SERVICES 11 (2008)) (noting that the Dallas Police Department identified 189 cases of children who had run away from home four or more times in a single year, or who had repeatedly been victims of sexual abuse or exploitation, making them high-risk victims).

61. See Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235, 240 (2008).

62. See *id.*

Unfortunately, the promise of love and the misconception that their trafficker truly cares about them prevent most prostituted minors from believing they are victims.⁶³ As a result of psychological bonding,⁶⁴ most victims refuse to cooperate or testify against their trafficker.⁶⁵ Although federal law considers the prostitution of children to be sex trafficking per se,⁶⁶ many states' prostitution statutes fail to distinguish between adult and child prostitutes.⁶⁷ Currently, Florida law only recognizes prostituted minors as potential victims if a third party facilitated their prostitution.⁶⁸ Moreover, due to the overwhelming reliance on victim testimony in DMST prosecutions, most traffickers are not prosecuted.⁶⁹ According to Florida's Department of Juvenile Justice, there were forty-one minors arrested for prostitution between 2010 and 2011.⁷⁰ To some, this number seems low, but to many, it is forty-one arrests too many.⁷¹

Another factor that enables the demand for DMST in Florida is the number of large metropolitan areas in the state, including Miami, Orlando, Fort Lauderdale, Jacksonville, and Tampa.⁷² Miami and Fort Lauderdale are two of the most popular cities in Florida for both tourists and locals interested in purchasing and selling children in the sex trade.⁷³ The demand-side for prostituted children is mostly comprised of adult men, commonly referred to as "johns."⁷⁴ In fact, many Florida traffickers are from these large metropolitan areas.⁷⁵

63. See Smith & Vardaman, *supra* note 57, at 286.

64. *Id.* (explaining how in many DMST cases, girl victims of sex trafficking are typically convinced that the trafficker is their boyfriend).

65. See Birkhead, *supra* note 15, at 1083-85 (finding that victims sometimes display similar symptoms as those suffering from battered women syndrome by recanting their stories or expressing remorse).

66. See Adelson, *supra* note 18, at 96.

67. See Schwartz, *supra* note 61, at 258; see also FLA. STAT. § 796.07(4)(a) (2012). The Legislature defines prostitution without regard for the age of the person engaged in the act, criminalizing the minor's first offense for prostitution as a second-degree misdemeanor.

68. See FLA. STAT. § 796.035 (2012); see also CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 93, 175 ("This change in the law keeps open the possibility that minors engaged in commercial sex but whose actions have not been facilitated by a pimp, procurer, or third party are still liable for their actions. In any situation where [minors'] participation in prostitution has been induced by a third party, however, Florida law now regards them as victims.").

69. See REID, *supra* note 44, at 2, 69-70 (noting that the victim-centered approach focuses on victims' testimony rather than the perpetrator's).

70. See Elliot, *supra* note 2.

71. *Id.*

72. See SHARED HOPE INT'L, *supra* note 1, at 11.

73. *Id.* at iii.

74. *Id.*

75. For examples of the various DMST cases occurring in Florida's metropolitan areas, see Amy Pavuk, *Sex Traffickers Force Girls as Young as 8 into Prostitution in Central Florida*, ORLANDO SENTINEL (Sept. 3, 2012), [http://articles.orlandosentinel.com/2012-09-03/news/os-teenage-sex-trafficking-orlando-20120903_1_prostitution-victims-of-sexual-exploitation-fbi-agents](http://articles.orlandosentinel.com/2012-09-03/news/os-teenage-sex-trafficking-orlando-20120903_1_prostitution-victims-of-sexual-exploitation-fbi-agents; Tampa Man Sentenced to 30 Years for Sex Trafficking of Minors); *Tampa Man Sentenced to 30 Years for Sex Trafficking of Minors*, FBI TAMPA DIVISION (Sept. 17, 2012), <http://www.fbi.gov>

These traffickers lure minors into these larger cities with promises of love, money and fame; however, once prostituted by their traffickers, the minors soon realize they no longer have control over any aspect of their life.

As a hub for many forms of human trafficking, Florida has gone through many legislative phases in addressing both human trafficking and DMST. Within the last eight years, the Florida Legislature has made significant strides in becoming a zero-tolerance state for trafficking, including DMST. While Florida currently ranks as one of the top states in combating human trafficking, the state's human trafficking legislation involved years of trial and error.⁷⁶

III. FLORIDA'S LEGISLATIVE EVOLUTION OF HUMAN TRAFFICKING AND DMST

A. Florida's First Legislative Steps

In response to the growing issue of human trafficking, the federal government created the first comprehensive law to combat human trafficking in 2000, the Trafficking Victims Protection Act (TVPA).⁷⁷ In order to target DMST, the TVPA specifically took age into consideration and was written to ensure that those under the age of eighteen and involved in commercial sex acts did not need to show force, fraud, or coercion.⁷⁸ Although the TVPA inherently equates child prostitutes as victims of human trafficking,⁷⁹ most states, like Florida, do not differentiate age to "vitiolate culpability."⁸⁰ However, as DMST began to receive more national attention, its advocates began to realize the legislative importance of the TVPA and the potential the TVPA had as a medium for addressing the issues and needs of DMST victims.⁸¹

A few years after the TVPA's enactment, the Florida legislature recognized the prevalence of human trafficking in Florida were attributable to some of the factors that make the state so unique.⁸² Up

tampa/press-releases/2012/tampa-man-sentenced-to-30-years-for-sex-trafficking-of-minors; Trischitta, *supra* note 51 ("South Florida is a gateway for human trafficking, three of the region's top law enforcers say, ranking just behind New York and Los Angeles.").

76. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 90 (discussing how Florida's anti-trafficking laws have been "a work in progress" for much of the past decade").

77. Trafficking Victims Protection Act, 22 U.S.C. § 7101-7112 (2006). See also CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 90; Adelson, *supra* note 18, at 101-02.

78. Adelson, *supra* note 18, at 102.

79. *Id.* at 128.

80. *Id.* at 120.

81. See Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 40 (2011).

82. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 39, 90 (Some of these factors include "large immigrant communities, the availability of low wage

until 2004, Florida trafficking victims were without legal remedies if they were unable to show other criminal elements were involved while they were being trafficked, such as battery, false imprisonment or kidnapping.⁸³ Fortunately, in October 2004, the Florida Legislature criminalized human trafficking as a second-degree felony⁸⁴ and criminalized the sex trafficking of minors as a first-degree felony.⁸⁵

Due to the emergence of human trafficking as a crime, combined with the lack of human trafficking training law enforcement officers had received, many law enforcement officers mishandled DMST cases.⁸⁶ Moreover, by only criminalizing the act of human trafficking without taking “further steps at preventing it, facilitating prosecution, or protecting victims,” the legislature failed to recognize the unlikelihood of victims reporting the act.⁸⁷ However, in 2006, the Florida Legislature addressed many of these gaps by amending its human trafficking statute.⁸⁸

B. Addressing the Gaps: The 2006 Amendments

The legislative gaps in Florida’s 2004 human trafficking statute were addressed in 2006, when the Florida Legislature officially recognized two different areas of human trafficking: labor trafficking and sex trafficking.⁸⁹ The Florida Legislature further recognized the need to strengthen human trafficking penalties, and amended two civil statutes and two criminal statutes.⁹⁰ The Florida Legislature provided a new civil cause of action that allowed trafficking victims to sue their trafficker for up to three times the actual financial damage.⁹¹ Unfortunately, that statute also explicitly denied courts the option of awarding trafficking victims punitive damages.⁹² The Florida Legislature also expanded criminal liability to anyone who

jobs, entire sectors of the economy that operate with little governmental regulation (such as agricultural labor), and thriving commercial sex venues.”).

83. See Terry S. Coonan, *Human Rights in the Sunshine State: A Proposed Florida Law on Human Trafficking*, 31 FLA. ST. U. L. REV. 289, 297 (2004).

84. FLA. STAT. § 787.06(b)(2) (2004) (“Any person who knowingly engages in human trafficking with the intent that the trafficked person engage in forced labor or services commits a felony of the second degree. . .”).

85. FLA. STAT. § 796.035 (2004); see also CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 90.

86. See Adam S. Butkus, Note, *Ending Modern-Day Slavery in Florida: Strengthening Florida’s Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 327-28 (2007).

87. *Id.* at 314, 327 (explaining how police officers have to overcome many obstacles in handling and identifying DMST cases because the act of DMST is “unique” in the sense that many of its victims are reluctant to report the act).

88. *Id.* at 326-27.

89. See FLA. STAT. § 787.06(1)(b) (2006) (“The Legislature finds that while many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry, trafficking also occurs in forms of labor exploitation . . .”).

90. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 91.

91. See FLA. STAT. § 772.104(2) (2006); see also Butkus, *supra* note 86, at 326.

92. See FLA. STAT. § 772.104(3) (2006); see also Butkus, *supra* note 86, at 326.

knowingly benefits financially or who receives anything of value from human trafficking as a racketeering crime pursuant to section 895.02, *Florida Statutes*.⁹³

Furthermore, the amendments to the 2004 human trafficking statute also broadened the definition of trafficking by providing examples and techniques of coercion⁹⁴ and clarifying that a trafficker could still be found guilty of trafficking even if physical force was not used.⁹⁵ The 2006 amendments also shifted the statute's focus on victims' rights by addressing the need for educational training for both law enforcement and attorneys.⁹⁶ For law enforcement, new recruits were required to participate in a human trafficking course as a part of their training.⁹⁷ The Supreme Court of Florida and the Florida Bar were also called to create training on human trafficking and disseminate it to judges and attorneys.⁹⁸

Although the 2006 amendments to the human trafficking statute were more comprehensive than the initial legislation, the Florida Legislature failed to reconcile the gaps in Florida law that were detrimental to DMST victims. After amending its human trafficking laws, Florida still failed to align itself with the TVPA in two significant ways.⁹⁹ First, Florida defined victims of human trafficking as "young children, teenagers, and adults" but failed to use the TVPA standard that exempted minors from having to prove that fraud, force, or coercion had been used against them.¹⁰⁰ Because juvenile prostitution is classified as a second-degree misdemeanor,¹⁰¹ it was common for law enforcement to arrest these victims and encourage them to plead guilty.¹⁰² By pleading guilty, DMST victims were automatically disqualified from obtaining a public defender and ineligible for victim services.¹⁰³

Second, at that time, the law regarding the commercial exploitation of minors was found in the prostitution statute rather than the

93. See FLA. STAT. § 895.02(1) (2006).

94. See FLA. STAT. § 787.06(2)(b) (2006); see also Butkus, *supra* note 86, at 326 (footnote omitted) (Section 787.06, *Florida Statutes*, "redefines 'forced labor or services' to include fraud or coercion, debt practices, and manipulation of victim's documents.").

95. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 91 (noting that "anyone who knowingly benefits financially or who receives anything of value from human trafficking can be prosecuted").

96. *Id.*

97. FLA. STAT. § 787.06 (2)(b)(4)-(5) (2006); see also CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 91.

98. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 91.

99. See REID, *supra* note 44, at 19, 39.

100. *Id.* at 19.

101. *Id.* at 65.

102. See *id.* (explaining how police would encourage minors to "plead 'guilty' to expedite the judicial process").

103. *Id.*

human trafficking statute.¹⁰⁴ As a result of this disconnect, the statute's placement hindered awareness that prostituted minors were, and still are, human trafficking victims.¹⁰⁵ Fortunately, the Florida Legislature addressed some of these issues in 2008 and further aligned Florida law with federal TVPA standards.¹⁰⁶ Florida also created a human trafficking task force, which brought many more issues facing victim's needs to the legislature's attention.¹⁰⁷

C. Florida's Responses to the Evolving Nature of DMST

Prior to 2008, Florida defined child sex trafficking differently than the federal law by requiring children to show that force, fraud, or coercion had been used to induce them to participate in prostitution, pornography, or stripping.¹⁰⁸ By re-examining the adverse effects and limitations that the human trafficking statutes had on minors, the Florida Legislature broadened Florida's criminal statutes.¹⁰⁹ Although the statute was revised in 2008 to exempt minors from showing force, fraud, or coercion if a third party facilitated their prostitution, the revisions were very difficult for law enforcement to implement since they were placed in the prostitution statute rather than the human trafficking statute.¹¹⁰

In 2009, the Florida Legislature mandated a Statewide Human Trafficking Task Force pursuant to Senate Bill 168.¹¹¹ The Task Force examined Florida's human trafficking problems and recommended strategies to the legislature to further eliminate trafficking in Florida.¹¹² Also in 2009, the Florida State University Center for the Advancement of Human Rights created a statewide strategic plan for human trafficking and addressed the "(1) description of available data; (2) identification of available victim programs and services; (3) evaluation of public awareness strategies; (4) assessment of current

104. See, e.g., FLA. STAT. § 796.035 (2006).

105. See REID, *supra* note 44, at 4 ("A disconnect in terminology is causing a lack of cooperation between those working on child pornography cases and those working on child prostitution cases."); see also FLA. STAT. § 796.035 (2006).

106. See *infra* Part III.C.

107. See *infra* Part III.C; see also an act effective June 1, 2009; ch. 2009-95, § 1(1)-(2)(a), 2009 Fla. Laws 1353-54.

108. FLA. STAT. § 796.035 (2008); see also CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 92; FLA. STAT. § 796.035 (2007). "Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participate in the trade of sex trafficking, commits a felony of the first degree."

109. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 92.

110. *Id.* at 93-94; see also FLA. STAT. § 796.035 (2008).

111. See act effective June 1, 2009, ch. 2009-95, § 1(1)-(2)(a), 2009 Fla. Laws at 1353-54.

112. *Id.* § (3)(a), (4)(a)-(c), 2009 Fla. Laws at 1355; see also CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at xi-xii.

laws; and (5) [a] list of recommendations produced in consultation with governmental and non-governmental organizations.”¹¹³

The Task Force’s research found that one of the biggest gaps in Florida law was the extreme need for secure rehabilitative facilities for DMST victims.¹¹⁴ The Task Force recommended that the legislature enact a Safe Harbor statute for short-term “safe shelters” that would care for sexually exploited children in a secure facility.¹¹⁵ While at the shelter, sexually exploited children would be able to receive therapeutic care, allowing them to heal and understand that their trafficker is not their companion but rather their exploiter.¹¹⁶ Another paramount concern of the Task Force was the lack of statistical data and the need for research comparing runaways and DMST victims.¹¹⁷

The lack of comprehensive data has stifled Florida’s ability to assess how many DMST victims exist and are in need of services in Florida.¹¹⁸ Fortunately, Florida’s Department of Children and Families (DCF)’s 2011 Implementation Report addressed many of the Task Force’s concerns.¹¹⁹ The report found a correlation between runaways and potential DMST victims through DCF’s tracking system and hotline.¹²⁰ DCF has “developed one of the nation’s most aggressive systems for tracking children who have run away from foster care,” finding 2062 runaways in 2010 and identifying ninety-six foster care runaways as being potential victims of DMST.¹²¹ DCF also offered some statistical guidance as to how many victims there may be in Florida when it received reports of 156 trafficking incidents from the Florida trafficking hotline; the majority involved female minors.¹²²

D. Other Florida Legislation Involving DMST

In order to better protect children in Florida from being victimized by sexual predators, convicted perpetrators of DMST are required to register as sex offenders under Florida’s Sexual Predators Act.¹²³ Florida also created an “exploited children’s civil remedy,” which provides that anyone under the age of eighteen who had been exploited

113. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at xii (footnote omitted).

114. *Id.* at 6.

115. *Id.* at 6-7.

116. *Id.* at 7.

117. *Id.* at 42-43.

118. *Id.* at 7-8 (discussing law enforcement’s need for a statewide database on human trafficking); *see* REID, *supra* note 44, at 3 (explaining how “the lack of systematic data tracking of DMST victims, which makes it difficult to establish an accurate estimate of the total number of victims.”).

119. IMPLEMENTATION REPORT, *supra* note 56.

120. *See id.* at 17.

121. *Id.*

122. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 39 (examining the results of DCF-collected data from May 1, 2009 through June 30, 2010).

123. *See* FLA. STAT. § 775.21(3)(d), (4)(b) (2012).

through child pornography may be awarded damages of at least \$150,000.¹²⁴ To better identify runaways as potential DMST victims, Florida mandates schools to flag a missing student's "records in such a manner that whenever a copy of or information concerning the records of the missing child is requested, the person authorized to provide such copy or information is alerted to the fact that the child has been listed or reported as missing."¹²⁵

IV. FLORIDA LEGISLATION AND CURRENT TRENDS

While the legislative framework for addressing criminal and civil issues has changed over time, the Florida Legislature in 2012 addressed the unmet needs of DMST victims by amending Florida's Human Trafficking Act¹²⁶ and enacting Florida's Safe Harbor Act.¹²⁷

A. Florida's Safe Harbor Act of 2012

Throughout the country, only eleven states have attempted to address the issue of DMST through comprehensive legislation¹²⁸: Connecticut,¹²⁹ Illinois,¹³⁰ Massachusetts,¹³¹ Michigan,¹³² Minnesota,¹³³ New York,¹³⁴ Ohio,¹³⁵ Tennessee,¹³⁶ Vermont,¹³⁷ Washington,¹³⁸ and Florida.¹³⁹ These states have modeled their legislation after the language used in the TVPA, recognizing sexually exploited minors as per se victims of trafficking in need of services and shelters.¹⁴⁰ Although these laws are not identical, each "requires that some category of prostituted minors be removed from delinquency or criminal court proceedings and diverted instead to social services, such as psychological counseling or long-term housing."¹⁴¹ Pioneered by New York in 2007, the state categorized those engaged in prostitution while under

124. FLA. STAT. § 847.01357(1) (2012).

125. See FLA. STAT. § 937.025(1) (2012).

126. Act effective July 1, 2012, ch. 2012-97, 2012 Fla. Laws 1090.

127. Florida Safe Harbor Act, ch. 2012-105, 2012 Fla. Laws 1199.

128. See Susan Crile, Comment, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors*, 61 AM. U. L. REV. 1783, 1791-92 (2012).

129. See CONN. GEN. STAT. § 53a-82 (2012).

130. See 720 ILL. COMP. STAT. ANN. 5/11-14(d) (2012).

131. See MASS. GEN. LAWS ch. 119, § 39L (2012).

132. See MICH. COMP. LAWS § 750.448-.449 (2009).

133. See MINN. STAT. ANN. § 609.093 subdiv. 1 (West Supp. 2011) (effective Aug. 1, 2014).

134. See N.Y. SOC. SERV. LAW §§ 447-a to -b (McKinney 2010) (authorizing services for sexually exploited youth); N.Y. FAM. CT. ACT § 732.

135. See H.R. 262, 129th Gen. Assemb., Reg. Sess. (Ohio 2011).

136. See TENN. CODE ANN. § 39-13-513(d) (2011).

137. See VT. STAT. ANN. TIT. 13, §§ 2652(c)(1), 2653(a)(1) (2011).

138. See WASH. REV. CODE § 13.40.070(7) (2012).

139. See FLA. STAT. § 409.1678 (2012).

140. See Crile, *supra* note 128, at 1792.

141. See Birckhead, *supra* note 15, at 1067-68.

the age of eighteen as “ ‘sexually exploited child[ren]’ [giving] family court judges the discretion to convert juvenile delinquency petitions for prostitution offenses into petitions alleging that the child is a ‘person in need of supervision.’ ”¹⁴²

Florida addressed the need for legislative action in the area of DMST and recommended passing something similar to the Safe Harbor Act proposal in 2009.¹⁴³ Although the 2010 proposal was unable to pass,¹⁴⁴ it paved the way for the Act to pass in 2012. Recognizing that detention facilities are ill-equipped to handle sexually exploited minors, the 2012 Act added gender-specific, short-term specialized housing with around-the-clock staff for DMST victims.¹⁴⁵ Victims would also be provided services such as counseling, health care, and case management¹⁴⁶ in one of the twenty-eight youth shelters throughout the state that are operated by the Department of Juvenile Justice.¹⁴⁷ These shelters can be either voluntary or court-ordered, in which case a minor can reside at the shelter up to 120 days.¹⁴⁸

Although some states’ Safe Harbor Acts decriminalize prostitution for minors under a certain age,¹⁴⁹ Florida’s does not, nor did Florida make any substantive changes to its prostitution statutes.¹⁵⁰ As a legislative compromise, the Act gave law enforcement the discretion of either arresting and detaining the prostituted minor or delivering him or her directly to a safe house.¹⁵¹ Although the Act seemed to hint that first-time offenders should be classified as dependents rather than adjudicated delinquent, it is not mandated.¹⁵² Civilly, the Act increases penalties for solicitation from \$500 to \$5,000 and directs that the additional \$4,500 be paid to a trust fund at DCF to fund services for sexually exploited children.¹⁵³ Consequently, the Act

142. *Id.* at 1068 (footnotes omitted).

143. *See* IMPLEMENTATION REPORT, *supra* note 56, at 23, 38.

144. *Id.*

145. *See* Florida Safe Harbor Act, ch. 2012-105, § 6(1)(b), (e), 2012 Fla. Laws 1, 7-8 (codified at FLA. STAT. § 409.1678).

146. *Id.*

147. Fla. H.R. Comm. on Health & Hum. Servs., HB 99 (2012) Staff Analysis 3 (Apr. 16, 2012).

148. *Id.*

149. *See* Birckhead, *supra* note 15, at 1067-68 (noting that Michigan holds only those sixteen years or older criminally liable for prosecution, Connecticut decriminalized prostitution for minors under sixteen and presumes those sixteen and seventeen were “coerced” into prostitution, and Illinois decriminalized prostitution for children under the age of eighteen).

150. *See* Fla. H.R. Comm. on Health & Hum. Servs., HB 99 (2012) Staff Analysis 2 (Apr. 16, 2012).

151. *Id.* at 1, 4.

152. *Id.* at 2 (citing FLA. STAT. § 39.01(15) (2012)).

153. Florida Safe Harbor Act, ch. 2012-105, § 7(6), 2012 Fla. Laws at 1209 (codified at FLA. STAT. § 796.07).

did not create immediate funding and the solicitation fines appear to be the only source of funding for Safe Harbor shelters.¹⁵⁴

B. Amendments to Acts Relating to Human Trafficking

The Florida Legislature also extensively revised statutes relating to human trafficking; the revisions provided new judicial tools for prosecuting traffickers. First, the 2012 amendments authorize statewide prosecutions of human trafficking offenses that occurred in two or more judicial circuits.¹⁵⁵ The statute also specifically recognized domestic trafficking, stating “victims of human trafficking also include . . . those persons trafficked domestically within the borders of the United States.”¹⁵⁶ More importantly, the statute defines commercial sexual activity, which was traditionally limited to instances of commercial sex, to include pornography.¹⁵⁷ The inclusion of pornography in commercial sexual activity is a very important addition because it creates a larger pool of traffickers that can now be prosecuted in DMST cases. Consequently, it is likely Florida will also see an increase in the prosecution of traffickers as a result of the combination of involuntary servitude, human trafficking, and sex trafficking statutes into one single statute, which should generate less confusion among law enforcement officers and close many legal loopholes.¹⁵⁸

The statute also authorizes the use of wiretapping,¹⁵⁹ which will prove useful for evidentiary purposes in DMST investigations for two main reasons. First, text messages are governed under wiretapping law, and wiretapping allows the interception of text messages.¹⁶⁰ Second, due to the increased usage of text messaging in the commercial sex trade, wiretapping will produce better evidence and will alleviate the testimonial burden placed on victims.¹⁶¹ Furthermore, the statute increases the burden of proof against businesses in the commercialized

154. *Id.*; see Fla. H.R. Comm. on Health & Hum. Servs., HB 99 (2012) Staff Analysis 2 (Apr. 16, 2012) (explaining that the effect of increasing in civil fines was to create a “proposed funding source for services sexually exploited children” funded by “court-ordered assessments from offenders, including a mandatory court cost, a surcharge on fines, restitution, and subrogation, when appropriate.”).

155. See an act effective July 1, 2012, ch. 2012-97, § 1(1)(a)(15), 2012 Fla. Laws at 1091-92 2-3 (codified at FLA. STAT. § 16.56).

156. *Id.* § 5(1)(a), 2012 Fla. Laws. at 1094 (codified at FLA. STAT. § 787.06).

157. *Id.* § 5(2)(b), 2012 Fla. Laws. at 1095 (“ ‘Commercial sexual activity’ means any violation of chapter 796 or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.”).

158. See *id.* § 5(1)(b), 2012 Fla. Laws. at 1094.

159. *Id.* § 10(1), 2012 Fla. Laws at 1098-99 (codified at FLA. STAT. § 934.07).

160. See SHARED HOPE INT’L, PROJECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY 10 (2011), available at <http://sharedhope.org/wp-content/uploads/2012/09/ProtectedInnocenceMethodologyFINAL.pdf>.

161. *Id.*

sex industry to “knowingly, or in reckless disregard.”¹⁶² This change increases the civil liability of businesses, like massage parlors and strip clubs, by holding them more accountable if they should have known that sex trafficking had occurred.¹⁶³ Because the statute authorizes asset forfeiture for any business engaged in human trafficking,¹⁶⁴ many more businesses’ assets, such as buildings, computers, and cars, will be subject to seizure.

V. ADDRESSING FLORIDA’S LEGISLATIVE GAPS THROUGH STATE COMPARISON

In order to strengthen Florida’s efforts in combating DMST, it is critical to examine and address Florida’s legislative gaps. Because the “johns” in Florida create such a large demand for DMST, Florida must play an important role in effectively protecting its youth from trafficking. Florida’s failure to create an age differentiation in its prostitution statute prevents many prostituted minors from receiving a second chance at life. Further, Florida’s strict prohibition on punitive damages allows the demand for DMST in Florida to remain high. Part V of this Note will address the three main gaps that currently exist in Florida including the criminalization of prostitution, Florida’s explicit prohibition of awarding punitive damages for trafficking victims, and the need for privileged communication between NGOs¹⁶⁵ and sex trafficking victims.

A. Florida’s Current Gaps in Prostitution Legislation

One of the most highly contested issues surrounding DMST is whether states should criminalize prostitution without consideration of the individual’s age. Under the TVPA, age is an important factor in determining whether a victim engaged in prostitution is required to prove that force, fraud, or coercion was used against him or her.¹⁶⁶ Nevertheless, young minors can be prosecuted for prostitution under a state’s prostitution statute “despite the fact that they are too young to legally consent to sex under another [state’s rape statute],” making them “both ‘offenders’ and ‘victims’ simultaneously.”¹⁶⁷ In Florida’s

162. Fla. H.R. Judiciary Comm., HB 7049 (2012) Staff Analysis 6-8 (Apr. 10, 2012). See also FLA. STAT. § 787.06(3) (2011), which previously only contained the mens rea “knowingly . . . [e]ngages, or attempts to engage, in human trafficking”

163. Fla. H.R. Judiciary Comm., HB 7049 (2012) Staff Analysis 7-10 (Apr. 10, 2012).

164. *Id.* at 10.

165. See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at ii (defining an NGO as a Non-Governmental Organization).

166. *Id.* at 92; see also Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(A) (2006).

167. Birkhead, *supra* note 15, at 1068-69. See also Adelson, *supra* note 18, at 108 (explaining how it is logically inconsistent for states to have rape statutes designating a minimum age requirement to consent to sex, but not have a minimum age requirement to consent to commercialized sex in their prostitution statutes).

criminal statute, the Legislature defines prostitution without regard for the age of the person engaged in the act, criminalizing the minor's first offense for prostitution as a second-degree misdemeanor.¹⁶⁸

Under Florida law, minors who “willfully engage” in prostitution are not considered “a child who can be considered dependent by the court” and are explicitly exempt from receiving DMST services.¹⁶⁹ Although Florida law does not provide any specific definition of what would constitute willful engagement in prostitution, it implies that prostitution not facilitated by a third party would automatically deem the minor as willfully engaged.¹⁷⁰ According to the National Incident Study for missing, abducted, runaway, and throw-away children, the average age of girls entering prostitution is between twelve and fourteen.¹⁷¹ Considering this, it is imperative that Florida create a minimum age requirement that would exempt minors of a certain age from being held criminally liable in its prostitution statute.¹⁷² Although Florida's prostitution statute appears harsh by prohibiting any person, regardless of their age, from engaging in prostitution, only five states have decriminalized the offense for minors under a certain age,¹⁷³ most of which hold those sixteen and under immune from criminally liability. For example, Michigan and Connecticut decriminalized prostitution for those under sixteen and Illinois immunizes all minors under the age of eighteen, including repeat offenders.¹⁷⁴

However, overcoming legislative hurdles can be problematic in this area of law when opponents against passing Safe Harbor type of legislation believe enacting such legislation would create “a loophole for pimps to exploit.”¹⁷⁵ For example, Georgia, whose capital is considered a major hub for commercial sex,¹⁷⁶ recognized the need to amend its states' prostitution laws by setting a certain age limitation for a prosecution based on prostitution; unfortunately, most of these

168. FLA. STAT. § 796.07(4)(a) (2012).

169. See FLA. STAT. § 39.01(67)(g) (2012); see also Fla. H.R. Comm. on Health & Hum. Servs., HB 99 (2012) Staff Analysis 2 (Apr. 16, 2012) (explaining that “[t]he definition of abuse from sexual exploitation in Chapter 39, Florida Statutes, does not include children who willfully engage in prostitution.” But “[c]hildren who are allowed, encouraged or forced to engage in prostitution may be considered dependent by the court and delivered to DCF for shelter and services in or out of their caregiver's home.”).

170. See E-mail from Tyson Elliot, Statewide Human Trafficking Coordinator, Office of Refugee Servs., Fla. Dep't of Children & Families, to Janelle Zabresky, student, Fla. State Univ. Coll. of Law (Mar. 26, 2012, 9:12 AM EST) (on file with author).

171. See Elliot, *supra* note 2.

172. CLAWSON ET AL., *supra* note 58, at 8.

173. See Birkhead, *supra* note 15, at 1067; see also Jonathan Todres, *Change Exploited Kid Laws*, ATLANTA J.-CONST., <http://www.ajc.com/opinion/change-exploited-kid-laws-569201.html> (last updated July 12, 2010, 7:25 PM).

174. See Birkhead, *supra* note 15, at 1067-68.

175. See Todres, *supra* note 173.

176. See Birkhead, *supra* note 15, at 1071.

bills died in committee.¹⁷⁷ Those who opposed the age standard argued the need for prostituted minors to be criminally detained so they can be kept off the street.¹⁷⁸ Conversely, this rationale ignores the fact that juveniles have not fully developed cognitively or psychologically¹⁷⁹ and the stigma that comes with being criminally detained. In reality, the stigma of incarceration is one that is carried with the juvenile for the rest of their life.¹⁸⁰ Additionally, there is a high risk that prostituted children will return home and go back to a life of prostitution after being released;¹⁸¹ thus, jail is not a safe harbor that would keep these victims from returning to prostitution.¹⁸²

The philosophical principle of juvenile justice recognizes that juveniles are different from adults with respect to underdeveloped decision-making capacities and increased susceptibility to the influence of others.¹⁸³ The United States Supreme Court has also recognized these developmental differences between adults and minors with respect to underdeveloped capacities, especially in the area of criminal culpability.¹⁸⁴ In *Graham v. Florida*, the Supreme Court exempted juveniles from life without parole for committing non-homicidal crimes.¹⁸⁵ The Court recognized that a juvenile's diminished capacity rests on the lack of maturity and underdeveloped sense of responsibility and that juveniles have a "heightened susceptibility to negative influences and outside pressures" compared to that of their adult counterparts.¹⁸⁶

Thus, if the Supreme Court and Congress recognize these developmental distinctions by requiring parental permission in areas such as medical procedures and abortion,¹⁸⁷ how can they criminalize minors under the same rationale? With twelve to fourteen being the average age of minors entering prostitution, Florida should prevent those sixteen and under from being arrested for prostitution.

177. *Id.* at 1071-72.

178. *See id.* at 1085 (explaining that under this rationale, opponents of decriminalizing juvenile prostitution would fail because "strategies of persuasion and common sense have failed with these youth, it is necessary to place them in secure custody for their own protection.").

179. *See* BARRY C. FELD, CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION 44-45 (3rd ed. 2009).

180. *See* Adelson, *supra* note 18, at 122.

181. Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL'Y BRIEF 67, 71 (2012).

182. *Id.* at 122-23.

183. *See* FELD, *supra* note 179, at 44-45.

184. *Id.* (Minors experience physical and psychological development from the onset of puberty to maturity. As a result of underdevelopment challenges in maturational, psychological decision making development, they are not as culpable and less deserving than their adult counterparts.); *see also* *Miller v. Alabama* 132 S. Ct. 2455 (2012) (finding mandatory life imprisonment without parole for those who committed their crime while under the age of 18 violated the Eight Amendment's prohibition on cruel and unusual punishment).

185. *Graham v. Florida*, 130 S. Ct. 2011 (2010).

186. *Id.* at 2038 (Roberts, C.J., concurring).

187. *See* Birckhead, *supra* note 15, at 1070.

Although Florida will soon provide Safe Harbor shelters, DMST victims are not guaranteed that they will escape detention.¹⁸⁸

One way to approach this legal conundrum is to adopt Illinois's approach as delineated in its Safe Children Act.¹⁸⁹ Under the Safe Children Act, those under the age of eighteen are taken into protective custody and immune from prosecution based on prostitution.¹⁹⁰ Illinois also allows minors who were arrested for prostitution to petition to expunge their juvenile record at the age of seventeen.¹⁹¹ Conversely, Florida does not have a provision that would allow minors who were arrested for prostitution to expunge their record. By creating a similar provision, Florida would allow minors affected by DMST a second chance for a better life and would promote long-term recovery. Alternatively, Washington's legislation mandates diversion for a minor's first offense involving prostitution for those under the age of eighteen.¹⁹² Although Washington's statutory language implicitly allows the arrest of minors for prostitution, "there is a presumption that the alleged offender meets the criteria for a certification as a victim of a severe form of trafficking."¹⁹³

B. Florida's Current Legislative Gaps in Punitive Damages and Advocate Privilege

Because DMST is such an egregious crime against society's most vulnerable members, its victims should be entitled to punitive damages and their traffickers should be financially crippled. Currently, Florida explicitly denies human trafficking victims the opportunity to be awarded punitive damages.¹⁹⁴ However, the Ninth Circuit in *Ditullio v. Boehm* recently held that human trafficking victims are permitted to recover punitive damages under the TVPA.¹⁹⁵ The plaintiff in *Ditullio* was fifteen at the time she was recruited to engage in commercial sexual activity in exchange for controlled substances.¹⁹⁶ The Ninth Circuit determined that human trafficking cases under the TVPA satisfied common law standards for an award of punitive

188. See Fla. H.R. Comm. on Health & Human Servs., HB 99 (2012) Staff Analysis 1 (Apr. 16, 2012).

189. See SHARED HOPE INT'L, *supra* note 47, at 23; see also The Illinois Safe Children Act, Public Act 96-1464 (2010); CHARLES HOUNMENOU, UNIV. OF ILL. AT CHI., HUMAN TRAFFICKING IN ILLINOIS FACT SHEET (2012), available at http://www.uic.edu/jaddams/college/research_public_service/files/TraffickingInPersonsInIllinois_FactSheet09202010.pdf.

190. See SHARED HOPE INT'L, *supra* note 47, at 20.

191. *Id.* at 133.

192. *Id.* at 201.

193. WASH. REV. CODE § 13.40.219 (2012); see also SHARED HOPE INT'L, *supra* note 47, at 200-01.

194. FLA. STAT. § 772.104(3) (2012); see also CIVIL REMEDIES FOR HUMAN TRAFFICKING VICTIMS, *infra* note 198.

195. *Ditullio v. Boehm*, 662 F.3d 1091, 1094 (9th Cir. 2011).

196. *Id.* at 1095.

damages because the conduct, which Congress has described as “a contemporary manifestation of slavery,” is “both intentional and outrageous” and furthered Congress’s purpose in enacting the law, which was to “increase[] protection [of] victims of trafficking and punishment of traffickers.”¹⁹⁷

Not only has the federal law recognized the need for punitive damages but several states, such as California, Illinois, Wisconsin, and Alabama, have also allowed victims the opportunity to seek punitive damages under their respective civil action statutes.¹⁹⁸ For example, a California jury awarded \$500,000 in punitive damages, pursuant to the state’s human trafficking statute, to a plaintiff who had been forced to work as a domestic servant for a couple who in turn confiscated the plaintiff’s passport and withheld all pay for fifteen years.¹⁹⁹

Florida currently bars human trafficking victims from recovering punitive damages and limits their recovery to three times their actual damages²⁰⁰ or three times the amount gained from their services.²⁰¹ Because DMST is an especially egregious act, it is simply unreasonable that a state ranking as one of the top three states in human trafficking²⁰² would explicitly prohibit punitive damages. Because Florida has one of the largest demands for human trafficking and has a large adult entertainment industry, it should create laws that expose traffickers to the harshest civil penalties that in turn would discourage future traffickers from engaging in the lucrative sex trafficking enterprise.²⁰³ Furthermore, allowing punitive damages would effectively decrease the demand of DMST because the extreme financial penalties awarded to human trafficking victims would scare off most potential traffickers.

Additionally, victims of human trafficking in Florida do not enjoy the same communication privileges with human trafficking advocates that victims of domestic and sexual violence have with domestic violence advocates.²⁰⁴ A domestic violence advocate is defined as a person “whose primary purpose is the rendering of advice, counseling, or

197. *Id.* at 1098.

198. See NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE NAT’L DIST. ATTORNEYS ASS’N., CIVIL REMEDIES FOR HUMAN TRAFFICKING VICTIMS *passim* (2012), available at <http://www.ndaa.org/pdf/Civil%20Remedies%20for%20Human%20Trafficking%20Victims-jan2012.pdf>. Other states that provide punitive damages for human trafficking victims also include Maine, Vermont, Massachusetts, Minnesota, Indiana, Oklahoma, District of Columbia, and Oregon. *Id.*

199. Yusuf v. Tija, No. B222277, 2010 WL 4012145 at *1-4 (Cal. Ct. App. Oct. 14, 2010) (unpublished opinion).

200. FLA. STAT. § 772.104(1) (2012).

201. FLA. STAT. § 772.104(2) (2012).

202. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 106.

203. See Butkus, *supra* note 86, at 331-33.

204. See generally FLA. STAT. § 90.5036 (2012) (discussing the domestic violence advocate-victim privilege).

assistance to victims of domestic violence.”²⁰⁵ Further, the statute ensures that any “communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim” are classified as confidential and privileged communication.²⁰⁶

Currently, communication between sex trafficking victims and human trafficking victim advocates is not considered protected communication, making the conversations between the two susceptible to discovery in court proceedings.²⁰⁷ It is imperative for the Florida Legislature to create a provision similar to the domestic violence advocate provision to ensure that the communication between sex trafficking victims and human trafficking victim advocates is protected. This privilege would create a safe and stable environment for trafficking victims to confide in their advocates without fear that their conversation could be used against them in court. Furthermore, Florida would benefit from a human trafficking victim advocate privilege provision because it would expedite litigation. By providing sex trafficking victims privileged communication with their human trafficking victim advocate, victims would feel more secure in disclosing information about their trafficking and thus would be more likely to provide testimony against their trafficker.

VI. HOW ONLINE TRAFFICKING HAS TURNED DMST INTO A NATIONAL EPIDEMIC

Considering the paramount role states play in identifying and protecting DMST victims and prosecuting their traffickers, it is imperative that other states take the same initiative as Florida by enacting legislation that would help DMST victims and impose strict criminal penalties and fines on their traffickers. While the majority of this Note focuses on Florida’s current DMST legislation and areas that can still be improved upon, Florida, as a front-runner in DMST legislation, serves as an ideal template for other states to imitate. Due to the growing demand for online underage prostitution through easily accessible websites like Backpage.com,²⁰⁸ it is more important than ever for states to create individualized state DMST legislation that will protect our nation’s youth from traffickers.

Backpage.com is a national website that allows individuals to advertise items for sale, including sex, and is considered by some as “the leading Web site for sex trafficking in America today.”²⁰⁹ Because

205. *Id.* § (1)(b).

206. *Id.* § 2.

207. *See* CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *supra* note 22, at 94.

208. *See generally* Geraldine Sealey, *Girls 4 Sale*, MARIE CLAIRE, Sept. 2012, at 228-33 (discussing the multimillion-dollar business of online sex trafficking).

209. Nicholas D. Kristof, *Not Quite a Teen, Yet Sold for Sex*, N.Y. TIMES, Apr. 18, 2012,

Backpage is so easily accessible—and despite its efforts to monitor user-posted ads for illegal solicitations—the site has been regarded as “a godsend to pimps, allowing customers to order a girl online as if she were a pizza.”²¹⁰ According to AIM, a research and consulting company, “Backpage accounts for about 70 percent of prostitution advertising among five Web sites that carry such ads in the United States, earning more than \$22 million annually from prostitution ads.”²¹¹ Although Backpage has received much media backlash over the years, the website has been considered an ally in combating human trafficking and “already employs a triple-tiered policing system that includes automated filtering and two levels of manual review of the adult and personal categories. It also responds to law-enforcement subpoenas within 24 hours or less in almost all cases.”²¹²

As a result, the growing trend of buying underage girls online for sex has flourished on a national level. Because sites like Backpage have made it easier for pimps throughout America to solicit underage sex online to buyers, the prevalence of underage online prostitution should not be understated. Politically, Backpage has been heavily scrutinized by law enforcement and government agencies for contributing to the online sex trafficking of minors. For example, attorney generals from forty-eight states came together to write Backpage a joint letter “warning that it had become ‘a hub’ for sex trafficking and calling on it to stop running adult services ads.”²¹³ In the letter, the attorneys general also indicated “that they had identified cases in [twenty-two] different states in which pimps peddled underage girls through Backpage.”²¹⁴

More recently, the online prostitution of minors has gained national attention of social media as well. In the September 2012 issue of *Marie Claire*, the magazine published an article contending that Backpage has allowed the online prostitution of minors to flourish nationally because the site allows pimps to sell underage girls “at high volume.”²¹⁵ The article further notes that although prostitution is

<http://www.nytimes.com/2012/04/19/opinion/kristof-not-quite-a-teen-yet-sold-for-sex.html>.

210. Nicholas D. Kristof, *How Pimps Use the Web to Sell Girls*, N.Y. TIMES, Jan. 25, 2012, <http://www.nytimes.com/2012/01/26/opinion/how-pimps-use-the-web-to-sell-girls.html>.

211. Nicholas D. Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES, Mar. 17, 2012, http://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html?_r=0. The AIM Group, formally the Advanced Interactive Media Group LLC, is the world’s leading consultancy in interactive media and classified advertising. *Welcome to the AIM Group*, AIMGROUP.COM, <http://aimgroup.com/welcome-the-aim-group> (last visited Feb. 18, 2013).

212. Liz McDougall, *Backpage.com Is an Ally in the Fight Against Human Trafficking*, HUFFINGTON POST (May 6, 2012), http://seattletimes.com/html/opinion/2018143440_guest07mcdougall.html (explaining that Backpage “uses its own technological tools to voluntarily collect and submit additional evidence to law enforcement from across the Internet.”).

213. Kristof, *supra* note 210.

214. *Id.*

215. See Sealey, *supra* note 208, at 231.

illegal in almost every state, “hosting online sex ads is not, thanks to section 230 of the federal Communications Decency Act, which protects Web companies against liability for what users post on their sites.”²¹⁶

In the last four years, Backpage has been reportedly involved in “more than 50 instances in 22 states involving underage sex trafficking.”²¹⁷ The majority of these underage victims are both emotionally and physically traumatized and can suffer from symptoms commonly associated with Stockholm syndrome as a result of being routinely victimized by their pimp.²¹⁸ Because there are countless DMST victims in need of counseling and safe housing throughout the country, it is imperative that other states take the same legislative initiative as Florida and the various states discussed through this Note to better serve and protect DMST victims and further deter traffickers by imposing stricter criminal penalties and fines.

VII. CONCLUSION

Although there is a rising need for states to create their own DMST legislation, there is also room for improvement from states, like Florida, that have already done so. Since passing its first human trafficking law in 2004, the Florida Legislature has recognized the state’s longstanding problem regarding the sexual commercial exploitation of Florida’s children. Despite Florida’s recent legislative changes, the legislature should continue to ensure that Florida’s children are protected from sex trafficking. The Florida Legislature should implement Connecticut’s prostitution statute²¹⁹ by decriminalizing prostitution for children under the age of sixteen. This would eliminate the possibility of further irreparable harm to sexually exploited minors through arrest and prosecution.

Alternatively, the Florida Legislature could duplicate Illinois’ approach by immunizing anyone under the age of eighteen from a prosecution based on prostitution. However, because the Florida Legislature emphatically emphasized that the Safe Harbor Act would not decriminalize juvenile prostitution, duplicating Connecticut’s prostitution statute rather than Illinois’s would avoid likely legislative upheaval. However, at the very least, the Florida Legislature should implement something similar to Illinois’ Safe Children Act²²⁰ by providing minors found guilty of prostitution the opportunity to expunge their record.

216. *Id.* at 230.

217. *Id.* at 231.

218. *See* Kristof, *supra* note 209.

219. *See* Birkhead, *supra* note 15, at 1068.

220. *See* SHARED HOPE INT’L, *supra* note 47, at 133; *see also* Illinois Safe Children Act, Public Act 96-1464 (2010).

Furthermore, in an effort to deter sex trafficking, Florida should follow the legislative steps of California, a state that also ranks in the top three for human trafficking, by allowing punitive damages.²²¹ In an effort to deter sex trafficking in Florida, a punitive-damages provision would significantly decrease the demand for trafficking by providing victims the opportunity for large punitive awards. An award of punitive damages would not only be financially damaging to the trafficker, it would also allow victims a chance to fully assimilate into the community by providing economic stability. Furthermore, the Florida Legislature should also create privileged communication between human trafficking victim advocates and trafficking victims that mirrors the current statute for domestic violence victims and their domestic violence advocates.

In sum, because Florida's human traffickers have a high demand for prostituted minors, it is the legislature's responsibility to ensure that its children are properly protected from sexual commercial exploitation. In doing so, it is critical to address Florida's legislative gaps presented in this Note. Furthermore, law enforcement, state attorneys, and judges must focus on effectively utilizing the judicial tools found in chapter 2012-97, Florida Laws and ensure that DMST victims are receiving rehabilitative services and shelter through Florida's Safe Harbor Act. By taking further legislative initiative, Florida's DMST legislation can serve as an effective template for combating DMST for every state in America.

221. See NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE, *supra* note 198, at 5-6; see also NAT'L HUMAN TRAFFICKING RESOURCE CTR., ANNUAL REPORT-2011: AN ANALYSIS OF CALL DATA FROM THE NATIONAL HUMAN TRAFFICKING HOTLINE, ii (2011), available at https://na4.salesforce.com/sfc/p/300000006E4S11Sv6mFa.D_CB10UueofejFjNL0=.