

**Child Sex Trafficking is Distinct from Statutory Rape:
The Critical Importance of Using Sex Trafficking Laws to Combat Child Sex Trafficking Crimes**

This policy brief addresses a concerning trend toward using statutory rape laws as a primary tool for combatting demand for child sex trafficking victims, even as the nation moves toward recognizing the role of buyers of commercial sex with minors as sex trafficking offenders under state laws. As demonstrated below and in the attached national state law survey comparing protections for minors under sex trafficking laws and statutory rape laws, the laws used to combat demand can have serious consequences for minor victims.

The fundamental problem with this conflicting trend is that many minors will be left unprotected by statutory rape laws because the great majority of states do not apply their statutory rape laws to older minors and penalties vary greatly when applied to the prosecution of child sex buyers. Moreover, statutory rape laws often require a minimum age for perpetrators and carve out “safe zone” age ranges, wherein a buyer could not be prosecuted for statutory rape based on how close in age he/she is to the age of the victim, with some states extending this “safe zone” age gap as much as 10 years.

There are 5 key reasons that statutory rape laws fail to provide adequate protection to child sex trafficking victims:

1) Most Statutory Rape Laws Do Not Protect All Minors, Leaving Older Minors Largely Unprotected

Maximum Age a child is protected under the statutory rape law¹	Number of states
14:	2 States
15:	31 States + DC
16:	7 States
17:	10 States
Avg maximum age: 15.54 years old	

- Only 10 States protect all minors under 18.
- 2 States, Arizona and Vermont, do not protect 15-year-olds from statutory rape.
- 34 States, including Washington, D.C. do not protect 16-year-olds from statutory rape.
- 41 States, including Washington, D.C. do not protect 17-year-olds from statutory rape.
- In the ten states that do not currently extend their trafficking law to buyers of sex with children, only two have a statutory rape law that applies to all minors. Seven of these states only apply their statutory rape laws to children 15 years old and younger, and the other state only applies its law to children 16 years old and younger.

2) Statutory Rape Laws Often Carry Substantially Lower Penalties than Trafficking Laws

Maximum Imprisonment:

Statutory Rape: 9 Months in Jail – Life

¹ Maximum age at which a minor engaging in sex with an adult is criminalized without regard to force, fraud or coercion or other aggravating factors, such as the adult holding a position of authority or trust.

Sex Trafficking: 6 Years – Life

Maximum Fines:

Statutory Rape: \$0 – \$300,000

Sex Trafficking: \$0 – \$1,000,000

- 10 States Consider Statutory Rape with an Older Minor as a Misdemeanor
- 29 States Have Greater Penalties for Sex Trafficking Laws than for Statutory Rape Laws

3) Most Statutory Rape Laws Require a Minimum Age of the Perpetrator, Often Above the Age of Majority

The average minimum age of adult perpetrators: 19.96 (29 states in total)

Number of States that set the minimum age of perpetrators above the age of majority (19+): 14

- 16 states set 18 as the minimum age.
- 11 states set the minimum age as under 18.
- 5 states require no minimum age of the perpetrator. They commit a crime based solely on the age differential.

4) Statutory Rape Laws Often Require an Age Difference Between the Victim and Perpetrator

Age Difference Range: 2 Year Age Difference – 10 Year Age Difference

Avg. Minimum Age Difference: 4.5 Years

30 States Require a Minimum Age Difference Between the Perpetrator and the Victim

Age Difference	Number of States that Require this Minimum Age Difference
2 years	3
3 years	3
4 years	16
5 years	5
6 years	1
10 years	2

5) The Statutory Rape Framework Was Developed to Address a Different Type of Crime:

All of these limitations on the application of statutory rape laws exist because this framework of laws was not developed or intended to address the crime of buying sex with a child. Simply, statutory rape laws were not developed with the purpose of addressing sex trafficking issues.² Instead, they were developed to protect minors below a certain age from “predatory, exploitative sexual relationships” with much older partners.³ While age disparity is a factor in sex trafficking, this is not the only way in which sex trafficking offenders prey upon children. Instead, sex trafficking laws address the exploitation inherent in the commodification of child sex trafficking victims, including the *purchase* of commercial sex with minors, not just the sale of children for commercial sex.⁴

² OFFICE FOR VICTIMS OF CRIME, U.S. DEPARTMENT OF JUSTICE, STATE LEGISLATORS HANDBOOK FOR STATUTORY RAPE ISSUES 6 (2000) available at <https://ojp.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf>.

³ Id.

⁴ See Victims of Trafficking Prevention Act, 11 U.S. § 7101(4), (5), & (15):

The inappropriateness of using statutory rape laws to combat demand for child sex trafficking victims is demonstrated most clearly in the precipitous drop in penalties as minors approach the age of majority. While the vast majority of state sex trafficking laws extend special protections to all minors under the age of 18, only 10 state statutory rape laws protect all minors. On average, state statutory rape laws only protect children under fifteen and a half years old, with 33 states and Washington, D.C. only protecting children under the age of 16. This means that in 34 states, 16 and 17 year-olds are unprotected by statutory rape laws, and child sex buyers could purchase sex with 16 and 17 year-olds without facing penalties under the statutory rape law. Moreover, 40 states and Washington, D.C. do not protect 17 year-olds from statutory rape.

The penalty ranges applicable to statutory rape similarly reflect the inadequacy of these laws to combat the commodification of children in the commercial sex trade. As noted above, 10 states criminalize statutory rape as a misdemeanor, depending on the child's age. Statutory rape penalties among the states vary greatly from misdemeanors to felonies with life sentences. Meanwhile, state sex trafficking laws uniformly recognize the gravity of the offense, and criminalize child sex trafficking as a felony.⁵ In the ten states that criminalize statutory rape as a misdemeanor for some minors, utilizing these laws as a primary tool for the prosecution of child sex buyers⁶ would be a mockery to the pain and suffering endured by child sex trafficking victims. This disparity in penalties also extends to victim protections since much of federal Trafficking Victims Protection Act⁷ is centered on victim protection and restoration and services specifically designated for sex trafficking victims would not be available to minor victims who were instead classified as statutory rape victims.

In addition to lowering penalties for offenses involving older minors, several state statutory rape laws require that the defendant's age be well above the age of majority in order for the defendant to face any penalties under the statutory rape law. The following seven states demonstrate how drastically high minimum age requirements can run for statutory rape perpetrators:

- In Delaware, the minimum age for a statutory rape perpetrator is 30 years old. If this statutory rape law was applied to address demand for child sex trafficking victims, a 29 year-old sex buyer who buys sex with a 16 or 17 year-old would not violate this law.⁸
- In Utah, the minimum age for a statutory rape perpetrator is 26 years old.⁹ If used to address demand for child sex trafficking victims, a 25 year-old sex buyer can pay to have sex with a 16 or 17 year-old without violating this law.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models...

(5) Traffickers often transport victims from their home communities to unfamiliar destinations... away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

(15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

⁵ 29 states establish greater penalties for sex trafficking offenders than for statutory rape offenders.

⁶ 3 states, Virginia California, and Maryland, simultaneously only recognize statutory rape with an older minor as a misdemeanor, and do not apply sex trafficking laws to child sex buyers. Thus child sex buyers in these states can only be charged with misdemeanors for their heinous crimes.

⁷ P.L. 106-386 (Oct. 28, 2000).

⁸ This applies to victims ages 16 and 17 years old.

⁹ Utah has a 10 year minimum age difference between the perpetrator and the victim for victims ages 16 – 17.

- In Colorado, the minimum age for a statutory rape perpetrator is 25 years old.¹⁰ Under this law, a 24 year-old can pay to have sex with a 15, 16 or 17 year-old without committing statutory rape.
- In Nebraska, the minimum age for a statutory rape perpetrator is 25 years old. If Nebraska's statutory rape law was used to prosecute buyers of sex with children, a 24 year-old who paid to have sex with a 12, 13, 14, 15, 16 or 17 year-old would not violate this statutory law.¹¹
- In Florida, the minimum age is 24, meaning a 23 year-old sex buyer can pay to have sex with a 16 or 17 year-old without violating this statutory rape law.¹²
- In Missouri, the minimum age is 21, meaning a 20 year-old sex buyer can pay to have sex with a 14, 15, 16 or 17 year-old without violating this statutory rape law.¹³
- In Arkansas, the minimum is 20, meaning a 19 year-old sex buyer can have sex with a 14, 15, 16 or 17 year-old without violating this statutory rape law.¹⁴

These seven examples, along with the other 33 states that require a minimum age for statutory rape perpetrators, further demonstrate how statutory rape laws are often an inconsistent—and often inapplicable—penalty in child sex trafficking situations.

Similarly, because statutory rape laws were developed to protect youth from sexual relationships with much older partners,¹⁵ most statutory rape laws create a “Romeo and Juliet” exception. Thirty states and Washington, D.C. have these “Romeo and Juliet” laws. These age differences range from 2 years to 10 years, with an average minimum age difference of 4.5 years. These exceptions focus on the age disparity by protecting individuals who are close in age to the minor. This age disparity, while arguably appropriate in certain cases, is inappropriate in sex trafficking cases. The person buying sex with a child is playing a direct and damaging role in the commodification of that child in the commercial sex industry. Limiting the prosecution of sex trafficking buyers to statutory rape offenses leaves many children exposed and vulnerable and fails to reflect the specific form of exploitation occurring in these cases.

Conclusion:

Advocating for the use of statutory rape laws to prosecute buyers of sex with children is fundamentally harmful, not only from the perspective of effective prosecutions, but also to ensure recognition of the unique trauma endured by commercially sexually exploited children, who, regardless of their age, require an appropriate, protective response. The structure of many statutory rape laws that carve out labyrinthine exceptions to the culpability of offenders encourages the continued bias against buyer accountability and the tendency to hold the victim responsible. Survivors and advocates have fought hard to dispel these perceptions of child sex trafficking victims. Advocacy to use statutory rape laws to prosecute child sex trafficking undermines that effort.

Also, identifying demand as a crime of statutory rape rather than a crime of sex trafficking has a direct impact on how child sex trafficking victims are identified and treated. When states do not use sex trafficking laws to prosecute child sex buyers, and fail to align their laws with the federal definition of sex trafficking, the very definition of a child sex trafficking victim is narrowed to those children who have an identified trafficker. The resulting victim hierarchy between children who are bought by a buyer versus

¹⁰ Colorado has a 10 year minimum age difference between the perpetrator and the victim for victims ages 16 – 17.

¹¹ This applies to victims ages 12 – 17 years old.

¹² This applies to victims ages 16 and 17 years old.

¹³ This applies to victims ages 14 – 17 years old.

¹⁴ This applies to victims ages 14 – 17 years old.

¹⁵ OFFICE FOR VICTIMS OF CRIME, U.S. DEPARTMENT OF JUSTICE, STATE LEGISLATORS HANDBOOK FOR STATUTORY RAPE ISSUES 6 (2000) available at <https://ojp.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf>.

children who are sold by a trafficker limits identification and access to services for some of the most vulnerable victims of this crime.

The use of statutory rape laws may be appropriate as a complement to sex trafficking laws, or as an alternative when sex trafficking and CSEC laws are not available but should be viewed as a stop-gap measure only. Statutory rape laws are insufficient to deal with the realities of child sex trafficking. Too many minors would be left unprotected. Some state penalties are too light, thereby diminishing the gravity and seriousness of child sex trafficking. Other states provide minimum age requirements or “Romeo and Juliet” laws, which create gaps of impunity for child sex buyers. Standing alone, statutory rape laws are inadequate to combat child sex trafficking.

In light of the substantial gaps in combatting demand, Shared Hope urges state and federal prosecutors to apply sex trafficking laws to the crime of buying sex with children and aggressively prosecute buyers under all applicable laws, including statutory rape when more appropriate laws are not available or as a complement to laws that specifically criminalize the purchase of sex with a child.