

CHILD SEX TRAFFICKING AND ADOPTION RE-HOMING: AMERICA'S 21ST CENTURY SALACIOUS SECRET

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I. INTRODUCTION

Human trafficking is a menacing force in the United States and an underground horror imprisoning hundreds of thousands of people—namely children. With trafficking of minors becoming more frequent, federal and state regulations have been amended to prevent trafficking and to provide better protection for victims.¹ A few states provide services for sex trafficking victims, specifically those victims under the age of eighteen.² However, there should be mandatory safe harbor protections for child victims of trafficking. Additionally, child victims who are at the highest risk are juvenile delinquents and children sheltered from caregivers as a result of abuse, neglect, and abandonment.³ There should be more protection provided for these children as well.

Recently, the federal government passed legislation increasing penalties for traffickers and providing education to employees within government agencies.⁴ The federal imposition of lengthy prison time and steep fines attempts to deter future

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1. Jennifer A.L. Sheldon-Sherman, *The Missing "P": Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 PENN ST. L. REV. 443, 467–71 (2012).

2. *2014 State Ratings on Human Trafficking Laws*, POLARIS, <https://polarisproject.org/resources/2014-state-ratings-human-trafficking-laws> (last visited Apr. 22, 2017).

3. CHILD WELFARE INFO. GATEWAY, CHILD WELFARE AND HUMAN TRAFFICKING 1 (2015), <https://www.childwelfare.gov/pubPDFs/trafficking.pdf>.

4. 22 U.S.C. §§ 7105(c)(4), 7109(b)(1)–(3) (2012).

human trafficking.⁵ The training programs focus on identifying trafficking victims' needs, documenting risk factors, and establishing a national alert system for missing children.⁶ The programs, however, fail by not providing education to juvenile delinquents, children in foster care and safe-harbor houses, and children attending public schools.⁷ Importantly, many states have yet to implement safe harbor provisions and instead assess minor penalties for those who engage in child prostitution.⁸ Addressing these factors are essential steps in the prevention of sex trafficking.

Public awareness will target the very center of trafficking, even though it has remained underground for years. There is an immediate need to implement a sex trafficking prevention education program within our national school system because children are at high risk for sexual exploitation due to their immaturity and vulnerability. Part II of this Article will discuss the history of child sex trafficking. Part III will outline federal and state legislation regarding trafficking, technology and trafficking, and the relevance of immigration status. Part IV will detail the new phenomenon of the so-called re-homing of children previously adopted internationally and then re-homed in the United States. Part V will discuss the benefits of victim identification and safe harbor provisions. Finally, Part VI of this Article will propose a solution for the prevention of sex trafficking of minors in the United States—namely, nationwide, mandatory safe harbor legislation, a national education program for all public schools, and more intense psychological counseling for all child trafficking victims in government care.

5. *Id.* § 7109(b); *see also* Sheldon-Sherman, *supra* note 1, at 453 (“If a trafficking crime results in death, attempted killing, kidnapping, attempted kidnapping, or aggravated or attempted sexual abuse, traffickers can face a life sentence.”).

6. *See* 22 U.S.C. § 7105(c)(1)–(4) (2012).

7. *See id.* § 7104(b) (requiring government agency heads to “carry out programs to increase public awareness, particularly among potential victims of [human] trafficking” generally, but not mandating educational programs for juvenile delinquents, children in foster care and safe harbor houses, and all children attending U.S. public schools).

8. Lauren Jekowsky, *Un-Safe Harbor: Why U.S. State Legislation Is Ineffectively Addressing Sex Trafficking of Minors*, HUM. TRAFFICKING CTR. BLOG (Mar. 10, 2014), <http://humantraffickingcenter.org/un-safe-harbor-why-u-s-state-legislation-is-ineffectively-addressing-sex-trafficking-of-minors>.

II. THE HISTORY OF SEX TRAFFICKING IN THE UNITED STATES

Laws against human trafficking originate from anti-slavery laws from the early 1900s.⁹ Trafficking is coercion, use of harm, or threats of harm to force another into labor or providing services against the victim's will.¹⁰ Historically, trafficking was forcing another to perform acts of domestic servitude and labor, while early instances of a sexual servitude were not discussed.¹¹ Sex trafficking, the act of forcing another to perform any sexual activity against a person's will, was first recognized in the Mann Act of 1910, in which prostitution was made illegal.¹²

The early statutes prohibited "involuntary servitude, peonage, and enticement into slavery . . . [but] only [applied] to physical or overt forms of coercion."¹³ Present day sex trafficking holds a much deeper sense of emotional and psychological harm that traps victims into the trade.¹⁴ Sex trafficking is commonly referred to as human trafficking or "pimping." For example, in Georgia, any person who aids in prostituting another person to a third party is guilty of pimping.¹⁵ In other jurisdictions, someone who forces another to perform sexual activity with a third party is the pimp or trafficker.¹⁶ The person who purchases any sexual activity from the trafficker is a "John," or a buyer.¹⁷ Finally, the person forced to engage in sexual activity by the trafficker was once only considered a prostitute, but recent legislation denotes this person as a victim.¹⁸

Sex trafficking was recognized as a national problem in 2000 when Congress implemented the Trafficking Victims

9. See 18 U.S.C. §§ 1581–1584 (2012).

10. 22 U.S.C. § 7102(14).

11. Sheldon-Sherman, *supra* note 1, at 448.

12. White Slave Traffic Act (Mann Act), ch. 395, 36 Stat. 825 (1910); Sheldon-Sherman, *supra* note 1, at 451.

13. Sheldon-Sherman, *supra* note 1, at 451.

14. *Id.* at 450.

15. GA. CODE ANN. §16-6-11 (2011).

16. *Know the Language of Human Trafficking: A Glossary of Sex Trafficking Terms*, IN PUB. SAFETY (July 3, 2014), <http://inpublicsafety.com/2014/07/know-the-language-of-human-trafficking-a-glossary-of-sex-trafficking-terms>.

17. *Id.*

18. April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 247 (2007).

Protection Act (“TVPA”).¹⁹ The TVPA has been amended multiple times as a result of case law and public awareness since trafficking has reached epidemic proportions domestically and internationally.²⁰ Recently, sex trafficking of minors has been at the forefront of the news, as the vast number of child victims is horrific.²¹

Internationally, women and girls comprise nearly fifty-six percent of sex trafficking victims and make up around ninety-nine percent of sex trafficking victims domestically.²² Historically, trafficking victims of all forms have been primarily female, but recent studies show an increase in the number of male victims.²³ Thirty-eight percent of male trafficking victims suffered from sex trafficking.²⁴

Many Americans are in denial that sex trafficking occurs on U.S. soil.²⁵ Public awareness is a crucial step in the prevention of sex trafficking. Alarming, a recent study proved eighty-three percent of sex trafficking victims are citizens of the United States.²⁶ Also, the victims of sex trafficking are often the same nationality as the trafficker.²⁷

Recent studies display staggering numbers of sexually exploited victims within the United States.²⁸ For example,

19. Sheldon-Sherman, *supra* note 1, at 451–52 (citing Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000)).

20. *Id.* at 444.

21. *Id.*

22. *Id.* at 449; see U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 45 (2012), <https://www.state.gov/documents/organization/192587.pdf> (noting that the International Labour Organization estimates that fifty-five percent of forced labor victims are women and girls, and ninety-eight percent of sex trafficking victims are women and girls); U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 34 (2010), <https://www.state.gov/documents/organization/142979.pdf>.

23. Ben Quinn, *UN Says More Children and Men Falling Prey to Traffickers Amid Migration Crisis*, THE GUARDIAN (Dec. 21, 2016, 11:31 AM), <https://www.theguardian.com/global-development/2016/dec/21/un-more-children-and-men-falling-prey-human-traffic-king-migration-crisis>.

24. *Id.*

25. Kirsten Powers, *Sex Slavery: America in Denial*, N.Y. POST (Mar. 2, 2009, 8:14 AM), <http://nypost.com/2009/03/02/sex-slavery-america-in-denial>.

26. DUREN BANKS & TRACEY KYCKELHAHN, U.S. DEP’T OF JUSTICE, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS 1 (2011), <http://bjs.gov/content/pub/pdf/cshu0810.pdf>.

27. *Human Trafficking FAQs*, U.N. OFF. ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/human-trafficking/faqs.html> (last visited Apr. 22, 2017).

28. Powers, *supra* note 25.

prostitution arrests in New York have dramatically increased.²⁹ Historically, law enforcement records show approximately three hundred prostitution arrests during a calendar year in the borough of Manhattan, New York City; but in a single month in January 2014, law enforcement made one hundred prostitution arrests, partly due to the 2014 Super Bowl.³⁰ Within that year, there was a thirty percent increase in the number of prostitution arrests within the city radius.³¹ Many of these prostitutes were controlled by a trafficker, but were criminally charged with prostitution because they would not reveal the trafficker's name.³² Traffickers remain hidden because the psychological fear resulting from being a victim of the sex trade is overpowering.³³

Victims' silence and fear are major reasons sex trafficking remains underground and goes unrecorded. From the beginning, victims are enticed with various promises like money, gifts, immigration to the United States, family benefits, and protection.³⁴ Once imprisoned or kidnapped by the trafficker, the victim faces threats of physical abuse and suffers actual physical and sexual abuse.³⁵ Traffickers threaten to murder victims' families if the victim attempts to escape, therefore leaving the victims bound both psychologically and physically.³⁶ Unfortunately, this bond is almost impossible to break.³⁷

Despite the horrors that victims of sex trafficking experience, the victim often cannot escape. In Tennessee, for example, a trafficker was convicted on ten counts of sex trafficking for heinous crimes done to victims, especially to those who attempted to run away.³⁸ The traffickers tortured and beat the victims with "padlocks, crowbars, and dog chains, and [the victims were] burned with irons and scalding hot water in order to force

29. Kate Mogulescu, *The Super Bowl and Sex Trafficking*, N.Y. TIMES, Feb. 1, 2014, at A23.

30. *Id.*

31. Mary Pilon, *Jump in Prostitution Arrests in Super Bowl Week*, N.Y. TIMES, Jan. 30, 2014, at B16.

32. Mogulescu, *supra* note 29.

33. Sheldon-Sherman, *supra* note 1, at 449–50.

34. *Id.* at 449.

35. *Id.* at 449–50.

36. *Id.*

37. *Id.*

38. J. Ryan Dalton, *Modern-Day Slavery: Lawyers Help Fight Human Trafficking in Tennessee*, 49 TENN. B.J. 12, 13 (2013).

the women into prostitution.”³⁹ The type of brutality these victims experienced on a daily basis caused psychological vulnerability, which prevented escape.⁴⁰

However, recent events shed light on this underground horror to increase public awareness. Many news reports, such as CNN’s *Freedom Project*, highlight human trafficking.⁴¹ Through the *Freedom Project*, CNN attempts to raise awareness of human trafficking by sharing stories of victims and addressing the problem head-on.⁴² The website offers multiple links to national help resources, statistics on current domestic and international trafficking incidents, and personal experiences of victims.⁴³ Interestingly, the *Freedom Project* reports that the city of Atlanta, Georgia, has one of the highest incidences of human trafficking within the United States.⁴⁴ The *Freedom Project* suggests the high rate is due to traffickers taking advantage of the busiest international airport, which is located in Atlanta.⁴⁵

A disturbing reality within the sex trade involves abuse and exploitation of children. Because of the position of power of the adult, a vulnerable child is an easy target.⁴⁶ Children do not have the physical or mental capacity to fight being kidnapped, locked in basements, or forced to perform sexual acts.⁴⁷ Sadly, often the child is trafficked by a family member with no hope or means of escape.⁴⁸

39. *Id.*

40. *Id.* at 16.

41. *CNN Freedom Project*, CNN, www.cnn.com/freedomproject (last visited Apr. 22, 2017).

42. *Id.*

43. *Id.*

44. See Leif Coorlim & Dana Ford, *Sex Trafficking: The New American Slavery*, CNN (July 21, 2015), <http://www.cnn.com/2015/07/20/us/sex-trafficking> (noting that Atlanta is a “hub” for trafficking).

45. *Id.*

46. See Lily Kuo, *Teen Prostitutes Rescued, Pimps Held, in FBI Sweep*, REUTERS (June 25, 2012), <http://www.reuters.com/article/us-usa-prostitution-child-idUSBRE85O19H20120625> (“[Pimps] lure minors in, often through social media, hold them against their will through threats to them or their families, and then traffic them through different U.S. cities.”).

47. See David A. Alexander & Susan Klein, *Kidnapping and Hostage-Taking: A Review of Effects, Coping and Resilience*, 102 J. ROYAL SOC’Y MEDICINE 16, 17–20 (discussing the mental and physical effects on adult and children victims of kidnapping and hostage situations).

48. LINDA A. SMITH ET AL., SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 32 (2009).

The number of child victims has increased domestically and internationally at exponential rates. A recent study showed that over 300,000 children in the United States are at risk of sex trafficking.⁴⁹ Children are easy targets for trafficking cells, especially children who have previously suffered some form of emotional or physical trauma.⁵⁰ National Center for Missing and Exploited Children (“NCMEC”) data shows that one in six children of the 10,000 reported missing in 2014 were victims of child sex trafficking.⁵¹ Additionally, out of those 10,000 children, sixty-eight percent were in the care of social services when they ran away.⁵² The vast number of child victims catapulted child trafficking to the forefront of the legislature, which has implemented necessary laws and preventative measures.

Studies of child sex trafficking victims are generally difficult to compile due to multiple factors—namely, the strict confidentiality of the victim.⁵³ Therefore, a few organizations have researched other areas, such as state legislation and law enforcement task force procedures, to better understand trafficking. For example, the Polaris Project completed a twelve-point study on which states implemented better trafficking prevention programs using legislation and penalties against traffickers, legislation and services for minors as victims, law enforcement task forces, and available hotlines as data.⁵⁴ Among the worst rated states for providing any of these services were South Dakota, New Hampshire, Delaware, Colorado, and Utah for

49. Rodney Frelinghuysen, *Human Trafficking: New Jersey’s “Unseen Prisons” a Tragic Situation*, OBSERVER TRIB. (Feb. 13, 2015), http://www.newjerseyhills.com/observer-tribune/opinion/columns/commentary-human-trafficking-new-jersey-s-unseen-prisons-a-tragic/article_0e875e99-c10c-51bf-9693-dd51b47e7518.html; see also, SMITH ET AL., *supra* note 48, at 4.

50. See SMITH ET AL., *supra* note 48, at 31 (noting that a study out of Texas found that “93 to 95% of commercially exploited children had been previously physically and sexually abused”).

51. *Child Sex Trafficking*, NAT’L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.org/lin6> (last visited Apr. 22, 2017).

52. *Id.*

53. MICH. COMM’N ON HUMAN TRAFFICKING, 2013 REPORT ON HUMAN TRAFFICKING 21 (2013), https://www.michigan.gov/documents/ag/2013_Human_Trafficking_Commission_Report_439218_7.pdf.

54. POLARIS PROJECT, SEE HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012? (2012), <https://polarisproject.org/sites/default/files/2012-State-Ratings.pdf>.

the lack of harsh penalties for traffickers and programs for aiding victims.⁵⁵

The Polaris Project also negatively rated the above states specifically for not providing protection for child victims of sex trafficking.⁵⁶ Children are at high risk for sexual exploitation because of their powerlessness, and juvenile delinquents or children in government care are at an even higher risk.⁵⁷ When the state removes a child from a home for things like domestic violence, sexual molestation, caregiver neglect, and abandonment the child enters foster care with an egregious amount of psychological damage.⁵⁸ Other factors, such as immigration and poverty, increase the vulnerability of foster care children.⁵⁹ Many juvenile delinquents are prior victims of trafficking who failed to receive adequate care after being sexually exploited.⁶⁰ The Polaris Project study is a useful guide for state governments to provide better legislation to protect these children.

III. THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000: TVPA AND OTHER DOMESTIC HUMAN TRAFFICKING LEGISLATION

In 2000, Congress passed the TVPA, which defined trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”⁶¹ TVPA also differentiated trafficking of minors from trafficking of adults as a “severe form of trafficking.”⁶²

In 2003, Congress amended the TVPA to the Trafficking Victims Protection Reauthorization Act (“TVPRA”).⁶³ TVPRA was

55. *Id.*

56. *Id.*

57. *Risk Factors and Indicators*, NAT’L CTR. ON SAFE SUPPORTIVE LEARNING ENV’TS, <http://safesupportivelearning.ed.gov/human-trafficking-americas-schools/risk-factors-and-indicators> (last visited Apr. 22, 2017).

58. *Id.*

59. ANNE P. WILSON, *TRAFFICKING RISKS FOR REFUGEES* 8 (2011), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1003&context=humtraffconf3>.

60. CHILD WELFARE INFO. GATEWAY, *CHILD WELFARE AND HUMAN TRAFFICKING* 8 (July 2015), <https://www.childwelfare.gov/pubPDFs/trafficking.pdf>.

61. Trafficking Victims Protection Act, 22 U.S.C. § 7102(9)(A) (2000).

62. *Id.* § 7102(8)(A).

63. Trafficking Victims Protection Reauthorization Act, H.R. 2620, 108th Cong. § 1 (1st Sess. 2003) [hereinafter TVPRA].

amended again in 2008.⁶⁴ Importantly, the 2008 amended TVPRA allocated state funding for minor victims within the Guardian Ad Litem Program.⁶⁵ This was a crucial step as many child victims are already in foster care or have been removed from a caregiver who was the trafficker and placed within the department. The TVPRA also provided state funding for anti-trafficking programs⁶⁶ and training programs for government employees on how to identify child victims.⁶⁷

Sex trafficking of minors in the TVPRA is defined as when the defendant

knowingly in or affecting interstate or foreign commerce . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means [the victim] . . . [and that the defendant committed such act] knowing, or in reckless disregard of the fact . . . that [the victim] has not attained the age of 18 years and will be caused to engage in a commercial sex act.⁶⁸

Often a child victim of sex trafficking is also a victim of forced labor. TVPRA expanded protection for child victims of sex trafficking by criminalizing forced labor as “trafficking.”⁶⁹ The statute defines a defendant as guilty of forced labor if he knowingly provides or obtains the labor or services of a person by force, threats of force, physical restraint, serious harm, abuse, or threats of harm and abuse.⁷⁰ TVPRA imposed penalties for child trafficking when a trafficker may not have actual knowledge of the age of the person, but if there was reckless disregard of age and the person is under eighteen.⁷¹

64. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 102, 122 Stat. 5044, 5045 (codified as amended at 22 U.S.C. §§ 7101–07 (2012)).

65. H.R. REP. NO. 101-430, at 26 (2007).

66. William Wilberforce Trafficking Victims Protection Reauthorization Act, § 105(a).

67. *Id.*

68. 18 U.S.C. § 1598(a) (2012).

69. *Id.* § 1589.

70. *Id.* § 1589(a).

71. *Id.* § 1591(c).

Recent case law regarding sex trafficking continued to shape the TVPRA, such that it was amended once again. First, a sex act does not actually have to occur.⁷² In *United States v. Garcia-Gonzalez*, the court held that even though one of the illegally transported and imprisoned female children never engaged in sexual intercourse with a patron of the trafficker's bar,⁷³ the defendant was still convicted of sex trafficking.⁷⁴ The "future verb tense of the phrase 'will be caused'—which precedes 'to engage in a commercial sex act'—indicates that a sex act does not have to occur to satisfy the elements of the child-sex-trafficking offense."⁷⁵

A defendant can be convicted of sex trafficking if the defendant had a reasonable opportunity to observe the victim.⁷⁶ In *United States v. Robinson*, the court held where a defendant has a reasonable opportunity to view the victim, there is "strict liability with regard to the defendant's awareness of the victim's age."⁷⁷ The child victim was seventeen at the time of the sex act, and the defendant recklessly disregarded the victim's age.⁷⁸ The defendant does not have to have actual knowledge that the victim was a minor, and the prosecution only has to show the defendant had a reckless disregard for the victim's age.⁷⁹

However, a defendant can be convicted of sex trafficking even without a reasonable opportunity to observe the victim and find out the victim's age.⁸⁰ In *United States v. Phea*, the defendant met a fourteen-year-old girl online and subsequently provided for transportation from her home to his location.⁸¹ He engaged in sexual intercourse with the girl, took her to a hotel where he housed other prostitutes, and provided her with new clothes and a cell phone that was linked to a prostitution website.⁸² When the victim made it clear she did not wish to work as a prostitute, she was beaten and tased.⁸³ If the government can prove beyond a

72. *United States v. Garcia-Gonzalez*, 714 F.3d 306, 312 (5th Cir. 2013).

73. *Id.* at 312–14.

74. *Id.* at 314.

75. *Id.* at 312.

76. *United States v. Robinson*, 702 F.3d 22, 26 (2d Cir. 2012).

77. *Id.*

78. *Id.* at 27.

79. *United States v. Mozie*, 752 F.3d 1271, 1286 (11th Cir. 2014).

80. *United States v. Phea*, 755 F.3d 255, 261 (5th Cir. 2014).

81. *Id.* at 258–59.

82. *Id.* at 259.

83. *Id.*

reasonable doubt that a defendant had a reasonable opportunity to observe a “recruited” person, then the government does not have to prove that a defendant had actual knowledge that the victim was under the age of eighteen.⁸⁴ However, a conviction may be obtained if a defendant recklessly disregards a victim’s age, regardless of whether there was a reasonable opportunity to observe the victim.⁸⁵

A. The Trafficking Victims Protection Reauthorization Act of 2013

After 2008, incidents of sex trafficking continued to increase domestically, and further amendment to the TVPRA became necessary. In 2012, President Obama made a plea for legislation regarding trafficking to address the four Ps:

- 1) *Preventing* trafficking by raising awareness among vulnerable populations, leading by example, and educating the public and first responders;
- 2) *Prosecuting* traffickers through strengthened investigations and enforcement tools;
- 3) *Protecting* survivors through comprehensive social services, family reintegration, and immigration services; and
- 4) *Partnering* with civil society, state and local government, the private sector, and faith-based organizations to maximize resources and outcomes.⁸⁶

The focal points of President Obama’s plea were to use technology in trafficking prevention; offer better services for victims, such as pro bono legal help; and to implement more effective documentation of domestic trafficking.⁸⁷

In 2013, President Obama supported Congress in passing the Violence Against Women Reauthorization Act of 2013

84. *Id.* at 261.

85. *Id.* at 261–62.

86. Press Release, The White House, Office of the Press Sec’y, The Obama Administration’s Record on Human Trafficking Issues (Apr. 9, 2013), <https://obamawhitelibrary.archives.gov/the-press-office/2013/04/09/obama-administration-s-record-human-trafficking-issues> (emphasis added).

87. *Id.*

(“VAWRA”), amending the TVPRA.⁸⁸ VAWRA changed TVPRA by “developing, implementing, or enhancing Sexual Assault Response Teams . . . [and] developing and strengthening policies, protocols, best practices, and training for law enforcement agencies and prosecutors relating to the investigation and prosecution of sexual assault cases and the appropriate treatment of victims.”⁸⁹ The legislation pushed to better educate government employees and to facilitate a reduction in repeat trafficking.⁹⁰ To receive federal funding, a state implementation plan must be detailed and show allocation of funds within states agencies, victim services, expected results of the proposed plan, and “demographic characteristics of the populations.”⁹¹ This was especially important because individual state agencies could appropriately address local population needs.

Specifically, VAWRA added statewide funding for intervention services for minors who are victims of sex trafficking,⁹² new procedures for identifying victims, and prevention education for high-risk youth,⁹³ later codified in statute. Identification and documentation of minors remain confidential, but VAWRA called for states to apply better confidential information sharing practices.⁹⁴

The most important change VAWRA made to the TVPRA regarded prostitutes who receive criminal charges, especially those under the age of eighteen. Historically, minors were sexually exploited yet still criminally prosecuted.⁹⁵ VAWRA, codified later in statute, changed the definition of human trafficking to declare that a person under the age of eighteen years who performs any sexual activity within a situation of trafficking is a victim and not an offender.⁹⁶

88. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (codified as amended in scattered sections of 22 U.S.C. and 42 U.S.C.); see also Nia-Malika Henderson, *Obama Signs New Violence Against Women Act*, WASH. POST, Mar. 8, 2013, at A2.

89. 42 U.S.C. § 3796gg(b)(15)–(16) (2012).

90. *Id.* § 3796gg(a).

91. *Id.* § 3796gg-1(i).

92. *Id.* § 14043c (repealed 2013).

93. *Id.* §§ 14043a-1(a), 14043b.

94. *Id.* § 14043b.

95. Mary Graw Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, 21 DUKE J. GENDER L. & POL'Y 289, 289–90 (2014).

96. 22 U.S.C. §§ 7101(9)–(15) (2012); see also Leary, *supra* note 95, at 291.

After VAWRA was codified, many state laws were in conflict as to whether a minor was classified as a criminal instead of a victim.⁹⁷ A child arrested alongside the pimp or the adult was considered a prostitute instead of a trafficking victim.⁹⁸ Federal legislation preempts state legislation where interstate commerce is affected, and sex trafficking affects interstate commerce through various means: technology, travel of traffickers, buyers, and minors, and sales across state lines.⁹⁹ However, statewide legislation needed to be amended.

For example, earlier state statutes in Virginia, Pennsylvania, Nevada, Maine, Hawaii, and Colorado did not provide separate protection for minor victims of trafficking.¹⁰⁰ These states applied victimization of sex trafficking only to cases where “force, fraud, or coercion is proven. This . . . limits the protection of minors who are exploited for commercial sex[,] . . . subverts prosecution and punishment of those who traffic minors for commercial sex[,] . . . [and] diminishes trafficking prevention efforts.”¹⁰¹

However, since the TVPRA was passed in 2008, many states have already begun to amend trafficking laws.¹⁰² In 2011, Wisconsin enacted legislation to prevent child victims of sex trafficking from being prosecuted for prostitution.¹⁰³ The statute provided a “victim of a violation of [sex trafficking] . . . an affirmative defense for any offense committed as a direct result of the violation.”¹⁰⁴ In addition, a convicted trafficker faces up to a forty-year prison sentence where the trafficker “knowingly attempts to recruit, entice, provide, obtain, or harbor . . . any child for the purpose of commercial sex acts.”¹⁰⁵ Wisconsin attempts to

97. NICOLE HAY, SHARED HOPE INT’L, DOMESTIC MINOR SEX TRAFFICKING: IDENTIFICATION OF DOMESTIC MINOR SEX TRAFFICKING VICTIMS AND THEIR ACCESS TO SERVICES 6 (2008), http://sharedhope.org/wp-content/uploads/2012/09/Dallas_PrinterFriendly2.pdf.

98. *Id.* at 14–15.

99. See U.S. CONST. art. I, § 8; Naomi Harlin Goodno, *When the Commerce Clause Goes International: A Proposed Legal Framework for the Foreign Commerce Clause*, 65 FLA. L. REV. 1139, 1140–41 (2013).

100. Cheryl Nelson Butler, *Making the Grade: The U.S. TIP Report & the Fight Against Domestic Child Sex Trafficking*, 67 SMU L. REV. 341, 364 n.198 (2014).

101. *Id.* at 369.

102. Leary, *supra* note 95, at 290–91.

103. WIS. STAT. §§ 939.46(1m), 948.051 (2016).

104. *Id.* § 939.46(1m).

105. *Id.* § 948.051(1).

prevent further trafficking by providing an affirmative defense for the minor and implements criminal penalties for the trafficker.¹⁰⁶

Unfortunately, statewide legislation is not uniform and remains far from perfect. Many times, the victim will not give up the name of the trafficker, even though protection is provided for the victim. The victim often chooses criminal charges instead of identifying the trafficker.

B. Age of Majority, Age of Consent, and Victim Status for Minors

The age of majority and the age of consent are two important elements regarding sexual activity. Distinguishing these terms becomes important when imposing penalties on traffickers and prostitutes, and providing protection for potential victims. The age of majority in the United States originated in the Constitution; an adult carried the right to vote and marry without parental consent.¹⁰⁷ Currently, federal statute defines a person under the age of eighteen to be a minor, in an effort to protect children from abuse and harm.¹⁰⁸ Persons under the age of sixteen are in a federally protected class, due to presumed legal incapacity based on age.¹⁰⁹ At sixteen, the legal capacity to consent, especially to any sexual activity, is not an available affirmative defense for the adult.¹¹⁰

When regarding consent to a sexual relationship between two persons, federal statute presumes legal incapacity to consent for a person under sixteen years.¹¹¹ And, any sexual activity with a minor under twelve years is defined as statutory rape as the child does not hold legal capacity to consent.¹¹² In 2004, federal age of consent was declared unconstitutional as it conflicted with state legislation.¹¹³ Therefore, current federal legislation leaves each state to provide its own statutory provisions regarding the age to consent to sexual activity.¹¹⁴

106. *Id.* § 939.46(1m).

107. U.S. CONST. amend. XV, § 1; U.S. CONST. amend. XIV, § 1.

108. 18 U.S.C. § 2256(1) (2012).

109. *Id.* § 2243(a)(1).

110. *Id.* § 2243(a), (c).

111. *Id.* § 2243(a)(1).

112. *Id.* § 2A3.1(b)(2).

113. *United States v. Detwiler*, 338 F. Supp. 2d 1166, 1167 (D. Or. 2004).

114. *Id.* at 1166–67.

The age of consent for any sexual activity may differ from the age of majority, depending on the state.¹¹⁵ Most states hold that the age of a person to consent to sexual activity is dependent on the facts and usually falls between sixteen to eighteen years of age.¹¹⁶ When prosecuting prostitution and convicting child predators, addressing the age of consent has been a primary concern. First, state courts differ in determining at what age someone can consent to sex, as well as which criminal charges a sexual offender may receive. Second, state courts differ in their interpretation of age of consent, when prosecuting prostitution, as to whether a person holds the legal capacity to consent to sexual activity.

For example, Oklahoma statutes differentiate between the two terms, regarding a sexual relationship, in an attempt to prevent sex trafficking of minors. Consider the following Oklahoma statute, where a minor is defined as anyone under the age of eighteen; however, the age of majority could differ from the age of consent:

For purposes of First Amendment analysis of statute defining offense of soliciting sexual conduct or communication with a minor by use of technology, state retained compelling interest in protecting minors from luring and abduction, sexual exploitation, child pornography, sexual abuse, human trafficking and child prostitution with respect to minors past statutory age of consent.¹¹⁷

Oklahoma legislation defines a minor to be someone under eighteen years of age, but the legal capacity to consent to a sexual relationship could be as young as sixteen years.¹¹⁸ In *Arganbright v. State*, the court held the age of majority is “the age at which an individual is recognized as an adult . . . at which a person attains full legal rights” and is to be separate from the “age

115. Jennifer Ann Drobac, *Sex and the Workplace: “Consenting” Adolescents and a Conflict of Laws*, 79 WASH. L. REV. 471, 486 (2004).

116. *Id.* at 485.

117. OKLA. STAT. ANN. tit. 21, § 1040.75 (West 2015); *Arganbright v. State*, 328 P.3d 1212, 1213 (Okla. Crim. App. 2014).

118. OKLA. STAT. ANN. tit. 21, § 1040.75(1) & n.1; *Arganbright*, 328 P.3d at 1218.

of consent.”¹¹⁹ The court opined that the age of consent is when a “person is legally capable of agreeing . . . to sexual intercourse” and, based on the facts, held it to be sixteen years.¹²⁰ The defendant (age forty) was sending sexually explicit text messages that coerced the minor (age fifteen) to eventually have sexual intercourse with the defendant once she was sixteen years of age.¹²¹ The court held that because there was sexual coercion of any nature while the child was under the age of consent, the defendant was convicted of sexual assault of a minor.¹²² The court opined further that an adult is in a position of power and control, and provisions are needed to protect a child from an abuse of this power.¹²³ At sixteen to eighteen years old, the child did not hold the legal capacity to consent to sexual activity with the adult because the solicitation began at fifteen years old.¹²⁴

Other states offer different legislation on the age of consent and sexual activity. In Florida, “[a] person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony.”¹²⁵ Florida holds the age of consent is the age of majority if the adult party is over twenty-four years of age.¹²⁶ If the adult party is under twenty-four years and the minor party is between sixteen and seventeen years, the decision will be handled on a case-by-case basis.¹²⁷

In somewhat different legislation than Oklahoma, Florida provides a younger age of consent if the defendant is within sixteen to twenty-four years of age and the State does not have a “compelling interest to prohibit sexual activity.”¹²⁸ The court in *State v. Raleigh* held that a sixteen-year-old may consent to sexual activity with another sixteen to twenty-four-year-old, if facts show

119. *Arganbright*, 328 P.3d at 1218.

120. *Id.*

121. *Id.* at 1219.

122. *Id.* at 1221.

123. *Id.*

124. *Id.* at 1218.

125. FLA. STAT. § 794.05(1) (2014).

126. *Feliciano v. State*, 937 So. 2d 818, 819 (Fla. Dist. Ct. App. 2006) (determining that despite consent from a sixteen- to seventeen-year-old child, sexual activity with an adult over twenty-four years is impermissible).

127. *See State v. Raleigh*, 686 So. 2d 621, 623 (Fla. Dist. Ct. App. 1996) (Harris, J., concurring).

128. *Id.* at 623.

the persons had legitimate reasons and consent was freely given.¹²⁹ If there are any facts present to show coercion, then the affirmative defense of consent for the actor is not appropriate.¹³⁰ Florida legislation offers protection for children against potential abuse of an older actor.

The problem in prosecuting child sex crimes is not necessarily within obvious prostitution, but in prostitution hidden as a sexual relationship. Consider a situation where the child is in the sixteen-to-eighteen-year range, sexual exploitation occurs, consent is used as an affirmative defense by the adult actor, and the minor is too psychologically traumatized to speak out. The minor may be beholden to a familial abuse situation or an adult actor who is a sex trafficker. Continuing this example, the actor forces the minor to perform sex acts, holds the minor captive, uses verbal threats of harm and abuse if the minor attempts to escape, and secretly forces the minor to perform sex acts with other “patrons” (the exchange of money can be hard to track or does not always occur). Many times, because of this trauma, the victim will not agree to help prosecute the trafficker. Therefore, consent could be used as a defense by the actor.

Age of consent regarding prostitution is more statutorily consistent among the states. Prostitution in the United States is illegal except within a few select counties in the state of Nevada.¹³¹ If a person offers sexual activity in exchange for money, it is a criminal offense.¹³² However, many states now protect a person who offers prostitution if the person is under the control of a pimp or a trafficker.¹³³ More importantly, federal legislation presumes a person under the age of majority, who offers sexual activity, lacks legal capacity and is a victim of trafficking.¹³⁴

129. *Id.*

130. *Id.*

131. NEV. REV. STAT. ANN. § 201.354 (LexisNexis 2012) (noting that prostitution is legal within a “licensed house of prostitution” only); Deborah C. England, *Prostitution in Nevada: Laws and Penalties*, NOLO, <http://www.criminaldefenselawyer.com/resources/prostitution-pimping-and-pandering-laws-nevada.htm> (last visited Apr. 22, 2017).

132. *See, e.g., Prostitution*, FINDLAW, <http://criminal.findlaw.com/criminal-charges/prostitution.html> (last visited Apr. 22, 2017).

133. Rebecca Beitsch, *More States Separate Prostitution, Sex Trafficking*, PEW CHARITABLE TR. (Oct. 21, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/10/21/more-states-separate-prostitution-sex-trafficking>.

134. *State ex rel. M.J.*, 160 So. 3d 1040, 1051 (4th Cir. 2015).

For example, Minnesota law is strict, as traffickers who solicit, induce, or promote prostitution with a person under the age of eighteen years will be prosecuted.¹³⁵ In prior legislation, the “prostitute,” regardless of age, could be convicted. Recent legislation provides victim status for a person under eighteen who “proves by a preponderance of the evidence” that the person was the subject of labor or sex trafficking.¹³⁶ Minnesota presumes that the minor is incapable of acting alone to proffer sexual activity in exchange for money.¹³⁷

Georgia defines a minor as someone under the age of eighteen, and any sexual act with a person under the age of sixteen is considered a criminal offense.¹³⁸ Interestingly, traffickers are statutorily defined by different names; any person who “pimps” or “panders” a person under the age of eighteen is criminally liable.¹³⁹ Georgia statutes impose strict penalties on someone caught pimping but does not offer as much protection for a minor between the ages of sixteen and seventeen who offers sexual activity under the pimp.¹⁴⁰

Texas has amended multiple statutes regarding crimes of a sexual nature. In previous years, Texas law held two interesting sexual assault affirmative defenses available for the defendant: (1) the defendant was married to the minor, or (2) the defendant who was “not more than three years older than the victim and at the time of the offense . . . was not required . . . to register for life as a sex offender . . . and the victim was a child of 14 years of age or older and was not a person whom the [defendant] was prohibited from marrying or purporting to marry.”¹⁴¹ Texas allowed a person of age fourteen to engage in sexual activity with a person up to seventeen years of age, as long as consent was appropriate.¹⁴² What was alarming about this provision is the lack of protection for the minor who is a victim of familial sex trafficking without a voice to deny marriage to a trafficker.

135. MINN. STAT. ANN. § 609.322 (West 2009).

136. MINN. STAT. § 609.325 (2016).

137. MINN. STAT. ANN. § 609.322.

138. GA. CODE ANN. §§ 16-6-4, 16-6-5 (2011).

139. *Id.* § 16-6-13(c)(1).

140. *Id.* § 16-6-13(b)(1).

141. TEX. PENAL CODE ANN. § 22.011(e)(1) (West 2011).

142. *Id.* § 22.011(b).

In 2008, Texas amended legislation in an attempt to correct the status of the adult actor and the victim.¹⁴³ For crimes of sexual assault, the amended statute defined a minor as under seventeen years of age.¹⁴⁴ With respect to trafficking specifically, forced labor or services of any other person was deemed criminal behavior punishable by law;¹⁴⁵ legislation also added forced “sexual conduct” within the trafficking definition.¹⁴⁶ Further, the buyer, or third-party actor, commits a felony and could be punished, if he or she solicits any person younger than eighteen years of age, regardless of “whether the actor knows the age of the person solicited at the time.”¹⁴⁷ Finally, amended statutes added “trafficking of persons” within all areas previously criminalizing child abuse and sexual assault.¹⁴⁸ While Texas law includes many harsh punishments for sex crimes, especially to minors, there are loopholes when considering the lack of victim participation.¹⁴⁹ However, the victim of trafficking who refuses to name the trafficker is a crucial element to consider.¹⁵⁰ Texas, originally at the forefront of sex trafficking prevention legislation, fell short of protecting victims by allowing traffickers to escape criminal liability, especially given the fact that many victims refuse to identify their traffickers.

Louisiana defined the age of consent to be the age of majority in prostitution.¹⁵¹ Under Louisiana law, the state has no burden of proof in showing that the minor was not a victim of sex trafficking.¹⁵² The minor may assert a lack of legal capacity to consent to sexual activity and, therefore, claim that he or she was

143. 2009 Tex. Gen. Laws 710, 710–11.

144. TEX. PENAL CODE ANN. § 22.11(c)(1).

145. *Id.* § 20A.01.

146. 2015 Tex. Gen. Laws 1499, 1500 (amending the definition of “trafficking of persons” in the Texas Code of Criminal Procedure to include sexual conduct and permit prosecutions of such trafficking under section 20A.02 of the Texas Penal Code).

147. TEX. PENAL CODE ANN. § 43.02(c)(3)(A).

148. 2015 Tex. Gen. Laws 1499, 1500.

149. Morgan Smith et al., *She Was a Sex-Trafficking Victim, but Texas Law Labeled Her a Pimp*, TEX. TRIB. (Feb. 16, 2017, 12:01 AM), <https://www.texastribune.org/2017/02/20/w-hat-texas-can-do-help-child-sex-trafficking-victims>.

150. Morgan Smith et al., *How Texas’ Crusade Against Sex Trafficking Has Left Victims Behind*, DALL. NEWS (Feb. 16, 2017), <http://www.dallasnews.com/news/texas-legislature/2017/02/16/texas-crusade-sex-trafficking-left-victims-behind>.

151. LA. STAT. ANN. § 14:80 (2012).

152. LA. CHILD. CODE ANN. art. 804(3) (2014); State *ex rel.* M.J., 160 So. 3d 1040, 1045–46 (4th Cir. 2015).

trafficked at the time of the sex act.¹⁵³ This protection falls within Louisiana's safe harbor provision:

The legislature finds that arresting, prosecuting, and incarcerating victimized children serves to re-traumatize them and to increase their feelings of low self-esteem, which only makes the process of recovery more difficult. Both federal and international law recognize that sexually exploited children are the victims of crime and should be treated as such. Therefore, sexually exploited children should not be prosecuted for criminal acts related to prostitution. . . . This is to be accomplished by presuming that any child engaged in prostitution, prostitution by massage, or crime against nature by solicitation is a victim of sex trafficking and providing these children with the appropriate care and services where possible.¹⁵⁴

The statute holds a presumption that a minor does not have legal capacity to consent to sex and is therefore most likely acting under coercion of a trafficker.¹⁵⁵ The minor is considered a victim of a crime and not criminally liable for sexual activity.¹⁵⁶

Minors, especially those who have already been victimized by abuse, sexual abuse, neglect, or abandonment, are easy prey for trafficking under the guise of prostitution. Prostitution of children remains a major domestic problem within the United States and is one that the age of consent and the age of majority are closely intertwined with.

C. Technological Effects on TVPRA and Other Acts

In an attempt to better protect the exploitation of children, Congress passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003

153. See LA. CHILD. CODE ANN. art. 725 (noting that a child is presumed to lack capacity to consent to prostitution).

154. *Id.*

155. *Id.*

156. *Id.*

(“PROTECT Act”).¹⁵⁷ This act offered greater punishment for persons who sexually abuse or kidnap children (Title I), removed the statute of limitations on prosecuting child sex crimes (Title II), amended the prior AMBER Alert Act (Title III), and strengthened penalties for child pornography (Title IV).¹⁵⁸

The goal of the AMBER Alert Act was to create more efficient communication among various states in order to track down missing or kidnapped children.¹⁵⁹ NCMEC reported 462,567 missing children in 2013 and 466,949 reported missing children in 2014.¹⁶⁰ Also, the Missing Children’s Assistance Act revamped the earlier “Cyber Tipline” that gave “online users . . . an effective means of reporting Internet-related child sexual exploitation.”¹⁶¹ In 2014, NCMEC reported the CyberTipline had 1.1 million tips of “[a]pparent child sexual abuse images; [o]nline enticement, including ‘sextortion’; [c]hild sex trafficking; [and] [c]hild sexual molestation.”¹⁶² In 2010, NCMEC started reporting public websites that contained child sexual abuse images. NCMEC then notified electronic service providers of these sites in order to track child pornography and aid in preventing further abuse.¹⁶³

In 2012, Congress amended the PROTECT Act in order to specifically target the creation and distribution of child pornographic materials.¹⁶⁴ Codified under federal statute, the penalty for transporting a person under the age of eighteen across state lines with the intent to have the person engage in “any sexual activity” was increased to a minimum of ten years to life imprisonment.¹⁶⁵ In an attempt to prevent exploitation of children internationally, the statute expanded to “[a]ny U.S. citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another

157. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003).

158. *Id.*

159. 42 U.S.C. § 5791 (2012); U.S. DEP’T OF JUSTICE, AMBER ALERT TIMELINE 1, <https://www.amberalert.gov/pdfs/AMBERAlertTimeline-508c.pdf> (last visited Apr. 22, 2017).

160. *Key Facts*, NAT’L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.com/KeyFacts> [<http://web.archive.org/web/20160114152257/http://www.missingkids.com/KeyFacts>] (last visited Apr. 5, 2017).

161. 42 U.S.C. § 5773(b)(1)(P).

162. *Key Facts*, *supra* note 160.

163. *Id.*

164. 18 U.S.C. § 2252 (2012).

165. *Id.* § 2423(a).

person,” violators of which can face penalties and imprisonment for up to thirty years.¹⁶⁶

As technology advances, sexual exploitation of children increases exponentially—namely, due to vulnerability.¹⁶⁷ Children have readily available access to the Internet through schools, phones, libraries, friends, and family members. Traffickers prey on children’s social media accounts—such as Facebook, Instagram, Twitter, and Snapchat—especially if the account lacks privacy settings.¹⁶⁸ Traffickers create entire profiles posing as a youth, engaging the unaware child into communication and eventually meeting in person.¹⁶⁹ The risk of being kidnapped upon a physical meeting is great, and many times the child will not disclose the scheduled meeting with an adult.

Backpage.com is a website where users can purchase prostitution within its adult social section.¹⁷⁰ Prostitutes create fictitious names to lure patrons, and the patrons pay for “services” directly on the site.¹⁷¹ In 2013, three adult women were arrested for sex trafficking a sixteen-year-old girl, and the women used Backpage.com to advertise her.¹⁷² The women recruited the minor in Pennsylvania, created an Internet screen name, “Cherry Red,” and drove her across various state lines to buyers who paid on Backpage.com.¹⁷³ Advertising sex using different terminology on website pathways is a lucrative marketing tool for traffickers, especially when sexually exploiting minors.

Recently, major credit card companies removed their connection with Backpage.com after various law enforcement

166. *Id.* § 2423(c).

167. Leary, *supra* note 95, at 291.

168. *Id.* at 309.

169. *Id.* at 311 (citing *United States v. Werlein*, 664 F.3d 1143, 1145 (8th Cir. 2011) (noting that defendant used a fake online profile to befriend adolescent girls and induce them to meet for sex)).

170. Alastair Jamieson & Tracy Connor, *Backpage Pulls Adult Ads, Blames “Censorship” After Report on Sex Trafficking, Prostitution*, NBC NEWS (Jan. 10, 2017, 5:33 AM), <http://www.nbcnews.com/news/us-news/backpage-pulls-adult-ads-blames-censorship-after-report-sex-trafficking-n705056>.

171. *Id.*

172. Press Release, U.S. Att’y’s Office, W. Dist. N.Y., *Superseding Indictment Handed Down in Sex Trafficking and Transportation Cases* (July 30, 2014), <https://www.justice.gov/usao-wdny/pr/superseding-indictment-handed-down-sex-trafficking-and-transportation-case>.

173. *Id.*

offices reported the site as encouraging sex trafficking.¹⁷⁴ Adult sex workers claim that blocking the usability of Backpage.com is a violation of free speech because only escort services are being offered, and the site gives lower-income escorts a safe place to advertise.¹⁷⁵ The workers can post independently, and the chances of being controlled by a pimp on a street corner are supposedly less likely.¹⁷⁶ However, with the sexual exploitation of children on the rise in the United States, websites like this only facilitate trafficking and should be monitored.

*D. TVPRA and INA: Trafficking and Immigrant Status
in the United States*

Immigration has been a long and heated political debate in the United States, fueled even more by international human trafficking present on American soil. An initial goal of TVPA in 2000 was to protect immigrants who were victims to trafficking.¹⁷⁷ When reauthorized in 2008, TVPRA added extra protection services for immigrants—namely, immigrants under the age of eighteen.¹⁷⁸

Immigrant children smuggled into the United States are defined within TVPRA and the Immigration and Nationality Act (“INA”) as “under the age of 18, who have no lawful immigration status in the United States and have no parent or legal guardian in the United States to care for them.”¹⁷⁹ The Department of Justice (“DOJ”) considers an undocumented, immigrant child an “Unaccompanied Child” (“UC”).¹⁸⁰ Historically, the INA did not

174. Hilary Hanson, *Sex Workers Say Credit Card Bans on Backpage.com Do More Harm than Good*, HUFFINGTON POST (July 30, 2015, 10:41 AM), http://www.huffingtonpost.com/entry/backpage-credit-cards-sex_us_55b96ed3e4b0af35367a4530.

175. *Id.*

176. *Id.*

177. 12 U.S.C. § 7101(a) (2012).

178. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 424 (2008).

179. News Release, U.S. Dep’t of Justice, Unaccompanied Alien Children in Immigration Proceedings (Apr. 22, 2008) (on file with the *Washington and Lee Journal of Civil Rights and Social Justice*).

180. *Hearing on the 2014 Humanitarian Crisis at Our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later Before S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 1 (2015) [hereinafter *Humanitarian Crisis*] (statement of Joseph E. Langlois, Associate Director, Refugee, Asylum, and International Operations Directorate, United States Citizenship & Immigration Services), <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/2014-humanitarian-crisis-our-border-rev>

consider UCs as children of the United States but as children of their nationality.¹⁸¹ The lack of documentation and immigrant status pose a huge problem, especially regarding kidnapped children who have experienced immense trauma.

Traffickers coerce foreign children living in extreme poverty with promises of gifts and money. In Texas, a defendant illegally transported four young girls from Honduras after the girls were promised nice clothing and money by waitressing in his restaurant.¹⁸² In reality, the girls were forced to wear revealing clothing in a bar, consume alcohol, and offer sex to the customers, and any money earned went directly to the trafficker.¹⁸³ The immigrant girls lived in a prison with no identity, no means to escape, no clothing or money, and no ability to contact their families in Honduras.¹⁸⁴ The language barrier, coupled with post-traumatic stress from kidnapping, can prevent reunification of the child and parent.

The INA, in combination with TVPRA, included measures of protection for the immigrant victims of trafficking by allowing them to remain in the United States as long as the INA shows proof of severe trafficking.¹⁸⁵ The reauthorized, 2008 TVPRA added more protection for immigrant trafficking victims by offering “outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers.”¹⁸⁶

However, the largest changes in statutory protection for immigrant victims of trafficking were seen in 2013 with VAWRA.¹⁸⁷ First, the United States offered asylum to trafficking victims from other countries in order to protect the victim and families, as many of the victims are children.¹⁸⁸ Second, federal statute grants

iew-governments-response-unaccompanied-minors-one-year-later-senate-committee-homeland-security-july-2015-associate-director-joseph-e-langlois.

181. 8 U.S.C. § 1101 (2008).

182. *United States v. Garcia-Gonzalez*, 714 F.3d 306, 311 (5th Cir. 2013).

183. *Id.*

184. *Id.*

185. 22 U.S.C. § 7105(c)(3) (2012).

186. *Id.* § 7105(a)(1)(F)(i).

187. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 110, 110–11 (2013).

188. *Id.* at 111.

protection, asylum, and medical assistance while attempting to reunify the immigrant child with the caregiver.¹⁸⁹

In an attempt to prevent trafficking on a global scale, VAWRA provided “measures to establish the identity of local populations, including birth registration, citizenship, and nationality”¹⁹⁰ and established documenting measures to determine “[w]hether the government of the country has made serious and sustained efforts to reduce the demand for commercial sex acts and participation in international sex tourism by nationals of the country.”¹⁹¹ The United States was to “urgently” work with other nations in trafficking prevention by sharing information compiled regarding trafficked victims, creating education programs for victims, and forming domestic law enforcement procedures with other nations in hopes of preventing sex trafficking on a global scale.¹⁹² The creation of a uniform, confidential database between the United States and other nations will facilitate a quicker response to adequately protect immigrants in the United States and children from the United States who have been abducted to other countries.

Finally, VAWRA attempted to fight sex tourism on a global scale in order to prevent domestic trafficking.¹⁹³ Training, job counseling, educational programs for victims, and promotion of international television and radio programs to raise global awareness were a few of the guidelines.¹⁹⁴

Since the newly awarded asylum protection was reauthorized under VAWRA, DOJ data shows promising statistics. The U.S. Citizenship and Immigration Services (“USCIS”) and the U.S. Customs and Border Protection (“CBP”) follow guidelines within the TVPRA and the INA to better identify and document UCs and to provide more effective protective services.¹⁹⁵ Recent studies within the DOJ have proved the effectiveness of the amendments to TVPRA:

189. 22 U.S.C. § 7105(c)(1).

190. *Id.* § 7106(b)(3).

191. *Id.* § 7106(b)(11).

192. *Id.* §§ 7103(a), 7105.

193. *Id.* § 1704.

194. *Id.*

195. *Humanitarian Crisis, supra* note 180, at 2.

Statistics on Asylum Applications Filed by
Unaccompanied Children

Overall Trends: FY 2009 to present

USCIS has received a total of 13,004 asylum applications filed by UCs apprehended by CBP since Fiscal Year 2009, when the TVPRA was first implemented. The table below shows that this total represents only six percent of the number of UCs apprehended by CBP during this period.

UC Asylum Cases Filed by Apprehension Year			
Year	UC Apprehensions by CBP	New Asylum Cases Filed by UCs	Percentage
FY 2009	19,819	431	2%
FY 2010	19,173	593	3%
FY 2011	17,786	534	3%
FY 2012	27,053	1235	5%
FY 2013	41,908	2753	7%
FY 2014	73,471	6990	10%
FY2015–05/31	22,869	468	2%
TOTAL	222,079	13,004	6% ¹⁹⁶

The data shows that with an increase in undocumented minor immigrant victims, the United States offered an increase in asylum protection—from two percent in 2009 to ten percent in 2014.¹⁹⁷ Asylum applications can take months for approval.¹⁹⁸ From October 1, 2013, to July 31, 2014, “7,041 [undocumented minors] applied for asylum with USCIS under the TVPRA . . . [and the] USCIS has adjudicated 3887 of their cases, approving 1616 for an approval rate of 41.6%.”¹⁹⁹ In July 2015, there were 2993 cases still awaiting approval.²⁰⁰

196. *Id.* at 4.

197. *Id.*

198. *Id.*

199. *Id.* at 5.

200. *Id.*

Another available protection for immigrant children victims of trafficking is within the Special Immigrant Juvenile (“SIJ”) department.²⁰¹ The protection applies to “foreign-born, non-U.S. citizen or lawful permanent resident children present in the United States who have been abused, neglected, or abandoned by a parent.”²⁰² However, it is only applicable to “children . . . subject to court proceedings under state law.”²⁰³ Through SIJ, these children can get a visa, access further government protection, and reunite with a caregiver, if possible.²⁰⁴ A recent study by the DOJ shows:

SIJ Status: Receipts, Approvals, Denials—FY 14–FY 15 (through May)			
FISCAL YEAR	RECEIPTS	APPROVALS	DENIALS
2014 Totals	5,817	4,605	245
2015 Totals	6,814	5,257	198 ²⁰⁵

This data shows a small improvement in protective services for immigrant minor victims of trafficking, as long as they are already within the court system. However, the children who are not under SIJ still remain powerless victims.

Unfortunately, there are children within the SIJ not granted extended asylum. To grant an immigrant child permanent residency within the United States after situations of abuse, the SIJ requires a court order declaring “an alien minor dependent . . . [and] it would not be in the alien child’s best interest to be returned to their country of origin.”²⁰⁶ In the case *In re B.Y.G.M.*, the minor (who was seventeen years of age at the time) fled from her father in El Salvador to live with her mother in the United States after suffering abuse and death threats in El

201. *Id.*

202. *Id.*

203. *Id.*

204. *Special Immigrant Juveniles (SIJ) Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status> (last updated Oct. 12, 2016).

205. *Humanitarian Crisis*, *supra* note 180, at 6.

206. *In re B.Y.G.M.*, 176 So. 3d 290, 292 (Fla. Dist. Ct. App. 2015) (citing 8 U.S.C. § 1101(a)(27)(J)(i) (2012)).

Salvador.²⁰⁷ However, because the child had no contact with the father while residing with her mother within the United States, there was not a “present threat” of immediate abuse and harm from the father to the child.²⁰⁸ Therefore, the minor was not granted government protection through the SIJ.²⁰⁹

Another goal of trafficking prevention is to protect minor immigrant victims within the United States and immigrations in nations around the world. Recruiters from other countries enter the United States to lure victims back to their country.²¹⁰ Upon entering foreign soil with the recruiter, the victims are immediately enslaved. The Trafficking in Persons report (“TIP”) identifies trafficking on a global scale.²¹¹ In 2015, TIP reported that “Tier Three” countries had the highest incidence of victims.²¹² One country included in “Tier Three” is Thailand, which currently “does not . . . comply with the minimum standards for the elimination of trafficking.”²¹³ Corruption within the Thai government directly conflicts with the United States’ sex trafficking prevention programs.²¹⁴

President Obama urged all nations to work together to prevent human trafficking and recommended penalties for those nations that do not.²¹⁵ On July 16, 2015, President Obama nominated Assistant United States Attorney Susan Coppedge as

207. *Id.* at 291.

208. *Id.* at 293 (citing *B.C. v. Dep’t of Children & Families*, 846 So. 2d 1273, 1274 (Fla. Dist. Ct. App. 2003)).

209. *Id.*

210. *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, AM. CIV. L. UNION, <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states> (last visited Apr. 22, 2017).

211. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (2015), <https://www.state.gov/documents/organization/245365.pdf>; U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 8* (2012), <https://www.state.gov/documents/organization/192587.pdf>; U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2–3* (2010), <https://www.state.gov/documents/organization/142979.pdf>.

212. *TIP Report: A Harsh Picture*, BANGKOK POST (July 29, 2015), <http://www.bangkokpost.com/print/637492>.

213. *Id.*

214. *Id.*

215. Press Release, The White House, Office of the Press Sec’y, *supra* note 86; *see also* 22 U.S.C. § 7103(a) (2012) (“The President shall establish an Interagency Task force to Monitor and Combat Trafficking.”).

Ambassador-at-Large in an attempt to coordinate trafficking prevention with other countries.²¹⁶

Combining efforts for victim protection and trafficking prosecution with many countries is essential; trafficking is an international problem due to the traffickers transporting and harboring victims across borders to multiple locations.²¹⁷ The majority of child trafficking victims within the United States are citizens, not immigrants.²¹⁸ However, addressing child trafficking domestically and internationally is necessary to prevent further sex trafficking of children.

IV. THE “RE-HOMING” OF CHILDREN HAS EVOLVED INTO AN UNDERGROUND FORM OF TRAFFICKING

Historically, many states offered a quick solution for parents to give up parental rights to a family member, known as kinship adoption.²¹⁹ Kinship adoption was a solution for the child to remain within the family where parental rights were in question.²²⁰ The child’s close family members could temporarily or permanently adopt the child without terminating parental rights.²²¹ Kinship adoption was to benefit the best interest of the child by eliminating major disruption and allowing the adoptive family member legal rights to provide care for the child.²²² Kinship adoption was meant to be a fairly easy process for a close family member to obtain legal custody of a child through power of

216. Press Release, The White House, Office of the Press Sec’y, President Obama Announces More Key Administration Posts (July 15, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/07/15/president-obama-announces-more-key-administration-posts>.

217. U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS, at 37–38, U.N. Sales No. E.14.V.10 (2014).

218. S. Res. 340, 113th Cong. (2014); Press Release, The White House, Office of the Press Sec’y, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012), <http://www.obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

219. See, e.g., MARK S. GURALNICK, GURALNICK’S NEW JERSEY FAMILY LAW ANNOTATED 547 (2015–2016).

220. *Id.*

221. *Id.*

222. *Id.*

attorney.²²³ This was meant to lessen the burden on the family and help facilitate a permanent and stable home for the child.²²⁴

An alarming trend in kinship adoption practices has recently been uncovered and brought to public attention. Some individuals who adopt or foster children use kinship adoption to dispose of custody and parental responsibilities for various reasons, often because the child exhibits behavioral problems.²²⁵ Parents can offer and sell the child via the Internet.²²⁶ “Through Yahoo and Facebook groups, parents and others advertise the unwanted children and then pass them to strangers with little or no government scrutiny, sometimes illegally . . . children are treated as chattel.”²²⁷ This trend of adopting-out unwanted, problematic children became to be known as “re-homing.”²²⁸

Re-homing occurs when a parent secures a “basic ‘power of attorney’ document—a notarized statement declaring the child to be in the care of another adult.”²²⁹ The parent fills in the new caregiver’s name based on their response to the advertisement.²³⁰ In re-homing, the new caregiver is not a close family relative and is usually a stranger to both the parent and the child.²³¹ After responding to the advertisement, the new caregiver sets up a time to take the child from the parent.²³² The parent passes over the child with the power of attorney document.²³³

This transfer is problematic for multiple reasons. First, the child advertised usually has severe behavioral, emotional, or

223. *See id.* at 547–48 (“Kinship legal guardian’ means a caregiver who is willing to assume care of a child due to parental incapacity with the intent to raise the child to adulthood.”); *id.* at 669 (“[W]ith the consent of the other parent . . . by a properly executed power of attorney, [a parent] may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child . . .”).

224. *Id.* at 547.

225. Megan Twohey, *Americans Use the Internet to Abandon Children Adopted from Overseas*, REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part1>.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *See id.* (discussing the simple process of signing and notarizing a power of attorney to transfer the child).

231. *Id.*

232. *Id.*

233. *Id.*

physical impairments, which is often the very reason for the proposed sale.²³⁴ Second, the new caregivers generally have little or no training for providing care for a child with behavioral, emotional, or physical problems.²³⁵ Even a caregiver with originally good intentions may not be able to sustain the burden of caring for the child. Further, there are very limited resources for the caregiver to gain assistance, due to the unconventional transfer of parental rights.²³⁶

Re-homing, while possibly an innocent practice at inception, became a pathway for human trafficking.²³⁷ Children advertised and sold on the Internet are prime targets for trafficking due to the ease of transfer and lack of documentation.²³⁸ Namely, underground sex trafficking operations take full advantage of securing legal rights to vulnerable, unwanted children.

On Yahoo.com, a group called “Adopting from Disruption” completed a study on the website’s popular “advertisement” page, which has since been shut down by Yahoo.²³⁹ Over a span of five years and a total of 5029 posts, the group reported that a child-for-sale advertisement occurred on average once per week.²⁴⁰ Out of those reported advertisements, the approximate ages of the children ranged from six to fourteen, with most of the adoptees from Russia, China, Ethiopia, and Ukraine.²⁴¹ On a disturbing note, a Haitian child was advertised multiple times at fourteen, fifteen, and sixteen years of age.²⁴²

An even greater problem with lack of documentation of the child transfer is locating the child in the future, especially when the trafficker crossed state lines to procure the sale. Very little state procedures were in place to document a re-homing sale, and therefore the state lacked the ability to track the child once

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

the trafficker took the child across state lines.²⁴³ More and more often, the child advertised on the Internet for re-homing is then trafficked or abused.²⁴⁴

As the practice of re-homing evolved into trafficking, public outcry demanded legislation reform.²⁴⁵ The Interstate Compact on the Placement of Children (“ICPC”) regulated the transfer of children from caregivers.²⁴⁶ “The agreement requires that if a child is to be transferred outside of the family to a new home in a different state, parents notify authorities in both states.”²⁴⁷ States varied in terms of punishment if ICPC standards were violated, and also varied on which party to the transaction should be penalized.²⁴⁸

An example of varying adoptive procedures that resulted in punishing the parent was seen in recent case law. In Tennessee, a woman adopted a seven-year-old boy from a Russian orphanage through Russian adoption procedures.²⁴⁹ The orphanage declined to inform the woman that the child suffered from severe behavioral and emotional health problems.²⁵⁰ As a result, the woman was unequipped to provide adequate care for the child.²⁵¹ The woman placed the child on a plane back to Russia after only six months.²⁵² She pinned a letter to the boy’s chest stating he had severe emotional problems and that she no longer wanted to care for him.²⁵³ The court held the woman was liable for child support

243. See Leslie A. Gordon, *States Start to Crack Down on Parents “Re-Homing” Their Adopted Kids*, A.B.A. J. (Dec. 1, 2014, 5:20 AM), http://www.abajournal.com/magazine/article/states_start_to_crack_down_on_parents_re_homing_their_adopted_kids?utm_source=internal&utm_medium=navigation&utm_campaign=most_read (stating that adoption re-homing is “largely unregulated” and “oversight is limited”).

244. See *Bolster “Re-Homing” Solutions*, POST & COURIER (Jul. 10, 2016), http://www.postandcourier.com/opinion/bolster-re-homing-solutions/article_bdfd563a-090b-5a7c-9f0c-e9a39129a44.html.

245. Martha Neil, *As a Growing Number of States Enact “Rehoming” Laws, Facebook Reportedly Disables Page*, A.B.A. J. (Mar. 23, 2015, 11:00 AM), http://www.abajournal.com/news/article/facebook_reportedly_disables_page_for_rehoming_children_as_growing_number. The Facebook group was called “Adoption Through Disruption.” *Id.*

246. Twohey, *supra* note 225.

247. *Id.*

248. *Id.*

249. *In re* Justin A. H., No. M2013-00292-COA-R3CV, 2014 WL 3058439, at *1 (Tenn. Ct. App. June 7, 2014).

250. *Id.* at *2.

251. *Id.* at *1.

252. *Id.* at *1–2.

253. *Id.* at *2.

payments even though the child remained in a Russian orphanage.²⁵⁴

Another example of courts attempting to halt re-homing practices was recently decided in a New York court. The court ruled against parents who were attempting to reverse a prior adoption of two Russian children.²⁵⁵ At the time, New York allowed re-homing through securing a power of attorney contract.²⁵⁶ Judge Edward McCarty III opined that re-homing in this situation paralleled trafficking and therefore required the parents to use the court system to remove the children from their home.²⁵⁷

With re-homing now viewed as a form of trafficking, state legislatures have started amending adoption procedures. In 2015, Wisconsin was the first state

to make it illegal for anyone not licensed by the state to advertise a child older than age one for adoption or any other custody transfer, both in print and online. Parents who want to transfer custody of a child to someone other than a relative must seek permission from a judge. Violators face up to 9 months in jail or as much as \$10,000 in fines.²⁵⁸

Louisiana followed with a penalty of \$5000 and a maximum sentence of five years in prison.²⁵⁹

Re-homing, once used for legitimate purposes tying the best interest of the child standard to reunification of the family, evolved into an underground black market for trafficking children, necessitating immediate legislative action.

254. *Id.* at *15.

255. Tina Traster, *Judge Says Rehoming Is Trafficking*, PSYCHOL. TODAY (Jan. 1, 2015), <https://www.psychologytoday.com/blog/against-all-odds/201501/judge-says-rehoming-is-trafficking>.

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

V. PREVENTING SEX TRAFFICKING OF MINORS THROUGH VICTIM IDENTIFICATION AND SAFE HARBOR PROVISIONS

Identifying past and potential trafficking victims has been on the forefront of recent legislation.²⁶⁰ Federal funding has been implemented to equip state agencies with resources to document and identify victims.²⁶¹ Often, traffickers of children are family members of the victim.²⁶² Victims remain enslaved due to traumatic psychological attachment to the trafficker, especially when the trafficker is a family member.²⁶³ If the child victim is removed, he or she will most likely return to the trafficker because of this attachment.²⁶⁴ Also, children who are removed remain vulnerable and have health risks such as sexually transmitted diseases and severe psychological issues preventing them from seeking help.²⁶⁵ The barriers within the victim hinder agencies offering rescue.

A. *Identifying and Documenting Victims*

Identifying past victims placed in government care is difficult due to confidentiality. When a child has been a victim of a crime, especially sex trafficking, the records are sealed for the child's protection.²⁶⁶ This makes identifying cells of traffickers and other potential victims difficult. Many states have begun to implement legislation for documenting trafficking victims while maintaining the victim's confidentiality.

260. Keith Goble, *States Make Inroads to Combat Human Trafficking*, LAND LINE MAG. (Mar. 16, 2017), <http://landlinemag.com/Story.aspx?StoryID=33013>.

261. CHILDREN'S BUREAU, ISSUE BRIEF: CHILD WELFARE AND HUMAN TRAFFICKING 12, 14 (2015).

262. SMITH ET AL., *supra* note 48, at 32–34.

263. *Id.*

264. *Id.* at 43.

265. LEAH KAYLOR, PSYCHOLOGICAL IMPACT OF HUMAN TRAFFICKING AND SEX SLAVERY WORLDWIDE: EMPOWERMENT AND INTERVENTION 3 (2009), <https://www.apa.org/international/pi/2015/09/leah-kaylor.pdf>.

266. *See, e.g.*, SHARED HOPE INT'L, ISSUE BRIEF: SECTION 5.9 PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS (2016) (“[S]ealing of juvenile delinquency records resulting from . . . adjudications for prostitution-related offenses committed as a result of . . . the commercial exploitation of a minor is available within a reasonable time after turning 18.”).

The Alliance to End Slavery and Trafficking (“ATEST”) is an organization aimed at preventing human trafficking.²⁶⁷ ATEST hopes to prevent trafficking globally by raising awareness, identifying and documenting victims, and proposing legislation.²⁶⁸ ATEST states, “human trafficking is the second largest criminal enterprise in the world, generating over \$150 billion in profits to traffickers annually” and emphasizes that all global corporations and supply chains should implement anti-trafficking policies.²⁶⁹

Identification of victims has varied statewide. In 2009, Minnesota statutes required data collection processes regarding trafficking to be uniform.²⁷⁰ Minnesota documented “the numbers of arrests, prosecutions, and successful convictions of traffickers and those committing trafficking-related crimes; . . . statistics on the number of trafficking victims, including demographics, method of recruitment, and method of discovery; trafficking routes and patterns; . . . method of transportation; . . . and social factors that contribute to and foster trafficking.”²⁷¹ This was an attempt to close the gap between past and future victims, locate and punish traffickers, and raise awareness of trafficking statewide.

In 2011, most recorded data of sex trafficking contained three elements: “new cases are regularly entered, the information provides individual-level information for at least one suspect or victim, and the information is updated on a regular basis.”²⁷² One goal was to identify and separate domestic victims from international victims in order to increase trafficker arrests.²⁷³ Recording domestic crime separately would better track the location of the trafficker, the child victim’s home, how the child was placed in to slavery, and lead to identification of other potential victims.²⁷⁴ However, identifying where the child came

267. See *Who Is ATEST*, ATEST, <https://endslaveryandtrafficking.org/about> (last visited Apr. 22, 2017).

268. *Id.*

269. *Id.*

270. MINN. STAT. ANN. § 299A.785 (West 2009).

271. *Id.*

272. BANKS & KYCKELHAHN, *supra* note 26, at 5.

273. Heather J. Clawson et al., *Human Trafficking into and Within the United States: A Review of the Literature*, U.S. DEP’T HEALTH & HUM. SERVS. (Aug. 30, 2009), <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature>.

274. *Id.*

from was often a difficult task based on the level of trauma the child had experienced.²⁷⁵

One of the top goals of victim documentation is to prevent future occurrences of sex trafficking. Children who are victimized by sex trafficking are considered high-risk for fleeing safety and returning to the trafficker.²⁷⁶ Identifying high-risk runaways and documenting where they came from will better assist a second rescue if the child flees.²⁷⁷ As soon as a child runs away, state departments are to record it and monitor where the child went when found.²⁷⁸ Often, the runaway will take another child from the safe house or foster care with them. Better recording and information systems will help lead authorities to find the runaway victim, other potential victims, and trafficking cells to prevent further child trafficking.

As NCMEC's data shows, many runaways are already within state care facilities.²⁷⁹ Due to this, state legislatures have begun identifying those children in order to offer better protective measures. For instance, in 2013, Texas implemented the Best Practices to Identify and Assess Victims of Sex Trafficking to implement specific screening procedures, which should be used within juvenile departments.²⁸⁰ Some of the identification procedures recommended are:

- (1) examining a juvenile's referral history, including whether the juvenile has a history of running away from home or has been adjudicated for previous offenses;
- (2) making inquiries into a juvenile's history of sexual abuse;

275. See VERA INST. OF JUSTICE, SCREENING FOR HUMAN TRAFFICKING 5 (2014), <http://archive.vera.org/sites/default/files/resources/downloads/human-trafficking-identification-tool-and-user-guidelines.pdf> (noting that child victims and interviewers must develop a rapport before the victim feels safe disclosing information).

276. *Key Facts*, *supra* note 160.

277. See Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 101, 128 Stat. 1919, 1920-21 (2014) (calling for recording information regarding child victims of sex trafficking).

278. *Id.*

279. *Key Facts*, *supra* note 160.

280. TEX. HUM. RES. CODE ANN. § 221.0035 (West 2013).

- (3) assessing a juvenile's need for services, including counseling through a rape crisis center or other counseling; and
- (4) asking the juvenile a series of questions designed to determine whether the juvenile is at high risk of being a victim of sex trafficking.²⁸¹

The information regarding the minor victim remains confidential, but it is a useful tool for preventing further runaways within state care.

NCMEC has compiled data from missing and exploited children and recently began notifying law enforcement and electronic service providers of the results.²⁸² In the Child Victim Identification Program, 147 million images have been collected since 2002, and law enforcement has been able to identify almost 10,000 child victims.²⁸³ The more data collected and shared among various agencies, law enforcement, and Internet service providers, the more children can be rescued from human trafficking. In addition, the data collected on missing children helps “identify trends and help[s] develop safety tips for families.”²⁸⁴

B. Safe Harbor Provisions

Recent federal legislation has developed procedures and programs to help victims remain safe from trafficking and other various crimes through safe harbor placement.²⁸⁵ Safe harbor placement occurs when a victim is placed in immediate, protective care due to abuse, namely crimes of sexual exploitation.²⁸⁶

Safe harbor placements evolved from instances where a child was a victim of trafficking but still could be criminally charged with prostitution.²⁸⁷ The underlying principle of a safe

281. *Id.* § 221.0035(c)(1)–(4).

282. *Key Facts, supra* note 160.

283. *Id.*

284. *Id.*

285. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1243, 127 Stat. 54, 154 (2013).

286. See Lisa Holl Chang, *Reaching Safe Harbor: A Path for Sex-Trafficking Victims in Wisconsin*, 2013 WIS. L. REV. 1489, 1493 (2013).

287. Wendi Adelson, *Child Prostitute or Victim of Trafficking*, 6 U. ST. THOMAS L.J. 96, 96–97 (2008).

harbor is to provide a child with “legal protection and provision of services.”²⁸⁸ The child would be protected within the confidential, lock-down environment of the safe harbor and would be offered services for the trauma suffered.²⁸⁹ The safe harbor assigns victim status to a minor under the age of eighteen years.²⁹⁰ Less than half of the fifty states offer safe harbor placement to specifically address the trauma of the sexually exploited child and to provide a secure location in an attempt to prevent further trafficking.²⁹¹ The states that do offer safe harbor provisions usually have Child Protective Services.²⁹² Once in Child Protective Services, the child is removed from imminent harm and is placed under secure protection offered by the state.²⁹³ The need for sheltering a child in a safe house is fact-sensitive. However, legislation varies from state to state, and it is far from a perfect system.²⁹⁴

The Uniform Act on Prevention of and Remedies for Human Trafficking of 2013 (“Uniform Act”) provides for more consistent safe harbor policies among individual states.²⁹⁵ Although VAWRA provided a safe harbor model for sex trafficking victims, many states have not yet implemented safe harbor provisions.²⁹⁶ As stated above, safe harbor provisions can provide care, education, and legal services—thus, safe harbor provisions may prevent further trafficking.

The Uniform Act states, “[A]n individual who was a minor at the time of the offense is not criminally liable or subject to [a

288. See POLARIS, HUMAN TRAFFICKING ISSUES BRIEF: SAFE HARBOR (2015), <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.

289. *Id.*

290. *Id.*

291. See ECPAT USA, STEPS TO SAFETY: A GUIDE TO DRAFTING SAFE HARBOR LEGISLATION TO PROTECT SEX-TRAFFICKED CHILDREN 6 (2015), <http://www.ecpatusa.org/wp-content/uploads/2016/01/Steps-to-Safety.pdf> (listing Arkansas, Florida, Kansas, Michigan, Minnesota, New York, and Washington as states that call for establishment of safe houses).

292. See POLARIS, *supra* note 288 (“Most states provide services to [commercially sexually exploited child] victims through the state child welfare systems.”).

293. *Id.*

294. *Id.*

295. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 15 (NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS 2013); see also POLARIS, *supra* note 288; Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1281, 1316–18 (2015).

296. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1243, 127 Stat. 54, 154 (2013).

juvenile delinquency proceeding] for [prostitution] and [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking.”²⁹⁷ Trafficking penalties are expanded to child victims of other crimes, not just those children who have been sexually exploited on a commercial basis.²⁹⁸

Most states currently classify a person under the age of eighteen who has been involved in sex trafficking as a victim.²⁹⁹ However, a few glaring loopholes exist: victim status is only allowed for children involved in actual prostitution, and remedies are limited to either therapy or legal services.³⁰⁰ Of the twenty-two states that provide safe harbor legislation, only fifteen offer “both legal protection and services.”³⁰¹ This is especially limiting when dealing with children who are wards of the state, in the juvenile delinquency system, and children who end up recruiting other children back to the trafficker. Addressing a solution to prevent and protect children who are under state care will prevent future victims.

In 2008, New York was the first state to provide safe harbor legislation.³⁰² New York defines a child victim as someone who is sexually exploited, under eighteen years of age, and has engaged in sexual conduct.³⁰³ The safe harbor provision includes short-term housing, food and clothing, medical care, and crisis counseling.³⁰⁴

Another example of a safe harbor provision can be found in Florida law.³⁰⁵ Child Protective Services is granted authority to utilize a safe house for children who have suffered from sexual exploitation; an interesting note is that Florida’s safe harbor placement statute not only offers the victim protection but also monitors the protection of the other victims within the house.³⁰⁶

297. Uniform Act on Prevention of & Remedies for Human Trafficking § 15(a).

298. *Id.* § 3.

299. POLARIS, *supra* note 288.

300. *Id.*

301. *Id.*

302. SARAH WASCH ET AL., AN ANALYSIS OF SAFE HARBOR LAWS FOR MINOR VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION: IMPLICATIONS FOR PENNSYLVANIA AND OTHER STATES 6 (2016), <http://impact.sp2.upenn.edu/fieldctr/wp-content/uploads/2013/05/SafeHarborWhitePaperFINAL.pdf>.

303. N.Y. SOC. SERV. LAW § 447-a(1)(b) (McKinney 2010).

304. *Id.* § 447-a(2).

305. FLA. STAT. ANN. § 39.524 (West 2012).

306. *Id.* § 39.524(1).

The statute allows placement of a “dependent child 6 years of age or older who has been found to be a victim of sexual exploitation.”³⁰⁷ The child then “must be assessed for placement in a safe house . . . as long as the child’s behaviors are managed so as not to endanger other children served in that setting.”³⁰⁸ This language is a good response to situations where traffickers send in children to a safe harbor placement facility to recruit other children for the trafficker’s working ring. Florida’s legislation is attempting to correct a variety of problems with victims in order to prevent further victimization of children, and is an example other states should follow

Additionally, Florida passed the Rilya Wilson Act, where a child’s attendance in a government care program is required in the safety plan for any child placed in the care of the department.³⁰⁹ Tracking a child’s attendance will lend a quicker response to potential runaways and will hopefully stop the child from returning to a trafficker. Also within the safe house, a Child Protective Team must create a permanency plan to move the child to permanency.³¹⁰ Permanency is where the “best interest of the child” deems permanent placement for living until age eighteen.³¹¹ When dealing with a foster care child who was removed from a sex trafficking situation, a permanency goal can prove to be difficult. Florida’s safe house provision, attendance tracking, and permanency plan create a well-rounded approach to solving a difficult situation.

Another example is within Louisiana’s safe harbor provision:

Sexually exploited children should, where possible, be diverted into services that address the needs of these children outside of the justice system. Sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services. The purpose of this Chapter is to protect a

307. *Id.*

308. *Id.*

309. *Id.* § 39.604.

310. *Id.* §§ 39.01, 39.524.

311. *Id.* § 39.621(1).

child from further victimization after the child is discovered to be a sexually exploited child by ensuring that a child protective response is in place in the state.³¹²

In addition to providing a safe harbor, Louisiana provides victim status to minors, which is essential to avoid prosecuting the victim for prostitution.³¹³

A few other states have similar safe harbor provisions, such as Connecticut, Illinois, Massachusetts, Minnesota, Nebraska, New Jersey, Vermont, and Washington.³¹⁴ However, many states have not yet provided any safe harbor provisions. For example, Wisconsin does not offer safe harbor placement.³¹⁵ Instead, child victims of sex trafficking are placed in the less favorable, “out-of-home placements.”³¹⁶ If the location is not secure, the child is an easy target for abduction by the trafficker. In addition, the child may not receive necessary trauma counseling services. Studies show a high percentage of sexually exploited children within government care go missing and are either runaways or victims of kidnapping.³¹⁷ Therefore, a secure, safe location with target counseling would be ideal placement for sexually exploited child victims.

Georgia does not offer safe harbor placement, but instead offers temporary placement within a Guardian Ad Litem (“GAL”) program or foster care.³¹⁸ Unfortunately, temporary placement within GAL services may not be equipped to handle the therapy needed for sex trafficking trauma, or to closely protect those child from potential kidnapping or from running away; GAL services handle a large number of children sheltered for various reasons outside of sex trafficking.³¹⁹

One glaring reality missing from states without safe harbor provisions, and even from some of the states that offer the provision, is when the trafficker sends in a “drone” to recruit

312. LA. CHILD. CODE ANN. art. 725 (2013).

313. *Id.*

314. ECPAT USA, *supra* note 291, at 9.

315. Chang, *supra* note 286, at 1493.

316. *Id.* at 1494.

317. *Key Facts*, *supra* note 160.

318. GA. CODE ANN. §§ 29-2-22, 29-2-50, 29-10-1 (2007).

319. *See generally* Chang, *supra* note 286.

other children to the trafficker.³²⁰ Protections need to be in place for those children, including the sex trafficking victims. Florida's safe harbor provision is on the forefront of curing this practice by mandating protections for victims already in safe harbor locations. In addition, this protection should be provided to all other children within government care.

VI. PROPOSED SOLUTIONS: A NATIONAL EDUCATION PROGRAM ON PREVENTING SEX TRAFFICKING; COUNSELING FOR CHILDREN IN STATE CARE; AND MANDATORY SAFE HARBOR PROVISIONS

Current legislation pushes for better documentation practices in hopes of narrowing in on trafficking rings, providing education for government employees to better equip agencies with awareness, and offering services to child victims who have been removed to shelters.³²¹ Also, safe harbor provisions in some states offer protection to sexually exploited children.³²² Safe harbor legislation better protects the child by presuming the child has been trafficked and is a victim and by offering a secure location hidden from the trafficker. Also, all children sheltered from a caregiver should be provided with prevention of sex trafficking education, as sheltered children have a heightened vulnerability; addressing sex trafficking prevention is key to preventing future trafficking. As highlighted in President Obama's plea, "[p]reventing trafficking by raising awareness among vulnerable populations"³²³ and "[p]rotecting survivors through comprehensive social services, family reintegration, and immigration services" are essential steps in preventing sex trafficking.³²⁴ Finally, a national education plan for all children in public schools should be provided.

320. *Id.* at 1494–95.

321. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, §§ 1241–1243, 127 Stat. 54, 152–54 (2013).

322. Chang, *supra* note 286, at 1494.

323. *The Obama Administration's Record on Human Trafficking Issues*, *supra* note 86 (emphasis added).

324. *Id.*

A. Current Counseling and Education Programs for Victims

Some states provide counseling for victims of sex trafficking. The counseling programs are usually not-for-profit and require the professional to undergo many hours of training, specifically when handling sexually exploited victims.³²⁵ For example, Virginia provides “awareness and training materials for local school division staff on human trafficking, including strategies for the prevention of trafficking of children.”³²⁶ Ideally, counselors should be well equipped to handle the psychological and physical trauma from trafficking, to provide a safe environment for the victim, and to maintain confidentiality for victim protection, especially if the victim is under eighteen years of age.

In 2007, the U.S. Department of Education created a national trafficking awareness fact sheet for school employees.³²⁷ Traits of a sex trafficking victim are described as:

[U]nexplained absences from school for a period of time, and is therefore a truant; [d]emonstrates an inability to attend school on a regular basis; [c]hronically runs away from home; [m]akes references to frequent travel to other cities; [e]xhibits bruises or other physical trauma, withdrawn behavior, depression, or fear; [l]acks control over her or his schedule or identification documents; [i]s hungry, malnourished or inappropriately dressed . . . ; [and] [s]hows signs of drug addiction.³²⁸

Certain states address attendance tracking as part of trafficking awareness.³²⁹ Also to be noted is the importance of immediately documenting a runaway as an alert to potential trafficking.

325. D.C. CODE § 14-311 (2012).

326. VA. CODE ANN. § 22.1-16.5 (2016).

327. U.S. DEP’T OF EDUC., HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES: A FACT SHEET FOR SCHOOLS (2007) [hereinafter FACT SHEET FOR SCHOOLS], <https://www2.ed.gov/about/offices/list/osdfs/factsheet.pdf>.

328. *Id.*

329. FLA. STAT. ANN. § 39.604 (West 2012).

The fact sheet defines a child who may have a “boyfriend” who is considerably older, is seen with new and expensive items, displays promiscuous behavior, or makes sexual innuendos that are not normal to the child’s age group as a victim.³³⁰ The footnote on the fact sheet alerts school employees that the list is not comprehensive and does not always mean the child is involved in sex trafficking; however, it is “a guide to determine if further action is needed.”³³¹ While the Department of Education has educated school officials on trafficking awareness, a program for children in schools has not yet been implemented.

B. Proposed Education Plan for Schools and Foster Care Centers

School systems throughout the country provide such education regarding anti-bullying, sex education, and drug awareness.³³² Sex trafficking education should be implemented in public and private schools throughout the county, like Drug Abuse Resistance Education (“DARE”).³³³ A national program on the prevention of sex trafficking in school systems would provide awareness and protect children from potential trafficking situations.

Importantly, children who are in government care are at the highest risk for potential victimization due to their psychological vulnerability.³³⁴ These children only have access to programs like DARE and anti-bullying programs when attending public schools.³³⁵ Often, school attendance drops because of psychological stress.³³⁶ The best place to teach foster care children about sex trafficking would be within the foster care center, outside of school. The child will be in a safe, comfortable setting around care workers that the child can trust.

330. FACT SHEET FOR SCHOOLS, *supra* note 327.

331. *Id.*

332. *See About D.A.R.E.*, DARE, <http://www.dare.org/about-d-a-r-e> (last visited Apr. 22, 2017) (noting that bullying and anti-drug education programs are provided on a national level).

333. *Id.*

334. *See Adelson, supra* note 287, at 122–23.

335. *See About D.A.R.E.*, *supra* note 332.

336. AM. PSYCHOLOGICAL ASS’N, FACING THE SCHOOL DROPOUT DILEMMA 4 (2012), <http://www.apa.org/pi/families/resources/school-dropout-prevention.pdf>.

California recently passed legislation for a school safety and education plan.³³⁷ The act calls for schools to work with experts to create a safety plan to prevent sex trafficking, to provide education for school employees, and to encourage schools to work with police to identify high risk students in order to prevent trafficking.³³⁸ California is taking necessary steps to raise awareness for the prevention of trafficking. However, the state should further expand legislation to educate all children, not just employees.

Texas requires all judges to complete twelve hours of human trafficking training.³³⁹ The training must cover case law regarding trafficking, protection for victims, effects of trafficking on victims, and problems with child development as a result of trafficking.³⁴⁰ Additionally, Texas created a Child Sex Trafficking Prevention Unit, where agencies must distribute their research and data to other agencies within Texas and are to “refer victims of child sex trafficking to available rehabilitation programs and other resources.”³⁴¹ While this is a step in the right direction, it still falls short of implementing a mandatory training schedule for all children, including child victims of trafficking.

In June 2015, Massachusetts proposed an education plan for a “first offender prostitution solicitation program,” which should be followed in all states.³⁴² The proposal provides communities with information on the “negative impact of commercial sex trafficking on victims . . . and communities; the health risks involved in prostitution[;] . . . and classroom instruction related to the prevention of prostitution and organized crime and the sex industry.”³⁴³ This proposal addresses the victim status of the trafficked child, the potential and prevention of future recruits, and education for schools on trafficking prevention.³⁴⁴

337. CAL. EDUC. CODE § 49380 (West 2015).

338. *Id.*

339. TEX. GOV'T CODE ANN. § 22.110(b) (West 2009).

340. *Id.* §22.110(d).

341. *Id.* § 772.0062(d)(4).

342. 2015 S.B. 1944 § 87B(c), 198th Gen. Ct. (Mass. 2015).

343. *Id.* § 87B(c)(i).

344. *Id.*

*C. Proposed Target Counseling and Safe Harbor
Provisions for Trafficking Victims*

Children in foster care are easy targets for sex trafficking due to their vulnerability. Many factors increase their risk, such as domestic violence, molestation, prior experience with a pimp, running away, promises of money and things, and immigration.³⁴⁵ A solution directed at decreasing their vulnerability would be the most beneficial solution. Identifying risk factors of victims and closely documenting the demographics of the trafficker are two areas of focus the federal government has implemented in legislation. While this is a step in the right direction, it falls short of the ultimate goal of preventing future sex trafficking. Providing specialized education to victims and potential victims within sheltered situations and counseling all children in foster care for emotional healing are necessary solutions. Implementing an educational process within foster care centers for all of the children, not just the foster care providers, will give the children an awareness of their high-risk status.

Every state should offer safe harbor provisions for victims of trafficking. Not only will the child be protected but safe harbor provisions will also create a presumption that the child is a victim of trafficking and will not face criminal charges for prostitution. In addition, safe harbor provisions provide selective therapy for sexually exploited victims. There are a rising number of organizations offering safe house locations.³⁴⁶ These locations provide counseling within the safe house to address the victim's vulnerability.³⁴⁷ This is a great example to follow for foster care children who are not just the victims of sex trafficking but also every child in the custody of the department. Providing group therapy for all foster children on location will help heal the sex trafficking victim and give awareness to the other children of their high level of vulnerability.

The Living Water Center is an example of a safe harbor for victims that provides services for survivors of sex trafficking.³⁴⁸ Its philosophy is to emphasize "the power of the survivor's

345. See Adelson, *supra* note 287, at 121.

346. See CIRCLE OF FRIENDS: CELEBRATING LIFE, <http://www.cofcl.org> (last visited Apr. 22, 2017).

347. *Id.*

348. *Id.*

experience to impact the lives of other girls who survived sex trafficking.”³⁴⁹ The program offers a three-day to nine-month stay to rehabilitate the survivor to be able to graduate high school and gain employment.³⁵⁰

Wellspring Living in Georgia is another example of a safe harbor organization that provides education for victims of trafficking in order to change the vulnerability of the victim for reentry into society.³⁵¹ Wellspring offers an overnight stay to a thirteen-month program where child victims are given counseling for trauma, education, and training to gain courage and confidence to build a successful life.³⁵²

The following statements came from interviews with sex trafficking victims:

“What would have made the difference for you? What would have helped prevent you from getting into this situation in the first place?” We were curious what they thought about that question, because there has been a lot of money spent to try to find prevention techniques. All those who answered the question said the same thing: “As a child I needed more knowledge about the world, and more education about sex. I needed to know more about sex and about violence and about drugs and about how the world operates. I was very naïve.”³⁵³

Interestingly enough, the victims clearly state that had they been educated properly, they would have been equipped with better tools to avoid falling victim to the sex trade.³⁵⁴ Agencies provide education for employees to create awareness and assist victim recovery; agencies should provide education for the children themselves to give them courage and confidence, and to be aware of the signs of sex trafficking. The therapy needs to

349. *Id.*

350. *Id.*

351. *Wellspring Living Girls' Residential Program*, WELLSRING LIVING, <https://wellspringliving.org/girls> (last visited Apr. 22, 2017).

352. *Id.*

353. Aziza Ahmed, Cyra Choudhury, Sienna Baskin & Sandy Skelaney, Panel on Sex Trafficking (July 1, 2015), in 5 U. MIAMI RACE & SOC. JUST. L. REV. 445, 452 (2015).

354. *Id.*

educate children about why they are considered high risk and how to recover from psychological damage.³⁵⁵ Along with this concept, therapy provided in safe houses, especially for foster care children who were subjected to sex trafficking, will lead to a more successful outcome.

Another detrimental factor seen in victims of sex trafficking is the societal stigma attached to them as damaged goods, which creates an even greater vulnerability.³⁵⁶ Due to a permanently damaged psyche, the child's chances of returning to the sex trade are great.³⁵⁷ Government care centers see a huge number of runaways.³⁵⁸ Sadly, often the child returns to the very horror that he or she had escaped from. In order to better protect the child from runaway status, education and counseling on vulnerability and trafficking should be immediately provided to the child upon entering the care center. Recognizing signs of trafficking and addressing the psychological vulnerability will provide the child with tools to not fall victim to trafficking.

Child trafficking victims are frequently sent in as drones to recruit other children within a safe harbor.³⁵⁹ Sixty percent of children exploited in trafficking are first recruited by peers.³⁶⁰ Unfortunately, children who have been abused, who may also be within government care, are more likely to be enticed by a peer into the sex trafficking trade.³⁶¹ There are two types of child victims who should be addressed in state counseling programs: one is the child victim who is the recruiter for the trafficker, and the second is the child victim who may fall prey to the recruiter. Providing education for all of the children within government facilities will raise awareness so each child can be alerted to their own vulnerability, other children's victimization and potential

355. See Leary, *supra* note 95, at 289.

356. *Id.*

357. *Id.* at 310.

358. See *Key Facts*, *supra* note 160.

359. Katarina Rosenblatt, *Determining the Vulnerability Factors, Lures and Recruitment Methods Used to Entrap American Children into Sex Trafficking*, 2 J. SOC. & CRIMINOLOGY 1, 14 (2014).

360. WASH. COAL. OF SEXUAL ASSAULT PROGRAMS, PUB. NO. 14-0030, COMMERCIAL SEXUAL EXPLOITATION, ABUSE AND TRAFFICKING OF CHILDREN AND YOUTH 5 (2014), <http://www.k12.wa.us/safetycenter/CSEC/pubdocs/Sexual-Exploitation-and-Trafficking-of-Children-and-Youth.pdf>.

361. *Id.*

connection to a trafficker, and hopefully prevent any child from becoming enslaved to the trafficker.

Focusing on vulnerability instead of attempting to glean information is a far better approach. Providing informative anti-trafficking education within government care centers will be more effective. Teaching children about their vulnerability and susceptibility is an essential step in preventing them from further victimization.

VII. CONCLUSION

With the estimated number of sexually exploited child victims in the United States almost reaching a half million this year, the prevention of sex trafficking should be on the forefront of legislative agendas. Providing safe harbor provisions is essential; the presumption that a person under eighteen years of age who offers any sexual activity is being trafficked protects potential victims from traffickers. These presumptions offer legal protection to victims. In addition, a safe harbor house with staff well equipped to handle the psychological trauma the victim has experienced also prevents further victimization. Finally, a national education program raising awareness to sex trafficking should be implemented in all public schools—preferably at the middle school level. These steps are necessary to prevent further victimization of our children.