

**ELIMINATING THE THIRD PARTY CONTROL
BARRIER TO IDENTIFYING JUVENILE SEX
TRAFFICKING VICTIMS**

JUST RESPONSE POLICY PAPER

A PROJECT OF



A PROJECT OF SHARED HOPE INTERNATIONAL

THIS POLICY PAPER WAS AUTHORED BY SHARED HOPE INTERNATIONAL, AS INFORMED AND ENDORSED BY THE FOLLOWING JUST RESPONSE COUNCIL MEMBERS:¹

NANCY BALDWIN, HICKEY FAMILY FOUNDATION

LAURA BOYD, FOSTER FAMILY-BASED TREATMENT ASSOCIATION

VEDNITA CARTER, BREAKING FREE

CARLA DARTIS, ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE

MELINDA GIOVENGO, YOUTHCARE

LISA GOLDBLATT GRACE, MY LIFE MY CHOICE

YOLANDA GRAHAM, DEVEREUX GEORGIA TREATMENT NETWORK

MICHELLE GUYMAN, LOS ANGELES COUNTY PROBATION DEPARTMENT

MARIAN HATCHER, COOK COUNTY SHERIFF'S OFFICE

STEPHANIE HOLT, MISSION 21

REBECCA JOHNSON, AIM / ENGEDI REFUGE

GRETCHEN KERR, NORTHLAND, A COMMUNITY CHURCH

LINDA KRIEG, ACTING CHIEF EXECUTIVE OFFICER, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

ALEXANDRA PIERCE, OTHAYONIH RESEARCH

MARGIE QUIN, TENNESSEE BUREAU OF INVESTIGATIONS

DOMINIQUE ROE-SEPOWITZ, SEX TRAFFICKING INTERVENTION RESEARCH OFFICE, ARIZONA STATE UNIVERSITY

MALIKA SAADA-SAAR, HUMAN RIGHTS PROJECT FOR GIRLS

LINDA SMITH, SHARED HOPE INTERNATIONAL

CAROL SMOLENSKI, ECPAT-USA

JEN SPRY, PENNSYLVANIA COALITION AGAINST HUMAN TRAFFICKING

PEG TALBURTT, LOVELIGHT FOUNDATION

THE POLICY PAPER HAS BEEN FURTHER ENDORSED BY THE FOLLOWING FIELD EXPERTS:

AUTUMN BURRIS, SURVIVORS FOR SOLUTIONS

CHERYL DELUCA JOHNSON, STREETGRACE

KATE PRICE, UNIVERSITY OF MASSACHUSETTS BOSTON

SHEA M. RHODES, VILLANOVA LAW SCHOOL INSTITUTE TO ADDRESS COMMERCIAL SEXUAL EXPLOITATION

HEATHER STOCKDALE, GEORGIA CARES

ALEX TROUETAUD, YOUTHSPARK

¹ The JuST Response Council is an advisory group formed by Shared Hope International to inform on issues related to improving the quality of and access to services for juvenile sex trafficking victims.

Introduction

This paper evaluates the fundamental importance of defining sex trafficking to include all instances of commercial sexual exploitation of minors.² Beyond the question of whether force, fraud or coercion was used by the offender, this discussion addresses the impact of requiring that a third party, in particular a trafficker, has caused a minor victim to engage in commercial sexual activity in order for a minor to be recognized as a sex trafficking victim.

While federal law states that any commercially sexually exploited minor is a victim of sex trafficking,³ some state statutory schemes mandate identification of a controlling third party or trafficker in order for instances of commercial sexual exploitation of children to be identified as sex trafficking. This means if a buyer directly pays a minor or offers food or shelter in return for sex acts, then this child may not be identified as a victim. Alternatively, even when a trafficker is involved, if the minor does not identify the trafficker, the exploitation will not be identified as an instance of sex trafficking. This is problematic since victims often deny the extent of their own exploitation and often experience trauma-bonding⁴ making it difficult or impossible for children to disclose their trafficker. Instead of being identified and provided protections as a trafficking victim, the child could be prosecuted for prostitution in many jurisdictions. At its core, requiring the presence of third party control ignores the fact that buyers are committing the very exploitation that the trafficking laws were enacted to punish. Failure to recognize the conduct of buyers as acts of sex trafficking ignores the definition of trafficking.

Overview of the Issue

From one perspective, “johns”—as the individuals who solicit sexual services from these youth—are capitalizing on the abject need of these minors, and their actions are equally exploitative as that of the pimps who prostitute children. On the other hand, one could argue that minors are prostituting themselves and through this “choice,” they must understand the consequences of their actions.... [E]ven if it appears that commercial sexual self-exploitation is a choice, a child’s young age negates the ability to make that “choice” a free and educated one. This reasoning possibly inspired the differentiation between commercially sexually exploited adults and children in the TVPA. - Wendi J. Adelson⁵

The theory that buyers of sex acts are only *indirectly* connected to the crime of sex trafficking—that without a trafficker to provide the victim, no trafficking crime has occurred—harms victims and harms the fight against sex trafficking. The danger of this theory is most apparent in the context of juvenile sex trafficking⁶ since it conflicts with the overriding interest of federal and state laws to protect children.⁷

² “Commercial sexual exploitation of a minor” occurs when something of value is exchanged for a sex act with a minor. “Minor” is a person under the age of 18. A “sex act” is any sexual conduct including sexual performance. In this paper, the terms “minor,” “child” and “juvenile” are used interchangeably to refer to a person under the age of 18.

³ See *infra* Part III.A for a discussion of federal law.

⁴ E.g., Annitto, *infra* note 50, at 14. (“Experts explain that as a result of this careful manipulation, victims of commercial sexual exploitation often display symptoms of —traumatic bonding!—more commonly known as Stockholm syndrome—which makes it more difficult for them to separate themselves from the person responsible for their harm.”)

⁵ Wendi J. Adelson, *Child Prostitute Or Victim Of Trafficking?*, 6 UNIV. OF ST. THOMAS LAW JOURN. 96, 97 (2008).

⁶ Many advocates and survivors further promote the policy that any commercially exploited person is a victim. Based on the structure of existing legal distinctions between minors and adults coupled with current understanding of the nuances of brain development in youth, this paper focuses on the issue of third party control in the context of juvenile sex trafficking. We recognize however that many adults are also victimized through commercial sexual exploitation and their needs should not be discounted.

Notably, this theory conflicts with the inclusion of specific protections for children in the federal and *most* state sex trafficking laws.⁸ While special protections for minors in other contexts are readily accepted without controversy,⁹ the protection of commercially sexually exploited children under sex trafficking laws continues to face definitional challenges that risk harming the children these laws are designed to protect.¹⁰

Survivors, law enforcement and service providers report that victims are unable or unwilling to identify having a trafficker due to extreme trauma bonding, or were exploited young enough and long enough that they do not see themselves as victims.¹¹ As a result, the only identifiable offenders may be their buyers. Buyers commonly prey on runaway and homeless youth, offering food and shelter in exchange for sex.¹² The exploitation of these victims by buyers occurs whether a trafficker is involved or not. However under laws that require third party control to establish a sex trafficking offense, these youth cannot be identified as sex trafficking victims.

Failure to include the conduct of buyers in the crime of sex trafficking is fundamentally linked to third party control requirements in sex trafficking laws. Even though some states have begun to include buyer accountability under the trafficking statute or in the trafficking chapter,¹³ statutory schemes that provide

⁷ In deciding that the defendant's "alleged lack of knowledge as to [the minor victim's] age cannot serve as a shield from conviction," an Eleventh Circuit Federal Appellate case highlighted "the congressional goal of protecting minors victimized by sexual crimes" so as to "not make conviction more difficult for crimes that affect them." *United States v. Daniels*, 685 F.3d 1237, 1250 (2012) (holding that "[p]roof that the defendant knew the victim was under the age of eighteen is not required" for a conviction pursuant to 18 U.S.C § 2422(b) (coercion and enticement)). See generally, CRS, JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING, *infra* note 17, (discussing TVPA) ("A minor is considered a victim of trafficking regardless of whether the minor represents himself/herself as an adult. The law provides that in prosecutions involving a minor victim, the government is not required to prove that the defendant knew that the victim was under the age of 18." (citation omitted)).

⁸ See e.g., 18 U.S.C. § 1591(a) (The federal crime of sex trafficking includes acts committed "knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years."). See generally, Shared Hope International, State Law Survey: Requiring Proof of Force, Fraud, or Coercion When the Victim of Sex Trafficking is a Minor, available at http://sharedhope.org/wp-content/uploads/2015/04/Shared-Hope-State-law-survey_FFC-under-HT-Law_as-of-4.20.14.pdf (showing consensus excluding proof of force, fraud or coercion for minors).

⁹ See *supra* note 7.

¹⁰ See *In re M.D.*, 231 Cal. App. 4th 993 (Cal. App. 1st Dist. 2014). This appeal of a California juvenile court decision demonstrates how California's failure to include buyers of sex with minors as sex trafficking offenders directly impacted identification of a commercially sexually exploited minor as a victim of human trafficking and the consequent denial of statutory protections she would have had if properly identified. At the trial level, "the court found there was insufficient evidence that the minor was a victim of human trafficking under the definition set forth in Penal Code section 236.1 [Admissibility of evidence relating to victim of human trafficking] and denied the minor's motion [to exclude evidence related to commercial sexual activity]." *Id.* at 998. On appeal, the appellate court affirmed the juvenile court ruling that the minor was not a victim of human trafficking on the ground that she could not prove "she . . . was induced or persuaded to engage in the activity by another." *Id.* at 1001. Interpreting a provision of the Californians Against Sexual Exploitation (CASE) Act, the court states, "Nothing in the language of section 1161 suggests an intent to create an evidentiary presumption that all minors charged with committing commercial sex acts are victims of human trafficking." *Id.* See also, Protected Innocence Challenge analysis report, § 2.1, available at http://sharedhope.org/PICframe4/analysis/PIC_AR_2014_CA.pdf. (Analyzing the California sex trafficking law as inapplicable to buyers of sex with minors.)

¹¹ See CRS, JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING, *infra* note 17, at 4 ("Victims often do not readily self-identify as such, and this leaves the challenge of victim identification to authorities such as law enforcement and social service providers."). See also Adelson, *supra* note 5, at 112 ("Because commercially sexually exploited minors and other trafficking victims do not self-identify, law enforcement and victim advocates need to actively search for them."); REBECCA EPSTEIN AND PETER EDELMAN, BLUEPRINT: A MULTIDISCIPLINARY APPROACH TO THE DOMESTIC SEX TRAFFICKING OF GIRLS 5 (2013), <http://www.traffickingresourcecenter.org/sites/default/files/Blueprint%20-%20GL.pdf> ("Indeed, trafficked girls often do not initially self-identify as victims. They may need time to identify and recognize the trauma and exploitation they have experienced and the viability and value of accepting assistance, leaving pimps, and forming new connections."). See generally, Annitto *infra* note 50, at 13 (discussing relationship tactics between traffickers and girls) ("Gradually, when the pimp introduces the young girl into prostitution, she fails to recognize that she is a victim and becomes trapped. Many factors can prevent a young girl from realizing that she is being exploited or from recognizing the dangers she faces, including age, lack of knowledge or experience, poor judgment, the need for attention, previous abuse, and, in some cases, learning disabilities and limitations.").

¹² See DOMINIQUE ROE-SEPOWITZ ET AL., YES (YOUTH EXPERIENCES SURVEY) PROJECT: EXPLORING SEX TRAFFICKING OF ARIZONA'S HOMELESS AND RUNAWAY YOUNG ADULTS (2014), <http://www.trustaz.org/downloads/tr-stir-youth-experiences-survey-report-nov-2014.pdf>; SHARED HOPE INTERNATIONAL, DEMANDING JUSTICE ARIZONA: A FIELD ASSESSMENT OF DEMAND DETERRENCE AND ENFORCEMENT AND JUSTICE FOR VICTIMS 43, 46, 53 (2015).

¹³ See Appendix A, State Law Survey: Impact of Third Party Control Requirement.

liability for buyers as a trafficking-*related* offense but do not incorporate the role of buyers as an intrinsic component of the offense of sex trafficking may fail to identify all commercially sexually exploited juveniles as sex trafficking victims.¹⁴ Sex trafficking laws that only criminalize the conduct of buyers who know or have reason to know they are buying sex with a *juvenile trafficking victim who is under third party control* assume that victimization under the sex trafficking law must happen *before* the crime of buying sex occurs, not *as a result* of buying sex with that minor.¹⁵

I. Are all commercially sexually exploited children victims of sex trafficking?

While the TVPA defines any commercially sexually exploited child as a victim of sex trafficking, some state laws¹⁶ limit the offense of sex trafficking to traffickers and exclude the role of buyers. A Report from the Congressional Research Service highlighted the importance of the definition of sex trafficking, while noting discrepancies between federal law and some states' laws.

How to categorize the juveniles involved in commercial sexual activities has become one of the perennial issues for law enforcement and policy makers. . . The federal government and some states have conceptualized these children differently, and this variability has contributed to the implementation of differing policies throughout the country. In short, while the federal government considers these minors as victims and thus eligible for specialized services, some states may still treat these minors as perpetrators engaged in prostitution and related crimes.¹⁷

With greater understanding of adolescent brain development coupled with expanded knowledge about how minors are subtly lured into sex trafficking, sex trafficking laws are approaching consensus on the principle that juvenile victims need not be subject to force, fraud or coercion in order to be a victim of sex trafficking.¹⁸ However, the concomitant conclusion that should follow has not been as widely accepted—that every commercially sexually exploited child is a victim of sex trafficking whether the child was exploited by a trafficker and sold to others, or exploited only by a buyer.¹⁹ A shift to treating buyers as

¹⁴ See *id.* See also Adelson, *infra* note 5, at 101 (quoting Representative Smith, “[e]nactment of [the TVPA] will begin to shift the paradigms so that these exploited girls and women will receive assistance that they so desperately need. It will make a difference for many American girls, mostly the runaways who are then victimized by the traffickers.”) (*citing* 151 CONG. REC. H11574–11575 (daily ed. Dec. 14, 2005) (statement of Rep. Smith)).

¹⁵ For example, in Indiana, the third party control requirement within the buyer-specific provision requires that the buyer knew that the child was forced into prostitution, undermining the elimination of this force, fraud or coercion requirement in the general sex trafficking law. See Ind. Code Ann. § 35-42-3.5-1(d)(3) (“A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into . . . prostitution; commits human trafficking . . .”)

¹⁶ See *infra* Part III.C.2. (discussing state laws that require third party control).

¹⁷ KRISTIN FINKLEA, CONG. RESEARCH SERV., R43677, JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING: JUVENILE JUSTICE ISSUES 1 (2014). See also Dep’t of Justice, Dep’t of Health and Human Services, Dep’t of State and Dep’t of Homeland Security, Coordination, Collaboration, Capacity, Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017 (2014), <http://www.trustaz.org/downloads/tr-stir-youth-experiences-survey-report-nov-2014.pdf> (The Federal Strategic Action Plan, which is a federal initiative to foster collaboration and seamless service provision between agencies, notes the problematic effects of differing, unclear definitions for victims in the provision of services.

Differences in how human trafficking is defined and described, including among the various Federal Government agencies dealing with the issue, are cited as a challenge for service providers and regional, state, territorial, tribal, and local government agencies that try to navigate the federal service system on behalf of victims.)

¹⁸ See State Law Survey: Requiring Proof of Force, Fraud, or Coercion, *supra* note 8. See also Cheryl Nelson Butler, *Kids for Sale: Does America Recognize Its Own Sexually Exploited Minors As Victims of Human Trafficking?*, 44 SETON HALL L. REV. 833 (2014).

¹⁹ Adelson, *supra* note 5, at 102-03.

If the TVPA labels a “trafficker” as someone who causes a person less than eighteen years of age to engage in a commercial sex act, then the statute broadens the group of people considered traffickers. Generally, prosecutors consider pimps the individuals “causing” a child to engage in commercial sex acts. . . . In some instances, prostituted children, and more often male than female ones, do not have pimps and instead, prostitute themselves directly to the consumer. Where no pimp is involved, the “john” is arguably the person who “causes” a child to engage in a commercial sex act when he buys sex from a child prostitute. Under this rubric, any “john” who causes a child to engage in sex acts for money should also be considered a trafficker under the TVPA and prosecuted accordingly.

equally culpable as traffickers in committing the crime of sex trafficking resolves the conflict between the definition of a victim and definition of the buyer's crime.

A. Why define all commercially sexually exploited children as victims of sex trafficking?

There is substantial overlap between sex trafficking offenses and crimes of commercial sexual exploitation of children (CSEC).²⁰ This presumed redundancy is sometimes cited as a reason for limiting the scope of sex trafficking laws, to avoid too much overlap with conduct that is otherwise criminalized under laws prohibiting commercial sexual exploitation of minors.²¹ This may also raise concerns about the CSEC and trafficking offenses merging²² and in one state legislators specifically required that sex trafficking and CSEC offenses merge when both offenses apply to the same conduct.²³ Beyond enforcement concerns, the overlay between these laws raises the fundamental issue of which offense is the “umbrella” offense under which other offenses fall.

While CSEC laws may seem to provide a broader net for identifying victims, this approach is ultimately neither victim-centered nor beneficial to enforcement efforts. Classifying CSEC offenses as umbrella offenses over sex trafficking subverts victim identification in four primary ways:

(1) CSEC penalties do not consistently reflect the seriousness of the offense. Based on a state law survey in the Demanding Justice Report,²⁴ in 27 of 30 states where both sex trafficking and CSEC laws could apply to buyers, the maximum penalty for sex trafficking exceeded the maximum penalty for CSEC offenses. In 2 states,²⁵ Louisiana and Montana, the penalties for sex trafficking and CSEC were equivalent and only one state, Idaho, had a higher maximum penalty for buyers under the state CSEC law. This demonstrates a clear trend that penalties available under sex trafficking laws generally surpass penalties under CSEC laws and better reflect the seriousness of the offense.

(2) Not all states have CSEC laws that criminalize buying sex with a child. In eight states²⁶ that do not have a CSEC law criminalizing buying sex with a minor, applicability of the sex trafficking law to buyers is critical to identifying victims whose only known exploiter is their buyer. However, four of those states

²⁰ See generally Dep't of Justice, NAT'L STRATEGY, *infra* note 54, at 33 (discussing difficulty in gathering data as to instances of trafficking since these crimes are not always prosecuted under trafficking or CSEC provisions).

²¹ *E.g.*, In 2015, Hawaii became the last state without a law specifically criminalizing sex trafficking; nevertheless, opposition to pending legislation argued that current laws under the prostitution section were adequate and broad enough.

The Department strongly believes that Hawaii's current statutes regarding Promoting Prostitution ... are already very strong tools for deterring and prosecuting all forms of “sexual human trafficking,” effectively addressing the wide array of means by which offenders further the sexual exploitation of others. ...[T]he proposed offense of Sex Trafficking would incorporate multiple elements and terms from other offenses, which would likely be considerably more complicated than simply proving those other offenses.

Relating To Sex Trafficking: Hearing on SB 265, SD1 Before the Comm. on Judiciary, 2015 Leg., 28th Sess. 1-2 (Haw. 2015) (testimony of Department of the Prosecuting Attorney of the City and County of Honolulu).

²² See *Blockburger v. United States*, 284 U.S. 299, 304 (1932) (“The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not... A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.”)

²³ See Ohio Rev. Code Ann. §§ 2905.32(D) (Trafficking in persons), § 2942.25(A) (Multiple counts), § 2941.25(Allied offenses of similar import—multiple counts); see also, Shared Hope International, Protected Innocence Challenge, 2014 Analysis and Recommendations for Ohio, p. 15, available at: http://sharedhope.org/PICframe4/analysis/PIC_AR_2014_OH.pdf.

²⁴ SHARED HOPE INTERNATIONAL, DEMANDING JUSTICE REPORT 2014 120-23 (2014), http://www.demandingjustice.org/content/themes/dj/assets/resources/Demanding_Justice_Report_2014_Final.pdf.

²⁵ *Id.*

²⁶ Alabama, Delaware, Indiana, New Hampshire, North Dakota, South Dakota, Vermont, Wyoming.

(Delaware, Indiana, North Dakota²⁷ and Wyoming) require third party control,²⁸ leaving some victims to fall between the cracks if they cannot identify a trafficker, because they are effectively excluded from the definition of either CSEC or sex trafficking in those states.²⁹ In New Hampshire, buying sex with a minor is not criminalized under the CSEC *or* sex trafficking laws, meaning that victims without an identified trafficker are automatically left outside the definition of either crime.

(3) CSEC penalties, which are often codified as enhanced penalties under prostitution statutes, can be stigmatizing. While many states have enacted CSEC laws to provide a heightened penalty when the victim is a minor, many of these CSEC provisions are codified as subsections of the prostitution law or in the prostitution chapter.³⁰ Under the majority of solicitation laws that apply to buying sex with adults, sex buyers continue to be classified as low level offenders.³¹ As a result, these low level penalties provide the baseline for plea negotiations in cases initially charged with more serious penalties under the CSEC law.³² In addition to the impact this has on enforcement, survivors note there is a stigma associated with prostitution laws.³³ By contrast, sex trafficking laws generally carry higher penalties³⁴ and are codified separately from prostitution-related offenses.³⁵

(4) Defining victims based on an incomplete patchwork of laws with inconsistent penalties allows victims to be identified by their level of victimization or trauma rather than the nature of the exploitation by the defendant. While the impact and extent of victimization can be important for determining an appropriate service response, quantifying victimization for the purpose of defining a crime hinders proper identification of victims and perpetrators. Indeed, separating out certain victims as less victimized based on their resilience and resulting illusion of agency³⁶ underlies much of the unfairness

²⁷ See *infra* Part III.C.2.i for discussion of the Uniform Act which North Dakota recently adopted in H.B. 2107, Reg. Sess., 64th Leg. (N.D. 2015) (enacted).

²⁸ See Appendix A, State Law Survey: Impact of Third Party Control Requirement.

²⁹ Buyer applicability is also limited in two other states, Alabama and South Dakota, where force, fraud or coercion is required even when the victim is a minor.

³⁰ Appendix B, State Law Survey: Location of Provisions Criminalizing Buyer Conduct (noting whether CSEC offenses are housed under the general patronizing provision or set out in a separate offense).

³¹ See Protected Innocence Challenge state analysis reports, section 2.2, available at: <http://sharedhope.org/what-we-do/bring-justice/reportcards/>.

³² See DEMANDING JUSTICE REPORT, *supra* note 24, at 39-40.

³³ See DEMANDING JUSTICE ARIZONA, *supra* note 12, at 54 (“The most energetic discussion was around the injustice of the stigma they wear as ‘prostitutes.’ As one survivor put it, ‘Prostitution stigma is different from anything else—different from drug abuse...if you say ‘I’m a recovered drug user’, you are applauded. If you say, ‘I’m a former prostitute—I did that to get the money for those drugs’, people treat you differently.”); See also DEMANDING JUSTICE REPORT, *supra* note 24, at 40 (“Not only does this practice of pleading CSEC offenses down to age-neutral prostitution offenses minimize deterrence, but it harms victims. As discussed in the Portland thought leader roundtable, charging a defendant with the offense of patronizing a prostitute could be stigmatizing for the victim. Pleading a CSEC case down to patronizing prostitution would have the same effect. One of the Portland cases reflects how a victim manipulated by the defendant into sex acts in exchange for money then had to face the stigma of having engaged in prostitution when the defendant entered a guilty plea to patronizing prostitution and her name was mentioned throughout the court documents.”)

³⁴ DEMANDING JUSTICE REPORT, *supra* note 24; Appendix: State Law Survey of Base Penalties for Buyers of Sex Acts with a Minor at 114-23.

³⁵ See Appendix B, State Law Survey: Location of Provisions Criminalizing Buyer Conduct (analyzing whether sex trafficking law is housed in prostitution chapter, or in separate trafficking chapter, or some other chapter such as kidnapping).

³⁶ See Epstein, *supra* note 11, at 5 (quoting LINDA M. WILLIAMS & MARY E. FREDERICK, PATHWAYS INTO AND OUT OF COMMERCIAL SEXUAL VICTIMIZATION OF CHILDREN: UNDERSTANDING AND RESPONDING TO SEXUALLY EXPLOITED TEENS 19 (2009)

[I]n no uncertain terms they have been victimized The complexity of their lives and their survival skills, however, often are not taken into account in common depictions of the prostituted teen [T]he portrayal of the weak, “innocent,” helpless victim is directly challenged by the teen [that] the police or a would-be service provider encounters in the field. Instead of a sad-eyed victim, they confront a strong, willful survivor who looks and acts quite differently from the victims portrayed in the media.)

See generally, CRS, *supra* note 17, at 2 (discussing TVPA) (“A minor is considered a victim of trafficking regardless of whether the commercial sex act is believed to be forced or voluntary.” (citation omitted)).

that survivors report in the enforcement of laws criminalizing commercial sex³⁷ and reflects the idea that some victims bear greater responsibility for their own victimization.

B. Promoting Fairness in Enforcement

Establishing adequate penalties for buyers helps ensure justice in anti-demand enforcement by acknowledging buyers' culpability and reflecting the actual power structure at play when buyers take advantage of vulnerable youth. Denying the exploitation involved in buying sex with a minor continues to legally and culturally penalize children for their own victimization while those who purchase children for sex enjoy relative impunity and anonymity as less serious, or less problematic offenders.³⁸ Just as increased awareness and development of sex trafficking laws has shifted perceptions from "pimps" to "traffickers," the conversation also needs to shift from "patrons" and "johns" to "exploiters" and "predators."³⁹

Another primary reason for bringing all commercially sexually exploited children within the sex trafficking definition is to clarify that there is no such thing as "child prostitution." Considering the importance of language in the fight against sex trafficking, correctly defining who is a "victim" of sex trafficking helps to replace the negative stigma of prostitution with an understanding of the inherent exploitation involved. Just as culture shapes legislation, legislation shapes culture. Laws that accurately reflect the crime can help shift cultural perspectives of sex trafficking and prostitution toward a more victim-centered model that acknowledges victimization of minors whether they are bought or sold and whether at any given time there is a single abuser or multiple perpetrators acting in concert.

II. The Intersection of Vulnerability and Exploitation

A third party control requirement under the sex trafficking law primarily impacts two particularly vulnerable groups of juvenile sex trafficking victims: (1) runaway and homeless youth who exchange sex acts⁴⁰ for basic necessities and/or drugs, often to feed an addiction developed as a result of their victimization, and (2) juvenile victims who have been exploited for such a long time or are so traumatized by their exploitation that they cannot recognize their victimization and would not give up their trafficker out of fear or as a result of trauma-bonding. In some cases, these victims may not be actively controlled by a trafficker but continue "in the life" since it is how they know to survive. In both situations, these victims are unable to establish third party control, shifting them from victims to criminals who contribute to their own victimization. But, if third party control is not part of the definition these otherwise

³⁷ See DEMANDING JUSTICE ARIZONA, *supra* note 12, at 42 (survivor discussion about lack of fairness in anti-demand enforcement).

³⁸ See generally DEMANDING JUSTICE ARIZONA, *supra* note 12, at 28 (2015). ("Most of the survivors described experiencing more violence from buyers than pimps, estimating that about a third of them would appear normal and then become violent. They described fear as being the ever-present state of mind and being on constant alert. 'They like to see blood and pain. They like to see your fear. It's the hunter/predator experience.'")

See also Ian Urbina, *Running in the Shadows For Runaways, Sex Buys Survival*, NEW YORK TIMES (Oct. 27, 2009) (quoting Dallas Police Sergeant describing a previous problematic system,

[G]irls working as prostitutes were handled as perpetrators rather than sexual assault victims. If a 45-year-old man had sex with a 14-year-old girl and no money changed hands, she was likely to get counseling and he was likely to get jail time for statutory rape... . If the same man left \$80 on the table after having sex with her, she would probably be locked up for prostitution and he would probably go home with a fine as a john.)

³⁹ Definitions and elements of criminal offenses as well as language used by society matter, embodying society's perceptions and attitudes regarding the gravity of offenses and the degree of intolerance—or tolerance—for perpetrators. For example, archaic perceptions of "prostitutes" misinform criminal codes and apply unfair stigmas to exploited persons. Likewise, culture's reticence to admit and address culpability of buyers is arguably influenced by perceptions of the buyers' role or place in society, based in part on their race and/or socioeconomic status.

⁴⁰ See *supra* note 2.

unrecognized juvenile sex trafficking victims can be properly identified and provided the same access to services and assistance that are provided to other victims.

The crime of trafficking is often not captured in one discreet act. Instead, the factual circumstances of trafficking are a continuum of exploitation which buyers exacerbate. In some cases a minor may be initially lured into sex trafficking by a buyer and continue to be exploited by buyers without any trafficker involvement,⁴¹ and in other cases the exploitation of a homeless youth by buyers who take advantage of a youth's need for basic necessities may lay the groundwork for her eventual exploitation by a violent trafficker.⁴²

“Survival sex” is often used to refer to sexual exploitation accomplished by perpetrators taking advantage of the heightened vulnerability of neglected, runaway, or homeless youth and leveraging their basic needs against them; generally, the term references “the exchange of sex for food, shelter, clothing, or other basic needs.”⁴³ This dangerous phenomenon is common for homeless and runaway youth, as buyers exploit almost one third of street youths in this way.⁴⁴ One survey found that

[s]helter was the number one commodity traded in return for sexual activity. Of those who engaged in commercial sex activity, almost half—48% in total—said they did it because they did not have a place to stay. Participants explained how traffickers loiter in areas where homeless youth are known to gather and then tell them that the shelters are full and offer them a place to stay in lieu of sleeping on the streets.⁴⁵

The extent of this exploitation is often misunderstood in the United States. Accordingly, this term, “survival sex” is commonly rejected by survivors. This terminology and its connotations, especially when referencing the conduct of minors, implies a false sense of agency or equal bargaining power, and enables tolerance and even punishment for youth.⁴⁶ “[T]he idea that a rape victim invited the crime due to her

⁴¹ See DEMANDING JUSTICE REPORT, *supra* note 24, at 102-106.

⁴² Urbina, *supra* note 38 (“Runaways are especially attractive recruits because most are already engaging in survival sex for a place to stay, said Evelyn Diaz, who is serving a nine-year sentence in a federal prison in Connecticut for three counts of sex trafficking of minors. ... For those girls not already engaged in survival sex, the grooming process was gradual and calculated. At first, the sex is consensual. Before long, the girl is asked to turn occasional tricks to help pay bills. ‘I might start by asking her to help me by sleeping with a friend,’ Mr. Washington [incarcerated for pandering a minor and three adults] said in a telephone interview. ‘Then I push her from there.’”).

⁴³ NATIONAL ALLIANCE TO END HOMELESSNESS, HOMELESS YOUTH AND SEXUAL EXPLOITATION: RESEARCH FINDINGS AND PRACTICE IMPLICATIONS 1 (2009), http://b3cdn.net/naeh/c0103117f1ee8f2d84_e8m6ii5q2.pdf. See also Jody M. Greene, Susan T. Ennett, and Christopher L. Ringwalt, *Prevalence and Correlates of Survival Sex Among Runaway and Homeless Youth*, 89 AMER. JOURN. OF PUBLIC HEALTH 1406 (1999) (“The dangers inherent in survival sex make it among the most damaging repercussions of homelessness among youths.”); COVENANT HOUSE, HOMELESSNESS, SURVIVAL SEX AND HUMAN TRAFFICKING: AS EXPERIENCED BY THE YOUTH OF COVENANT HOUSE NEW YORK (2013) (defining the term ‘survival sex’ to also include the acts of “individuals over the age of 18 who traded sex acts (including prostitution, stripping, pornography, etc.) to meet the basic needs of survival”).

⁴⁴ Greene, *supra* note 43 at 1406-07 (“Approximately 28%, of street youths and 10% of shelter youths reported having participated in survival sex.”); Urbina, *supra* note 38 (“Nearly a third of the children who flee or are kicked out of their homes each year engage in sex for food, drugs or a place to stay, according to a variety of studies published in academic and public health journals.”).

⁴⁵ Covenant House, *supra* note 43, at 6, 11 (“[Y]oung people reporting that they traded sex for something of value out of desperation in order to meet basic needs of survival were twice as common as young people reporting compelled [meaning that force, fraud or coercion was used] sex trafficking.”).

⁴⁶ Adelson, *supra* note 5, at 103-04.

From one perspective, “johns”—as the individuals who solicit sexual services from these youth—are capitalizing on the abject need of these minors, and their actions are equally exploitative as that of the pimps who prostitute children. On the other hand, one could argue that minors are prostituting themselves and through this “choice,” they must understand the consequences of their actions. ...[E]ven if it appears that commercial sexual self-exploitation is a choice, a child’s young age negates the ability to make that “choice” a free and educated one. This reasoning possibly inspired the differentiation between commercially sexually exploited adults and children in the TVPA.

behavior or lifestyle is similar to the argument that girls who are sold for sex choose their exploitation.”⁴⁷ Interestingly, when a similar fact pattern came to light recently in the Central African Republic where foreign peacekeepers were accused of offering food to children suffering from hunger in exchange for sexually abusing them,⁴⁸ such exploitation was loudly condemned.⁴⁹ Rather than shifting the blame to exploited victims, public perception of the exploitative nature of trading food for sex with children was seemingly self-evident and the child victim was not seen to be at fault because something of value was received in return for sex acts.

Indeed, purchasers of sex acts with minors are sexual predators—the exchange of money, food, shelter or even addictive drugs does not sanitize the underlying crime of child rape or molestation. Not only are homeless youth vulnerable due to their financial need, but runaway and homeless youth propositioned to exchange sex acts for necessities are often suffering multiple layers of abuse. Many times the situations that lead children to run away from home already entail abuse or neglect.⁵⁰ Buyers who take advantage of these vulnerabilities are engaging in a severe form of exploitation commensurate with the severity of exploitation committed by traffickers.

Admittedly, the age of 18 is a somewhat arbitrary legal bright line delineating the age of majority; however, growing jurisprudence⁵¹ and science support distinguishing teenagers from adults within the criminal justice system and when defining and designating state duties to protect and provide for children. Adolescent development and brain behavior leave minors more vulnerable as the behavior and decision-making faculties are not fully matured.⁵² In accordance with this lack of maturity is a legally defined lack of agency⁵³ which is reflected in ages of consent, as minors are often unable to consent to sexual relations

⁴⁷ Annitto, *infra* note 50, at 18.

⁴⁸ Krishnadev Calamur, *France Investigates Claims Its Soldiers Abused Children In Africa*, NATIONAL PUBLIC RADIO, Apr. 30, 2015, <http://www.npr.org/sections/thetwo-way/2015/04/30/403285926/france-investigates-claims-its-soldiers-abused-children-in-africa>; Sandra Laville, *UN Aid Worker Suspended for Leaking Report on Child Abuse by French Troops*, THE GUARDIAN, Apr. 29, 2015, <http://www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car> (“The children described how they were sexually exploited in return for food and money.”).

⁴⁹ See e.g., Angelique Chrisafis, *French Minister Calls on Soldiers who Sexually Abused Children to Come Clean*, THE GUARDIAN, May 3, 2015, <http://www.theguardian.com/world/2015/may/03/french-minister-jean-yves-le-drian-peacekeepers-abuse-children-come-forward>.

⁵⁰ See e.g., Megan Annitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 YALE LAW JOURNAL 1, 9 (2011) (“[Exploited youths’] pasts often reveal that the social systems that are supposed to protect them have already failed them. Some children are prostituted as early as age nine, while the average age of entry into prostitution is estimated to be between twelve and fourteen.”); Mitchell, *et al.*, *infra* note 53, at 19 (“[J]uveniles involved in prostitution frequently have histories of maltreatment in their families of origin.”); Adelson, *supra* note 5, at 111 (“[M]any of these commercially sexually exploited children have often run away from home to escape physical and often sexual abuse only to be exploited in the commercial sex industry by pimps and traffickers who often use violence to extract obedience.”); Epstein, *supra* note 11, at 4 (“Many, if not most, child survivors of sex trafficking were abused, neglected, or otherwise exposed to trauma prior to being trafficked; many of them were runaways, thrown out of their homes, placed in multiple foster care or group homes, or detained in jail.”).

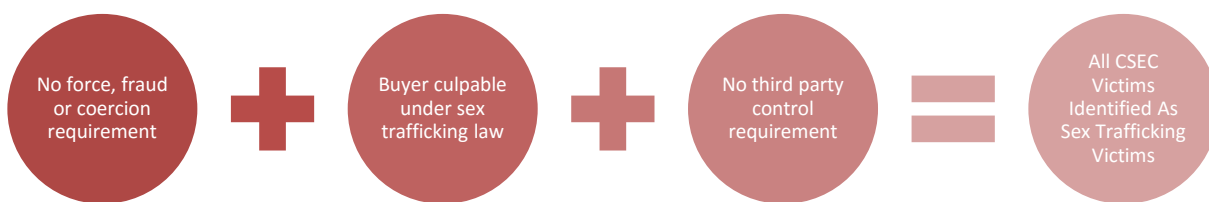
⁵¹ E.g., *Graham v. Florida*, 560 U.S. 48, 68 (2010) (“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”) (citing Brief for American Medical Association et al. as *Amici Curiae* 16–24); *id.* (“As compared to adults, juveniles have a “‘lack of maturity and an underdeveloped sense of responsibility’”; they ‘are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and their characters are ‘not as well formed.’”) (quoting *Roper v. Simmons*, 543 U.S. 551, 569–570 (2005) (analyzing culpability and sentencing of juvenile offenders).

⁵² Annitto, *supra* note 50, at 5 (“Modern scientific research has shown that the underdevelopment in certain areas of the adolescent brain affect behavior, decision making and the ability to understand consequences.”). See also EPCAT-USA, ALTERNATIVE REPORT, *infra* note **Error! Bookmark not defined.**, at 16 (“Adolescent girls may be physically mature, but are clear victims under the TVPA.... [A]dolescents are children and not adults. With brains still developing, capacities such as judgment, impulse control, and self-awareness are still in a state of flux; prostitution places them at serious risk to long-term impairment of healthy mental and emotional development.”).

⁵³ See Kimberly J. Mitchell, David Finkelhor, Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18, 19 (2010) (“[I]llegal sexual activities by adults with children have been clearly designated as a core concern of the child maltreatment field, even when those activities involve some “‘voluntary’” participation on the part of youth.”).

with an adult.⁵⁴ Arguably age 18 is too low, as many studies show brain and personality development continues into the 20's.⁵⁵ Fortunately, some state systems extend youth services beyond the age of 18, such as access to education funds, jurisdiction of youth courts, and access to services provided through welfare and dependency systems.⁵⁶

III. How are Federal and State Laws Protecting or Not Protecting Sex Trafficked Children?



A. The Federal Model: 18 U.S.C. § 1591 and the Trafficking Victims Protection Act

The federal sex trafficking law, 18 U.S.C. § 1591⁵⁷ and the Trafficking Victims Protection Act⁵⁸ define any minor who is commercially sexually exploited as a victim of sex trafficking.⁵⁹ First, in eliminating the

⁵⁴ See SHARED HOPE INTERNATIONAL, DEMANDING JUSTICE REPORT, *supra* note 24; Appendix: State Law of Base Penalties for Buyers of Sex Acts with a Minor, pages 114-119. See also Adelson, *supra* note 5, at 104; EPCAT-USA, ALTERNATIVE REPORT, *infra* note 65, at 16 (“Laws against solicitation or paying for sex with prostitutes are considered a state issue and left to the states, most of whom follow age-of-consent laws. This means that men who are paying for sex with underage girls are rarely arrested for child sex exploitation. Under the TVPA anyone under the age of 18 who is induced to perform a commercial sex act is a victim, and cannot legally ‘consent.’” (Citations omitted)). See generally, DEP’T OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION 29 (2010), <http://www.justice.gov/psc/docs/natstrategyreport.pdf> (discussing tactics of online predators targeting vulnerabilities inherent to age of minors) (“They prey on what makes children susceptible to manipulation, intimidation, and victimization—children’s naïveté.”).

⁵⁵ See David Dobbs, *Beautiful Brains*, NATIONAL GEOGRAPHIC, Oct. 2011, <http://ngm.nationalgeographic.com/2011/10/teenage-brains/dobbs-text>.

⁵⁶ E.g., N.Y. FCT. LAW § 1055 (family court jurisdiction can continue to age 21 with consent of youth after age 17); MISS. CODE ANN. § 43-21-151 (2013) (youth court jurisdiction extends to 20th birthday). See generally Jane Kim and Kevin Sobczyk, *Continuing Court Jurisdiction in Support of 18 to 21 Year-Old Foster Youth*, American Bar Association Center on Children and the Law (July 2004) (Updated Apr. 2008 by Sarah Purce) (discussing need to continue court jurisdiction for foster youth).

⁵⁷ 18 U.S.C. § 1591, as amended by the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, defines the crime of sex trafficking as:

- (a) Whoever knowingly—
- (1) ... recruits, entices, harbors, transports, provides, obtains, maintains, patronizes, or solicits by any means a person; or
 - (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act

See also 18 U.S.C. § 1591(c) (“In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.”).

⁵⁸ Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

requirement to prove force, fraud or coercion when the victim is a minor,⁶⁰ the federal sex trafficking law establishes special protections by precluding interpretations that a child victim can choose to be exploited. Second, by providing a disjunctive list of prohibited conduct without prioritizing any one type of offender or illicit act, the federal sex trafficking law criminalizes a broad range of exploitative conduct within the statute, including the conduct of any buyer who exchanges something of value⁶¹ for sex acts with a minor. The federal sex trafficking law, 18 U.S.C. § 1591(a)(1), lists the following verbs as equally offensive acts: “recruits, entices, harbors, transports, provides, obtains, maintains, patronizes, or solicits.”⁶² “Because the TVPA contains the presumption that consent to prostitution is impossible for a trafficked child, all prostitution of children is essentially ‘caused’ by an individual’s attempt to buy sexual services from these vulnerable minors.”⁶³ Under federal law, anyone who exploits a child through commercial sex is a sex trafficking offender,⁶⁴ and any child exploited through commercial sex is a victim of sex trafficking.⁶⁵

Prior to the enactment of the Justice for Victims of Trafficking Act (JVTA), a debate had arisen around applying 18 U.S.C. § 1591 to the conduct of buyers,⁶⁶ despite the need for this law to reach buyers in order to define all commercially sexually exploited youth as victims of sex trafficking. However, the JVTA of 2015⁶⁷ confirmed the intent of Congress that the federal sex trafficking law criminalize the

⁵⁹ See *supra* note 57 (quoting text of the federal sex trafficking law, 18 U.S.C. § 1591); 22 U.S.C. § 7102(9)(a) (Definitions) (“The term ‘severe forms of trafficking in persons’ means. . . sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”) (emphasis added). E.g., CRS, JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING, *supra* note 17, at Summary. (“[u]nder the [TVPA], . . . an individual under the age of 18 who is involved in commercial sex activities is considered a victim of these [trafficking] crimes.”); U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES (ACYF), GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 2 (2014), http://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf (“[T]he federal definition of child sex trafficking defines any child in a commercial sex act as a victim of human trafficking.”).

⁶⁰ E.g., CRS, JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING, *supra* note 17, at 1, 2. (“[T]he law specifies that when a minor—an individual under the age of 18—is involved, the commercial sexual activity need not contain force, fraud, or coercion in order to be deemed sex trafficking.” (citation omitted)); FEDERAL STRATEGIC ACTION PLAN, *supra* note 17, at 5. While noting problematic definitional discrepancies, the Federal Strategic Action Plan repeated the definition as provided in the TVPA.

Under the TVPA, eligibility for victim services is limited to victims of a “severe form of trafficking in persons,” which is defined as: sex trafficking [i.e., the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act] in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. (citations omitted)

⁶¹ The TVPA defines “commercial sex act” as “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. 7102 (3). “Anything of value” is a broad term, which includes protection from a gang or gang induction, shelter, food, or drugs.

⁶² See *supra* note 57.

⁶³ Adelson, *supra* note 5, at 104.

⁶⁴ See *supra* note 19.

⁶⁵ See e.g., *supra* note 59; Adelson, *supra* note 5, at 102

The result is similar to the effect reached with statutory rape laws: because force, fraud or coercion need not be present, if a child engages in a commercial sex act at the behest of another, such a situation legally is considered trafficking. Therefore, because child prostitution is defined as his or her engagement in a commercial sex act at the behest of another, all prostituted children could be considered victims of human trafficking under the TVPA. (citation omitted).

See also EPCAT-USA, ALTERNATIVE REPORT: AN NGO RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY 7 (2012) (“According to the TVPA, sex trafficking of children is synonymous with child prostitution, or commercial sexual exploitation of children. It applies to all persons under the age of 18. Issues of consent, physical maturity, and the child’s lack of acknowledgment of her/his victimhood are irrelevant.”); CRS, *supra* note 17, at 1 (“Experts generally agree that this definition includes the prostitution of minors. . . In other words, for purposes of prosecuting a trafficker, if a minor is involved in a commercial sex act, he or she is considered a victim of sex trafficking (and thus a victim of a severe form of trafficking in persons) in the federal government’s eyes.”).

⁶⁶ See *Fierro v. Taylor*, No. 11-CV-08573 (S.D.N.Y July 2, 2012) (“the statute extends to the traffickers who habitually enslave children, not the one-time purchaser of the trafficked person’s services”) (citing *United States v. Bonestroo*, 2012 WL 13704, at *4.) but cf. *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). See also Samantha Healy Vardaman and Christine Raino, *Prosecuting Demand as a Crime of Human Trafficking: The Eighth Circuit Decision in United States V. Jungers*, 43 U. MEM. L. REV. 917 (2013).

⁶⁷ In light of the ongoing debate regarding the application of the federal sex trafficking law to the acts of buyers, the U.S. Congress responded legislatively. See Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, Sec. 109:

It is the sense of Congress that . . . while use of the word “obtains” in section 1591, United States Code, has been interpreted, prior to the date of enactment of this Act, to encompass those who purchase illicit sexual acts from trafficking victims, some confusion persists . . . in *United States vs. Jungers*, 702 F.3d 1066 (8th Cir. 2013), the United States Court of Appeals for the Eighth Circuit ruled that

conduct of buyers and protect *all* commercially sexually exploited minors—whether or not a controlling third party is identified.

B. *United States v. Jungers*

Before Congress passed the JVTAs and clarified its intent that the federal crime of sex trafficking include the conduct of buyers, the federal Eighth Circuit Court of Appeals had already held that the federal sex trafficking law, 18 U.S.C. § 1591 applies to buyers in *United States v. Jungers*.⁶⁸ The court found that 18 U.S.C. § 1591 “makes no distinction between suppliers or purchasers of commercial sex acts with children” and held that “§ 1591 applies to a purchaser of commercial sex acts who violates the statute’s terms”⁶⁹ thereby rejecting the arguments of Defendants and the ruling in a civil trial in the Southern District of New York.⁷⁰ The court explained that the term “obtains” is “broad enough to encompass the actions of both suppliers and purchasers of commercial sex acts.”⁷¹ Furthermore, the Appellate court did not find that applicability of the sex trafficking law to buyers was limited to use of the term “obtain,” finding instead that buyers could violate 18 U.S.C. § 1591 in a variety of ways. In fact, the court offered hypothetical scenarios in which a buyer could engage in conduct prohibited by the federal crime of sex trafficking:

Consider a purchaser who arranges with a fourteen-year-old prostitute’s pimp to take the victim from Sioux Falls to Las Vegas for a few days for \$1,000, during which time it is agreed the child will provide companionship and perform a sex act. The purchaser picks up the child, drives her to the airport, and flies her to Las Vegas. They take a taxi to a hotel where the purchaser rents a room and provides the victim with food, clothing, and drugs for several days. After the victim performs a sex act as agreed, the purchaser entices the child victim to engage in additional sex acts with the purchaser for the rest of the trip for an additional \$100 each time. The purchaser and the victim have sex several times before returning to the airport and traveling back to Sioux Falls, where the purchaser returns the child to her pimp.

....

In the hypothetical above, a reasonable jury could find the purchaser obtained, transported, harbored, maintained, and enticed [terms listed in the TVPA as ways to commit the offense of sex trafficking] the child before the child was “caused to engage” in various commercial sex acts. Perhaps more commonly, a purchaser could agree on the street corner to purchase a sex act with a

section 1591 of title 18, United States Code, applied to persons who purchase illicit sexual acts with trafficking victims after the United States District Court for the District of South Dakota erroneously granted motions to acquit these buyers in two separate cases; and . . . section 108 of this title amends section 1591 of title 18, United States Code, to add the words “solicits or patronizes” to the sex trafficking statute ***making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders*** when this is merited by the facts of a particular case. (emphasis added).

The JVTAs in effect codifies the interpretation of the federal sex trafficking law in the *Jungers* case applying the crime to buyers. See *supra* Part III.B (discussing interpretation of the federal sex trafficking law in *Jungers*).

⁶⁸ *Jungers*, 702 F.3d 1075 (“We hold § 1591 applies to a purchaser of commercial sex acts who violates the statute’s terms.”)

⁶⁹ *Id.* See also *id.* at 1071 (“[18. U.S.C. § 1591] prohibits acts of trafficking regardless of the identity or status of the trafficker.”).

⁷⁰ Defendants in *Jungers* submitted a Citation of Supplemental Authority before the Eighth Circuit, in order to highlight the interpretation of the district court that the TVPA did not necessarily apply to individual buyers. Nevertheless, the Appellate Court still rejected these arguments. See Citation of Supplemental Authority, *U.S.A. v. Ronald Bonestroo*, 702 F.3d 1066 (8th Cir. 2013) No. 12-1100; but cf. *Jungers*, 702 F.3d 1075.

⁷¹ *Id.* at 1071.

child, but take the child to a motel or drive to a remote spot to engage in the act. Again, the sex act is prospective when the purchaser obtains and transports the child.⁷²

Even though the trafficker is the criminal party profiting from the exploitation of the child, the court notes the buyer’s role in the commodification of the child, which the court identifies as the factor that distinguishes sex trafficking from other prohibited forms of child sexual abuse. The court implies that actually engaging in the commercial sexual activity is a subsequent offense, not necessarily sex trafficking within § 1591: “[W]e do not conclude § 1591 criminalizes the act of engaging in a commercial sex act with a minor. Rather, we conclude a purchaser may be convicted for committing an act prohibited by § 1591 without ever engaging in a sex act.”⁷³ The Court also noted that the Ninth Circuit has held that a jury can find a violation of § 1591(a) even if the minor never engages in a commercial sex act.⁷⁴ The fact that rendering payment or promising to pay for sex acts with a child is what factually constitutes an offense of sex trafficking places a stark spotlight on the implicit weight, culpability, and severity of commodification of sexual conduct.

C. State Sex Trafficking Laws

As of August 1, 2015, almost all 50 states and the District of Columbia have a law specifically criminalizing sex trafficking. When Virginia enacted its first sex trafficking law in March 2015,⁷⁵ Hawaii became the only state in the nation without such a law.⁷⁶

In addition, 45 states and the District of Columbia have eliminated the requirement to prove force, fraud or coercion when the victim of sex trafficking is a minor.⁷⁷ However, even without the requirement to prove force, fraud or coercion within state sex trafficking definitions, some statutory schemes still require that a trafficker be identified in order for a commercially sexually exploited child to be identified as a trafficking victim. Many states require presence or identity of a trafficker or a “pimp,” a third party controlling the victim who provides, maintains or makes available the victim to the buyer. The State Law Survey: Impact of Third Party Control Requirement⁷⁸ in Appendix A identifies jurisdictions that require

⁷² *Id.* at 1072-73 (citations omitted) (emphasis added).

⁷³ *Id.* at 1074. See also *id.* at 1072

While the defendants are correct that § 1591 does not criminalize engaging in a commercial sex act with a minor, it does not necessarily follow that the statute only applies to suppliers. The defendants fail to explain why a purchaser who entices, transports, or obtains a child “for the purpose of a commercial sex act” cannot be guilty of both sex trafficking under § 1591 and subsequently engaging in the commercial sex act prohibited by another applicable statute.

⁷⁴ *Id.* at 1074 (citing *United States v. Brooks*, 610 F.3d 1186, 1197 n.4 (9th Cir. 2010); *United States v. Todd*, 627 F.3d 329, 333-34 (9th Cir. 2010)).

⁷⁵ See H.B. 1964 and S.B. 1188, Reg. Sess. (Va. 2015) (enacted).

⁷⁶ Legislation that would have created a specific sex trafficking offense in Hawaii passed the legislature unanimously but was vetoed by the governor, leaving the state without a law that specifically criminalizes sex trafficking. S.B. 265, 28th Leg., Reg. Sess. (Haw. 2015) (vetoed).

⁷⁷ In state law, a consensus has developed and is nearing uniformity in defining sex trafficking to exclude requirements to show force, fraud or coercion when a minor is caused to engage in a commercial sex act. In 2015, two more states, Utah and South Carolina, aligned with the vast majority of states by removing elements of force, fraud, or coercion within their definitions of sex trafficking when the victim is a minor. H.B. 252, 61st Leg., Reg. Sess. (Utah 2015) (enacted); S 196, 121st Leg., Reg. Sess. (S.C. 2015) (enacted). Additionally, Virginia’s newly enacted law (Va. Code Ann. § 18.2-357.1 (Commercial sex trafficking; penalties)) which specifically criminalizes sex trafficking does not require force, fraud or coercion when the victim is a minor. In fact, only four out of the 50 states —Alabama, Connecticut, New York, South Dakota —still mandate that force, fraud or coercion be proven in order to constitute sex trafficking when the victim is a minor. See Appendix A. As reflected in the State Law Survey: Impact of Third Party Control Requirement in Appendix A, the states that continue to require force, fraud or coercion when the victim is a minor are outliers and significantly out of step with the consensus reflected in current state and federal law. Enacting laws that specifically criminalize trafficking of minors for commercial sexual exploitation without requiring proof of force, fraud or coercion is necessary to facilitate the prosecution of all offenders—traffickers, facilitators and buyers of commercial sex acts with children. Including this requirement prohibits application to buyers except in rare cases since it would be extremely difficult to prove use of force, fraud or coercion on the part of a buyer.

⁷⁸ See Appendix A.

third party control. Of the jurisdictions that do not require force, fraud or coercion to constitute trafficking of children, 12 states require proof of third party control, which means that many victims may not be identified or protected in these states.

1. Statutory Examples: State laws that do not require third party control

(i) Including “solicit” or “purchase” in the list of prohibited conduct. Some states have sex trafficking statutes that closely mirror the federal definition of sex trafficking in the TVPA by providing a disjunctive list of prohibited conduct that includes verbs such as “solicit,” “pay” or “purchase” as well as “obtains” within the foundational sex trafficking provision. For example, the text of Washington’s trafficking law states, “[a] person is guilty of trafficking in the first degree when: (a) Such person: (i) Recruits, harbors, transports, transfers, provides, *obtains, buys, purchases,* or receives by any means another person. . .”⁷⁹

(ii) Including “obtain” in the list of prohibited conduct. Many states’ sex trafficking laws apply to buyers by including the term “obtain” as well as other terms identified by the Eighth Circuit in *United States v. Jungers* as potentially applicable to buyers of sex with minors.⁸⁰ For example, Colorado’s law states, “A person who knowingly sells, recruits, harbors, transports, transfers, isolates, entices, provides, receives, obtains by any means, maintains, or makes available a minor for the purpose of commercial sexual activity commits human trafficking of a minor for sexual servitude.”⁸¹

By incorporating the conduct of buyers as a fundamental component of the crime of sex trafficking, these types of statutory constructs do not require third party control and clarify that victims who are exploited by buyers *or* traffickers should be identified as victims of sex trafficking.

2. Statutory Examples: The Uniform Act and States that Require Third Party Control

The requirement to prove third party control can be incorporated into state sex trafficking laws in several ways that result in excluding the conduct of buyers, including expressly prohibiting application of the statute to buyers. When buyer conduct is excluded, the statute focuses solely on the conduct of traffickers, creating a *de facto* third party control requirement. However, some states that include culpability for buyers still require third party control because the role of the buyer is not intrinsic to the sex trafficking offense. Consequently, under these laws the crime of sex trafficking cannot be committed unless there is a trafficker.

(i) The Uniform Act on Prevention of and Remedies for Human Trafficking.⁸² The Uniform Act, which was developed as an alternative to the federal model, establishes a requirement to prove third party control over a minor engaged in prostitution in order to be recognized as a sex trafficking offense.⁸³ Even

⁷⁹ Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) (*emphasis added*).

⁸⁰ See Part III for discussion of the federal sex trafficking law as interpreted in *United States v. Jungers* and as amended by the Justice for Victims of Trafficking Act.

⁸¹ Colo. Rev. Stat. Ann. § 18-3-504(2)(a) (Human trafficking of a minor for sexual servitude).

⁸² National Conference of Commissioners on Uniform State Laws, “Uniform Act on Prevention of and Remedies for Human Trafficking” (2013) [hereafter Uniform Act].

⁸³ During the drafting process, the Uniform Law Commission was well advised that this approach was going against current trends that recognize the role of buyers as sex trafficking offenders who drive the demand for sex trafficked children. Unfortunately the timing of the Uniform Act prevented the Uniform Law Commission (ULC) from fully understanding the ramifications of their approach and despite heated debate and strong support for removing the third party control requirement by ULC delegates and expert advisors, the Uniform Act was enacted with this provision.

though the offense of human trafficking occurs when a person “recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices” another person in furtherance of sexual servitude,⁸⁴ the separate offense of sexual servitude is committed when a person “maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity.”⁸⁵ The phrase “maintains or makes available” describes trafficker conduct and excludes the conduct of buyers, establishing a requirement that a minor be under third party control in order for that child to be considered a victim of sexual servitude. While buyers face criminal liability under a separate provision, “Patronizing a Victim of Sexual Servitude,”⁸⁶ this offense is not incorporated as part of the overall trafficking law.⁸⁷

The ripple effect of separating out buyer conduct in this manner not only leads to misidentification of victims due to the third party control requirement but also undermines victim benefits and protections proposed within the Uniform Act. One of the most progressive provisions of the Uniform Act establishes immunity for minor victims from prostitution charges and other non-violent offenses, recognizing the fact that juveniles do not consent to their own exploitation. However, this immunity generally depends on the victim establishing that the offenses were committed “as a direct result of being a victim of human trafficking,”⁸⁸ making the definition of “victim” paramount to accessing this important protection.” While the Uniform Act attempts to avert the impact of requiring third party control by providing an alternative definition of “victim” for purposes of immunity, the structure of the law still creates loopholes that protect buyers and result in inconsistent application of protections for victims—crucial remedies such as restitution, asset forfeiture and civil remedies are available to victims when exploited by a trafficker, but not for exploitation by a buyer.⁸⁹

Partial adoption of the Uniform Act fails to address demand and further deepens the divide in protections for minor victims. In New Hampshire—which adopted the basic criminal provisions and the immunity provision but did not adopt any provisions that apply to buyers—vulnerable youth without an identified trafficker cannot receive the protection of the immunity provision. New Hampshire’s adoption of the Uniform Act reflects how the Act’s narrow definition of sexual servitude undermines protections for the vulnerable victims whom the law is intended to protect.

By contrast, Montana adopted the Uniform Act with specific changes that ensure third party control is not required and victims are not excluded from the definition of sex trafficking due to gaps in buyer culpability. Under Montana’s new human trafficking law, all commercially sexually exploited juveniles are identified as victims of sex trafficking and consequently are able to access the rights, benefits and services established for juvenile victims regardless of whether they are exploited by buyers in conjunction

⁸⁴ See Uniform Act, *supra* note 82, at § 5(a)(1) (Sexual Servitude).

⁸⁵ *Id.* § 5 (a) (1).

⁸⁶ The Uniform Act also provides an *optional* offense titled “Patronizing a Minor for Commercial Sexual Activity” which makes it a crime to give, agree to give, or offer to give anything of value for commercial sex with a minor. However, the penalties are staggered depending on whether it is proven that the defendant acted with the intent to engage in commercial sex specifically with a minor.

⁸⁷ The primary human trafficking provision, Uniform Act §3 (Trafficking an individual), only incorporates conduct that violates the sexual servitude, Uniform Act § 5, or forced labor provisions, Uniform Act § 4. An optional provision, “Patronizing a Minor for Commercial Sexual Activity,” Uniform Act § 7, specifically criminalizes all buying of sex with a minor but this offense is similarly excluded from the core definition of sex trafficking or main human trafficking law. The Uniform Act defines “victim” to include anyone subject to human trafficking and defines “human trafficking” to include the buyer-applicable patronizing offense. As a result, this definition of victim extends the protection of the immunity provision to all sex trafficking victims, but does not extend protections such as mandatory restitution, access to civil remedies and asset forfeiture to victims who do not have a trafficker, or choose not to pursue remedies against their trafficker but wish to seek justice against their buyers instead.

⁸⁸ Uniform Act, *supra* note 82, § 15 (*emphasis added*).

⁸⁹ See Uniform Act, *supra* note 82, § 10, 11 and 18. See also *supra* note 87.

with a trafficker, or just by buyers.⁹⁰ The key differences between Montana’s law and the Uniform Act are: (1) Montana does not limit prohibited conduct under the sexual servitude law to “maintains or makes available” but includes conduct that could reach buyers, including the term “obtains,” and (2) Montana’s law does not create loopholes for buyers that harm victims; unlike the Uniform Act, convicted buyers in Montana will face criminal asset forfeiture and civil claims for the exploitation they commit.⁹¹

(ii) State laws that require third party control. Beyond the Uniform Act, third party control requirements have also arisen in non-adopting states. Some of these state sex trafficking laws resemble the Uniform Act because they also provide buyer culpability under a separate provision similar to “Patronizing a victim of sexual servitude,” while narrowing the core human trafficking offense to eliminate buyers and require third party control.⁹² Language that eliminates applicability to buyers and leaves a narrow patronizing offense as the only applicable penalty for buyers constrains the overall definition of a sex trafficking victim to those victims who are under third party control.

Another way that state sex trafficking laws create a third party control requirement is by expressly prohibiting application of the sex trafficking law to buyers. Alaska,⁹³ Connecticut,⁹⁴ Maine,⁹⁵ Minnesota⁹⁶ and Ohio⁹⁷ expressly eliminate application of the sex trafficking law to buyers. In other states, there is no express prohibition on applying the statute to buyers but the plain language of the statute renders it inapplicable to the conduct of buyers.⁹⁸ While proponents of this approach often assert that other laws can be used to prosecute buyers, this limit on application of the trafficking law continues to impede victim identification and fails to protect the most vulnerable and traumatized juvenile victims.

IV. Conclusion and Policy Statement on Third Party Control Requirement

The requirement to prove third party control over the child in order to prosecute under sex trafficking offenses seriously undermines other positive provisions in sex trafficking statutes for several reasons:

- 1) Requiring third party control dramatically diminishes the opportunity to hold buyers of sex with minors accountable as serious offenders. Proving that a buyer knew the child was under third party control is hampered by many realities ranging from the effects of trauma bonding which prevent children from identifying a trafficker to the shield of technology, used to keep the trafficker out of sight and unidentifiable.
- 2) From a victim’s perspective, it is irrelevant who sells and who buys the sexual performance of a child; all commercially sexually exploited children should equally be identified as sex trafficking victims and

⁹⁰ See H.B. 89 §§ 4, 5, Reg. Sess., 64th Leg. (Mont. 2015) (enacted) (establishing the offenses of sexual servitude and patronizing victim of sexual servitude, both of which reach the conduct of buyers of sex with minors.)

⁹¹ See id. §§ 7 (Property subject to forfeiture—human trafficking) and 11 (Civil action—human trafficking victim).

⁹² E.g., Wyo. Stat. Ann. § 6-2-701 (a)(xiv).

⁹³ Alaska Stat. § 11.66.110(a)(2) (Sex trafficking in the first degree) (“[a] person commits the crime of sex trafficking...if the person...other than a patron of a prostitute, induces or causes a person under 18 years of age, to engage in prostitution...”)

⁹⁴ Conn. Gen. Stat. § 53a-192a (Trafficking in persons) (“A person is guilty of trafficking in persons when such person compels or induces another person to engage in conduct involving more than one occurrence of sexual contact with one or more third persons”)

⁹⁵ Me. Rev. Stat. Ann. tit. 17-A, § 851(2) (Definitions) (As used under Me. Rev. Stat. Ann. tit. 17-A, § 852(1) (Aggravated sex trafficking), “promotes prostitution” is defined as “[c]ausing or aiding another to commit or engage in prostitution, other than as a patron.”)

⁹⁶ Minn. Stat. Ann. § 609.322(1)(a) (Expressly states that its provisions only apply to a person who solicits a minor to practice prostitution if the person is “acting other than as a prostitute or patron.”)

⁹⁷ Ohio Rev. Code Ann. § 2905.32(C) (“In a prosecution under [Trafficking in Persons], proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.”)

⁹⁸ E.g., Md. Code Ann., Crim. Law § 11-303 (Human trafficking).

rendered eligible for related services. Structuring criminal penalties to create a hierarchy of offenders fails to recognize the role of all exploiters—buyers and sellers alike—in the exploitation of commercially sexually exploited youth. This variable and inconsistent identification of offenders perpetuates victim-blaming and sends the harmful message to the juveniles most at risk that they are somehow responsible for their own victimization.

3) Failure to identify buyers as sex trafficking offenders has a direct correlation to the failure to identify all commercially sexually exploited juveniles as victims of sex trafficking. Even where states have made efforts to ensure that buyers are identified as trafficking-related offenders, these laws may still fail to protect all victims if the conduct of buyers is not intrinsically tied to the basic crime of sex trafficking. If penalties for buyers are merely included as a related crime and not part of the crime of sex trafficking, vulnerable victims could be excluded and denied access to services that would be available if their buyers were recognized as sex trafficking offenders.

4) Third party control is conceptually mired in the force, fraud or coercion narrative that states are systematically eliminating from their sex trafficking laws. As the force, fraud and coercion gap closes, the state laws that require third party control stand in stark contrast to those that do not include this requirement, as it presents the primary remaining barrier to identifying all commercially sexually exploited juveniles as victims of sex trafficking.

In the fight against sex trafficking there must be a single standard for defining a sex trafficking victim. To ensure the greatest protection for victims, that definition cannot include third party control as this requirement is inherently in conflict with the intent, design and scope of sex trafficking laws. Trafficking laws were designed to protect vulnerable victims from exploitation, and special protections have been carved out to address the particular susceptibility of minors to this type of exploitation. To achieve consistent protections for victims, states must reach consensus on the fundamental and intrinsic role of buyers in the sex trafficking offense and align the definition of a sex trafficking victim with the definition of a buyer's crime by eliminating the third party control requirement.

© August 11, 2015 Shared Hope International. All rights reserved.

Appendix A
State Law Survey: Impact of Third Party Control Requirement

Key factors impacting whether all CSEC victims will be defined as victims of sex trafficking:

State	When the victim is a minor, force, fraud or coercion is...	Sex trafficking law provides criminal liability for buyers of sex with minors... ⁹⁹	Establishing the crime of sex trafficking, third party control is...
Alabama	Required	Yes*	Not Required
Alaska	Not Required	No	Required
Arizona	Not Required	Yes*	Not Required
Arkansas	Not Required	Yes***	Not required
California	Not Required	No	Required
Colorado	Not Required	Yes*	Not Required
Connecticut ¹⁰⁰	Not Required	No	Required
Delaware	Not Required	Yes	Required
DC	Not Required	Yes*	Not Required
Florida	Not Required	Yes*	Not Required
Georgia	Not Required	Yes*	Not Required
Hawaii	No sex trafficking law	N/A	N/A
Idaho	Not Required	Yes	Not required
Illinois	Not Required	Yes*	Not required
Indiana	Not Required	Yes	Required
Iowa	Not Required	Yes	Not Required
Kansas	Not Required	Yes*	Not Required
Kentucky	Not Required	Yes*	Not Required
Louisiana	Not Required	Yes**	Not Required
Maine	Not Required	No	Required
Maryland	Not Required	No	Required
Massachusetts	Not Required	Yes	Not Required
Michigan	Not Required	Yes* ¹⁰¹	Not Required

⁹⁹ Responses with a single asterisk (*) indicate applicability to buyers following the precedent in *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). Responses with a double asterisk (**) indicate that the sex trafficking law aligns with the federal sex trafficking law (18 U.S.C. § 1591(a)) as amended by the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, by including purchase, pay or solicit as prohibited conduct. Responses with a triple asterisk indicate applicability to buyers following the precedent in *Jungers* as well as a separate provision that specifically reaches buyers. Except where indicated otherwise, responses are based on 2014 Protected Innocence Challenge analysis. See <http://sharedhope.org/what-we-do/bring-justice/reportcards/>.

¹⁰⁰ See Enacted House Bill 6849 (2015). Connecticut also requires more than one occurrence of sexual contact with a third party to constitute sex trafficking.

¹⁰¹ See Enacted House Bill 5234 (2015).

A PROJECT OF SHARED HOPE INTERNATIONAL

Minnesota	Not Required	No	Required
Mississippi	Not Required	Yes	Not Required
Missouri	Not Required	Yes*	Not Required
Montana	Not Required	Yes*** ¹⁰²	Not Required
Nebraska	Not Required	Yes	Not Required
Nevada	Not Required	Yes*	Not Required
New Hampshire	Not Required	No	Required
New Jersey	Not Required	Yes*	Not Required
New Mexico	Not Required	Yes*	Not Required
New York	Required	No	Required
North Carolina	Not Required	Yes	Not Required
North Dakota	Not Required ¹⁰³	Yes	Required
Ohio	Not Required ¹⁰⁴	No	Required
Oklahoma	Not Required	Yes**	Not Required
Oregon	Not Required ¹⁰⁵	Yes*	Not Required
Pennsylvania	Not Required	Yes*	Not Required
Rhode Island	Not Required	Yes**	Not Required
South Carolina	Not Required ¹⁰⁶	Yes**	Required
South Dakota	Required	Yes*	Not Required
Tennessee	Not Required	Yes**	Not Required
Texas	Not Required	Yes	Not Required
Utah	Not Required ¹⁰⁷	Yes*	Not Required
Vermont	Not Required	Yes***	Not Required
Virginia¹⁰⁸	Not Required	No	Required
Washington	Not Required	Yes**	Not Required
West Virginia	Not Required	Yes* ¹⁰⁹	Not Required
Wisconsin	Not Required	Yes*	Not Required
Wyoming	Not Required	Yes	Required
Total states w/ barriers to identifying all CSEC as sex trafficking victims	3 states require proof of force, fraud or coercion 1 state has no sex trafficking law	11 state sex trafficking laws do not apply to the conduct of buyers	15 states require third party control to establish the crime of sex trafficking

¹⁰² See Enacted House Bill 89 (2015).

¹⁰³ See Enacted House Bill 2107 (2015).

¹⁰⁴ Ohio's human trafficking law eliminates the requirement to prove force, fraud or coercion when the victim is under 16 years of age or the victim is 16 or 17 and the defendant is in a position of authority or trust as described in Ohio Rev. Code Ann. § 2907.3(A)(5), (6), (7), (8), (9), (10), (11), (12), or (13).

¹⁰⁵ Oregon's human trafficking law eliminates the requirement to prove force, fraud, or coercion when the victim is under 15 years of age.

¹⁰⁶ See Enacted Senate Bill 196 (2015).

¹⁰⁷ See Enacted House Bill 252 (2015).

¹⁰⁸ See Enacted House Bill 1964 and Enacted Senate Bill 1188 (2015).

¹⁰⁹ However, West Virginia's human trafficking law requires that two or more persons must be trafficked to establish the offense.

Appendix B
State Law Survey: Location of Provisions Criminalizing Buyer Conduct

State	Location of Sex Trafficking Provision Applicable to Buyers ¹¹⁰	Location of CSEC Provisions Applicable to Buyers ¹¹¹
Alabama	Danger to the Person Chapter	Not applicable to buyers ¹¹²
Alaska	Not applicable to buyers	Offenses Against Public Health and Decency Chapter
Arizona	Kidnapping and Related Offenses Chapter	Prostitution Chapter
Arkansas	Human Trafficking Act Chapter	Offenses against Children or Incompetents Chapter
California	Not applicable to buyers	Prostitution Chapter
Colorado	Human Trafficking and Slavery Part	Child Prostitution Part within Offenses Relating to Morals Article
Connecticut	Not likely applicable to buyers	Sex Offenses Part
Delaware	Human Trafficking Section	Not applicable to buyers
DC	Human Trafficking Chapter	Prostitution; Pandering Chapter
Florida	Kidnapping; False Imprisonment; Luring Or Enticing A Child; Custody Offenses Chapter	Lewdness; Indecent Exposure chapter; Obscenity Chapter
Georgia	Kidnapping, False Imprisonment, And Related Offenses Article	Sexual Offenses Chapter
Hawaii	No sex trafficking law	Offenses Against Public Health and Morals
Idaho	Human Trafficking Chapter	Prostitution Chapter
Illinois	Kidnaping And Related Offenses Article	Sex Offenses Article
Indiana	Human and Sexual Trafficking Chapter	Not applicable to buyers
Iowa	Human Trafficking Chapter	Vice Chapter
Kansas	Crimes Against Persons Article	Crimes Against The Public Morals
Kentucky	Prostitution Chapter	Family Offenses Chapter
Louisiana	Kidnapping and false imprisonment Subpart	Offenses concerning prostitution or Crimes Against Nature Within Offenses affecting Sexual immorality Subpart
Maine	Not applicable to buyers	The Sex Trafficking, Prostitution And Public Indecency Chapter
Maryland	Not applicable to buyers	Sexual Crimes Subtitle; Obscene Matter Subtitle
Massachusetts	Crimes Against the Person Chapter	Crimes Against Chastity, Morality, Decency and Good Order
Michigan	Human Trafficking Chapter	Prostitution Chapter
Minnesota	Not applicable to buyers	Sex Crimes
Mississippi	Crimes Against the Person Chapter	Crimes Against Public Morals And Decency Chapter
Missouri	Sexual Offenses Chapter	Prostitution Chapter; Sexual Offenses Chapter

*This chart addresses provisions that are applicable to the buying sex acts with minors; non-commercial, non-CSEC offenses that could apply to conduct of buyers are not necessarily included.

¹¹⁰ See Protected Innocence Challenge Analysis and Recommendations [for each state], section 2.1, available at: <http://sharedhope.org/what-we-do/bring-justice/reportcards/>. (identifying and discussing trafficking provisions applicable to buyers)

¹¹¹ See Protected Innocence Challenge Analysis and Recommendations [for each state], section 2.2, available at: <http://sharedhope.org/what-we-do/bring-justice/reportcards/>. (identifying and discussing CSEC provisions applicable to buyers)

A PROJECT OF SHARED HOPE INTERNATIONAL

Montana	Kidnapping Part	Offenses Against the Family Part
Nebraska	Offenses Relating to Morals Article	Offenses Relating to Morals Article
Nevada	Crimes Against Public Decency and Good Morals Chapter	Crimes Against Public Decency and Good Morals Chapter
New Hampshire	Not applicable to buyers	Not applicable to buyers
New Jersey	Kidnapping, Coercion Chapter	Obscenity And Indecency Chapter
New Mexico	Human Trafficking Article	Sexual Exploitation of Children Article; Sexual Offenses Article
New York	Not applicable to buyers	Prostitution Offenses
North Carolina	Human Trafficking Article	Prostitution Article
North Dakota	Human Trafficking Chapter	Not applicable to buyers
Ohio	Not applicable to buyers	Sex Offenses Chapter; Offenses Against the Family Chapter
Oklahoma	Kidnapping Chapter	Oklahoma Law On Obscenity And Child Pornography Chapter
Oregon	Kidnapping and Related Offenses	Sexual Offenses
Pennsylvania	Human Trafficking Chapter	Minors Chapter Public Indecency Chapter
Rhode Island	Trafficking of Persons and Involuntary Servitude Chapter	Sexual Assault Chapter
South Carolina	Trafficking in Persons Article	Obscenity, Material Harmful to Minors, Child Exploitation, and Child Prostitution Article
South Dakota	Human Trafficking Chapter	Not applicable to buyers
Tennessee	Kidnapping and False Imprisonment Part	Sexual Offense Part ¹¹³
Texas	Trafficking of Persons Chapter	Public Indecency Chapter; Preparatory Offenses Chapter; Sexual Offenses Chapter; Assaultive Offenses Chapter
Utah	Offenses Against the Person Chapter	Offenses Against Public Health, Safety, Welfare, and Morals Chapter
Vermont	Human Trafficking Chapter	Not applicable to buyers
Virginia	Not applicable to buyers	Crimes Involving Morals and Decency Chapter
Washington	Kidnapping, Unlawful Imprisonment, Custodial Interference, Luring, Trafficking, And Coercion Of Involuntary Servitude	Sexual Exploitation Of Children Chapter
West Virginia	Crimes Against the Person Article	Computer Crime And Abuse Act Article
Wisconsin	Crimes Against Children	Crimes Against Children
Wyoming	Human Trafficking Article	Not applicable to buyers
Section Totals	18: Trafficking 11: Not Applicable to Buyers 7: Kidnapping 7: Crimes Against Person/Children 4: No Section 2: Prostitution/Moral Indecency	27: Prostitution/Moral Indecency/Obscenity 12: Sexual Offenses 8: Not Applicable to Buyers 7: Crimes Against Children/Exploitation 3: Other

¹¹³ Patronizing prostitution is located under Sexual Offenses but is punishable under Trafficking a person for a commercial sex act under Kidnapping and False Imprisonment Part.