

Domestic Sex Trafficking of Minors in the United States  
The Disparity Between Federal Anti-Trafficking Laws and State Prostitution Legislation

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### Abstract

The United States has made strides in deterring the crime of sex trafficking of minors. Within the past 16 years, the central piece of legislation, the Trafficking Victims Protection Act (TVPA), has seen numerous reauthorizations, each one expanding from the one that precedes it. However, with its original intent focused on prosecuting international traffickers, the language cited is ambiguous. Furthermore, the federal anti-trafficking laws are inconsistent with state prostitution laws due to differences in age of consent. Because of this, a minor who is under federal law a victim may be prosecuted as a criminal under state law. This is a great inconsistency. To win the fight against sex trafficking of minors in the United States, state prostitution legislation must be encouraged to eliminate age of consent.

Domestic Sex Trafficking of Minors in the United States: The Disparity Between Federal  
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**Introduction: The International and Domestic Response to Human Trafficking by  
the United States**

The International Labour Organization (ILO) of the United Nations released a global estimate predicting 20.9 million or more people trapped in modern-day slavery today.<sup>1</sup> According to the United States Department of State, the face of modern-day slavery has taken the shape of human trafficking.<sup>2</sup> The crime of human trafficking is defined as "force, fraud, or coercion is used to control victims for the purpose of engaging in commercial sex acts or labor services against his/her will."<sup>3</sup> In light of definitions, the term commercial sex act is "any sex act on account of which anything of value is given to or received by any person."<sup>4</sup> Human trafficking can take the form of sex trafficking, child sex trafficking, forced labor, bonded labor or debt bondage, domestic

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1. "New ILO Global Estimate of Forced Labour: 20.9 Million Victims," International Labour Organization, June 01, 2012, accessed August 15, 2016, [http://www.ilo.org/global/topics/forced-labour/news/WCMS\\_182109/lang—en/index.htm](http://www.ilo.org/global/topics/forced-labour/news/WCMS_182109/lang-en/index.htm).

2. "What Is Modern Slavery?" U.S. Department of State, accessed August 12, 2016, <https://www.state.gov/j/tip/what/>.

3. "Human Trafficking," National Human Trafficking Resource Center, accessed August 14, 2016, <https://traffickingresourcecenter.org/type-trafficking/human-trafficking>.

4. "Federal Law," National Human Trafficking Resource Center, accessed August 14, 2016, <https://traffickingresourcecenter.org/what-human-trafficking/federal-law>.

servitude, forced child labor, unlawful recruitment and use of child soldiers, and the victim does not need to be physically transported.<sup>5</sup>

Furthermore, human trafficking is the third largest criminal enterprise globally.<sup>6</sup> The United Nations estimates that the industry of trafficking racks in a revenue of 32 billion dollars annually.<sup>7</sup> To put an end to this lucrative underground industry, the United States initiated the legislation against human trafficking through the Trafficking Victims Protection Act (TVPA) of 2000.<sup>8</sup> Deemed the first comprehensive federal law to address trafficking in persons, its purpose was to aid in combatting trafficking on an intercontinental level.<sup>9</sup> The federal anti-trafficking laws originally focused solely on

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5. "Federal Law."

6. Amanda Walker-Rodriguez and Rodney Hill, "Human Sex Trafficking," *FBI Law Enforcement Bulletin* 80, no. 3 (2011): 1, accessed September 1, 2016, <https://pdfs.semanticscholar.org/2092/dba2b98ed6b0a7ac0542432594d5428dcacd.pdf>.

7. "Factsheet on Human Trafficking," United Nations Office on Drugs and Crime, accessed August 20, 2016, [www.unodc.org/documents/human-trafficking/UNVTF\\_fs\\_HT\\_EN.pdf](http://www.unodc.org/documents/human-trafficking/UNVTF_fs_HT_EN.pdf).

8. Janie A. Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy," *University of Pennsylvania Law Review* 158, no. 6 (2010): 1657, accessed September 10, 2016, <http://www.jstor.org/stable/25682362>.

9. Iris Yen, "Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation," *The Journal of Criminal Law and Criminology* (1973-) 98, no. 2 (2008): 662, accessed October 23, 2016, <http://www.jstor.org/stable/40042872>.

addressing international trafficking crimes.<sup>10</sup> It integrated President Bill Clinton's three-pronged (3 P's) approach of prevention, protection, and prosecution,<sup>11</sup> which fabricated the framework of the United Nation's Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>12</sup> Moreover, the Protocol provides the first transnationally agreed upon definition of trafficking in persons using specific language to encompass all forms of trafficking throughout the world.<sup>13</sup>

The United States took a stance against human trafficking in multiple international circumstances with trade sanctions and agreed punishments between various nations under the Department of State and the Trafficking Victims Protection Act.<sup>14</sup> The United States government, being attentive to federalism and preemption concerns,<sup>15</sup> acted in the haste of combatting international trafficking and altered the language of the original TVPA, much like the Protocol, which resulted in unintended consequences in

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10. Megan Annitto, "Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors," *Yale Law & Policy Review* 30, no. 1 (2011): 39, accessed November 19, 2016, <http://heinonline.org.ezproxy.liberty.edu/HOL/Page?handle=hein.journals/yalpr30&collection=journals&id=4>.

11. Chuang, "Rescuing Trafficking from Ideological Capture," 1661.

12. "Factsheet on Human Trafficking."

13. Ibid.

14. "The 3Ps: Prevention, Protection, Prosecution," Democracy and Global Affairs, June 2011, accessed October 7, 2016, <http://www.state.gov/documents/organization/167334.pdf>.

15. Dysart, "Child, Victim, or Prostitute," 265.

prosecuting domestic sex trafficking crimes of minors within the United States.<sup>16</sup> This ambiguous language of the TVPA reflects the initial global focus of the Act, and is consistent with the fact that prostitution is typically prosecuted at the state and local level.<sup>17</sup> However, the United States can improve its prevention efforts by enhancing cooperation between federal and state authorities.<sup>18</sup> Specifically, in regards to sex trafficking of minors in the United States, state and federal penal statutes should be enhanced by expressly making age of consent irrelevant to the elements of the crime of prostitution through a new reauthorization of the TVPA.<sup>19</sup>

### **Domestic Minor Sex Trafficking in the United States**

Domestic Minor Sex Trafficking (DMST) is increasingly recognized as a compelling legal and social problem within the United States.<sup>20</sup> Reliable data does not yet

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16. Wendi J. Adelson, "Child Prostitute or Victim of Trafficking?" (September 6, 2009), *University of St. Thomas Law Journal* 6, no. 1 (2008): 102, accessed November 16, 2016, <http://dx.doi.org/10.2139/ssrn.1078503>.

17. Tessa L. Dysart, "Child, Victim, or Prostitute-Justice through Immunity for Prostituted Children," *Duke J. Gender L. & Pol'y* 21 (2013): 265, accessed October 10, 2016, [http://heinonline.org/HOL/Page?men\\_tab=srchresults&handle=hein.journals/djglp21&size=2&collection=journals&set\\_as\\_cursor=&id=256](http://heinonline.org/HOL/Page?men_tab=srchresults&handle=hein.journals/djglp21&size=2&collection=journals&set_as_cursor=&id=256).

18. Timothy Fisher, "Traffic Stop: How the United States Can Improve Its Efforts to Halt Sex Trafficking," *Journal of International and Comparative Law* 2, no. 2 (March 2016): 34, accessed November 20, 2016, <http://scholarship.law.stjohns.edu/jicl/vol2/iss2/1>.

19. *Ibid*, 36.

20. Sarah Wasch, M. S. W., and Debra Schilling Wolfe, "An Analysis of Safe Harbor Laws for Minor Victims of Commercial Sexual Exploitation: Implications for Pennsylvania and Other States" (2016), accessed August 29, 2016, <http://impact.sp2.upenn.edu/fieldctr/wp-content/uploads/2013/05/SafeHarborWhitePaperFINAL.pdf>.

exist due to both the paucity of scientific research and the underground nature of the crime of human trafficking.<sup>21</sup> The FBI estimates that at least 100,000 U.S. children are sold for sex each year; however, other research indicates a higher percentage.<sup>22</sup> The issue of human trafficking recently appeared on the nation's radar, and the term "domestic minor sex trafficking" subsequently replaced the term "child prostitution" as the current terminology.<sup>23</sup> This change in language gives responsibility of actions to the perpetrator rather than focusing on those of the victim.<sup>24</sup>

The TVPA does not contain any specific provisions making minors immune from prosecution for prostitution, due to it falling within state jurisdiction.<sup>25</sup> Wherein most states, a minor involved in prostitution could be prosecuted regardless of whether they were trafficked into the commercial sex industry due to a given state's age of consent under the law.<sup>26</sup> In Europe, the "Framework Directive on Combating Sexual Exploitation of Children and Child Pornography" obliges all member states of the European Union to create extensive offenses of child pornography and child prostitution that include all

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21. Wasch, M. S. W., Schilling Wolfe, "An Analysis of Safe Harbor Laws."

22. B. D. Liles, Blacker, D. M., Landini, J. L., and Urquiza, A. J., (2016) "A California Multidisciplinary Juvenile Court: Serving Sexually Exploited and At-Risk Youth." *Behav. Sci. Law* 34: 234, accessed September 17, 2016, <http://dx.doi.org/10.1002/bsl.2230>.

23. Wasch, M. S. W., Schilling Wolfe, "An Analysis of Safe Harbor Laws."

24. Ibid.

25. Dysart, "Child, Victim, or Prostitute," 265.

26. Annitto, "Consent, Coercion, and Compassion," 2.



people up to the age of 18 years despite the age of consent, which ranges from 14 to 16 years across all EU countries.<sup>27</sup>

With this, how does the United States combat the domestic sex trafficking of minors? Founder Jennifer Tartini of organization Jars of Hope, purposed to help fight sex trafficking in the United States and abroad, commented on the current stance of the United States government:

The government needs to play a greater role in ending slavery. The sad reality is a lot of the government is a part of this corruption. Many girls do not know how to escape or who to talk to because there are police officers, priests, firefighters, etc. coming in and purchasing sex. There certainly are men and women in the government industry fighting this issue, but it is far overlooked in America and needs to be addressed more. The government needs to take action in these matters, or sex slavery will only continue to grow.<sup>28</sup>

As addressed in the interview, sex slavery is a grave crisis the entire world is currently facing, and the cooperation of United States federal and state governments are essential elements required to eliminate sexual exploitation of minors. "Safe Harbor" legislation, introduced in 2008 by the state of New York, seeks to offer and engage victims in rehabilitative services instead of charging them with a crime.<sup>29</sup> By the close of 2015, two-thirds of states passed a version of Safe Harbor legislation to shift from a "prosecutorial

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27. Belinda Carpenter, Erin O'Brien, Sharon Hayes, Jodi Death, "Harm, Responsibility, Age, and Consent," *New Criminal Law Review* 17, no. 1 (2014): 33, accessed November 26, 2016, [http://heinonline.org.ezproxy.liberty.edu/HOL/Page?men\\_tab=srchresults&handle=hein.journals/bufcr17&size=2&collection=journals&set\\_as\\_cursor=&id=35](http://heinonline.org.ezproxy.liberty.edu/HOL/Page?men_tab=srchresults&handle=hein.journals/bufcr17&size=2&collection=journals&set_as_cursor=&id=35).

28. "Interview Questions for Jen Tartini," E-mail interview by author, September 3, 2016.

29. Wasch, M. S. W., Schilling Wolfe, "An Analysis of Safe Harbor Laws."

to a victim services focus" on viewing domestic minor sex trafficking victims.<sup>30</sup> This may be a solution in eliminating the prosecution of victims at state level.

It is imperative to evaluate current United States legislation, such as the federal Trafficking Victims Protection Act of 2000 (TVPA) and its reauthorizations, along with state prostitution laws to consider how trafficked, prostituted minors are being rescued and protected in the United States. An important definition contained within the TVPA is a minor being anyone under the age of 18, but often states differ greatly in age of consent.<sup>31</sup> Federal law, because of this, is not effective in combating domestic sex trafficking, especially when considering the disparity between federal anti-trafficking and state prostitution laws in age of consent.

With the authoring of the Trafficking Victims Protection Act, The United States involved itself in the international fight against human trafficking by utilizing equivocal, universal language within the TVPA to appeal to worldwide definitions, that then set the groundwork for the authoring of the Protocol by the United Nations.<sup>32</sup> This produced a long-term unintended consequences in the U.S., where the goal of the particular phrasing was to encompass a broad jurisdiction both internationally and domestically, but ultimately hindered the prosecution efforts of DMST crimes in the U.S. because of the vague definitions.<sup>33</sup> This conflict contributed to the failure in bringing the perpetrators to

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30. Wasch, M. S. W., Schilling Wolfe, "An Analysis of Safe Harbor Laws."

31. Adelson, "Child Prostitute or Victim of Trafficking?" 107.

32. "Factsheet on Human Trafficking."

33. Adelson, "Child Prostitute or Victim of Trafficking?" 102.

justice, while also failing to provide relief and protection for DMST victims forced into prostitution because of trafficking. Because of this, the victims are often prosecuted due to the gap between state prostitution legislation and the federal vaguely-worded, internationally-focused TVPA. The differing ages of consent internationally, federally, and by state plays a role in the failure of eliminating sex trafficking in the United States.

### **Domestic Minor Sex Trafficking Victims Characteristics**

Specifically addressed as victims are female minors, most often involved in the commercial sex industry by way of prostitution. They are also known as domestic minor sex trafficking (DMST) victims.<sup>34</sup> In an address delivered by the Federal Bureau of Investigation (FBI) in 2015, it was stated that while DMST victims come from all socioeconomic backgrounds, they are frequently targeted because of individual vulnerabilities.<sup>35</sup> Mostly runaway and homeless youth, as well as victims of domestic violence, sexual assault, or social discrimination are often lured by traffickers.<sup>36</sup>

Between 450,000 and 2.8 million children run away or are thrown out from home every year, and a significant numbers of them will be commercially sexually exploited.<sup>37</sup> In 2015, an estimated one out five endangered runaways reported by the National Center

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34. Kimberly Kotrla, "Domestic Minor Sex Trafficking in the United States," *Social Work* 55, no. 2 (2010): 183, accessed August 14, 2016, doi:10.1093/sw/55.2.181.

35. Michael T. Harpster, "Innocence for Sale: Domestic Minor Sex Trafficking," FBI, March 26, 2013, accessed August 19, 2016, <https://www.fbi.gov/news/testimony/innocence-for-sale-domestic-minor-sex-trafficking>.

36 "The Victims & Traffickers," *Polaris*, 2016, accessed August 19, 2016, <https://polarisproject.org/victims-traffickers>.

37. Kotrla, "Domestic Minor Sex Trafficking in the United States," 183.

for Mission and Exploited Children were likely sex trafficking victims.<sup>38</sup> This statistic has risen, because since 2014, according to the National Center for Missing and Exploited Children, it was estimated that only one in six endangered runaways were likely sex trafficking victims.<sup>39</sup> Various police departments have established a high-risk victims unit to identify and pay particular attention to chronic runaways.<sup>40</sup>

Estimated at around fifty-five percent, the majority of victims are female.<sup>41</sup> The ages range from 13 to 17 making the bulk of the population of people involved in sex trafficking minors.<sup>42</sup> Because of the individual's status as a minor, under federal law identified as 18, the crime is considered Child Sex Trafficking, defined as "when a child is induced to perform a commercial sex act, and proving force, fraud, or coercion against

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38. "The Facts," *Polaris*, 2016, accessed August 19, 2016, <http://polarisproject.org/facts>.

39. "Sex Trafficking," *Polaris*, 2016, accessed August 19, 2016, <http://polarisproject.org/sex-trafficking>.

40. Demanding Justice Arizona: A Field Assessment of Demand Deterrence and Enforcement and Justice for Victims, 2015, accessed August 5, 2016, <https://sharedhope.org/wp-content/uploads/2015/05/Arizona-Field-Assessment-Report-Online.pdf>. 44.

41. "Sex Trafficking."

29. Kimberly J. Mitchell, Lisa M. Jones, David Finkelhor, and Janis Wolak, "Internet-facilitated Commercial Sexual Exploitation of Children: Findings from a Nationally Representative Sample of Law Enforcement Agencies in the United States," *Sexual Abuse: a Journal of Research and Treatment* 23, no. 1 (2011): 59, accessed August, 20, 2016, doi: 10.1177/1079063210374347.

their pimp is not necessary for the offense to be characterized as human trafficking."<sup>43</sup>

The use of minors in the commercial sex trade is prohibited not only by United States law, but also by statute in many countries worldwide.<sup>44</sup>

Sex trafficking has significant consequences for minors, which include physical and psychological trauma, disease, drug addictions, unwanted pregnancy, malnutrition, and even death.<sup>45</sup> The TVPA explicitly states that when a minor is engaging in commercial sex, the perpetrator is guilty of trafficking.<sup>46</sup> As stated by the U.S. State Department, sex trafficking of a minor under the age of 18 does not require the use of force, fraud, or coercion.<sup>47</sup> The disparity then rises with the issue of differing ages of consent between states under a one-size-fits-all age found in federal and international anti-trafficking legislation.<sup>48</sup> The European Union took steps in alleviating this difference,<sup>49</sup> by obliging its member to ban all sexual activity with minors under 18 "only in the context of pornography, prostitution, violence and inducement" through the

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43. "Citizen's Guide to U.S. Federal Law on The Prostitution of Children," U.S. Department of Justice, July 6, 2015, accessed August 19, 2016, <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-prostitution-children>.

44. Ibid.

45. "What Is Modern Slavery?"

46. Ibid.

47. Ibid.

49. Carpenter, O'Brien, Hayes, Death, "Harm, Responsibility, Age," 33.

Framework Directive.<sup>50</sup> The United States should follow in a similar fashion to correct the discrepancies' within age of consent among state and federal legislation by encouraging the outlaw of all sexual activity with someone under 18 in the context of prostitution.

### **The Trafficking Victims Protection Act**

The Trafficking Victims Protection Act is considered the cornerstone piece of federal anti-trafficking legislation.<sup>51</sup> However, the language of the original Act was geared towards the global combat against trafficking in persons.<sup>52</sup> The TVPA of 2000 mandates restitution be paid to victims of human trafficking and prevent human trafficking by creating the Office to Monitor and Combat Trafficking in Persons, which is required to publish the Trafficking in Persons (TIP) report annually.<sup>53</sup> Notably, the TVPA protects victims and survivors of human trafficking by establishing the T Visa, allowing victims of trafficking and their families to become temporary U.S. residents and

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50. Helmut Graupner, "The 17-Year-Old Child: An Absurdity of the Late 20th Century," *Journal of Psychology and Human Sexuality* 16, no. 2-3 (May 1, 2005): 19, accessed November 30, 2016, <http://ezproxy.liberty.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=76055758&site=ehost-live&scope=site>.

51. Angela D. Giampolo, "The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight against Human Trafficking," *Temple Political & Civil Rights Law Review* 16, no. 1 (2006): 202, accessed October 5, 2016, [http://heinonline.org.ezproxy.liberty.edu/HOL/Page?men\\_tab=srchresults&handle=hein.journals/tempcr16&size=2&collection=journals&set\\_as\\_cursor=&id=206](http://heinonline.org.ezproxy.liberty.edu/HOL/Page?men_tab=srchresults&handle=hein.journals/tempcr16&size=2&collection=journals&set_as_cursor=&id=206).

52. Annitto, "Consent, Coercion, and Compassion," 39.

53. "Federal Law."

eventually eligible to become permanent residents after three years.<sup>54</sup> Most important to note, the Trafficking Victims Protection Act of 2000 held that all minors who were involved in commercial sex crimes are victims, and should be treated as such.<sup>55</sup>

Furthermore, the United States has since reauthorized the TVPA several times to accommodate for the victims of sex trafficking.<sup>56</sup> These reauthorizations include the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA of 2003), the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA of 2005), which included a pilot program providing shelter for minors who are survivors of trafficking, and grant programs to assist state and local law enforcement in combatting trafficking.<sup>57</sup> The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), also referred to as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, which in addition to new preventative measures, strengthened criminal sanctions against traffickers. It expanded definitions of different types of trafficking to make prosecution, allowing violators to be tried and then brought to justice.<sup>58</sup> The

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54. "Federal Law."

55. "Human Trafficking Issue Brief: Safe Harbor Fall 2015," Polarisproject.org, Fall 2015, accessed September 12, 2016, <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.

56. Nancy Kubasek and Kaela Herrera, "Combating Domestic Sex Trafficking: Time for a New Approach," *Tex. J. Women, Gender & L.* 24 (2014): 174, accessed September 10, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/tjwl24&g\\_sent=1&collection=journals&id=186](http://heinonline.org/HOL/Page?handle=hein.journals/tjwl24&g_sent=1&collection=journals&id=186).

57. "Current Federal Laws."

58. "Definitions and Methodology."

Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA 2013), which passed as an amendment to the Violence Against Women Act, established and enhanced programs to ensure that United States does not purchase products made by victims of human trafficking.<sup>59</sup> The most recent piece of legislation signed into law was the Justice for Victims of Trafficking Act of 2015.<sup>60</sup> This Act amended the current anti-trafficking legislation; however, it added more provisions for the relief victims.<sup>61</sup>

### **Prostitution of Minors in the United States**

Robert Flores, head of the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice, has said that "there's a suggestion that this is a type of prostitution. It's not. It's really the commercialized rape of our children,"<sup>62</sup> which raises the question if prostitution is inherently linked with sex trafficking. Prostitution is defined as "the engaging, agreeing to engage, or offering to engage in sexual acts or contacts with another person in return for a fee."<sup>63</sup> Historically, one of the first pieces of legislation of

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59. "Current Federal Laws."

60. Corban Teague, "Justice for Victims of Trafficking Act: One Year Later," *Polaris*, May 25, 2016, accessed September 03, 2016, <http://polarisproject.org/blog/2016/05/25/justice-victims-trafficking-act-one-year-later>.

61. *Ibid.*

62. Darren Geist, "Finding the Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors," *Legis. & Pol'y Brief* 4 (2011): 68, accessed September 11, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/legpb4&g\\_sent=1&collection=journals&id=235](http://heinonline.org/HOL/Page?handle=hein.journals/legpb4&g_sent=1&collection=journals&id=235).

63. D.C Code. § 22-2701.01.



its kind, the Mann Act of 1910, amended in 1978 and 1986, outlaws the transportation of minors to travel across state lines for engaging in commercial sex.<sup>64</sup>

Research from two studies confirmed that at least 70% of women involved in prostitution were introduced into commercial sex industry before reaching 18 years of age, and by federal law that makes them victims.<sup>65</sup> One-third of runaway children are lured into prostitution within 48 hours of leaving home.<sup>66</sup> Federal law takes into account child prostitution, also known as DMST, which is prohibited by 18 U.S.C § 1591; where this statute makes it a federal crime "to knowingly recruit, entice, harbor, transport, provide, obtain, or maintain a minor knowing or in reckless disregard of the fact that the victim is a minor and would be caused to engage in a commercial sex act."<sup>67</sup> While federal United States law now prioritizes protecting victims and deterring traffickers, state prostitution enforcement still targets persons in prostitution, mainly the prostitutes, to the exclusion of the johns who engage in, the traffickers who legitimize, and organized

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64. "Current Federal Laws."

65. Kotrla, "Domestic Minor Sex Trafficking in the United States," 182.

66. *Hearing before the Subcommittee on Human Rights and the Law of the Committee on the Judiciary*, S. HRG. 111–587, In Our Own Backyard: Child Prostitution and Sex Trafficking in the United States, 111th Cong., 2d sess., February 24, 2010, 9, accessed September 10, 2016, <https://www.gpo.gov/fdsys/pkg/CHRG-111shrg58003/pdf/CHRG-111shrg58003.pdf>.

67. "Citizen's Guide to U.S. Federal Law on the Prostitution of Children."

crime which finances all trafficking.<sup>68</sup> Despite the laws protecting minors, most victims will still be treated as criminals or delinquents under state statute.<sup>69</sup>

Additionally, the term prostitution confuses the common, traditional understanding of this form of child sexual exploitation.<sup>70</sup> It is important to note that minors involved in commercial sex are by federal law victims due to their being under the age of 18.<sup>71</sup> United States federal law regards those who employ such tactics as "traffickers," and the prostituted persons against whom such tactics are employed as "victims."<sup>72</sup> This designation, however, conflicts with state laws which criminalize most prostitution acts without exempting juveniles in most states because of age of consent differences, or adults who were initially trafficked and now have been prostituted through force, fraud, or coercion.<sup>73</sup> When a minor is unable to give consent according to her state's age of consent law, that minor is then a victim of statutory rape every time they are

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68. Moira Heiges, "From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad," *Minn. L. Rev.* 94 (2009): 429, accessed September 10, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/mnlr94&g\\_sent=1&collection=journals&id=438](http://heinonline.org/HOL/Page?handle=hein.journals/mnlr94&g_sent=1&collection=journals&id=438).

69. Geist, "Finding the Safe Harbor," 83-84.

70. "The Prostitution of Children."

71. *Ibid.*

72. Heiges, "From the Inside Out," 431.

73. *Ibid.*

purchased for sex.<sup>74</sup> Nevertheless, juveniles are treated as adult offenders or juvenile delinquents for their sexual abuse and exploitation while the abusers, the traffickers and the buyers, are often free from incarceration and punishment.<sup>75</sup>

### **Federal and State Prostitution Legislation**

#### **Federal Legislation**

While there is no federal statute addressing prostitution specifically, the United States government combats the illegal solicitation of minors through the TVPA, but leaves the prosecution to state and local governments.<sup>76</sup> Currently within the TVPA, the legal structure for handling prostitution cases does not consider trafficking as a primary means for prostitution.<sup>77</sup> There is even more of a disparity, because commercial sex crimes, such as prostitution, are not currently covered by the federal TVPA's definition of trafficking due to the lack of the elements, force, fraud, and coercion, needed to constitute

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74. T. Mir, (2013), "Trick or Treat: Why Minors Engaged in Prostitution Should Be Treated as Victims, Not Criminals," *Family Court Review* 51: 163, accessed October 1, 2016, doi:10.1111/fcre.12016.

75. Ibid.

76. Susan Crile, "Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws against Minors, A." *Am. UL Rev.* 61 (2011): 1794, accessed September 15, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/aulr61&g\\_sent=1&collection=journals&id=1801](http://heinonline.org/HOL/Page?handle=hein.journals/aulr61&g_sent=1&collection=journals&id=1801).

77. Kubasek and Herrera, "Combating Domestic Sex Trafficking," 173.

as trafficking.<sup>78</sup> These elements are categorized as "severe forms of trafficking," where they are used to exploit a person or minor by any means.<sup>79</sup>

The efforts to federalize broad categories of sex crimes were first opposed by the Department of Justice, many state and local law enforcement agencies, and some conservative think-tanks because it would unduly expand the federal crime-fighting mandate.<sup>80</sup> The Fraternal Order of Police has been quoted maintaining that "simple prostitution" is "unrelated" to the crime of sex trafficking and should therefore resume being "addressed without federal interference."<sup>81</sup> If the Department of Justice took over the prosecution, it would create "federalization of state crimes."<sup>82</sup> This would deter resources away from the core mission of prosecuting human trafficking crimes involving force, fraud, or coercion, or minor victims; and thus "trivialize the seriousness of actual human trafficking by equating it with run-of-the-mill sex crimes such as pimping, pandering, and prostitution."<sup>83</sup> Since the federal laws do not protect those who are prosecuted for prostitution under state jurisdiction, states are encouraged individually to identify victims of trafficking through TVPA provisions.<sup>84</sup>

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78. Kubasek and Herrera, "Combating Domestic Sex Trafficking," 173.

79. Heiges, "From the Inside Out," 431.

80. Chuang, "Rescuing Trafficking from Ideological Capture," 1693.

81. Heiges, "From the Inside Out," 449.

82. Chuang, "Rescuing Trafficking from Ideological Capture," 1693.

83. Ibid.

84. Heiges, "From the Inside Out," 438.

A relevant federal provision for states is the disbursement of grant funding to expand certain services for the victims of sex trafficking.<sup>85</sup> However, for states to be eligible for federal funding under the TVPA, they must enact Safe Harbor laws.<sup>86</sup> The states must also provide assurance that a minor victim of sex trafficking "shall not be required to collaborate with law enforcement to have access to residential care or services."<sup>87</sup> The legislative intent of removing sexually-exploited minors from the criminal justice system, and instead providing them with child welfare services protects them from the threat of criminal conviction to secure cooperation.<sup>88</sup> What is needed is a new, reauthorized piece of legislation based off of the TVPA where the primary focus is to combat trafficking in persons domestically without infringing on individual states' right of prosecution. Instead, states must be encouraged to work alongside the federal government in the prosecution of sex trafficking crimes through incentives provided by the new, reauthorized TVPA.<sup>89</sup>

### **State Legislation**

**Prostitution laws by state.** Current federal sex trafficking law and many state prostitution laws are in conflict over the treatment of prostituted minors, mainly because

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85. Wasch, M. S. W., Schilling Wolfe, "An Analysis of Safe Harbor Laws."

86. Ibid.

87. Ibid.

88. Ibid.

89. Fisher, "Traffic Stop," 33.

of age of consent issues.<sup>90</sup> While the United States has broadened its horizons by recognizing trafficking as a crime, its laws and law enforcement policies around prostitution also have an impact on its victims.<sup>91</sup> Prostitution is a crime in all states in the U.S. with the exception of some counties in the state of Nevada.<sup>92</sup> Although those who are trafficked into sex work are forced to commit criminal offenses, many state criminal laws do not recognize exceptions, create affirmative defenses or immunity from prosecution for them due to their being trafficked.<sup>93</sup>

A total of 29 states and the District of Columbia have enacted Safe Harbor laws that are deemed adequate for the victim since early 2016.<sup>94</sup> The first coming from the New York Safe Harbor Act in 2010,<sup>95</sup> because before Safe Harbor legislation, situations such as the testimony below were occurring:

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90. Dysart, "Child, Victim, or Prostitute," 256.

91. Cynthia Soohoo, Criminalization of Victims. International Women's Human Rights Clinic, City University of New York Law School Trafficking Victims Advocacy Project, Legal Aid Society of New York, April/May 2015, accessed September 5, 2016, <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Criminalization-of-Trafficking-Victims.pdf>.

92. Ibid.

93. Ibid.

94. Brendan M. Connor, "In Loco Aequitatis: The Dangers of Safe Harbor Laws for Youth in the Sex Trade," *Stan. JCR & CL* 12 (2016): 48, accessed September 13, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/stjcrcl12&g\\_sent=1&collection=journals&id=45](http://heinonline.org/HOL/Page?handle=hein.journals/stjcrcl12&g_sent=1&collection=journals&id=45)[http://heinonline.org/HOL/Page?handle=hein.journals/stjcrcl12&g\\_sent=1&collection=journals&id=45](http://heinonline.org/HOL/Page?handle=hein.journals/stjcrcl12&g_sent=1&collection=journals&id=45).

95. Ibid.

Nicolette was arrested for prostitution in New York City. She had previously been arrested for prostitution in a different city but was let go after her trafficker bailed her out. After her second arrest, Nicolette was convicted as a juvenile delinquent and placed in a secure detention facility. New York's age of consent is 17 years old. However, Nicolette was only 12 years old at the time of her arrest. As a 12-year-old, Nicolette was unable to even consent to sex, let alone sell it.<sup>96</sup>

Although Nicolette was considered a victim by federal anti-trafficking laws, she was prosecuted as a criminal at state level, and placed into a detention facility. Unfortunately, this is a commonality among minors who are trafficked, yet forced to engage in prostitution, most often due to discrepancies in age of consent between state and federal law.<sup>97</sup>

The ways to combat the age of consent issue comes in the form of immunity and affirmative defense. In 2015, the organization Shared Hope International released the State Survey Law: Immunity From Prostitution Charges for Domestic Minor Sex Trafficking Victims Report, which addressed whether minors under 18 are expressly immune to prostitution charges, and whether minors and or sex trafficking victims may assert an affirmative defense to prostitution charges in individual states.<sup>98</sup> These provisions of immunity or affirmative defense have been labeled as ways to assist victims of trafficking when facing prosecution. A total of 11 states have enacted immunity laws

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96. Mir, "Trick or Treat," 163.

97. Ibid.

98. State Survey Law: Immunity from Prostitution Charges for Domestic Minor Sex Trafficking Victims, 2014, accessed September 12, 2016, [http://sharedhope.org/wp-content/uploads/2014/06/Shared-Hope-State-law-survey\\_Immunity-for-minors\\_through-8.1.pdf](http://sharedhope.org/wp-content/uploads/2014/06/Shared-Hope-State-law-survey_Immunity-for-minors_through-8.1.pdf).

since late 2015, while 23 have asserted an affirmative defense of trafficking to prostitution charges.<sup>99</sup>

Thirty-nine states have adopted anti-trafficking criminal provisions since 2003.<sup>100</sup> Only a handful at this time provide decriminalization and immunity for the victim, as found in Safe Harbor legislation.<sup>101</sup> Along with this, only three states provide immunity from prosecution for minors under 18 who have engaged in prostitution-related offenses.<sup>102</sup> Two other states have set an age limitation for prostitution offenses, but the limit does not include all children below 18.<sup>103</sup> Additionally, in two states, minors charged with prostitution must be at least 14 and 16 years old, respectively.<sup>104</sup> Many have recognized prostitution as a consequence of sex trafficking, but legislation often fails to implement it in such a way.<sup>105</sup> All states should remove age of consent from prostitution legislation in order to effectively combat sex trafficking of minors, and develop a uniform age of consent reflective of the federal age of a minor<sup>106</sup> The answer to alleviating the

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99. State Survey Law.

100. Heiges, "From the Inside Out," 437.

101. Ibid.

102. Soohoo, Criminalization of Victims.

103. Ibid.

104. Ibid.

105. Ibid.

106. Annitto, "Consent, Coercion, and Compassion," 32.



differences between federal and state law may come in the form of Safe Harbor legislation.

As of late 2015, many states have passed a mild version of Safe Harbor legislation; however, there are reports that most of these states do not provide victims immunity or affirmative defense from prostitution prosecution.<sup>107</sup> Along with this, it is also reported that trafficking victims face criminalization for crimes committed as a "direct result of being subject to trafficking."<sup>108</sup> This is because the term "prostitution" can often delude or confuse the understanding of this particular venue of child sexual exploitation.<sup>109</sup> It is fundamental to emphasize that, in all circumstances by federal law, the minors involved are victims, whether forced into the industry or not.<sup>110</sup> The focus on prosecution should be turned from the victim, and onto the traffickers, pimps, and the individuals supplying the demand.

The federal anti-trafficking legislation and most state anti-trafficking laws identify commercially sexually exploited minors as victims of sex trafficking, whether they are 7 years old or 17 years old, but they may still face criminal charges under the prostitution laws in most states because of incongruities between federal and state age of

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107. Wasch, M. S. W., and Schilling Wolfe, "An Analysis of Safe Harbor Laws."

108. 2016 Trafficking in Persons Report, U.S. State Department.

109. "The Prostitution of Children."

110. Ibid.

consent.<sup>111</sup> The fundamental reason that criminalization of minors under state prostitution laws cannot be reconciled with the federal and state sex trafficking laws is because the conduct that makes the minor a victim of sex trafficking, engaging in commercial sex, is the same that subjects that minor to prosecution under state prostitution law.<sup>112</sup> The real problem lies with the differing ages of consent within federal and state laws.

**New York.** On September 26, 2008, Governor Paterson signed the first Safe Harbor for Exploited Children Act into law in New York State, also known as "New York's Safe Harbor Act."<sup>113</sup> When the legislature enacted criminal laws designed to address human trafficking issues, the government also passed legislation designed to assist human trafficking victims, specifically minors.<sup>114</sup> In addition to creating new crimes relating to sex and labor trafficking, the bill also produced a provision for victims' services and created a task force to coordinate and oversee implementation of the new law.<sup>115</sup> New York enacted the Safe Harbor provision also to prevent the criminal prosecution of minors for sex trafficking crimes.<sup>116</sup> The victims of trafficking are

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111. "Non-Criminalization of Juvenile Sex Trafficking Victims," Shared Hope International, 2015, 3, Accessed September 14, 2016, <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf>.

112. Ibid.

113. Geist, "Finding the Safe Harbor," 92.

114. Chacón, "Human Trafficking, Immigration Regulation and Sub-Federal Criminalization."

115. Ibid.

116. Ibid.

expressly exempt from prosecution as accomplices to trafficking or sex crimes under the terms of the bill.<sup>117</sup> The statute essentially decriminalizes prostitution for minors by requiring the replacement of a delinquency petition with a Person in Need of Supervision petition, which are requests for status offenses and calls for the provision of social services for juvenile offenders.<sup>118</sup> Notwithstanding, the age of consent in New York is currently set at 17, which is unlike the federal age of consent set at 18.<sup>119</sup>

Minors engaged in prostitution are considered victims of human trafficking and are entitled to emergency shelter, medical care, and counseling.<sup>120</sup> However, New York allows for the prosecution and detention of minors in limited circumstances, where a judge determines that an individual requires additional rehabilitation and supervision in a secure placement, thus authorizing a delinquency petition.<sup>121</sup> This is seen as the process of diversion, leading the victim away from the criminal act of prostitution where the victim can still be incarcerated. However, the Safe Harbor laws did not eliminate juvenile

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117. Chacón, "Human Trafficking, Immigration Regulation and Sub-Federal Criminalization."

118. Mir, "Trick or Treat," 168.

119. "New York Age of Consent Laws 2016," 2016, accessed November 25, 2016, <https://www.ageofconsent.net/states/new-york>.

120. Mir, "Trick or Treat," 168.

121. Ibid.

prostitution as a crime.<sup>122</sup> As a result, the option to convict and incarcerate children for prostitution still existed, as prostitution committed by a juvenile was still considered a criminal act.<sup>123</sup>

**Illinois.** Illinois' first anti-trafficking statute was not enacted until 2009.<sup>124</sup> The state legislature modeled the Illinois Trafficking of Persons and Involuntary Servitude Act of 2009 on the federal model trafficking statute originally issued by the Department of Justice.<sup>125</sup> The Illinois Trafficking of Persons Act criminalized "involuntary servitude for labor or services, which included sex under the statute as initially enacted; involuntary sexual servitude of a minor; and trafficking in persons for purposes of involuntary servitude or sexual servitude of a minor."<sup>126</sup> The social work approach that Illinois has adopted proved effective; minors are placed into the child welfare system, and the child protection agency is mandated to provide them with specialized social services.<sup>127</sup> The

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122. Elizabeth S. Barnert, Susan Abrams, Veronica F. Azzi, Gery Ryan, Robert Brook, and Paul J. Chung, "Identifying Best Practices for "Safe Harbor" Legislation to Protect Child Sex Trafficking Victims: Decriminalization Alone Is Not Sufficient," *Child Abuse & Neglect* 51 (2016): 254, accessed October 10, 2016, <http://dx.doi.org/10.1016/j.chiabu.2015.10.002>.

123. Ibid.

124. Chacón, Human Trafficking, Immigration Regulation and Sub-Federal Criminalization.

125. Ibid.

126. Ibid.

127. Mir, "Trick or Treat," 167.

agency then provides them with these services by partnering with local non-governmental organizations and an active human trafficking task force.<sup>128</sup>

Illinois law also contains a Safe Harbor provision guarding minor victims of trafficking from prosecution.<sup>129</sup> This is due to the immunity awarded to minor victims because of their exploitation.<sup>130</sup> The immunity type of Safe Harbor Legislation is not found in many states at this time; however, the problems that ensue are complicated, because blanketed immunity and decriminalization provides an alternate way for pimps and traffickers when prosecution is avoided.<sup>131</sup> Additionally, in some cases, supervised detention is critical in instances where the minor has a legitimate criminal record or when he or she poses as a danger to themselves or society.<sup>132</sup> They can be considered a "flight risk," running back to their pimp upon release; therefore detention may be necessary.<sup>133</sup> Furthermore, it is argued that these victims are exposed to a "revolving door" of exploitation and arrest.<sup>134</sup> Without a systematic program in place, particularly vulnerable

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128. Mir, "Trick or Treat," 167.

129. Chacón, Human Trafficking, Immigration Regulation and Sub-Federal Criminalization.

130. Mir, "Trick or Treat," 167.

131. Mir, "Trick or Treat," 168.

132. Ibid.

133. Geist, "Finding the Safe Harbor," 71.

134. Ibid, 74.

minors are left without the proper treatment and tools to recover and rebuild their lives.<sup>135</sup> Furthermore, Illinois' age of consent is 17, which is distinctive to the federal age of consent being 18.<sup>136</sup>

**Virginia.** In 2014, it was discussed by Virginia State Crime Commission whether Virginia should or should not employ statewide anti-trafficking legislation.<sup>137</sup> There were ample arguments for and against it; for example, the main arguments against enacting an anti-trafficking Act were that the crimes included were already adequately covered by existing statutes and that Virginia has not favored creating such duplicative statutory offenses.<sup>138</sup> Other arguments include the vagueness of the wording of anti-trafficking laws, issues with cross referencing.<sup>139</sup> There are currently no Safe Harbor Laws in place for minor victims in the state of Virginia. Furthermore, as mentioned, it is held that a minor involved in prostitution is more reliable being incarcerated due to the emotional ties to the pimp, than decriminalized for fear of the minor returning to the pimp.<sup>140</sup> The

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135. Mir, "Trick or Treat," 168.

136. "Illinois Age of Consent Laws 2016," 2016, accessed November 25, 2016, <https://www.ageofconsent.net/states/Illinois>.

137. "Human Trafficking and Juvenile Prostitution," 2014, accessed October 1, 2016, [http://vscc.virginia.gov/HUman trafficking.pdf](http://vscc.virginia.gov/HUman%20trafficking.pdf).

138. Ibid.

139. Ibid.

140. "Disposition of Minors Engaging in Prostitution: HB 1991," 2013, accessed October 1, 2016, [http://vscc.virginia.gov/documents/Disposition of Minors Prostitution FINAL.pdf](http://vscc.virginia.gov/documents/Disposition%20of%20Minors%20Prostitution%20FINAL.pdf).

age of consent in Virginia is 18, and under federal law that age is considered a minor; however, arrests of minors involved in prostitution are still occurring.<sup>141</sup>

### **Safe Harbor and DMST Victims**

The Safe Harbor Act was meant to resolve the issues with DMST mentioned above by diverting prostituted minors away from the juvenile justice system, and into new specialized services where the victims would receive care for their abuse.<sup>142</sup> While there is no agreed-upon federal definition of a "Safe Harbor" law, these rules "rely on custodial arrests to prosecute or divert youth arrested for or charged with prostitution-related offenses under the criminal law to court supervision under state child welfare, foster care, or dependency statutes."<sup>143</sup> According to the ABA Commission on Homelessness and Poverty, the policy features of the Safe Harbor laws include: focus on rescuing and protecting prostituted minors, protecting minors from the criminal and juvenile justice system, laws must offer specialized services, and deter prostitution of minors through aggressive prosecution of pimps and johns.<sup>144</sup> This position has been taken in the country of Sweden, wherein 1998 the purchase of sex became completely

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141. "Virginia Age of Consent Laws 2016," 2016, accessed November 25, 2016, <https://www.ageofconsent.net/states/Virginia>.

142. Geist, "Finding the Safe Harbor," 86.

143. Connor, "In Loco Aequitatis," 43.

144. Safe Harbor Laws: Policy in the Best Interest of Victims of Trafficking, Report, 2013, accessed September 15, 2016, [http://www.americanbar.org/content/dam/aba/events/homelessness\\_poverty/2013\\_Midyear\\_Meeting\\_Safe\\_Harbor\\_Laws/rich\\_hoos\\_wayman\\_powerpoint.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/homelessness_poverty/2013_Midyear_Meeting_Safe_Harbor_Laws/rich_hoos_wayman_powerpoint.authcheckdam.pdf).

illegal; however, the selling of sex remained legal.<sup>145</sup> This "Swedish model" law has dropped the numbers trafficked into prostitution, because of the drastic punishments for johns' and traffickers driving down the demand for sexual services.<sup>146</sup>

Most of these state Safe Harbor laws define a "minor" by specifying a maximum age under which a victim will be decriminalized, type of immunity granted, or a diversion set into place.<sup>147</sup> Such provisions reflect the presumption that minors who have participated in criminal activity have done so because of having been exploited sexually.<sup>148</sup> The most protective age-based statutes for minors have adopted immunity for all minors under the age of 18 "for prostitution, promoting prostitution, or other non-violent offenses if the crime was committed as a direct result of being a victim of human trafficking."<sup>149</sup> In a less protective approach, some other states only provide immunity for children under a certain age, usually differing by state in accordance to age of consent.<sup>150</sup>

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145. Witness: Ruth Nordström, "Why Sweden Leads the Way in Tackling Human Trafficking and the Sex Trade," Human Rights Europe, accessed October 18, 2016, <http://www.humanrightseurope.org/2014/02/witness-ruth-nordstrom-why-sweden-leads-the-way-on-tackling-human-trafficking-and-the-sex-trade/>.

146. Ibid.

147. "Human Trafficking Issue Brief: Safe Harbor Fall 2015."

148. Ibid.

149. Ibid.

150. Ibid.



At the local level, DMST victims are regularly still treated and considered as criminals.<sup>151</sup> Some states allow minors at any age to be prosecuted for prostitution, even though minors are too young to consent to sex with adults.<sup>152</sup> However, by charging victimized minors with crimes of prostitution, the harm towards the victim is only compounded.<sup>153</sup> The federal government's current failure to coordinate sex trafficking and prostitution enforcement represents a loss not only for DMST victims, but also for "American leadership in the international counter-trafficking movement."<sup>154</sup> This can be altered if the federal and state authorities work in conjunction to end the crime of DMST in the United States.<sup>155</sup>

### **Conclusion: The End in Sight**

Trafficking Victims Protection Act is a landmark piece of legislation in United States history; fighting against sex trafficking in the United States and worldwide.<sup>156</sup> However, because of its initial goal to prosecute international traffickers and ambiguous language, there are numerous unintended consequences within domestic state prostitution legislation.<sup>157</sup> The issue of age of consent differing between federal and state legislation

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151. "Human Trafficking Issue Brief: Safe Harbor Fall 2015."

152. In Our Own Backyard, *Hearing*, 6.

153. Ibid.

154. Heiges, "From the Inside Out," 429.

155. Fisher, "Traffic Stop," 34.

156. Crile, "A Minor Conflict," 1794.

157. Adelson, "Child Prostitute or Victim of Trafficking?" 102.

causes complications over the treatment of DMST victims in the United States.

Following after the "Framework Combative" initiated by the European Union, age of consent should not be considered within state prostitution legislation, this would alleviate the disparity by making 18 the age of a minor in all prostitution legislation. Furthermore, there is no straightforward solution for states in handling the victims of DMST, mostly because of extensive psychological trauma. Many state statutes recognize this, therefore, each state should remain sovereign in determining which options of deterrence and protection are available for victims, but the individual state's age of sexual consent should not be considered in state prostitution legislation; instead, the federal age of consent of 18 should be nationally upheld.

As of now, 15 states have enacted state prostitution laws that prohibit the criminalization of minor sex trafficking victims, showing that progress is being made in this area.<sup>158</sup> Having been influenced by Shared Hope International's Protected Innocence Challenge, five states in the U.S. last year passed legislation to prevent the criminalization of minors involved in prostitution.<sup>159</sup> Moreover, 2016 is the first year that all 50 states have passed legislation criminalizing the sex trafficking of minors.<sup>160</sup> However, more states must be encouraged to enact legitimate Safe Harbor legislation to help protect victims of DMST from unnecessary prosecution.

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158. Rickie Scott, "Children: Victims Not Criminals – Shared Hope International," Shared Hope International, accessed September 10, 2016, <http://sharedhope.org/2016/09/children-victims-not-criminals/>.

159. Ibid.

160. Ibid.

The vague wording and original intent of the TVPA hinder the fight against DMST domestically, because the victims are not receiving adequate protection under the law. The disparity between the anti-trafficking legislation and state prostitution laws needs to be addressed at a federal level, but the power must remain with the states. The improvements in federal and state legislation within the past 16 years, shows that the United States can win the fight against trafficking. A provision within a new reauthorization of the TVPA, mirroring that of the EU Framework Combative, should read "all states are obliged to remove age of consent from crimes in which trafficking was a possible reason for participation; these crimes include prostitution, pornography, violence and inducement." Ultimately, the TVPA needs to be reauthorized to incorporate language relevant to the United States domestic fight against DMST. Along with this, a new provision must be put forth to help alleviate the disparity between federal and state legislation.

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