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The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice

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THE PREDATOR ACCOUNTABILITY ACT: EMPOWERING WOMEN IN PROSTITUTION TO PURSUE THEIR OWN JUSTICE

> In spite of the abusive conditions in their lives prostitutes are afforded neither the status of victim nor survivor, but are defined as fully consenting participants in an industry that, if viewed objectively, would be understood to be the commerce of sexual abuse and inequality.[1]

INTRODUCTION

Olivia was sixteen when she landed her first well-paying job, at a strip club on Rush Street in Chicago.[2] Getting paid $1000 a night just to sell drinks and dance seemed too good to be true.[3] Stripping, and living on her own, was certainly better than living in her parents' house, surrounded by poverty, alcoholism, and domestic violence.[4] At home, she had been sexually abused and had seen her mother exploited in prostitution.[5] In the beginning, dancing was just what the ads in the newspaper[6] promised—a glamorous and easy way to make a small fortune.[7] The club owners had taken care of all the details, and even got her a fake I.D. because she was underage.[8] After working as a stripper for over a year, Olivia understood that many customers were looking for more than a few drinks and a striptease; they came for the "services" provided only in the back half of the club.[9] The managers were more than complicit in the backroom prostitution. They were consummate recruiters, slowly moving girls from the stage to the back rooms through flattery, intimidation, and outright threats. These methods eventually worked on Olivia like they had on other

1. Evelina Giobbe, *Prostitution: Buying the Right to Rape*, *in* RAPE AND SEXUAL ASSAULT III: A RESEARCH HANDBOOK 143, 159 (Ann Wolbert Burgess ed., 1991).

2. JODY RAPHAEL, LISTENING TO OLIVIA: VIOLENCE, POVERTY, AND PROSTITUTION 4 (2004).

3. *Id.* at 31.

4. *Id.* at 15–17.

5. *Id.*; *see also* Eloise Dunlap et al., *Girls' Sexual Development in the Inner City: From Compelled Childhood Sexual Contact to Sex-for-Things Exchanges*, 12 J. CHILD SEXUAL ABUSE 73 (2003) (reporting an ethnographic study of inner city women exploring the pathway from childhood sexual abuse to prostitution).

6. RAPHAEL, *supra* note 2, at 41.

7. *Id.* at 53.

8. Olivia Howard, Remarks at a DePaul University College of Law Book Reading and Discussion of *Listening to Olivia: Violence, Poverty, and Prostitution* (Nov. 9, 2005).

9. RAPHAEL, *supra* note 2, at 52–53.

dancers before her.[10] Although she earned more money selling sexual acts than she had stripping, the money did not salve the degradation of prostitution.[11] Olivia increasingly turned to alcohol and drugs as a sort of anesthesia to help her get through the day.[12] Eventually, she found herself handling seven or eight johns[13] a night, some of whom thought burning girls with cigarettes was part of what they had purchased.[14] The club managers apparently agreed, and it was understood that the girls were to handle violent johns, in the most discrete way possible, without calling for help unless absolutely necessary.[15]

When Olivia's drug addiction made it impossible for her to work a full shift, she quit and started prostituting near hotels, where the bell-

10. *Id.* at 56–57.

11. *Id.* at 76.

12. *Id.* at 57, 74–75. Research has shown a high prevalence of substance abuse and alcoholism among prostituted women. *See, e.g.*, Stephanie Church et al., *Violence by Clients Towards Female Prostitutes in Different Work Settings: Questionnaire Survey*, 322 BRIT. MED. J. 524 (2001) (reporting a survey of 240 prostituted women in Scotland in which many reported use of illegal drugs within the previous six months); Nikki Jeal & Chris Salisbury, *A Health Needs Assessment of Street-Based Prostitutes: Cross-Sectional Survey*, 26 J. PUB. HEALTH 147 (2004) (discussing interviews of seventy-one women prostituting in Bristol, United Kingdom, which revealed that all of the women were substance abusers).

13. The use of the term "john" in this Comment refers to an individual who trades money or other goods or services for a sexual act. *See* Martin A. Monto & Nick McRee, *A Comparison of the Male Customers of Female Street Prostitutes with National Samples of Men*, 49 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 505 (2005) (describing characteristics of men arrested for soliciting street prostitutes); *see also* CHI. COALITION FOR THE HOMELESS, BUYING SEX: A SURVEY OF MEN IN CHICAGO (2004), *available at* http://www.chicagohomeless.org/CCH%20Study3.pdf (calling for more research on men who buy sex and strategies for decreasing the demand for prostitution); John Lowman et al., Sexuality in the 1990's: Survey Results (1997), http://mypage.uniserve.ca/~lowman/ (reporting results of surveys administered as part of a larger study of men who buy sex from "street prostitutes, escorts, masseuses, and persons advertising in the business personal sections of various local newspapers and other publications").

14. RAPHAEL, *supra* note 2, at 76–77. Olivia's experience with violence is not anomalous. In a study of the violence experienced during prostitution on the streets of San Francisco, 82% of respondents reported physical assault (with 55% reporting physical assault by johns) and 68% reported rape. Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27 WOMEN & HEALTH 37, 40–41 (1998). Of those reporting rape, 48% reported being raped more than five times, and 46% reported being raped by johns. *Id.*; *see also* Melissa Farley et al., *Prostitution in Five Countries: Violence and Post-traumatic Stress Disorder*, 8 FEMINISM & PSYCHOL. 405 (1998) (discussing comparable results in a study conducted in the United States, South Africa, Thailand, Turkey, and Zambia). Some research suggests that indoor prostitution may involve less physical violence by johns. *See, e.g.*, Barbara G. Brents & Kathryn Hausbeck, *Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy*, 20 J. INTERPERSONAL VIOLENCE 270 (noting that prostitutes in legal brothels recognized the potential for violence from every customer, but reported very low rates of actual occurrence). The authors suggested that stringent house rules in legalized brothels and close monitoring by management create an environment in which customers know that rulebreaking would not be tolerated. *Id.* at 281–82.

15. RAPHAEL, *supra* note 2, at 76.

hops would solicit customers for her.[16] On good nights, when she had high-paying johns or could rob a john or two, she only needed to turn a few dates.[17] But working on the streets was not lucrative enough for Olivia to keep her apartment, so she moved in with her drug dealer, Strychnine, who quickly became her pimp.[18] Strychnine was a big man with a violent reputation, and having him around made Olivia less fearful of jumping into cars with men she did not know.[19] In the eight years she spent with Strychnine, however, his presence only added to the violence that she suffered.[20] Not only was Olivia routinely beaten and raped by johns, she was also abused physically, sexually, and emotionally by Strychnine, her avowed protector.[21] When Olivia left prostitution, nineteen years after being hired at the strip club, she had been arrested sixty-two times for prostitution-related offenses,[22] her ribs had been broken at least twelve times,[23] and she had been admitted to hospital emergency rooms on countless occasions for injuries inflicted by johns or her pimp.[24]

Now, more than twenty years after her escape from prostitution, Olivia is a college graduate who puts her experiences to work as a director at a major drug treatment program in Chicago.[25] Though two decades have passed, she continues to suffer from a number of medical problems she believes were caused by the violence and stress of prostitution, including recurrent headaches and ulcers.[26] Meanwhile, those who inflicted her injuries are likely oblivious or indifferent to

16. *Id.* at 92.

17. *Id.*

18. *Id.* Research on the link between homelessness (or near homelessness) and prostitution is sparse. *See* CHI. COALITION FOR THE HOMELESS, UNLOCKING OPTIONS FOR WOMEN: A SURVEY OF WOMEN IN COOK COUNTY JAIL (2002), *available at* http://www.chicagohomeless.org/factsfigures/jailstudy.pdf (detailing a survey of 235 women in the Cook County Jail in 2003 in which 54% of respondents indicated they had experienced homelessness "in the 30 days prior to entering jail").

19. RAPHAEL, *supra* note 2, at 92–93.

20. *Id.*

21. *Id.* at 93.

22. *Id.* at 129.

23. *Id.* at 145.

24. Howard, *supra* note 8.

25. Email from Jody Raphael, Senior Research Fellow, DePaul University College of Law, to the author (Jan. 24, 2006, 14:39 CST) (on file with author).

26. RAPHAEL, *supra* note 2, at 232. Research exploring the harms of prostitution has focused primarily on transmission of sexually transmitted infections (STIs), to the exclusion of other physical illnesses and psychological harms. Farley & Barkan, *supra* note 14, at 46. In Farley's study of street prostitution in San Francisco, 75% of respondents reported drug and alcohol abuse, 68% met the clinical criteria for posttraumatic stress disorder, and 50% reported some physical health problem. *Id.* at 45–46.

the harm they have caused.[27] Some of them are "substantial citizens such as lawyers and judges, politicians, priests and deacons, law enforcement officers, and high-ranking military personnel"; they are "respectable men who [have] much to lose by public exposure."[28] Do the men that bought and sold Olivia owe her anything? Should they be held accountable for the myriad health problems that she endures twenty years later? Or should society continue to ignore the role these men play in the continuation of the sex trade industry, subscribing to the fiction that buying and selling women's bodies is "normal and natural"?[29]

This Comment explores one possibility for shifting some responsibility to the johns and pimps who keep the machinery of the sex trade industry running: a civil cause of action for those used in prostitution.[30] To date, four states have created some version of this cause of action, including Illinois.[31] Part II of this Comment provides a brief overview of federal and state causes of action available to prostituted women,[32] including the Illinois Predator Accountability Act (PAA), and examines one case brought under a similar Florida statute.[33] Part III discusses weaknesses in the state causes of action enacted prior to the Illinois statute and explores how the PAA remedies some of these

27. *See generally* Daria Mueller, *Curbing the Demand for Prostitution*, FACTS BEHIND THE FACES (Chi. Coalition for the Homeless, Chi., Ill.), Fall 2005, *available at* http://www.chicagohomeless.org/factsfigures/PolicyPaper%20Fall05.pdf (summarizing several strategies for reducing prostitution by decreasing demand, including shaming techniques whereby pictures of those arrested for solicitation are posted online). One criticism of the shaming technique is that it unfairly targets minority and lower income johns, as arrests are generally the result of street prostitution sting setups in economically depressed areas. It is possible that more affluent johns are more discreet—using massage parlors and personal ads, or picking up women on the street in neighborhoods not targeted by the police.

28. REPORT OF THE FLORIDA SUPREME COURT GENDER BIAS STUDY COMMISSION, *reprinted in* 42 FLA. L. REV. 803, 899 (1990) (internal quotation marks omitted) (quoting P. Levine, Prostitution in Florida, A Report to the Gender Bias Study Commission of the Supreme Court of Florida 17 (Sept. 1988) (unpublished manuscript)) [hereinafter FLORIDA REPORT]; *accord* Martin A. Monto, *Prostitution and Fellatio*, 38 J. SEX RES. 140, 141 (2001) (providing statistical information on the educational backgrounds of johns arrested in San Francisco, Portland, and Las Vegas).

29. Stephen Grubman-Black, *Deconstructing John*, *in* DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING: CONFERENCE REPORT 17, 19 (2004).

30. This Comment uses feminine pronouns to refer to likely plaintiffs in cases brought under this type of cause of action and masculine pronouns for likely defendants.

31. *See* FLA. STAT. ANN. § 796.09 (West 2000); HAW. REV. STAT. ANN. § 663J (LexisNexis 2002); 740 ILL. COMP. STAT. ANN. 128 (West Supp. 2007); MINN. STAT. ANN. § 611A.80 (West 2003).

32. Phrases like "prostituted women" are used throughout this Comment in lieu of the much simpler and less awkward "prostitute," out of respect for those who have been victimized by prostitution.

33. *See infra* notes 37–95 and accompanying text.

weaknesses.[34] Part IV examines the likely impact of the PAA and compares its usefulness with criminal prosecution.[35] Finally, Part V concludes that, though the PAA provides a way for some prostituted women to obtain a measure of justice, it cannot supplant equitable application of criminal prostitution laws against the demand side of the industry.[36]

II. BACKGROUND

This Part provides an overview of past and existing civil causes of action available to prostituted individuals against pimps or johns. It reviews the federal Violence Against Women Act (VAWA),[37] which targeted gender-based violence in general, as well as innovative state initiatives passed in Florida, Hawaii, and Minnesota for use by prostituted women.[38] This Part also discusses a case brought under the Florida statute.[39]

A. Overview of the Federal Violence Against Women Act

Congress passed the VAWA in 1994, creating a civil cause of action for victims of gender-motivated crimes of violence such as sexual assault.[40] Whether an activity constituted a "crime of violence" depended, in part, on whether it was considered a felony under federal or state law.[41] In *United States v. Morrison*, the Supreme Court invalidated the civil cause of action created by the VAWA, holding that

34. *See infra* notes 96–179 and accompanying text.

35. *See infra* notes 180–196 and accompanying text.

36. *See infra* notes 197–200 and accompanying text.

37. 42 U.S.C. § 13981 (1994), *invalidated by* United States v. Morrison, 529 U.S. 598 (2000). There are other ways for prostituted individuals with creative lawyers to pursue civil actions in federal court against those who victimized them. *See, e.g.*, Lan Cao, Note, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297 (1987) (discussing how trafficked women might use the Racketeer Influenced and Corrupt Organizations Act as a basis for litigation).

38. *See* FLA. STAT. ANN. § 796.09 (West 2000); HAW. REV. STAT. ANN. § 663J (LexisNexis 2002); MINN. STAT. ANN. § 611A.80 (West 2003).

39. *See infra* notes 68–72 and accompanying text.

40. Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (1994) (codified at 42 U.S.C. § 13981(c) ("A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right [to be free of crimes of violence as] declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.")).

41. 42 U.S.C. § 13981(d). In full, the VAWA defined "crime of violence motivated by gender" as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." *Id.* "Crime of violence" was defined as follows:

Congress had no authority "to provide a federal civil remedy . . . under the Commerce Clause [or] under § 5 of the Fourteenth Amendment."[42] Before the Court's decision in *Morrison*, there was only one reported civil suit against a solicitor, panderer, or john by a prostituted woman under the provisions of the VAWA.[43] One obstacle to such claims may have been the required showing of case-specific "animus" based on gender, which was difficult to construe and even more difficult to satisfy.[44] Making such a showing was a challenge even in rape and sexual assault cases, due to "traditional gender biases, rape myths and sexual stereotypes."[45] Demonstrating gender animus would have been even more troublesome in prostitution-related cases, given society's tendency to view prostituted women as consenting adults.[46]

B. Overview of Civil Causes of Action Currently Available at the State Level

After *Morrison*, at least two states took to heart the Court's statement that the Constitution gives state governments the power to police "truly local" affairs, particularly "suppression of violent crime and

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(A) an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of title 18 [which provides an alternate definition for "crime of violence," centered on the use, attempted use, or threat of physical force], whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and (B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

Id. The requirement that the underlying crime be a felony was an additional difficulty in bringing prostitution-related civil suits under the VAWA, particularly those in which the underlying act does not constitute a federal felony and where there was no threatened, attempted, or actual use of physical force. In many states, soliciting, pandering, pimping, and hiring prostitutes constitute misdemeanor offenses, so claims based on these activities would fall short of the "felony crime" requirement of the VAWA. *See, e.g.*, 720 ILL. COMP. STAT. ANN. 5/11-18 (West 2002).

42. *Morrison*, 529 U.S. at 627.

43. Balas v. Ruzzo, 703 So. 2d 1076 (Fla. Dist. Ct. App. 1998). This case also included a claim under the civil cause of action that exists in Florida for prostituted individuals against their pimps. *See infra* notes 52–72 and accompanying text.

44. 42 U.S.C. § 13981(d)(1); *accord* J. Rebekka S. Bonner, Note, *Reconceptualizing VAWA's "Animus" for Rape in States' Emerging Post-VAWA Civil Rights Legislation*, 111 YALE L.J. 1417 (2002) (discussing the conceptualization of "animus" in post-VAWA civil rights statutes cropping up in states).

45. Jeanne A. Soriana, Comment, *Prostitution: An Economic Activity Entitled to a Federal Civil Remedy Under the Commerce Clause*, 4 J. LEGAL ADVOC. & PRAC. 207, 217 (2002).

46. FLORIDA REPORT, *supra* note 28, at 896–97.

vindication of its victims."[47] Both California[48] and Illinois[49] passed statutes that resemble the civil remedies overturned in *Morrison*, and there has been some movement in other states to do the same.[50] Although these statutes have not yet been utilized by women victimized in the sex trade industry, the statutory language is likely broad enough to allow recovery in such cases.[51] Other statutes, even before *Morrison*, went further and addressed prostitution specifically.

1. *Florida*

In 1987, Florida Chief Justice Parker Lee created the Supreme Court Gender Bias Study Commission "to determine in what areas of our legal society bias based on gender exists, and recommend measures to correct, or at least minimize the effect of, any such bias."[52] The Commission used a multidisciplinary approach, collecting information at public hearings and regional meetings, examining arrest and sentencing patterns, and conducting surveys of the Florida legal community at all levels, from law school students to judges.[53] In the area of "Gender Bias in Criminal Justice," the Commission found that women who became part of the Florida legal system tended to be "treated more harshly than similarly situated male offenders."[54] It found that enforcement of prostitution laws was one of the worst instances of this inequity:

> The laws against prostitution are enforced primarily against women, not the men who coerce them into prostitution or the customers who use their "services." . . . [P]rostitution is not a victimless crime. Its victims are the girls who run away from abusive and incestuous

47. *Morrison*, 529 U.S. at 618.

48. CAL. CIV. CODE § 52.4 (West 2006).

49. 740 ILL. COMP. STAT. ANN. 82/10 (WEST SUPP. 2007).

50. *See* Julie Goldscheid, *The Civil Rights Remedy of the 1994 Violence Against Women Act: Struck Down but Not Ruled Out*, 39 FAM. L.Q. 157 (2005) (discussing state and local laws similar to the VAWA).

51. Both laws include multiple definitions of "gender-related violence," including "[a] physical intrusion or physical invasion of a sexual nature under coercive conditions," although the Illinois law also requires that the violence meet the Illinois statutory definition of battery. CAL. CIV. CODE § 52.4(c)(2); 740 ILL. COMP. STAT. ANN. 82/5(2). The broad language of the state statutes notwithstanding, recovery for prostitution-related injuries remains more likely when suits are brought under laws tailored to the idiosyncrasies of the sex trade industry. Further, filing a civil suit under a law not specifically designed for use by prostituted women might raise other obstacles, because many courts would decline to hear cases that arise from illegal conduct. *See* Ben Fischer, *House Panel Votes to Let Prostitutes Sue Pimps*, CHI. SUN TIMES, Mar. 10, 2005, at 10 (quoting Samir Goswami of the Chicago Coalition for the Homeless, an organization that lobbied for the bill).

52. FLORIDA REPORT, *supra* note 28, at 803 (internal quotation marks omitted).

53. *Id.* at 803–04.

54. *Id.* at 837.

> relationships at home and are treated by the legal system first as errant children and later as hardened criminals.
>
> The Commission concludes that the dimensions of the problem are staggering and, by comparison, the legal system's efforts to combat prostitution have been futile at best.[55]

The Commission also specifically found that prostituted women are likely to be "controlled by 'pimps' who use a variety of coercive methods," and that women often engage in prostitution as a means to survive rather than by choice.[56] When arrested, these women face a judicial system that does not recognize that pimps and johns are more culpable than prostituted women, and does not provide effective treatment and rehabilitation.[57] The Commission recommended that Florida respond to these systemic problems in several ways, including "creat[ing] a civil cause of action on behalf of women against their pimps."[58]

On May 15, 1993, Florida became the first state in the country to provide prostituted women with a civil cause of action outside of traditional tort actions.[59] Although the Florida statute does not permit plaintiffs to sue johns or attempted johns, plaintiffs may bring suit against those who coerced them to begin prostituting, stay in prostitution, or relinquish any portion of prostitution-related earnings.[60] The statute defines coercion as "any practice of domination, restraint, or inducement for the purpose of or with the reasonably foreseeable effect of causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution," and it lists several specific examples.[61] Defendants are barred from raising certain de-

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55. *Id.* at xxxvii.

56. *Id.* at xxxviii.

57. *Id.*

58. FLORIDA REPORT, *supra* note 28, at xl.

59. 1991 Fla. Sess. Law Serv. 91-32 (West) (codified at FLA. STAT. ANN. § 796.09 (West 2005)).

60. FLA. STAT. ANN. § 796.09(1).

61. *Id.* § 796.09(3). This section of the statute reads as follows:

> (3) As used in this section, the term "coercion" means any practice of domination, restraint, or inducement for the purpose of or with the reasonably foreseeable effect of causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to: (a) Physical force or threats of physical force. (b) Physical or mental torture. (c) Kidnapping. (d) Blackmail. (e) Extortion or claims of indebtedness. (f) Threat of legal complaint or report of delinquency. (g) Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise. (h) Promise of legal benefit. (i) Promise of greater financial rewards. (j) Promise of marriage. (k) Restraint of speech or communication with others. (l) Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency. (m) Exploitation of victimization by sexual abuse. (n) Exploitation of pornographic performance. (o) Exploitation of human needs for food, shelter, safety, or affection.

fenses, including that the plaintiff received remuneration for the prostitution (the "compensation" defense) and that the plaintiff was prostituted prior to involvement with the defendant (the "preexisting practice" defense).[62] Suits are governed by Florida's four-year statute of limitations for personal injury tort actions.[63] The statute is tolled if the injured party was a minor at the time of the injury and the injury constitutes "abuse" under Florida law.[64] When the statute is tolled, the injured party must bring suit within seven years of turning eighteen, within four years of gaining independence from a defendant who is a parent or guardian, or within four years of the date the injured party realized the harm and understood that it was caused by the defendant.[65] Plaintiffs receive derivative immunity from future criminal investigations or proceedings, except for charges of perjury.[66] If successful, they may recover not only compensatory and punitive damages but also, at the court's discretion, attorney's fees and litigation costs.[67]

Since it was enacted more than twelve years ago, only two claims brought under the Florida statute have been reported.[68] In *Balas v. Ruzzo*, two female plaintiffs sued the owner and manager of a "leisure spa," alleging that she manipulated and coerced them into selling sexual acts.[69] The plaintiffs brought claims of assault, battery, false imprisonment, and intentional infliction of emotional distress, as well as

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Id.; *accord* Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 65, 71 (1993) (explaining that the Florida statute begins with the common forms of compulsion used in prostitution and rape).

62. FLA. STAT. ANN. § 796.09(5) ("(5) It does not constitute a defense to a complaint under this section that: (a) The plaintiff was paid or otherwise compensated for acts of prostitution; (b) The plaintiff engaged in acts of prostitution prior to any involvement with the defendant; or (3) The plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant.").

63. FLA. STAT. ANN. § 95.11(3)(o) (West 2002 & Supp. 2006).

64. *Id.* § 95.11(7).

65. *Id.*

66. FLA. STAT. ANN. § 796.09(4).

67. *Id.* § 769.09(1), (7).

68. Bryan v. Bryan, 930 So. 2d 693 (Fla. Dist. Ct. App. 2006); Balas v. Ruzzo, 703 So. 2d 1076 (Fla. Dist. Ct. App. 1998). As of November 14, 2006, internet database searches do not disclose any cases other than those mentioned above. There are, however, a number of pleadings citing the statute available on Westlaw, demonstrating that plaintiffs are bringing claims under the Florida statute. The limited number of reported cases may be because of the limited reporting of lower court decisions and the willingness of defendants to settle, rather than defend themselves in a public setting or face trial. *See generally* Margaret Baldwin, *What Can Be Done to Interfere with and Ultimately Eliminate Demand?*, *in* DEMAND DYNAMICS, *supra* note 29, at 105 (exploring the link between johns' ability to stay anonymous, the judicial system's failure to hold johns accountable, and the disparate assignment of culpability to the women).

69. *Balas*, 703 So. 2d at 1076–77.

a claim under the Florida statute.[70] During discovery, the defense sought information that would demonstrate that the plaintiffs were prostitutes prior to their employment at the defendant's establishment, that they prostituted themselves outside of the defendant's establishment during the same time period, and that they continued to prostitute themselves after leaving the defendant's employ.[71] On appeal, the court found that the information and materials requested were discoverable because the plaintiffs had brought suit under § 796.09 in combination with other causes of action, effectively eliminating the protection against the preexisting practice defense.[72]

2. *Minnesota*

On May 10, 1994, Minnesota became the second state to create a civil cause of action for prostituted individuals against those who coerced them to join or remain in prostitution.[73] This legislation came as a result of lobbying by Women Hurt In Systems of Prostitution Engaged in Revolt (WHISPER), an advocacy group comprised of law students, professors, and prostitution survivors.[74] In 1992, WHISPER launched a campaign to formulate public policy initiatives, outside of legalization and decriminalization, to combat the injurious effects of prostitution.[75] As a result of that campaign, WHISPER's ad hoc group pushed the Minnesota legislature to follow Florida in creating a civil cause of action for prostituted women.[76] The group selected this particular legislative initiative because of its goals:

> First, the legislation had to directly impact the ability of individuals to profit from the coercion of women and youth into or to remain in prostitution for their profit. Second, the bill had to impede the ability of johns to purchase sex at the expense of prostituted women with little, if any, risk to themselves. Third, the legislation had to provide immediate relief and benefits to women harmed in prostitution.[77]

Despite several changes to the bill,[78] the resulting Minnesota law is a somewhat broader cause of action than that created in Florida. The

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70. *Id.* at 1077.
71. *Id.* at 1077–78.
72. *Id.* at 1079.
73. 1994 Minn. Sess. Law Serv. 624 (West) (codified at MINN. STAT. ANN. § 611A.81 (West 2003)).
74. Evelina Giobbe & Sue Gibel, *Impressions of a Public Policy Initiative*, 16 HAMLINE J. PUB. L. & POL'Y 1, 2 (1994).
75. *Id.* at 16–17.
76. *Id.* at 29.
77. *Id.*
78. *Id.* at 30–31.

Minnesota law includes pimps and panderers as proper defendants but, unlike Florida's law, also allows for actions against some johns, attempted johns, and prostitution business owners.[79] In addition, the Minnesota statute includes a more extensive list of specific "coercive" behaviors than the Florida model, including destruction of property, interfering with educational opportunities, and creating an employment environment that foreseeably leads to prostitution.[80] As a result of amendments made by the Minnesota Senate Judiciary Committee, however, these enumerated behaviors only constitute *evidence* of coercion, rather than coercion per se, thus increasing the plaintiff's burden of proof.[81] Finally, the Minnesota statute specifically excludes a number of affirmative defenses, including consent, prohibition of prostitution by an employment contract or posted notices (the "employer prohibition" defense), and initiation of the relationship with the defendant by the plaintiff (the "plaintiff initiation" defense).[82] To date, no cases brought under the Minnesota law have been reported.

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79. *Id.*

80. MINN. STAT. ANN. § 611A.80 subd. 2 (West 2003) (defining "coercion" as the use or threat of "any form of domination, restraint, or control for the purpose of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution"). The statute addresses coercion comprehensively:

> Coercion exists if the totality of the circumstances establish the existence of domination, restraint, or control that would have the reasonably foreseeable effect of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution. Evidence of coercion may include, but is not limited to: (1) physical force or actual or implied threats of physical force; (2) physical or mental torture; (3) implicitly or explicitly leading an individual to believe that the individual will be protected from violence or arrest; (4) kidnapping; (5) defining the terms of an individual's employment or working conditions in a manner that can foreseeably lead to the individual's use in prostitution; (6) blackmail; (7) extortion or claims of indebtedness; (8) threat of legal complaint or report of delinquency; (9) threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise; (10) promise of legal benefit, such as posting bail, procuring an attorney, protecting from arrest, or promising unionization; (11) promise of financial rewards; (12) promise of marriage; (13) restraining speech or communication with others, such as exploiting a language difference, or interfering with the use of mail, telephone, or money; (14) isolating an individual from others; (15) exploiting a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency; (16) taking advantage of lack of intervention by child protection; (17) exploiting victimization by previous sexual abuse or battering; (18) exploiting pornographic performance; (19) interfering with opportunities for education or skills training; (20) destroying property; (21) restraining movement; (22) exploiting HIV status, particularly where the defendant's previous coercion led to the HIV exposure; or (23) exploiting needs for food, shelter, safety, affection, or intimate or marital relationships.

Id.

81. Giobbe & Gibel, *supra* note 74, at 41–42, 51.

82. MINN. STAT. ANN. § 611A.82; Giobbe & Gibel, *supra note* 74, at 31–32.

3. *Hawaii*

At the end of 1999, Hawaii joined Florida and Minnesota in creating a similar cause of action against pimps, panderers, johns, and attempted johns.[83] Like the Minnesota law, Hawaii's statute provides a nonexhaustive list of behaviors that constitute *evidence* of coercion.[84] Though the two lists are similar, Hawaii's law identifies several behaviors that constitute evidence of coercion only where the plaintiff was a minor.[85] For example, evidence that a defendant exploited the plaintiff's need for food and shelter or provided "financial rewards" would not be admissible to show coercion if the plaintiff was eighteen or older at the time.[86] Evidence that a defendant defined "terms of an individual's employment or working conditions in a manner that [was] likely to lead to the individual's use in prostitution" is similarly inadmissible unless the plaintiff was a minor.[87] A more significant difference between the Hawaii statute and those in Florida and Minnesota is that the Hawaii law does not enumerate nondefenses. Finally, the Hawaii law contains a two-year statute of limitations, tolled only while plaintiffs are minors or while criminal prosecution against the defendant is pending.[88]

C. *The Illinois Predator Accountability Act*

The Illinois legislature began consideration of the PAA in early 2005 and passed a final version of the bill in April 2006.[89] On July 3, 2006, Illinois Governor Rod Blagojevich signed the bill into law, thereby enabling prostituted individuals to sue a number of individuals involved in prostitution—from johns and would-be johns to pimps, panderers, solicitors, and recruiters.[90] Unlike its predecessors in Florida, Minnesota, and Hawaii, the Illinois statute does not require the

83. 1999 Haw. Sess. Laws 203 (codified at HAW. REV. STAT. ANN. § 663J-3 (LexisNexis 2002)).

84. HAW. REV. STAT. ANN. § 663J-4.

85. *Id.* § 663J-4(15).

86. *Id.*

87. *Id.*

88. *Id.* § 663J-7.

89. 2006 Ill. Legis. Serv. 2327 (West).

90. 740 ILL. COMP. STAT. ANN. 128 (West Supp. 2007). The relevant part of the statute provides as follows:

> (b) A victim of the sex trade has a cause of action against a person or entity who: (1) recruits, profits from, or maintains the victim in any sex trade act; (2) intentionally abuses, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, or causes bodily harm, as defined in Section 12-12 of the Criminal Code of 1961, to the victim in any sex trade act; or (3) knowingly advertises or publishes advertisements for the purposes of recruitment into sex trade activity.

plaintiff to prove coercion as an element of the claim, and it does not enumerate coercive behaviors.[91] Like its counterparts, the Illinois legislation specifies a number of so-called nondefenses.[92] The list is more comprehensive than those in the other state statutes, excluding not only obvious defenses like consent, but also less intuitive defenses based on the plaintiff and defendant's sexual involvement, cohabitation, or marriage.[93] Finally, the Illinois statute of limitations allows prostituted individuals to sue up to ten years after "the date the plaintiff discovers or through the use of reasonable diligence should discover both (i) that the sex trade act occurred, and (ii) that the defendant caused, was responsible for, or profited from the sex trade act."[94] The limitations period is tolled in specified situations.[95]

III. THE ILLINOIS PREDATOR ACCOUNTABILITY ACT IN CONTEXT

This Part provides an in-depth examination of a number of differences between the Illinois statute and those passed in Florida, Hawaii, and Minnesota.[96] The critical differences include the elimination of

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Id. § 128/15. An earlier version of the bill would have created an additional cause of action for individuals who are retaliated against after suing under the law, but this provision was removed from the final version. H.B. 1299, 94th Gen. Assem. (Ill. 2005).

91. 740 ILL. COMP. STAT. ANN. 128/15.

92. *Id.* § 128/25. The bill addresses nondefenses thoroughly:

> (a) It is not a defense to an action brought under this Act that: (1) the victim of the sex trade and the defendant had a marital or consenting sexual relationship; (2) the defendant is related to the victim of the sex trade by blood or marriage, or has lived with the defendant in any formal or informal household arrangement; (3) the victim of the sex trade was paid or otherwise compensated for sex trade activity; (4) the victim of the sex trade engaged in sex trade activity prior to any involvement with the defendant; (5) the victim of the sex trade made no attempt to escape, flee, or otherwise terminate contact with the defendant; (6) the victim of the sex trade consented to engage in acts of the sex trade; (7) it was a single incident of activity; or (8) there was no physical contact involved. (b) Any illegality of the sex trade activity on the part of the victim of the sex trade shall not be an affirmative defense to any action brought under this Act.

Id.

93. *Id.*

94. 735 ILL. COMP. STAT. ANN. 5/13-225(b) (West Supp. 2007).

95. *Id.* § 13-225(c)–(f). The statute provides for tolling in four situations: in some cases where the plaintiff was subjected to a "continuing series of sex trade acts by the same defendant"; where the plaintiff is a minor or has some other legal disability at the time the sex trade act occurs; where the plaintiff is subject to "threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant"; and, finally, during the length of limitations periods for criminal laws under which the plaintiff may be prosecuted. *Id.* In addition, a prior version of the bill would have placed no limitations period on actions seeking only declaratory or injunctive relief. H.B. 1299, 94th Gen. Assem. (Ill. 2005).

96. *See* FLA. STAT. ANN. § 796.09 (West 2000); HAW. REV. STAT. ANN. § 663J (LexisNexis 2002); 740 ILL. COMP. STAT. ANN. 128 (West Supp. 2007); MINN. STAT. ANN. § 611A.80 (West 2003).

coercion as an element of the claim, the strengthening of the bar against certain defenses, and the relatively long statute of limitations. Although earlier versions of the statute were even stronger than the final product, the PAA is substantially broader than anything previously passed.

A. Coercion Inheres in the Sex Trade

The first and most significant difference between the PAA and similar causes of action in other states is that plaintiffs bringing suit in Illinois are not required to prove coercion.[97] The drafters of the Illinois law considered this departure essential to ensure that the legislation would be effective, given the unusual difficulties in bringing these types of claims.[98] One commentator discussed some of these difficulties:

> Most of the violence of prostitution occurs in private. . . . [T]he violent acts of the abusers are rarely documented, either through police or medical reports. Generally few people witness the acts of violence between pimps and johns, and prostituted women. If anyone does witness this abuse, they are likely to be other pimps and johns, who may be equally culpable, or other prostituted women, who face the same risks and credibility problems as the plaintiff herself. Even when these problems do not exist, the plaintiff must be able to locate these witnesses, probably years after the incident occurred, and they must be willing to testify.[99]

As structured, the Illinois statute eliminates the requirement of making the difficult showing of coercion, possibly many years after the fact. It recognizes that coercion inheres in prostitution and that "all who become prostitutes are coerced."[100]

B. Johns and Business Establishments with Sex Trade Ties Are Proper Defendants

One of the most notable deficiencies in the Florida statute is the exclusion of johns and attempted johns as defendants.[101] This exclusion limits the options of those who have been injured, gives johns "the greatest legal and social protections of all, even though they are the *raison d'etre* of the entire institution . . . [and] strongly supports an

97. 740 ILL. COMP. STAT. ANN. 128/15.

98. Interview with Samir Goswami, Assoc. Dir. of Policy, Chi. Coalition for the Homeless, in Chi., Ill. (Oct. 4, 2005).

99. Giobbe & Gibel, *supra* note 74, at 51. This is not to imply that prostituted women are coerced only through violence. Coercion in the context of prostitution is much more diverse, as suggested by the per se coercive behaviors included in the various state statutes.

100. FLORIDA REPORT, *supra* note 28, at 896.

101. FLA. STAT. ANN. § 796.09(1).

inference that [a] gender-biased application of the law has the blessing . . . of the state."[102] The drafters of the Minnesota statute attempted to avoid this weakness by making it possible to sue johns and attempted johns who "[knew] or [had] reason to believe that the individual was coerced into or coerced to remain in prostitution."[103] The Conference Committee appended the phrase "by another person," implying that johns are not involved in the coercion of prostituted women "and are ordinarily unaware that [these women] have been coerced by a third party."[104] A second amendment, specifically excluding monetary payments by johns as evidence of coercion, was equally detrimental because it allowed "the legislature to ignore the central role of johns in the instigation and continuation of prostitution" and guaranteed "unconditional sexual access to women's bodies" based on the traditional notion that "you cannot steal (rape) what you have just purchased (a prostitute)."[105]

The Hawaii statute similarly allowed actions against johns and attempted johns only if they should have known that someone else coerced the plaintiff into prostitution.[106] It is arguable that offering money for sex is itself coercive, but the incorporation of the "reasonable person" standard goes against everything these statutes are meant to accomplish. Enumerating behaviors that constitute per se coercion is a method of removing from the factfinder the ability to decide when an individual has been prostituted against her will.[107] Removing this issue from the factfinder is essential, because society as a whole "does not understand, or acknowledge, the process of coercion that underlies prostitution."[108] Because a "reasonable person" may not believe that those who sell sex have been coerced, johns and attempted johns are unlikely to be liable under Hawaii's statute, despite being proper defendants.

Although lacking the restrictions of other state statutes, the Illinois law places conditions on john liability that may be similarly constraining. In most suits seeking damages from johns, the plaintiff will be "the prostitute who [was] the object of the solicitation."[109] Johns, however, do not become liable merely by soliciting this individual;

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102. FLORIDA REPORT, *supra* note 28, at 900.

103. Giobbe & Gibel, *supra* note 74, at 58.

104. *Id.* at 38 (emphasis omitted).

105. *Id.* at 38–40; *accord* MINN. STAT. ANN. § 611A.80 (West 2003).

106. HAW. REV. STAT. ANN. § 663J-3(4) (LexisNexis 2002).

107. *See* Giobbe & Gibel, *supra* note 74, at 41–42 (discussing changes to the Minnesota law that had the effect of increasing the plaintiff's burden of proving coercion).

108. FLORIDA REPORT, *supra* note 28, at 897.

109. 740 ILL. COMP. STAT. ANN. 128/10 (West Supp. 2007).

they must "intentionally abuse" or "cause[ ] bodily harm" to the prostituted individual in order to incur liability.[110] It seems unlikely that courts will find that johns "abuse" or "cause bodily harm" to prostituted women just by committing a sexual act. It is more likely that suits under the statute will be successful only against those johns who were violent or impregnated the plaintiff.[111]

What is clear in the PAA is that pimps, panderers, and solicitors are liable to those whom they prostitute.[112] Further, it has a broader reach than other statutes because it imposes liability on businesses that knowingly advertise or publish advertisements to recruit women into the sex trade.[113] This provision increases the likelihood that prostituted individuals will prevail.[114] First, such businesses (or their owners) are more likely targets because they are more easily located for service of process.[115] Second, and more importantly, strip clubs and massage parlors tend to have deeper pockets than street pimps. This

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110. *Id.* § 128/15(b)(2). Abuse includes "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation." 750 ILL. COMP. STAT. ANN. 60/103(1) (West Supp. 2006). Bodily harm is defined as "physical harm" and includes "sexually transmitted disease, pregnancy and impotence." 720 ILL. COMP. STAT. ANN. 5/12–12 (West 2002). One result of writing the statute in this way is that liability against would-be johns is very constrained. A person who unsuccessfully attempted to hire a prostituted woman would have to resort to some sort of physical abuse or harassment to become liable.

111. Of course, unlike in Minnesota and Hawaii, in cases where an Illinois john were found to be otherwise liable, he would not be able to defend himself on grounds that he did not know that the victim was coerced, since coercion is not an element of the offense. *See supra* notes 97–100 and accompanying text.

112. 740 ILL. COMP. STAT. ANN. 128/15(b)(1). The statute creates liability for anyone who "recruits, profits from, or maintains the victim in the sex trade." *Id.*

113. *Id.* § 128/15(b)(3). The statute includes a caveat to this provision:

> This Section shall not be construed to create liability to any person or entity who provides goods or services to the general public, who also provides those goods or services to persons who would be liable under subsection (b) of this Section, absent a showing that the person or entity either: (1) knowingly markets or provides its goods or services primarily to persons or entities liable under subsection (b) of this Section; (2) knowingly receives a higher level of compensation from persons or entities liable under subsection (b) of this Section than it generally receives from customers; or (3) supervises or exercises control over persons or entities liable under subsection (b) of this Section.

Id. § 128/15(c).

114. *Id.* § 128/15(b)(3); *see also* RAPHAEL, *supra* note 2, at 41–43 (discussing the advertising strategies used by the sex trade industry). In one Chicago-area example cited by Raphael, a strip club advertised itself as a no-nudity strip club on radio, despite being listed in an online directory as a nude club with an upstairs VIP room where physical contact is possible. *Id.* In many cases, the advertisements are openly published in local newspapers or announced on radio stations that cater to teenagers or young adults. *Id.*

115. RAPHAEL, *supra* note 2, at 41–43. When the businesses are still operating and running advertisements with current contact information, serving them with process is certainly less difficult than tracking down a pimp whose nickname may be all that is known to the plaintiff. For the same reasons, finding the former owners of such businesses several years later is likely to be less difficult than tracking down individual pimps.

makes them attractive to plaintiffs who stand to recover punitive damages, litigation costs, and attorney's fees, in addition to compensatory damages.[116] For women like Olivia, lured into prostitution and drugs by club owners and businessmen who target the naïve and inexperienced, this provision is more than potentially lucrative; it allows them to hold accountable those businesses that pull girls from disadvantaged lives into a world of degradation and violence.[117]

C. *The PAA Unequivocally Bars a Comprehensive List of Defenses*

The extensive list of nondefenses is another provision of the Illinois law that makes it more useful than the statutes passed in Florida, Hawaii, and Minnesota.[118] Excluding these defenses as a matter of law is important if the PAA is to be of use to prospective plaintiffs, given the pervasive societal bias against prostituted women.[119]

1. Florida

The Florida statute is unnecessarily narrow and useful to only a small number of prostituted women in Florida.[120] The statute's constrained list of nondefenses allows a defense of consent, plaintiff initiation, or that the plaintiff engaged in prostitution after her involvement with the defendant (the "continuing practice" defense).[121] The Florida statute also allows the employer prohibition defense in cases of indoor prostitution. As a result, a defendant in Florida has a wealth of defenses available.

The most likely defense, however, is consent.[122] The failure to preclude consent as a defense effectively ensures that perceptions of prostitution as "victimless" will influence the outcomes of cases tried

116. 740 ILL. COMP. STAT. ANN. 128/20.

117. *See* RAPHAEL, *supra* note 2, at 34–35 (explaining the prevalence of very young girls in prostitution and arguing that the younger a girl is when she is first prostituted, the less likely she is to exit the industry, even many years later). On a related note, prostituted individuals have only a very limited ability to sue businesses that actually carry or sell the advertisements. The statute stipulates that such businesses are liable only if they knowingly publish advertisements intended to recruit individuals into prostitution. Accordingly, radio stations, newspapers, and magazines that run ads for jobs at near-nude, "no touching" clubs would not incur liability unless they knew before publication that the purpose of the advertisements was to recruit individuals for prostitution.

118. 740 ILL. COMP. STAT. ANN. 128/25.

119. *See supra* notes 54–57 and accompanying text.

120. FLA. STAT. ANN. § 796.09 (West 2000).

121. *Id.* § 796.09(5).

122. *See generally* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 18 (5th ed. 1984) (discussing why consent serves to negate any alleged injury).

under the Florida statute.[123] Margaret Baldwin, the drafter of the Florida statute, intended for it to embody an understanding that consent to prostitution is rarely, if ever, voluntary.[124] Baldwin noted that "sexual 'bargains' which exploit women's isolation, deprivation, and despair . . . are conditions under which many girls and women stay in prostitution."[125] The statute's list of enumerated coercive behaviors "affirm simply that women and girls are not available for prostitution, and do not consent to it, by the fact of being human, with real needs, real vulnerabilities, and real wounds."[126] But the statutory language allows Florida courts to accept consent as a valid defense, particularly when none of the enumerated coercive behaviors are present, and perhaps even when they are.[127] This undermines the purpose of the statute, since the Florida report that spurred the passing of the law found unequivocally that prostitution is rarely voluntary and is usually the result of coercion.[128]

That Florida judges may interpret the statute in this way is demonstrated by Judge Charles Harris's concurring opinion in *Balas*.[129] Judge Harris argued that the Florida legislature did not intend to provide a "general prostitute's relief act."[130] He rejected the argument that the meaning of "coercion" should be drawn from the plain language of the statute, despite its definition of "coercion" and its fourteen enumerated examples.[131] He reasoned that if the plaintiffs made "a reasoned and voluntary exercise of their free will to enter or continue in the profession solely for financial rewards," then coercion was not present, and no cause of action would lie.[132]

Judge Harris's interpretation of "coercion" is problematic because it embodies the traditional prejudice against prostituted women—the same prejudice that spurred the Florida Commission to recommend

123. *See* Baldwin, *supra* note 61, at 70–71 (indicating that the Florida bill was intended by its sponsor to create a cause of action for use in cases of "'nonconsensual' prostitution" and that the enumerated coercive behaviors in the bill were included to delineate circumstances under which the victim's consent is ineffective).

124. *Id.* at 72.

125. *Id.*

126. *Id.*

127. *See supra* note 61 and accompanying text.

128. FLORIDA REPORT, *supra* note 28, at 906.

129. Balas v. Ruzzo, 703 So. 2d 1076, 1079–83 (Fla. Dist. Ct. App. 1998) (Harris, J., concurring).

130. *Id.* at 1082 (arguing that the legislature did not intend "to depart from the precepts of the commonly understood meaning of 'coercion' and to redefine it to include both free will decisions and compelled decisions").

131. *Id.* at 1081–82.

132. *Id.* at 1082.

creating this cause of action.[133] Similarly problematic is that Judge Harris's interpretation imposes a much stricter test for coercion than required by the plain language of the statute, effectively frustrating the efforts of the Florida legislature to address the reality of prostitution.[134] If Florida courts are willing to define "coercion" according to its dictionary definition and against the language of the statute, the availability of this cause of action will be limited to the point of irrelevance.[135] Potential plaintiffs would be limited to three categories of individuals: (1) those physically forced to prostitute themselves, (2) those who prostituted themselves due to credible threats of physical force against themselves or others, and (3) those who were prostituted due to a physical or mental disability or involuntary intoxication.[136] This limited group of plaintiffs would already have the gamut of traditional tort actions available to them, including intentional infliction of emotional distress, false imprisonment, sexual assault, and battery. They would have little need to resort to a cause of action that requires them to label themselves prostitutes.[137]

2. *Minnesota*

In its initial form, the Minnesota legislation would have overcome the weaknesses of the Florida statute by completely precluding many typical defenses.[138] The proposed language for the Minnesota statute, like the Florida law, did not prohibit the continuing practice defense.[139] But it did exclude other important defenses such as consent,

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133. FLORIDA REPORT, *supra* note 28, at 896–98. The report addressed the societal misperceptions about prostitution:

> Prostitutes are the victims of coercion and all who become prostitutes are coerced. While some forms of coercion may not appear as such, the coercion clearly is revealed when prostitution is stripped of its apologetic mythology. . . . The societal myth that women choose a life of prostitution rests upon the premise that choice is possible and that an affirmative decision is made. This firmly entrenched belief allows society to blame the prostitute for the abusive treatment that inevitably comes from the life "they have chosen." But the realities are different. . . .
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> . . . [S]ociety does not understand, or acknowledge, the process of coercion that underlies prostitution . . . .

Id. at 896–97.

134. *Id.* at 896–98.

135. *Black's Law Dictionary* defines "coercion" as "[c]ompulsion by physical force or threat of physical force" and "[c]onduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it." BLACK'S LAW DICTIONARY 275 (8th ed. 2004).

136. *Balas*, 703 So. 2d at 1080 (Harris, J., concurring).

137. Giobbe & Gibel, *supra* note 74, at 44.

138. *Id.* at 50–51.

139. MINN. STAT. ANN. § 611A.82 (West 2003).

plaintiff initiation, and employer prohibition.[140] Minnesota legislators, however, feared that even innocent defendants would be hurt by such an extensive list of nondefenses.[141] As a result, the legislature proposed an amendment to change the statutory language from "[i]t is *not* a defense"[142] to "none of the following shall alone or jointly be a *sufficient* defense."[143] To the dismay of those who drafted and lobbied for the Minnesota bill, the enacted statute included this amendment.[144] The statute permits defendants to plead the enumerated nondefenses, so long as they are used in combination with a defense not enumerated in the statute.[145] This is obviously less plaintiff-friendly than the original draft of the statute:

> Given society's current misconceptions about prostitution . . . a jury might be convinced that no coercion occurred. This prediction is likely . . . after a jury hears testimony that the plaintiff consented to engage in acts of prostitution, or engaged in prostitution, although ostensibly prohibited from engaging in prostitution as a condition of her employment, or that she made no attempt to flee. Juries will be instructed that such testimony, standing alone, is insufficient to establish a defense. However, such testimony will undoubtedly bolster an otherwise weak defense. Such testimony may also sway a jury in favor of the defendant if the deciding factor is credibility of the parties to the action, one of whom is a self-identified prostituted woman.[146]

For example, a john who introduces evidence that the plaintiff engaged in prostitution even after his "date" with her would also be able to introduce evidence that she propositioned him, consented to sexual acts in exchange for money, or made no attempt to terminate contact with the defendant—even though these defenses, standing alone, would not absolve him.[147] Faced with such evidence, a plaintiff is not likely to succeed.[148] Although the Minnesota statute still includes more nondefenses than the Florida law, the ability of defendants to testify about them may undercut a plaintiff's ability to meet her burden of proof.[149]

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140. Giobbe & Gibel, *supra* note 74, at 50.
141. *Id.* at 50–51.
142. *Id.* at 59 (emphasis added).
143. *Id.* at 52 (emphasis added).
144. *Id.* at 52–53.
145. *Id.* at 53.
146. Giobbe & Gibel, *supra* note 74, at 53.
147. MINN. STAT. ANN. § 611A.82 (West 2003).
148. *See* Giobbe & Gibel, *supra* note 74, at 53.
149. *See id.*

3. Hawaii

Despite being passed after the Florida and Minnesota laws, Hawaii's statute is the weakest of the three because it does not bar any defenses.[150] Accordingly, the statute places no restraint on the ability of Hawaii courts to base decisions on traditional, stereotypical views of prostitution and prostituted women. The failure to enumerate inadmissible defenses increases the plaintiff's burden of proving coercion. A defendant could counter evidence of coercion by arguing that the plaintiff was a prostitute prior to the alleged coercion, that she consented to the prostitution and received remuneration for the prostitution, or that she made little or no attempt to escape.[151] This increased burden in proving coercion will be nearly insurmountable for plaintiffs, except for those who were compelled to perform each and every sexual act by outright physical force or threats of violence.[152] In such cases, the defendant would probably be subject to civil liability for assault, battery, and intentional infliction of emotional distress, as well as criminal liability for felonious sexual assault. It is unclear why anyone would resort to the Hawaii statute given the tendency of society to view prostituted women as complicit rather than as victims.[153] A traditional action in tort would probably be the preferred legal recourse.

4. Illinois

The list of nondefenses in the final version of the PAA[154] was pared down from a much more extensive list included in the version originally passed by the Illinois House.[155] Despite the changes, the Act is

150. HAW. REV. STAT. ANN. § 663J (LexisNexis 2002).

151. *Id.* § 633J-4.

152. The pool of plaintiffs in Hawaii would necessarily be limited to this group for several reasons. Most women go through a number of pimps before escaping prostitution; without "prior prostitution" delineated as a nondefense, these women could sue only their first pimp. Since consent is not delineated as a nondefense, a Hawaii defendant is not barred from arguing that a plaintiff "consented" to negate the element of coercion, which is statutorily defined as a "means to use or threaten to use any form of domination, restraint, or control." *Id.* § 663J-2. And because the very definition of prostitution requires that the individuals involved receive money in exchange for their "services," remuneration would be a defense for almost every case. *Id.* § 712-1200.

153. FLORIDA REPORT, *supra* note 28, at 896–97.

154. 740 ILL. COMP. STAT. ANN. 128/25 (West Supp. 2007); *see also supra* notes 92–93.

155. H.B. 1299, 94th Gen. Assem. § 25 (Ill. 2005). Several nondefenses were taken out of the bill before its final version:

> [T]he plaintiff owed a debt to the defendant, monetary or otherwise; . . . the plaintiff initiated involvement with the defendant; . . . the plaintiff continued to engage in sex trade activity after terminating contact with defendant; . . . as a condition of employment, the defendant required the plaintiff to agree not to engage in the sex trade; [and]

more likely to be useful for plaintiffs than the Florida, Hawaii, or Minnesota statutes, because it completely bars consent as a defense in every case.[156] The defense of consent is unequivocally admissible under the Hawaii statute and is likely to be admissible in Florida, given that the statutory language does not enumerate consent as a nondefense.[157] Similarly, the Minnesota statute bars consent and other enumerated nondefenses only when used alone or in combination with other inadmissible defenses.[158]

One weakness of the PAA is that it does not bar defendant employers from asserting the employer prohibition defense.[159] This is an important difference from the Minnesota statute. Although it may not decrease the number of suits initiated against indoor prostitution establishments, it is likely to decrease plaintiffs' chances of recovering against them. Allowing businesses to use this defense ignores the reality that many seemingly legitimate dance and strip clubs encourage backroom prostitution tacitly, after hiring girls and women as "dancers" and papering the facilities with the official "house rules."[160]

The PAA also fails to bar the continuing practice defense.[161] This makes the statute internally inconsistent to a degree, because the point of this defense is to convince the factfinder that the plaintiff participated in the act of her own free will. This amounts to consent, which is statutorily prohibited as a defense, and it also seems irrelevant given that the statute does not require coercion.[162] A plaintiff's continued involvement in prostitution merely demonstrates that the plaintiff continued to be involved in an industry that is "inherently coercive, abusive, and exploitive."[163] Of course, nothing in the statute

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. . . the defendant's place of business was posted with signs prohibiting illegal sex trade activity.

Id.

156. 740 ILL. COMP. STAT. ANN. 128/25(6). The Illinois statute would even ensure that plaintiffs cannot contract away their ability to sue: "No person may avoid liability under this Act by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the victim of the sex trade." *Id.* § 128/45.

157. *See supra* notes 123–128 and accompanying text.

158. *See supra* notes 139–149 and accompanying text.

159. These provisions did appear in an earlier version of the bill. H.B. 1299, at § 25(12)–(13).

160. *See* RAPHAEL, *supra* note 2, 52–73 (discussing one woman's entry into prostitution via a strip club and the prevalence of prostitution activities in such clubs).

161. 740 ILL. COMP. STAT. ANN. 128/25. The Illinois statute prohibits defendants from using plaintiffs' prior prostitution as a defense. The version of the bill passed by the Illinois House in 2005 would have prohibited defenses that used plaintiffs' prostitution activities both before and after involvement with the defendants.

162. *Id.*

163. Transcription Deb., 33rd Legis. Day, 94th Gen. Assem. 31 (Ill. 2005) (statement of Rep. Howard).

states that Illinois courts must allow such a defense, and it is possible that testimony and evidence contributing to such a defense would be excluded on relevance grounds.

D. *Statutes of Limitations*

Florida and Minnesota have longer statutes of limitations than Hawaii, but their limitation periods are still several years shorter than in Illinois, even in cases where the plaintiff was a minor at the time of injury. Suits brought under the Florida law are governed by the statute of limitations applicable to traditional personal injury actions in tort.[164] These suits must be filed within four years, except where the injured party was a minor at the time of the injury and the injury constitutes "abuse" under Florida law.[165] In such instances, the statute runs at the latest of seven years after the plaintiff's eighteenth birthday, four years after becoming independent of the defendant, or four years after the date the injured party realizes she has been harmed and understands that the defendant caused the injury.[166]

The promoters of the Minnesota bill proposed an intricate statute of limitations that would have "address[ed] the problems survivors of prostitution experience" by allowing plaintiffs "to initiate legal action within six years of the time they 'knew and fully understood' they had been injured, and that the defendant was responsible for that injury."[167] But the version enacted into law is much more limited.[168] It runs six years from the date the cause of action arises and is tolled while the coercive behavior of the defendant continues.[169] The Minnesota law includes an exception for plaintiffs who were minors at the time of injury.[170] In those cases, the statute of limitations does not run until five years after the plaintiff turns eighteen.[171]

Hawaii's law is the true outlier in terms of statutes of limitations, as it requires that suits be brought within two years of "an act of promoting prostitution by coercion by that person," and would be tolled only "[d]uring the minority of the individual" or while an investigation or

164. FLA. STAT. ANN. § 95.11(3)(o) (West 2002 & Supp. 2006).

165. *Id.* § 95.11(7).

166. *Id.*

167. Giobbe & Gibel, *supra* note 74, at 45, 47.

168. MINN. STAT. ANN. § 611A.84. Had the Minnesota legislature not included this provision at all, however, suits would have been governed by the two-year statute of limitations for most torts in that state. MINN. STAT. ANN. § 541.07 (West 2000).

169. MINN. STAT. ANN. § 611A.84.

170. MINN. STAT. ANN. § 541.15.

171. *Id.*

prosecution of the defendant is underway.[172] This limitations provision is unduly restrictive for a number of reasons, including the fact that it accrues from the moment that the prospective plaintiff leaves the control of the defendant. This makes filing suit more difficult for prostituted individuals coerced by one individual after another, since the statute is not tolled if the plaintiff continues to be coerced to remain in prostitution by someone other than the defendant. Unlike Florida and Minnesota, Hawaii has no separate statute of limitations for traditional suits in tort for child sexual abuse and, perhaps as a consequence, provides no additional allowance for plaintiffs whose injuries would fall into that category.[173]

The PAA's statute of limitations stands apart from the very restrictive period under Hawaii law and the longer periods provided in the Florida and Minnesota statutes. The Illinois law allows individuals who have been prostituted to file suit within ten years, similar to the statute of limitations for tort suits in Illinois based on childhood sexual abuse.[174] That the limitations period surpasses the two years allowed for traditional personal injury actions[175] reflects an understanding of the obstacles that most prostituted individuals face in attempting to bring a suit under the Act. Plaintiffs may not immediately understand "the injuries suffered[,] . . . how the injuries were caused[,] and who was responsible for their infliction," may not be able to determine the real names and locations of potential defendants, may suffer from prostitution-related injuries, and may be subject to ongoing coercion at the hands of others after the initial injury.[176] These difficulties increase the amount of time that a prospective plaintiff needs to be able to sue successfully.[177]

The PAA's statute of limitations is also beneficial in that it is tolled while the plaintiff is a minor or has some other legal disability, while the plaintiff is subjected to a "continuing series of sex trade acts by the

172. HAW. REV. STAT. ANN. § 663J-7 (LexisNexis 2002).

173. Personal injury suits in Hawaii, including suits for child sexual abuse, must be filed within two years, tolled only during insanity, minority, or imprisonment. *Id.* § 657-7.

174. 735 ILL. COMP. STAT. ANN. 5/13-202.2 (West 2003). The previous version of the PAA did not limit the time individuals in prostitution have to file suits for declaratory judgment or injunctive relief. H.B. 1299, 94th Gen. Assem. § 35(e) (Ill. 2005). The exclusion of that provision will probably not reduce the number of suits brought under this law, because bringing such suits would be as emotionally traumatizing as other suits under this bill and involve the same difficulties in locating a proper defendant, but with the added problem of raising the money for an attorney and court costs.

175. 735 ILL. COMP. STAT. ANN. 5/13-202.

176. Giobbe & Gibel, *supra* note 74, at 47.

177. *See id.* at 46–48 (discussing similar obstacles to suits based on childhood sexual abuse and prostitution-related injuries).

same defendant," while the plaintiff is subject to "threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant," and during the length of limitations periods for criminal laws under which the plaintiff may be prosecuted.[178] These provisions should increase plaintiffs' chances of success in suits against pimps or businesses that acted as pimps, but are unlikely to affect the success of suits against johns. As previously discussed, a central barrier to suits against johns will be identifying and locating them, possibly many years after a single interaction. The version of the bill first passed by the Illinois House would have tolled the statute of limitations while the plaintiff remained unable to identify or locate the prospective defendant despite reasonable efforts.[179] The absence of this provision in the enacted law is probably of little consequence, however, as the ten-year limitations period does much of the same work.

IV. IMPACT

This Part examines the likely impact of the PAA and compares its usefulness with criminal prosecution in Illinois. It argues that the PAA, although making a statement that prostituted women are victims in some sense, should not be seen as a remedy for the chronic underenforcement of prostitution laws against pimps and johns.

A. The Few Cases Brought Under the PAA Are Likely to End in Settlement

Despite the efforts of the PAA's drafters to meet the challenges that prostituted women face in pursuing justice, the statute is unlikely to be frequently invoked in Illinois courts because of the inherent difficulties in bringing these types of suits.[180] Although there are thousands of prostituted women in the Chicago area alone who arguably have a claim under the PAA, few of them are likely to be in a position to take advantage of the statute.[181] Individuals trapped in the world of prostitution may not realize that they have a cause of action, and even if they hear of the law, they may not have the funds to hire a

178. 735 ILL. COMP. STAT. ANN. 5/13–225.

179. H.B. 1299, 94th Gen. Assem. § 35 (Ill. 2005).

180. *See supra* notes 97–100 and accompanying text.

181. JODY RAPHAEL & DEBORAH L. SHAPIRO, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO: A RESEARCH STUDY 8 (2002), *available at* http://www.impactresearch.org/documents/sistersspeakout.pdf (reporting on a 2000 study by the Center for Impact Research that estimated that at least 16,000 women and girls are involved in prostitution regularly in the Chicago area).

lawyer.[182] Some of these difficulties could be alleviated by the assistance of social service agencies, but those most in need of help are the women who have not taken advantage of the services these agencies offer.[183] Of course, if social service agencies successfully brought even a few cases, it may increase public knowledge about the true condition of prostituted women and perhaps dissuade some would-be johns. But this would do little for women now trapped in prostitution. For these reasons, women who have already escaped the sex trade industry are the most likely beneficiaries of the law, since they are in a better position to learn about the existence of the law and to retain attorneys. But regardless of whether they have left the prostitution industry, many women would be reluctant to publicly label themselves "prostitutes" and place themselves at the mercy of a judicial system that has failed them countless times in the past.[184]

B. Civil Causes of Action Under the Predator Accountability Act vs. Criminal Prosecution of Pimps and Johns

Criminal law aims to protect the interests of the general public by punishing those who cause harm or create situations from which harmful consequences are likely to result.[185] Civil law and the law of torts, on the other hand, focus on those who are injured by the conduct of others and, unlike criminal law, attempt to compensate injured parties for their injuries.[186] Within this framework, criminal prosecutions of pimps and johns focus on these crimes as departures from "what society regards as desirable," while civil causes of action against pimps and johns emphasize the injury done to prostituted women and provide a mechanism for them to recover for their injuries.[187] The PAA embodies this important distinction between criminal law and tort law and declares that prostitution is not a victimless crime, that coercion is inherent in all acts of prostitution, and that prostitution has life-long traumatizing consequences. While it is significant that Illi-

182. Although the law allows for recovery of attorney's fees and court costs, hiring an attorney may prove cost-prohibitive, unless the plaintiff is so likely to prevail that an attorney is willing to work on a contingent fee basis.

183. *See* RAPHAEL, *supra* note 2, at 211–17 (discussing the social services currently available for prostituted women and the lack of funding available for these services).

184. *See* CHI. COALITION FOR THE HOMELESS, UNLOCKING OPTIONS FOR WOMEN, *supra* note 18 (discussing a study that suggested prostituted women who have been arrested are frequently homeless or nearly homeless, suffer from a greater amount of violence, substance abuse, and trauma than other women in the jail, and leave jail with little or no resources for addressing these problems).

185. WAYNE R. LAFAVE, CRIMINAL LAW § 1.3(b) (4th ed. 2003).

186. *Id.*

187. *Id.* § 1.5.

nois has made this declaration, it somewhat contradicts the continued existence of statutes criminalizing the sale of sex (as opposed to the purchase of sex) and the ongoing inequitable enforcement of prostitution-related laws against women when compared to their customers.[188]

In addition to the theoretical differences in targeting pimps and johns in criminal versus civil proceedings, there are a number of fundamental procedural differences that may affect the respective outcomes. Most obviously, the financial burdens and benefits of civil suits are foreign to criminal prosecution.[189] While victims of crime are not required to have sufficient capital to initiate a suit, they also do not recover damages or costs for a successful prosecution.[190] This difference between criminal and civil suits cuts both ways, but there are other factors that make criminal prosecution less favorable than a civil suit. First, criminal prosecution carries an evidentiary disadvantage compared to civil actions, because the state must prove its case beyond a reasonable doubt, a more stringent standard than the preponderance of the evidence standard of civil cases. In addition, the ability of criminal defendants to exercise their Fifth Amendment right not to testify[191] compounds the evidentiary advantage of civil litigation. Third, the statute of limitations for criminal suits against men who have solicited or purchased sex in Illinois is just three years—less than a third as long as provided for by the PAA.[192]

Despite the inherent procedural disadvantages, criminal prosecution of pimps and johns has one significant advantage over civil litigation: there is no confidential settlement.[193] Making pimps and johns more visible to the public is crucial to improving the public understanding of prostitution. Many stereotypes associated with prostitution stem from the disproportionate arrest and prosecution of

188. Email from Jody Raphael, *supra* note 25; *see also* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 2004: UNIFORM CRIME REPORTS 297 tbl.42 (2004), *available at* http://www.fbi.gov/ucr/cius_04/documents/CIUS2004.pdf (showing that 69.1% of reported prostitution-related arrests in 2004 were arrests of females).

189. Because "the purpose of criminal law is the suppression of crime and the punishment of criminals" and "[c]riminal prosecutions are not brought for the protection and benefit of the victim," the victim is not responsible for initiating the suit and does not tangibly benefit if the prosecution is successful. LAFAVE, *supra* note 185, § 6.5(b), at 363.

190. *Id.* Of course, in the case of criminal demand-side prostitution laws, society is considered the victim, rather than the prostituted woman.

191. *Id.* § 3.5(e).

192. JOHN F. DECKER, ILLINOIS CRIMINAL LAW: A SURVEY OF CRIMES AND DEFENSES § 19.58 (3d ed. 2000).

193. *But see* LAFAVE, *supra* note 185, § 6.5(d), (e) (discussing other reasons that criminal suits sometimes fail to result in trial or conviction).

prostituted women compared to johns and pimps,[194] and the single best way to correct this injustice is to hold the men who fuel the sex trade industry accountable, in a public way, through the criminal justice system. Moreover, strict enforcement of criminal laws against soliciting and purchasing sex deters the men who have been prosecuted and seems likely to discourage others who have not.[195] "Successful" civil suits under the PAA and similar statutes, on the other hand, are much more likely to end in settlement,[196] reducing the potential to educate the public or act as a deterrent.

V. CONCLUSION

The PAA is an important step toward official recognition of the damage caused to women used in the sex trade. After years of underenforcing criminal laws against those who buy and sell women, the Act contributes to a growing consensus that pimps, johns, and panderers must be held accountable for their actions. Procedurally, a civil cause of action is useful for prostituted individuals, who are not even considered victims under the criminal law, because it gives them a measure of control over the litigation process and allows them to recover damages. Even though the PAA is perhaps the "most perfect"[197] civil cause of action for prostituted women, it is only useful to those who have already escaped the sex trade.[198] Further, the public awareness created by suits brought under the Act will be less than what would be accomplished through increased enforcement of prostitution laws against johns and pimps, given the ability of civil defendants to settle suits confidentially.[199] For these reasons, advocates for prostituted women must pursue decriminalization of the sale of sex and press for strict enforcement of existing criminal laws against the men who keep the business of prostitution going.[200] Reducing the use of women and girls in prostitution requires fair and regular enforcement of criminal laws against buying sex and pimping. Until then,

194. *See* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 2004, *supra* note 188.

195. RAPHAEL, *supra* note 2, at 218–19.

196. Baldwin, *supra* note 68, at 110 (stating that all other cases brought under the Florida statute "resulted in significant financial settlements in favor of the claimants").

197. Email from Jody Raphael, *supra* note 25.

198. *See supra* notes 181–184 and accompanying text.

199. *See supra* notes 192–196 and accompanying text.

200. Dorchen A. Leidholdt, *Keynote Address: Demand and the Debate*, *in* DEMAND DYNAMICS, *supra* note 29, at 1 (emphasizing the need to focus attention on the demand-side of the prostitution industry and highlighting the experiences in European countries with total decriminalization versus decriminalization of the demand side alone).

women like Olivia will be forced to rely on rare and uncertain tools like the PAA to pursue what small measure of justice is available.

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