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An Examination of Prostitution and Sex Trafficking Laws within the United States

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An Examination of Prostitution and Sex Trafficking Laws within the United States

Allison Jean Capaul

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Submitted for partial fulfillment of the requirements
for graduation with honors in Legal Studies
from Hamline University

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ABSTRACT:

As one of the oldest professions, prostitution has had a continual presence in the United States. This once tolerated activity became a public affront at the turn of the twentieth century. Failed attempts at regulation and changes in societal views then advanced the criminalization of prostitution throughout the United States: it was made completely illegal in all states with the exclusion of thirteen counties in Nevada.

At the same time, awareness of sex trafficking increased and laws attempted to protect individuals who were being transported by force, deceit, and threat of force for purposes of sex slavery. While states have recognized the existence of this involuntary servitude through sex trafficking, victims often remain unnoticed. Indeed, the simple category of sex trafficking is unable to subsume all prostitution victims. Persons who enter prostitution do so for various reasons. Some were former victims of trafficking. While they no longer are under threat, these individuals continue to sell themselves. Many are involved in a relationship with a controlling pimp. Others enter due to socioeconomic circumstances and have no better option. Do prostitution and sex trafficking laws protect these victims or do new laws need to be created?

Alternative sentencing models provide prostitutes with help and resources needed to break away from a life of prostitution. Despite the emergence of this alternative approach in select states, other states fail to show signs of adopting these methods. Although a given procedure may help a victim elude prison and is a better option, victims of pressurized prostitution may still go unnoticed.

Amidst changing laws, the overlap of prostitution and sex trafficking requires consideration. This research consists of a nation-wide examination and evaluation of the laws surrounding prostitution and sex trafficking in the United States. It will show how each state is handling these victims of prostitution.

**Pressurized Prostitution and Its Victims: An Examination of Prostitution and Sex
Trafficking Laws within the United States**

Allison Jean Capaul

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It would hardly be a satisfactory answer to say that the sound judgment and decisions of the police and prosecuting officers must be trusted to invoke the law only in proper cases. The law itself should be so drawn as not to make it applicable to cases, which obviously should not be comprised within its terms.

— President Roosevelt

INTRODUCTION

As one of the oldest professions, prostitution is the act of performing sexual services in exchange for payment.¹ When determining a legal approach to prostitution, there are four different courses of action that can be taken.² The first approach is the complete criminalization of prostitution. This method makes any involvement in prostitution illegal.³ The second approach is toleration or criminalization in part. It allows the prostitute to escape legal consequences, while other actors in prostitution are punished.⁴ Third, decriminalization of prostitution does not specifically have laws against the relationships or specific acts of prostitution and there are no laws regulating prostitution either. Rather, prostitution is held to standards like other forms of employment (i.e. employment and health laws). Engagement in prostitution is only punished if criminal laws are broken (i.e. rape, physical assault, etc.) and engagement in prostitution is punished for a criminal law that is broken.⁵ Finally, the fourth approach is legalization in which prostitution is legal and not against the law. However, the government heavily regulates prostitution and those involved must follow specific state laws and regulations concerning the conduct and operation of the business.⁶

¹ Minn. Stat. § 609.321 (2011).

² Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1668-1669 (2010).

³ Chuang, *supra* note 2, at 1668-1669.

⁴ Chuang, *supra* note 2, at 1668-1669.

⁵ Gail M. Deady, *The Girl Next Door: A Comparative Approach to Prostitution Laws and Sex Trafficking Victim Identification Within the Prostitution Industry*, 17.2 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 515, 517 (2011); Chuang, *supra* note 2, at 1669.

⁶ Chuang, *supra* note 2, at 1669.

The United States started as a country allowing prostitution to exist without rules or laws regulating it.⁷ During the 19th century in the United States, common law allowed officials to punish those involved in prostitution “under other offenses such as lewdness, fornication, adultery, or disorderly conduct.”⁸ After an unsuccessful attempt at controlling the business of prostitution, the United States moved towards the criminalization of prostitution (with the passage of the law).⁹ Later, in the United States Supreme Court decision of *Hoke v. United States*, it was determined individual states had the sole right to self-regulate prostitution within their jurisdiction.¹⁰ This led to more strictly enforced state laws. With the exception of thirteen counties in Nevada, the once legal profession of prostitution was made completely illegal in the United States by 1971.¹¹ It has remained so to this day.¹²

The research done for this paper has resulted in an examination of the intersection of prostitution and sex trafficking. What classifies an individual as either an individual selling himself or herself in prostitution or a sex trafficking victim? Since laws between the fifty states vary, this determination is dependent upon the state a person is caught in and the methods taken to identify individuals. Attempts at solving the overlap between prostitution and sex trafficking have been taken at the state level.

Use of alternative sentencing methods has been expanding throughout the states in the United States of America. There are programs available to individuals

⁷ Susan Deller Ross, Ann Freedman, Rhonda Copelon, Deborah L. Rhode, Nadine Taub, Barbara Allen Babcock & Wendy Webster Williams, *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE, THEORY*, 1476, (Wolters Kluwer: Law & Business, 2nd ed., 1989).

⁸ Ross, *supra* note 7, at 1476.

⁹ Ross, *supra* note 2, at 1476.

¹⁰ *Hoke v. United States*, 227 U.S. 308 (1913).

¹¹ Jessica N. Drexler, *Government's Role in Turning Tricks: The World's Oldest Profession in the Netherlands and the United States*, 15:1 DICK. L. REV. 201, 205 (1996).

¹² Drexler, *supra* note 11, at 205.

selling themselves for purposes of prostitution and/or patrons that serve as an educational rehabilitation to help these individuals from committing the crime again. However, without an established method of requiring such use of the programs and services, the impact of the program does not reach all individuals convicted of prostitution or related offenses.

Throughout the remainder of this thesis, the reader will be taken through the history of prostitution within the United States and then introduced to the state laws through an analysis of their definition of the crime. The paper will then move on to the legal history of sex trafficking within the United States and an analysis of what is defined as sex trafficking (or the state equivalent of such). The next section will discuss the defenses afforded to individuals who are found to be either victims of prostitution or trafficked individuals. From there a discussion surrounding the intersection of the two crimes takes place. It is from this discussion that a solution to the overlap of prostitution and sex trafficking is presented.

HISTORY

Prostitution

Prostitution has proven to be a controversial issue throughout the course of United States history and continues to be so today. Though it was not illegal during the early years of our nation's history, prostitution was slowly controlled until the regulations developed into the criminalization of prostitution, Nevada excluded. The determination of how to regulate prostitution was left up to the discretion of the individual states. The transportation of persons across state borders for sexual purposes fell under the purview of federal law.¹³ In order to gain an understanding of

¹³ Hoke v. United States, 227 U.S. 308 (1913).

the current laws pertaining to prostitution, it is important to examine the past and the evolution of these laws to what they are today. The transformation of these laws can provide an understanding of how prostitution has been viewed and whether the laws have been effective. Through the investigation into the history and development of the laws, a pattern or trend presents itself on how the laws have changed. It helps with the evaluation of where problems exist with the current laws, and is informative on how the laws of prostitution can be changed to better address the multi-faceted problems of prostitution.

Since the Thirteen Colonies fought for independence from Britain in the 18th Century, prostitution has been a part of American society. At this time the profession of prostitution was for the most part legal; however, it was disapproved of.¹⁴ During the American Revolutionary War, there emerged instances of attempts by military leaders to control prostitution. First witnessed inside of the American army camps, prostitution had mostly negative effects to the army. It gave a bad image to the army, distracted the soldiers, gave way to thefts, and most importantly, spread venereal disease; yet, the allowance of prostitutes within the army camps kept morale high.¹⁵ The disease of soldiers and disorder in the camps where prostitution was allowed became too much for General Artemas Ward, as well as other commanders, to ignore.¹⁶

On June 30, 1775, General Ward prohibited prostitutes from entering the military camps, and stated that appropriate punishment would be given in order to rid

¹⁴ Ross, *supra* note 7, at 523.

¹⁵ Carol Berkin, *FIRST GENERATIONS: WOMEN IN COLONIAL AMERICA*, 187, (N.Y.: Hill and Wang, 1st ed., 1996); Harry M. Ward, *THE WAR FOR INDEPENDENCE AND THE TRANSFORMATION OF AMERICAN SOCIETY*, 123, (UCL Press, 1st ed., 1999).

¹⁶ Holly A. Mayer, *BELONGING TO THE ARMY: CAMP FOLLOWERS AND COMMUNITY DURING THE AMERICAN REVOLUTION*, 111, (Columbia: U. S.C. Press, 1st ed., 1996).

the camp of the “lewd women.”¹⁷ After the banning, an accusation of prostitution against a woman meant she would be put under guard. Through military court hearing it would be determined what punishment would be appropriate. The punishment would then be carried out against the women. Although punishment did not happen often, the forms bestowed upon the condemned prostitutes were having their head shaven, being “well wated under a pump”¹⁸ or getting drummed out of the camp they were occupying. The latter of these three punishments was the most common type of punishment.¹⁹

The transition from the 18th Century into the 19th Century involved a growth in prostitution among society. Though, in most cities it was out of the public eye, the development started to bring worry to society. An upsurge in the number of bawdy houses, brothels, and saloons brought about attempts at deterring participation in prostitution. Through ordinances, city officials around America tried to prevent and punish those in the industry. Most of the ordinances made sexual intercourse between two non-married consenting adults illegal. Walking along the street looking for a patron was also illegal. It was also illegal to participate in adultery, and other acts thought to be associated with prostitution or other crimes.²⁰

In the District of Columbia, laws of vagrancy determined vagrants to be “any person wandering abroad and lodging...in the open air,” or “any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself [or herself].”²¹ While the vagrancy

¹⁷ Mayer, *supra* note 16, at 111; Ward, *supra* note 15, at 123.

¹⁸ Ward, *supra* note 16, at 124.

¹⁹ Mayer, *supra* note 17, at 111; Ward, *supra* note 16, at 124.

²⁰ Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33.2 SUFFOLK U. L. REV. 235, 241 (2000).

²¹ William O. Douglas, *Vagrancy and Arrest on Suspicion*, 70.1 YALE L.J. 1, 4 (1960).

laws were aimed at punishing individuals who fit the guidelines, they were sometimes used to punish those who were participating in sexual transgressions. The punishments took the favor of fines.²² These laws were in part successful at punishing those found to be involved in prostitution; yet, overall they were ineffective in the attempt to purge towns of prostitution. Due to a lack of “resources and conviction,”²³ there was not an extreme abundance of persons arrested for vagrancy or prostitution. Thus prostitution continued to expand.

Like the American Revolutionary War, the Civil War (1861-1865) brought about an enormous growth of prostitution in the United States. Again, prostitution was thought to keep morale high during this time and was accordingly tolerated. A soldier camping near Alexandria, Virginia depicted the increasing number of prostitutes in a letter to his wife when he stated “one house of every ten is a bawdy house.”²⁴

After the war many proposals were brought about for laws to regulate this sex business.²⁵ Some cities (such as New York, Cincinnati, Chicago, Baltimore, and Pennsylvania) made the attempt at legalizing and controlling prostitution, but failed.²⁶ In 1870, the St. Louis (Missouri) city council created the “Social Evil Ordinance” in order to regulate prostitution. This ordinance gave the power to their Board of Health to issue licenses to the houses of prostitution and the women. The board also appointed physicians to check the health of the women, so that they would prevent the spread of disease. Like the other cities that tried to regulate prostitution, the St. Louis

²² Deady, *supra* note 5, at 523.

²³ Whitebread, *supra* note 20, at 241.

²⁴ Thomas Lowry, *THE STORY THE SOLDIERS WOULDN'T TELL: SEX IN THE CIVIL WAR*, 32, (Mechanicsburg: StackPole Books, 1st ed., 1994).

²⁵ Drexler, *supra* note 11, at 204.

²⁶ Whitebread, *supra* note 20, at 241.

law failed.²⁷ Cities continued to use statutes – like “open and gross lewdness” statutes to punish those involved in prostitution.²⁸ At this point, most of the prostitutes and establishments of prostitution were tolerated if they were located within certain geographic areas which became known as “Red-light Districts.”²⁹

The Red-light Districts were illegal under many laws, but they were tolerated due to the view that they were a “necessary evil.”³⁰ Within the cities, prostitution was not as prominent, because it mostly “operated on the fringes of urban society.”³¹

The shift from the 19th to the 20th century brought about a different view on prostitutes. Prior to the 20th century, many people viewed the prostitutes as “fallen women,” or women who had resorted to this trade because they had a lack of morals or because they were of a lower class and it was the only way to make money. People of society often felt sympathy for these women, while at the same time blaming them.³² At the turn of the century, the prostitutes were viewed as “white slaves,” or women who were forced into the trade. They were seen as “young and innocent.” Victims.³³ These views were brought on by the discovery of “white slaves” or women who were enslaved into prostitution.³⁴

This breakthrough brought about the Mann Act. Passed by Congress in 1910, the act (also known as the White Slave Traffic Act) made it a federal crime for anyone to transport “any woman or girl for purposes of prostitution or debauchery or for any

²⁷ Peter C. Hennigan, *Property War: Prostitution, Red-Light Districts, and the Transformation of Public Nuisance Law in the Progressive Era*, 16.1 YALE J.L. & HUMAN. 123, 156 (2004).

²⁸ Deady, *supra* note 5, at 523.

²⁹ Neil Larry Shumsky, *Tacit Acceptance: Respectable Americans and Segregated Prostitution, 1870-1910*, 19.4 J. SOC. HIST. 665, 665 (1986).

³⁰ Hennigan, *supra* note 27, at 155.

³¹ Hennigan, *supra* note 27, at 156.

³² Hennigan, *supra* note 27, 157.

³³ Hennigan, *supra* note 27, 159.

³⁴ Hennigan, *supra* note 27, 158-159

other immoral purpose”³⁵ from one state to another. The intention of this act was to strike against forced prostitution; however, it became used to punish adults who had sexual relations outside of marriage.³⁶ In 1986, the Mann Act was amended and “or any immoral purpose” was eradicated and helped prevent the previous broad interpretations of the act.³⁷

Meanwhile, on the state level, the Red Light Abatement laws were being put into effect. First introduced in Iowa in 1909, the Red Light Abatement Act expanded standing and allowed individuals within a broad jurisdictional area to bring a public nuisance action to prohibit prostitution from a property. Citizens were given the right to close a dwelling of prostitution.³⁸ As a result of these laws, many of the red light districts ceased to exist. By 1919, the Red Light Abatement Act expanded throughout the United States and was in effect in 41 states. At the beginning of the 1920s most of the red light districts within the United States were gone, and by 1952, the only red light district in existence was in Galveston, Texas.³⁹

In 1913, the United States Supreme Court made a decision in *Hoke v. United States*, upheld the Mann Act, but granted the right to the individual states to control prostitution, since the Mann Act only provided congressional regulation of prostitution involving interstate travel.⁴⁰ By 1925, every state had passed a form of law concerning the regulation of prostitution.⁴¹ The following decades brought about many cases challenging the prostitution statutes, but the courts maintained the validity

³⁵ Brian Donovan & Tori Barnes Brus, *Narratives of Sexual Consent and Coercion: Forced Prostitution Trials in Progressive-Era New York City*, 36.3 LAW & SOC. INQUIRY 597, 601 (2011).

³⁶ Donovan, *supra* note 36, at 601-602.

³⁷ Deady, *supra* note 5, at 525.

³⁸ Hennigan, *supra* note 27, at 126.

³⁹ Hennigan, *supra* note 27, at 127.

⁴⁰ *Hoke v. United States*, 227 U.S. 308 (1913).

⁴¹ Drexler, *supra* note 11, at 203-204.

of the laws. In 1971, with the exception of the thirteen counties in Nevada, prostitution was made completely illegal in the United States and has remained to be.⁴²

The transition of laws from the end of the 18th century until the present establish the fact that “as prostitution increased, so too did disapproval for the ‘profession.’”⁴³ History also shows the importance of enforcement and preciseness with respect to the effectiveness of these laws. For example, as previously discussed, the vagrancy laws did not explicitly illegalize prostitution. This failure fostered the continuance and growth of prostitution in the United States. In addition, the allowance of prostitution in segregated areas during the 19th and early 20th centuries contributed to the growth. Once the laws were more heavily enforced, the existence of these districts ceased to exist. The above historical discussion of laws surrounding prostitution provides context for the importance avoiding vagueness in laws. The desire to avoid vagueness should be used when considering new prostitution laws.

Sex Trafficking

As the United States made prostitution illegal, an awareness of a new crime involving sex increased: human sex trafficking. This crime entails the act of a person transporting or recruiting an individual by force, deceit, or threat of force for purposes of sex slavery.⁴⁴

⁴² Drexler, *supra* note 11, at 205.

⁴³ Rebecca L. Wharton, *A New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act*, 16.3 WM. & MARY J. WOMEN & L. 753, 759 (2010).

⁴⁴ 22 U.S.C. § 7101(b)(2). This definition is merely the federal definition of sex trafficking. The laws of the states within the United States vary on their definitions. See the state analysis of sex trafficking laws for more details.

Two significant steps to combat sex trafficking – the Mann Act of 1910 and the Victims of Trafficking and Violence Protection Act of 2000 – were used. As discussed above, the Mann Act of 1910 forbade any person to cross state lines with a female for purposes of prostitution or for another similar reason.⁴⁵

Efforts towards combating human trafficking on both the national and international level were brought about during the mid-1990s.⁴⁶ Not only was trafficking increasing, but also the United States became an ideal location to traffic individuals to. During Bill Clinton’s presidency, he enacted a policy framework (commonly known as the “three Ps”) targeted at trafficking. In this structure, the “prosecution of trafficking, prevention of trafficking, and protection of trafficked persons”⁴⁷ was focused on to guide the United States in efforts against trafficking. This brought about the creation of laws to combat the crime.

At the height of human trafficking awareness and advocacy in 2000, the United States participated in the creation of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women (international law) and Children and the Trafficking Victims Protection Act of 2000 (United States law).⁴⁸ The Victims of Trafficking and Violence Protection Act of 2000, a federal law, expanded on the Mann Act of 1910. In addition to defining sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,”⁴⁹ it also provided a definition for a victim of

⁴⁵ Donovan, *supra* note 36, at 601.

⁴⁶ Chuang, *supra* note 2, at 1660.

⁴⁷ Chuang, *supra* note 2, at 1661.

⁴⁸ Chuang, *supra* note 2, at 1657.

⁴⁹ Victims of Trafficking and Violence Protection Act of 2000, PL 106-386, October 28, 2000, 114 Stat 1464. (22 U.S.C.A § 7102, Sec 103 (9)).

trafficking as “a person subject to an act or practice”⁵⁰ that constitutes a severe form of trafficking in persons or sex trafficking. This act brought about the establishment of the Office to Monitor and Combat Trafficking in Persons. This agency was created to solely tackle the issues of human trafficking on all legal levels and to bring forth legal actions.⁵¹

Reauthorized three more times (2003, 2005, and 2008), the Trafficking Victims Protection Act remains the national authority on human trafficking. Other efforts to lower the United States’ affiliation with human trafficking include (1) incorporating a clause in the contract of United States government contractors prohibiting these contractors from partaking in trafficking activities and (2) any military personnel who participates in prostitution – whether it is legal or not in the location the act took place – to be dishonorably discharged.⁵²

In the United States, it is estimated that between 100,000 to 300,000 children are sexually exploited. This number is hard to determine, since traffickers carefully cover up many incidences of sex trafficking and many victims caught for prostitution do not speak out about it.⁵³ Sex trafficking is illegal throughout the United States.

ENTRANCE

Pertinent to this discussion on the intersection, involves the risk factors as to why individuals enter prostitution or continue the lifestyle of a prostitute. Seldom, if

⁵⁰ Victims of Trafficking and Violence Protection Act of 2000, PL 106-386, October 28, 2000, 114 Stat 1464. (22 USCA § 7102, Sec. 103 (14).

⁵¹ Amanda Walker-Rodriguez and Rodney Hill, *Human Sex Trafficking*, FBI LAW ENFORCEMENT BULLETIN, U.S. Department of Justice: Federal Bureau of Investigation, March 2011, http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking.

⁵² Chuang, *supra* note 2, at 1688.

⁵³ Chuck Neubauer, *Sex Trafficking in the U.S. Called ‘Epidemic’*, THE WASHINGTON TIMES, 23 April 2011, <http://www.washingtontimes.com/news/2011/apr/23/sex-trafficking-us-called-epidemic/?page=all>

at all, do individuals enter prostitution or perform acts of prostitution for the mere thrill of breaking the law. “Entering the sex trade may not be a voluntary, premeditated career choice...it may be a last resort option.”⁵⁴ Among the reasons, a theme transpires: an underlying pressure or compulsion for these individuals to enter prostitution. In some of the motivations the theme is obvious (i.e. victims of recruitment methods), while in others it requires deep inspection and consideration (i.e. social influences). While reasons or pressures exist for why someone would enter prostitution, these precursors are not simply a cause that produces the effect. It is imperative to look at both the reason and the circumstances surrounding the entirety of the individual’s situation.

Education/Small Job Opportunities

“Without an education I can’t really do nothing. If I could have a job in the office, but make the same money, I’d take the job,”⁵⁵ stated a male prostitute in his thirties. While jobs without an education requirement exist, the ability to obtain a job with enough pay to support an individual is hard to come by. Although they have ambitions and goals, many individuals involved in prostitution face situations in which there is an obstacle – a history of prostitution or criminal conduct, lack of opportunity, or educational requirements – which stops these people from supporting themselves through a legal job.⁵⁶ When applying for jobs, a criminal background prevents many from obtaining it over others without a tainted record. Especially with

⁵⁴ M. Alexis Kennedy, Carolin Klein, Jessica T.K. Bristowe, Barry S. Cooper & John C. Yuille, *Routes of Recruitment: Pimps’ Techniques and Other Circumstances That Lead to Street Prostitution*, 15:2 J. OF AGGRESSION, MALTREATMENT & TRAUMA 1, 2 (2007).

⁵⁵ Evan Rosen & Sudhir Alladi Venkatesh, *A “Perversion” of Choice: Sex Work Offers Just Enough in Chicago’s Urban Ghetto*, 37:4 J. OF CONTEMP. ETHNOGRAPHY 417, 425 (2008).

⁵⁶ Rosen, *supra* note 55, at 426.

the state of the current economy, finding a job already proves difficult. In addition, if an individual lives in a poor area, few job opportunities are close by.

Family and Social Background

Everyone has different views of what is right and wrong. Being raised in different environments, surroundings, and communities impact different personal and cultural values of individuals. Growing up and then living in an area “where they, their parents, and their peers have been rejected many times”⁵⁷ can destroy the hope of finding a job that is legal and so may turn to prostitution. During their childhood, some lived in an area where prostitution was normal activity for family and friends. These individuals “look at role models and peers to see what their options are,”⁵⁸ and prostitution became normalized. Some see it as an inevitable pathway during their life.⁵⁹ There are other young girls or women who see friends engaged in prostitution as having a life of glamour – flexible lifestyle, nice clothes, freedom, and wealth.⁶⁰ Peer influence has a great deal to do with many individuals entrance into prostitution – whether the influence is forced or socially constructed.

Sexual Abuse

Engagement in prostitution can relate to previous sexual abuse experiences of prostitute. Attempting to run away from abuse at home, individuals may end up running into a life of prostitution as a means to get by.⁶¹ One prostitute believed that

⁵⁷ Rosen, *supra* note 55, at 426.

⁵⁸ Rosen, *supra* note 55, at 426.

⁵⁹ Kennedy, *supra* note 24, at 14.

⁶⁰ Kennedy, *supra* note 24, at 13.

⁶¹ Jane A. Siegel & Linda M. Williams, *The Relationship between Child Sexual Abuse and Female Delinquency and Crime: A Prospective Study*, 40:1 J. OF RES. IN CRIME AND DELINQ. 71, 72 (2003).

since she was “getting molested at home...why not get paid for it and get rent covered.”⁶² Individuals previously abused as either children, young adults, or adults participate in acts of sex in exchange for money, because they are desensitized to the psychological consequences; they “learned to separate their emotion from their sexual activity.”⁶³ As well as the separation of emotion and sexual acts, sexual abuse degrades a child sexually and reinforces the abuse victim to believe he or she is a sexual object.⁶⁴ These reactions and results of sexual abuse create an individual who is psychologically suited for prostitution, as a prostitute utilizes “emotional distancing during sex...while servicing her trick.”⁶⁵ While prior sexual abuse does not guarantee an individual will turn to a life of prostitution, the National Criminal Justice Reference Service found a person abused as a child is “27.7 times more likely than others to be arrested for prostitution.”⁶⁶ Sexual abuse does not represent a cause and effect or prostitution, but being a victim of this crime is related to engagement in prostitution.

Economic Necessity (unrelated to substance addiction)

For many prostitutes, resorting to this “profession” is due to financial difficulties. These individuals for various reasons are in need of an income, which can support either themselves or their children.⁶⁷ In other instances, an underage prostitute

⁶² Kennedy, *supra* note 24, at 14.

⁶³ Rosen, *supra* note 55, at 421,

⁶⁴ Ronald Simons & Les B. Whitbeck, *Sexual Abuse as a Precursor to Prostitution and Victimization among Adolescent and Adult Homeless Women*, 12:3 J. OF FAM. ISSUES 361, 364 (1991).

⁶⁵ Simons, *supra* not 64, at 376.

⁶⁶ Rosen, *supra* note 55, at 421.

⁶⁷ Cortney A. Ranklin, *Women Offenders, Disparate Treatment, and Criminal Justice: A Theoretical, Historical, and Contemporary Overview*, 21:4 CRIM. JUST. STUD. 341, 347 (2008).

may be a runaway and “turned to prostitution as they felt that they had no other potential source of income.”⁶⁸ “In some cases, entry into street prostitution began with women accepting financial assistance from men in exchange for sexual services. For example, one woman interviewed at the safe house...reported being stranded in a strange city after a fight with her boyfriend and stated: “I just was at a restaurant having coffee and, um, a rich man made me a very generous offer. Asked me if I was all right, if there was anything I needed help with. I explained that I had no means of getting home, and he bought me a ticket home and gave me money as well in return for sex which took about four minutes.” Being turned out by a stranger was different than the pimping techniques described because the man did not stay involved or benefit from her earnings.”⁶⁹ In these instances, the individuals are suffering from economic difficulties or have no alternative legal methods for an income. There is a need for money. This need pressures them into the last resort option of prostitution.

Drugs

Drug use and addiction are other causes for engaging in and continuing to engage in prostitution.⁷⁰ While some don't form an addiction until after turning tricks, others form a habit prior to their involvement. The habit formed is the motivation for entering the sex trade. These individuals find prostitution as the way to support their habit and fulfill their need for drugs. Individuals either prostitute themselves for the money to obtain drugs, or “trade sexual favors directly for narcotics.”⁷¹ Varying from

⁶⁸ Kennedy, *supra* note 24, at 12.

⁶⁹ Kennedy, *supra* note 24, at 13.

⁷⁰ Lyn Stankiewicz Murphy, *Understanding the Social and Economic Contexts Surrounding Women Engaged in Street-Level Prostitution*, 31:12 ISSUES IN MENTAL HEALTH NURSING 775, 779. (In some cases, female prostitutes engaged in prostitution in order to support their partner's or both of couple's drug habit.)

⁷¹ Rosen, *supra* note 55, at 421.

a cost of ten dollars a day to thousands creates a need for a higher income. In addition, using drugs gives the individuals a belief they are “unworthy” of doing other jobs or are deterred from a job due to the possibility of drug testing.⁷² While prostitution is not an appealing way of making money, it is a means to make enough money to support a drug addiction. This also applies to a prostitute who continues to turn tricks to support their drug addiction. Some prostitutes interviewed believe “once the drugs stop, the tricking will stop,”⁷³ and others have stated they need drug treatment to help them.⁷⁴ Although some entered prostitution due to other reasons, they continued to engage in sexual acts out of the necessity for drug money. These pressures, “both the physical and the emotional need for drugs overpower the aversion to the behavior of prostitution.”⁷⁵

STATE LAW ANALYSIS

Prostitution

The crime of prostitution is committed when an individual engages in a sexual activity with another person in exchange for a fee. Drawing upon the different states’ legal definitions of prostitution, one is able to draw a simplified definition of the offense based on three characteristics. For this crime to occur there must be the following: level of engagement, sexual activity, and a fee. The fifty states all vary on the details surrounding these three characteristics.⁷⁶

⁷² Id.

⁷³ Murphy, *supra* note 70, at 779.

⁷⁴ Murphy, *supra* note 70, at 779.

⁷⁵ Murphy, *supra* note 70, at 778.

⁷⁶ Mississippi, South Carolina, and West Virginia are excluded from the second two characteristics, since their laws do not provide terms for those characteristics. Michigan is excluded from the analysis of the three characteristics, since the Michigan Penal Code does not explicitly define prostitution. It is determined that an individual “16 years of age or older who accost, solicits, or invites another person...to commit prostitution or to do any other lewd

Level of Engagement

With respects to the first element – level of engagement – the states vary on what level is necessary to constitute prostitution. There are states that require a simple offer to engage in prostitution, while some require the act to take place for it to be considered a crime. California, Louisiana, Maryland, Mississippi, Nevada⁷⁷, Ohio, South Carolina, and West Virginia are the states that require the highest level of engagement before an individual can be arrested for being a prostitute. An individual must “engage in,”⁷⁸ “practice,”⁷⁹ or “perform”⁸⁰ the sexual activity in return for a fee. A conviction requires the actual performance of sexual activity in exchange for a fee to take place before allowing the arrest of an individual. In a sense, the “true” crime must actually be committed before an individual can be arrested and convicted for prostitution.

Although prostitution is the act of sexual activity in exchange for a fee, other states have interpreted this crime to allow leniency in the arrest and conviction of an individual for this crime. Lowering the level of engagement necessary, New Mexico, North Carolina, South Dakota, Tennessee, Vermont, and Virginia extend beyond

or immoral act” is guilty of soliciting. Mich. Comp. Laws § 750.448 (2013). In regards to sexual activity under Michigan’s Penal Code, it was found in People v. Warren that in addition to sexual intercourse, the “sexual stimulation of customer’s penis by direct manual contact in exchange for money constitutes prostitution.” People v. Warren, 449 Mich. 341, 346, 535 N.W.2d 173, 175 (1995).

⁷⁷ In Nevada, it is illegal to commit acts of prostitution “except in a licensed house of prostitution.” Nev. Rev. Stat. Ann. § 201.354 (2013).

⁷⁸ Cal. Penal Code § 266c (West 2013); Miss. Code. Ann. § 97-29-49 (2013); Nev. Rev. Stat. Ann. § 201.354 (2013); Ohio Rev. Code Ann. § 2907.01 (West 2013); S.C. Code Ann. § 16-15-90 (2013); W. Va. Code § 61-8-5 (2013).

⁷⁹ La. Rev. Stat. Ann. § 14:82 (2013).

⁸⁰ Md. Code Ann., Crim. Law § 11-301 (West 2013).

engaging in to also acts of “offering to engage in”⁸¹ prostitution. This lowers the involvement and actions necessary to be arrested for prostitution. An individual could merely make an offer to engage in prostitution and would be considered in violation of prostitution laws.⁸² There is no requirement for sexual activity or exchange of compensation to take place.

Similar to the previously mentioned states, Iowa also broadens the criminal definition of prostitution to involve “offering” sexual activity for sale.⁸³ Yet, with regards to the performance of such act, Iowa uses slightly different wording that could be interpreted differently from the other states traditional “engaging in” or “performing.” In its state statutes, Iowa utilizes the word “sells”⁸⁴ when referring to level of engagement. This word could be loosely interpreted to include the mere agreement and exchange of money before any sexual acts take place. The use of this word is hazy with whether it is strictly referring to the “engagement” in prostitution only or if it can be expanded to include “agreeing to engage” in prostitution.

Unlike Iowa’s use of the word “sell” and other states employment of “engaging in” or extension to include “offering to engage in,” the majority of states in the United States define the crime of prostitution to include “agreeing to engage in” prostitution within their laws. Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Texas, Washington, Wisconsin, and Wyoming lower the level of engagement in the

⁸¹ N.M. Stat. Ann. § 30-9-2 (2013); N.C. Gen. Stat. § 14-203 (2013); S.D. Codified Laws § 22-23-1 (2013); Tenn. Code Ann. § 39-13-512 (2013); Vt. Stat. Ann. tit. 13, § 2632 (2013); Va. Code Ann. § 18.2-346 (2013).

⁸² *Supra* note 81.

⁸³ Iowa Code § 725.1 (2013).

⁸⁴ *Supra* note 83.

crime necessary by broadening the criminal definition to “engaging in, offering to engage in, or agreeing to engage in” sexual activity in return for a fee.⁸⁵ With this extension, individuals could be asked to engage in prostitution and upon their acceptance they could then be arrested for the crime of prostitution.⁸⁶ Comparable to states that necessitate “engagement in” or “offering to engage in,” these states require an offer or acceptance for someone to be fit the states’ legal definition of prostitution. A sexual act does not need to take place. No fee needs to be exchanged. A person could simply say “yes” to fall under this definition.

Although merely agreeing to engage in prostitution is a low level of engagement, there are some states that require the act of lingering in area for the purpose of prostitution. Within Pennsylvania and Utah, an individual could be arrested for prostitution if they are either caught “engaging” in sexual activity for hire, or “loitering for the purpose of prostitution.”⁸⁷ Although loitering for the purpose of prostitution is generally illegal in many of the states, it is important to recognize these two states as defining the crime of prostitution as such. Loitering is defined as “to be dilatory; to be slow in movement; to stand around or move slowly about; to stand idly

⁸⁵ Ala. Code § 13A-12-120 (2013); Alaska Stat. § 11.66.100 (2013); Ariz. Rev. Stat. Ann. § 13-3211 (2013); Ark. Code Ann. § 5-70-102 (2013); Colo. Rev. Stat. § 18-7-201 (2013); Conn. Gen. Stat. § 53a-82 (2013); Del. Code Ann. tit. 11, § 1342 (2013); Fla. Stat. § 796.07 (2013); Ga. Code Ann. § 16-6-9 (2013); Haw. Rev. Stat. § 712-1200 (2013); Idaho Code Ann. § 18-5613 (2013); 720 Ill. Comp. Stat. 5/11-14 (2013); Ind. Code § 35-45-4-2 (2013); Kan. Stat. Ann. § 21-6419 (2013); Ky. Rev. Stat. Ann. § 529.020 (West 2013); Me. Rev. Stat. tit. 17-A, § 851 (2013); Mass. Gen. Laws Ann. ch. 272, § 53A (2013); Minn. Stat. Ann. § 609.321 (2013); Mo. Ann. Stat. § 567.010 (2013); Mont. Code Ann. § 45-5-601 (2013); Neb. Rev. Stat. § 28-801 (2013); N.H. Rev. Stat. Ann. § 645:2 (2013); N.J. Stat. Ann. § 2C:34-1 (West 2013); N.Y. Penal Law § 230.00 (McKinney 2013); N.D. Cent. Code § 12.1-29-06 (2013); Okla. Stat. tit. 21, § 1029 (2013); Or. Rev. Stat. Ann. § 167.007 (West 2013); R.I. Gen. Laws § 11-34.1-2 (2013); Tex. Penal Code Ann. § 43.02 (West 2013); Wash. Rev. Code § 9A.88.030 (2013); Wis. Stat. § 944.30 (2013); Wyo. Stat. Ann. § 6-4-101 (2013).

⁸⁶ *Supra* note 85.

⁸⁷ 18 Pa. Cons. Stat. § 5902 (2013); Utah Code Ann. § 76-10-1302 (West 2013).

around; to spend time idly; to saunter; to delay; to idle; to linger; to lag behind.”⁸⁸ With this in mind, the standard for establishing loitering for prostitution is not very high. Two elements must occur. First, an individual must be loitering “in or within view of any public place.”⁸⁹ Second, it must be apparent that the individual was doing so for the purpose of prostitution.⁹⁰ The second element could be met if a police officer sees an individual repeatedly waving down cars after midnight or hours in which it is uncommon to do so.⁹¹ It is important to look at all the circumstances surrounding the conduct of an individual suspected of loitering for purposes of prostitution (i.e. the time of day, dress of individual, individual’s conduct and actions while loitering, etc.).⁹²

Sexual Activity

The second element under the prostitution definition is sexual activity. While many of the terms associated under this element mean the same thing, it is important to show the differences between the states. Starting with the most common term of sexual activity associated with prostitution, we will look at the following states: Louisiana, Montana, North Carolina, and Vermont. These states use the phrase “sexual intercourse,”⁹³ which involves the one of the following: coitus, anal intercourse, or oral intercourse.⁹⁴

Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Kentucky, Massachusetts, Missouri, Nevada, New York, Rhode Island, Texas, Washington

⁸⁸ Com. v. Hill, 254 Pa. Super. 155, 157, 385 A.2d 572, 573 (1978).

⁸⁹ 18 Pa. Cons. Stat. § 5902 (2013); Utah Code Ann. § 76-10-1302 (West 2013).

⁹⁰ *Supra* note 89.

⁹¹ Comm v. Roberson, 298 Pa. Super. 184, 444 A.2d 722 (1982).

⁹² Comm v. Roberson, 298 Pa. Super. 184, 444 A.2d 722 (1982).

⁹³ La. Rev. Stat. Ann. § 14:82 (2013); Mont. Code Ann. § 45-5-601 (2013); N.C. Gen. Stat. § 14-203 (2013); Vt. Stat. Ann. tit. 13, § 2632 (2013).

⁹⁴ Merriam-Webster Dictionary.

employ the word “sexual conduct,”⁹⁵ which is extended into forms of “sexual contact, sexual intercourse.”⁹⁶ Sexual contact involves the direct or indirect touching of another person’s sexual organs.⁹⁷ Alabama, Arkansas, and Indiana incorporate “deviate sexual intercourse,”⁹⁸ “deviate sexual activity,”⁹⁹ or “deviate sexual conduct”¹⁰⁰ to describe a form of intercourse that is not the standard penetration of the penis into the vagina.

The state of Wyoming is slightly different from all, in that it utilizes the phrase “sexual intrusion,” to define acts of prostitution as the following: “sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, or an intrusion of an individual’s genital or anal opening “by any object or any part of a person’s body.”¹⁰¹

While other states employ the standard use of defining words (Florida, Georgia, Idaho, Illinois, Iowa, Maine, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia), the following explicitly list the different sexual acts or forms of sexual contact that are deemed to be considered prostitution: Colorado, Kansas, Oklahoma, and Wisconsin.

⁹⁵ Alaska Stat. § 11.66.100 (2013); Ariz. Rev. Stat. Ann. § 13-3211 (2013); Cal. Penal Code § 266c (West 2013); Conn. Gen. Stat. § 53a-82 (2013); Del. Code Ann. tit. 11, § 1342 (2013); Haw. Rev. Stat. § 712-1200 (2013); Ky. Rev. Stat. Ann. § 529.020 (West 2013); Mass. Gen. Laws Ann. Ch. 272, § 53A (2013); Mo. Ann. Stat. § 567.010 (2013); Nev. Rev. Stat. Ann. § 201.354 (2013); N.Y. Penal Law § 230.00 (McKinney 2013); R.I. Gen. Laws § 11-34.1-2 (2013); Tex. Penal Code Ann. § 43.02 (West 2013); Wash. Rev. Code § 9A.88.030 (2013).

⁹⁶ Ariz. Rev. Stat. Ann. § 13-3211 (2013); Wash. Rev. Code § 9A.88.030 (2013).

⁹⁷ R.I. Gen. Laws § 11-34.1-2 (2013); Tex. Penal Code Ann. § 43.02 (West 2013).

⁹⁸ Ala. Code § 13A-12-120 (2013).

⁹⁹ Ark. Code Ann. § 5-70-102 (2013).

¹⁰⁰ Ind. Code § 35-45-4-2 (2013).

¹⁰¹ Wyo. Stat. Ann. § 6-4-101 (2013).

Exchange of Fee

When thinking about the operation of prostitution, the form of payment is typically thought of as being cold, hard, cash. Yet, that is not always the case. Within the states laws, some of the states rely on money as being the only form of payment. Others extend beyond money in their criminal definitions of prostitution. Louisiana and Virginia remain the two states that define the form of payment as being money.¹⁰² The remaining states utilize words that expand beyond to include other forms of compensation to include property or some item of value.

Sex Trafficking

Sex trafficking is the compulsion of another person to engage in sexual activity for a fee. An individual is considered a victim of sex trafficking if they are compelled by another person to participate in sexual activity for a fee. From the different states' statutes surrounding sex trafficking or its equivalent, one is either provided with or able to derive a definition of sex trafficking from the state laws.¹⁰³ Within these

¹⁰² La. Rev. Stat. Ann. § 14:82 (2013); Va. Code Ann. § 18.2-346 (2013).

¹⁰³ Ala. Code § 13A-6-151 (2013); Alaska Stat. § 11.41.360 (2013); Ariz. Rev. Stat. Ann. § 13-1307 (2013); Ark. Code. Ann. § 5-11-108 (2013); Cal. Penal Code § 236.1 (West 2013); Colo. Rev. Stat. § 18-3-501 (2013); Conn. Gen. Stat. § 53a-192a (2013); Conn. Gen. Stat. § 53a-192 (2013); Del. Code Ann. tit. 11, § 787 (2013); Fla. Stat. § 787.06 (2013); Ga. Code Ann. § 16-5-46 (2013); Haw. Rev. Stat. § 712-1203 (2013); Idaho Code Ann. § 18-8602 (2013); Ill. Comp. Stat. 5/10-9 (2013); Ind. Code § 35-42-3.5-1 (2013); Iowa Code § 710A.1-710A.2 (2013); Kan. Stat. Ann. § 21-3446 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); La. Rev. Stat. Ann. § 14:46.2 (2013); Me. Rev. Stat. tit. 17-A, § 301 (2013); Md. Code Ann., Criminal Law § 11-303 (West 2013); Mass. Gen. Laws ch. 272, § 50(a) (2013); Mich. Comp. Laws § 750.462 (2013); Minn. Stat. § 609.321, Subd. 7a-7b (2013); Miss. Code. Ann. § 97-3-54 (2013); Mo. Rev. Stat. § 566.209 (2013); Mont. Code Ann. § 45-5-305 (2013); Neb. Rev. Stat. § 28-830, 28-831 (2013); Nev. Rev. Stat. § 200.463 (2013); N.H. Rev. Stat. Ann. § 633:6-7 (2013); N.J. Rev. Stat. § 2C:13-8 (2013); N. M. Stat. Ann. § 30-9-4 (2013); N.Y. Penal Law § 230.34 (McKinney 2013); N.C. Gen. Stat. § 14-43.10 (2013); N.C. Gen. Stat. § 14-43.43.13 (2013); N.D. Cent. Code § 12.1-40 (2013); Ohio Rev. Code Ann. § 2905.32 (West 2013); Okla. Stat. tit. 21, § 1081 (2013); Or. Rev. Stat. § 163.263-163.266, 163.275 (2013); 18 Pa. Cons. Stat. § 3001 (2013); R.I. Gen. Laws § 11-67-

statutes, one is either given an explicit definition of a victim of sex trafficking or able to formulate one. With each state¹⁰⁴, there are three significant characteristics within each legal definition: compulsion, sexual activity, and exchange of fee. While the states remain similar in their broad definition of sex trafficking, the requirements vary within some states.

Mechanisms of Compulsion

Within the first element, there are many different terms associated with the mechanisms for compelling an individual to participate in commercial sexual activity. Yet, the states remain similar in that the person subjected to trafficking believed there was no alternative but to comply with their trafficker's demands. Typically many of the states require the "use of force, fraud, or coercion"¹⁰⁵ or equivalent terms as the standard of compulsion.¹⁰⁶ While some states use terms to describe the force and pressure an individual endures, others list the means in which a trafficker controls his/her victim. A majority of the states list one or more of the following mechanisms:

1. Use or threaten to use physical harm to the victim or another person;
2. Physically restrain or threaten to physically restrain the victim or another person;
3. Abuse or threaten to abuse the law or legal process against the victim or another person;
4. Withhold or destroy government identification documents of another person;
5. Blackmailing an individual;

3 (2013); S.C. Code Ann. § 16-3-930 (2013); S.D. Codified Laws § 22-49 (2013); Tenn. Code Ann. § 39-13-301 (2013); Tenn. Code Ann. § 39-13-309 (2013); Tex. Penal Code Ann. § 20A.02 (West 2013); Utah Code Ann. § 76-5-308 (2013); Vt. Stat. Ann. tit. 13, § 2651-2652 (2013); Va. Code Ann. § 18.2-47 (2013); Wash. Rev. Code Ann. § 9A.40.100 (2013); W. Va. Code Ann. § 61-2-17 (2013); Wisc. Stat. § 940.302 (2013).

¹⁰⁴ Wyoming is excluded from this section, since there are no current laws in place regarding human trafficking or a near equivalent of such.

¹⁰⁵ Ark. Code. Ann. § 5-11-108 (2013).

¹⁰⁶ For a full list of terms and definitions for each state please see Appendix A.

6. Bringing or threatening to bring financial harm to an individual;
7. Threaten to or financially control an individual;
8. Enticing or luring by fraud or deceit; or
9. Deprive or threaten to deprive an individual of their basic needs or rights.¹⁰⁷

These mechanisms are utilized to get an individual to comply with the trafficker and participate in commercial sexual activity. Within many of the individual states, one or more of the different mechanisms are explicitly listed within the laws.

Sexual Activity

In order for a victim to be considered a victim of sex trafficking, the different states require a form of sexual activity to take place. Some of the states stick with terms utilized under prostitution statutes, such as “sexual conduct,”¹⁰⁸ “sexually explicit conduct,”¹⁰⁹ and “sexual activity or acts.”¹¹⁰ Alabama, one of the states employing the phrase “sexual conduct” goes further to describe “genital or anal intercourse, cunnilingus, fellatio, or masturbation” as the different acts considered “sexual conduct.”¹¹¹ Other states simply refer to the sexual activity as the offense of “prostitution”¹¹² or as “commercial sexual activity,”¹¹³ in which

¹⁰⁷ All eight of these mechanisms were derived from the fifty states statutes on their equivalent of sex trafficking laws. Table 1 identifies which mechanisms were listed under the state’s sex trafficking statute.

¹⁰⁸ Ala. Code § 13A-6-151 (2013); Alaska Stat. § 11.41.360 (2013); Ark. Code. Ann. § 5-11-108 (2013); Cal. Penal Code § 236.1 (West 2013); La. Rev. Stat. Ann. § 14:46.2 (2013); N.D. Cent. Code § 12.1-40 (2013); W. Va. Code Ann. § 61-2-17 (2013).

¹⁰⁹ Ga. Code Ann. § 16-5-46 (2013).

¹¹⁰ N.J. Rev. Stat. § 2C:13-8 (2013); N.D. Cent. Code § 12.1-40 (2013); Ohio Rev. Code Ann. § 2905.32 (West 2013); W. Va. Code Ann. § 61-2-17 (2013).

¹¹¹ Ala. Code § 13A-6-151 (2013).

¹¹² Ariz. Rev. Stat. Ann. § 13-1307 (2013); Conn. Gen. Stat. § 53a-192a (2013); Conn. Gen. Stat. § 53a-192 (2013); Fla. Stat. § 787.06 (2013); Haw. Rev. Stat. § 712-1203 (2013); Ind. Code § 35-42-3.5-1 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); Me. Rev. Stat. tit. 17-A, § 301 (2013); Md. Code Ann., Criminal Law § 11-303 (West 2013); Minn. Stat. § 609.321, Subd. 7a-7b (2013); N.Y. Penal Law § 230.34

Oklahoma and Kentucky go further to describe the acts deemed as “commercial sexual activity.” Acts of “prostitution, participation in the production of obscene material, engaging in sexually explicit performance,”¹¹⁴ are listed under both states. Oklahoma goes further to include “performance in strip club or exotic dancing or display”¹¹⁵ as forced conduct constituting the crime of sex trafficking. Two terms – “sexually explicit performances”¹¹⁶ and “production of pornography”¹¹⁷ extend beyond what is traditionally constituted as sex trafficking. While many of the states fail to mention the sexual acts that extend beyond the legal definition of prostitution, there are some states that include them under the laws of their equivalent to sex trafficking.¹¹⁸ These terms appear to tread into the area of labor trafficking. Yet, due to the sexual nature of the act, they are placed

(McKinney 2013); Okla. Stat. tit. 21, § 1081 (2013); S.D. Codified Laws § 22-49 (2013); Tex. Penal Code Ann. § 20A.02 (West 2013); Utah Code Ann. § 76-5-308 (2013); Va. Code Ann. § 18.2-47 (2013).

¹¹³ Del. Code Ann. tit. 11, § 787 (2013); Fla. Stat. § 787.06 (2013); Ill. Comp. Stat. 5/10-9 (2013); Idaho Code Ann. § 18-8602 (2013); Iowa Code § 710A.1-710A.2 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); La. Rev. Stat. Ann. § 14:46.2 (2013); Mass. Gen. Laws ch. 272, § 50(a) (2013); Mich. Comp. Laws § 750.462 (2013); Miss. Code. Ann. § 97-3-54 (2013); Mont. Code Ann. § 45-5-305 (2013); Neb. Rev. Stat. § 28-830, 28-831 (2013); N.H. Rev. Stat. Ann. § 633:6-7 (2013); N. M. Stat. Ann. § 30-9-4 (2013); Okla. Stat. tit. 21, § 1081 (2013); R.I. Gen. Laws § 11-67-3 (2013); Tenn. Code Ann. § 39-13-301 (2013); Tenn. Code Ann. § 39-13-309 (2013); Utah Code Ann. § 76-5-308 (2013); Wash. Rev. Code Ann. § 9A.40.100 (2013); Vt. Stat. Ann. tit. 13, § 2651-2652 (2013); Wisc. Stat. § 940.302 (2013).

¹¹⁴ Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013).

¹¹⁵ Okla. Stat. tit. 21, § 1081 (2013).

¹¹⁶ Ariz. Rev. Stat. Ann. § 13-1307 (2013); Fla. Stat. § 787.06 (2013); Iowa Code § 710A.1-710A.2 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); Mass. Gen. Laws ch. 272, § 50(a) (2013); Miss. Code. Ann. § 97-3-54 (2013); Mont. Code Ann. § 45-5-305 (2013); Neb. Rev. Stat. § 28-830, 28-831 (2013); Okla. Stat. tit. 21, § 1081 (2013); Utah Code Ann. § 76-5-308 (2013); Vt. Stat. Ann. tit. 13, § 2651-2652 (2013).

¹¹⁷ Fla. Stat. § 787.06 (2013); Mass. Gen. Laws ch. 272, § 50(a) (2013); Okla. Stat. tit. 21, § 1081 (2013); Utah Code Ann. § 76-5-308 (2013).

¹¹⁸ Ariz. Rev. Stat. Ann. § 13-1307 (2013); Fla. Stat. § 787.06 (2013); Iowa Code § 710A.1-710A.2 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); Mass. Gen. Laws ch. 272, § 50(a) (2013); Miss. Code. Ann. § 97-3-54 (2013); Mont. Code Ann. § 45-5-305 (2013); Neb. Rev. Stat. § 28-830, 28-831 (2013); Okla. Stat. tit. 21, § 1081 (2013); Utah Code Ann. § 76-5-308 (2013); Vt. Stat. Ann. tit. 13, § 2651-2652 (2013).

under sex trafficking. Lastly a portion of the states refers to the sexual activity as services¹¹⁹ and do not specify beyond it. Without any specifications or remarks as to the services being of a sexual nature, the distinction between sex trafficking and labor trafficking does not exist.

Exchange of Fee

While this element isn't explicitly stated under some of the states' sex trafficking laws¹²⁰, it is a defining characteristic of sex trafficking. In the majority of states, the sexual activity must involve payment to an individual – whether it is the victim or a third party. The majority of states simply require anything of value¹²¹ is given or promised. Nearly identical to these states, Colorado and Virginia require something of pecuniary benefit¹²² be exchanged. While the

¹¹⁹ Colo. Rev. Stat. § 18-3-501 (2013); Nev. Rev. Stat. § 200.463 (2013); Or. Rev. Stat. § 163.263-163.266, 163.275 (2013); 18 Pa. Cons. Stat. § 3001 (2013); S.C. Code Ann. § 16-3-930 (2013).

¹²⁰ Alaska Stat. § 11.41.360 (2013); Ariz. Rev. Stat. Ann. § 13-1307 (2013); Ark. Code. Ann. § 5-11-108 (2013); Conn. Gen. Stat. § 53a-192a (2013); Conn. Gen. Stat. § 53a-192 (2013); Idaho Code Ann. § 18-8602 (2013); Ind. Code § 35-42-3.5-1 (2013); Kan. Stat. Ann. § 21-3446 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); Me. Rev. Stat. tit. 17-A, § 301 (2013); Md. Code Ann., Criminal Law § 11-303 (West 2013); Mont. Code Ann. § 45-5-305 (2013); Nev. Rev. Stat. § 200.463 (2013); N.Y. Penal Law § 230.34 (McKinney 2013); N.D. Cent. Code § 12.1-40 (2013); Or. Rev. Stat. § 163.263-163.266, 163.275 (2013); 18 Pa. Cons. Stat. § 3001 (2013); S.C. Code Ann. § 16-3-930 (2013); S.D. Codified Laws § 22-49 (2013); W. Va. Code Ann. § 61-2-17 (2013).

¹²¹ Ala. Code § 13A-6-151 (2013); Cal. Penal Code § 236.1 (West 2013); Del. Code Ann. tit. 11, § 787 (2013); Ga. Code Ann. § 16-5-46 (2013); Ill. Comp. Stat. 5/10-9 (2013); Iowa Code § 710A.1-710A.2 (2013); La. Rev. Stat. Ann. § 14:46.2 (2013); Mass. Gen. Laws ch. 272, § 50(a) (2013); Mich. Comp. Laws § 750.462 (2013); Minn. Stat. § 609.321, Subd. 7a-7b (2013); Mo. Rev. Stat. § 566.209 (2013); Miss. Code. Ann. § 97-3-54 (2013); Neb. Rev. Stat. § 28-830, 28-831 (2013); N.H. Rev. Stat. Ann. § 633:6-7 (2013); N.J. Rev. Stat. § 2C:13-8 (2013); N. M. Stat. Ann. § 30-9-4 (2013); N.C. Gen. Stat. § 14-43.10 (2013); N.C. Gen. Stat. § 14-43.43.13 (2013); Okla. Stat. tit. 21, § 1081 (2013); Tenn. Code Ann. § 39-13-301 (2013); Tenn. Code Ann. § 39-13-309 (2013); Utah Code Ann. § 76-5-308 (2013); Vt. Stat. Ann. tit. 13, § 2651-2652 (2013); Wash. Rev. Code Ann. § 9A.40.100 (2013); Wisc. Stat. § 940.302 (2013).

¹²² Colo. Rev. Stat. § 18-3-501 (2013); Va. Code Ann. § 18.2-47 (2013).

exchange of a fee is not the most important element of sex trafficking, it is significant. This element is what distinguishes sex trafficking from labor trafficking: a payment for the sexual services of an individual.¹²³ Under trafficking laws, Hawaii focuses on this distinction.

In Hawaii's labor trafficking statute, any prostitution related trafficking is explicitly denied from being considered a part of labor trafficking.¹²⁴ Instead, one is instructed to refer back to prostitution-related offenses. It is under the prostitution laws that an alternative to sex trafficking is presented. Hawaii only allows for instances of sex trafficking to be charged under "Promoting Prostitution" laws.¹²⁵ A victim of promoting prostitution would be someone who is compelled or induced to engage in prostitution "by force, threat, fraud, or intimidation."¹²⁶

Recent Updates

As prostitution and sex trafficking are a topic of concern within many states, improvements upon the laws within various states are being made. While the amendments to prostitution and sex trafficking laws within the different states have been passed, a few will not become effective until a date later within this year. Others, due to the times in which the various state laws were researched, were unable to be added within the analysis of the paper. Below are brief summaries of the new amendments and the changes compared to the law prior to the amendment changes.

¹²³ Haw. Rev. Stat. §707.780 (2013); Haw. Rev. Stat. §712-1202 (2013).

¹²⁴ Haw. Rev. Stat. §707.780 (2013),

¹²⁵ Haw. Rev. Stat. § 712-1201-1203 (2013).

¹²⁶ Haw. Rev. Stat. § 717-1202(1)(a) (2013).

Arkansas

Approved on February 19, 2013, Arkansas law regarding trafficking has changed the term “sexual conduct” to “commercial sexual activity.” Under this term, broader terms ‘sexual act’ and ‘sexually explicit performance’ have been incorporated to broaden the acts that could be committed. It broadens to allow any touching of a person’s “sexual or other intimate parts,”¹²⁷ “whether directly or through clothing.”¹²⁸ Another amendment made under this act provided for “an affirmative defense to prosecution that the person engaged in an act of prostitution as a result of being a victim of trafficking of persons.”¹²⁹ In addition, under the crime of sexual solicitation, the new act provides an affirmative defense for those committing the crime of sexual solicitation as a victim of human trafficking.¹³⁰ These defenses are located under prostitution. By placing these defenses within the laws of prostitution, it explicitly allows for a victim of forced prostitution crimes to remain free of prosecution.

The amendments also brought about the ability for the Attorney General of Arkansas to establish a State Task Force for the Prevention of Human Trafficking¹³¹ and the ability for victims of human trafficking to bring a civil cause of action.¹³²

Although Arkansas’s Human Trafficking Act of 2013 lowered the requirements for sex trafficking, provided a definition for victims of human trafficking and added an affirmative defense for being a prostitute, it also added a requirement for the exchange of something of value, or at least the promise of such. By doing this, the trafficking law took an extra step to ensure that commercial sexual

¹²⁷ TRAFFICKING—HUMAN TRAFFICKING ACT OF 2013, 2013 Arkansas Laws Act 132 (S.B. 242). (13)(A)

¹²⁸ *Supra* note 127, at (13)(B)

¹²⁹ Ark. Code Ann. § 5-70-102(c) (2013).

¹³⁰ Ark. Code Ann. § 5-70-103(c) (2013).

¹³¹ Alaska Stat. § 12-19-101 (2013).

¹³² Alaska Stat. § 16-118-109 (2013).

activity was identical to the legal definition of prostitution. The changes made to Arkansas's trafficking law were, for the most part, an improvement. However, these amendments allow for sex trafficking laws to be shifted under prostitution laws easily without dramatically affecting the Human Trafficking Law.

Alaska

Passed during the 2013 First Regular Session of the 28th Legislature and effective March 1, 2013, Alaska made a drastic change to their Prostitution and Human Trafficking laws.¹³³ Acknowledging the intersection of prostitution and sex trafficking, Alaska placed sex trafficking under the section of "Prostitution and other related offenses."¹³⁴ This change now incorporates the crime of sex trafficking as one involved with prostitution. It defines four different degrees of sex trafficking. The amended law explicitly states the crime of sex trafficking as a person who "induces or causes a person to engage in prostitution"¹³⁵ rather than using the term "sexual conduct."¹³⁶ This change gives recognition to the overlap of the two offenses.

Kentucky

Approved on March 19, 2013, the new statute gives an explicit definition of a victim of human trafficking¹³⁷, allows minors to be free of prosecution for offenses constituting prostitution or loitering for prostitution,¹³⁸ and establishes the requirement to help victims of human trafficking and provide a proper course of

¹³³ Alaska Stat. § 11.41.360-365 (2013) & Alaska Stat. § 11.66.110-135 (2013).

¹³⁴ Alaska Stat. § 11.66.110-135 (2013).

¹³⁵ Alaska Stat. § 11.66.110(a)(1) (2013).

¹³⁶ Alaska Stat. § 11.41.360 (prior to 3-1-13) (2013).

¹³⁷ Ky. Rev. Stat. Ann. § 529.010(13) (2013).

¹³⁸ Ky. Rev. Stat. Ann. § 529.020(1) & Ky. Rev. Stat. Ann. § 529.080 (1) (2013).

action, such as treatment or other services needed.¹³⁹ This change signifies Kentucky's awareness of the need to help victims of human trafficking. In addition, the allowance of minors to remain free of prostitution prosecution shows progress towards the realization of an individual's pressure to become involved in the crime.

South Carolina

South Carolina passed in the summer of 2012 and made effective on December 15, 2012, the amendments made to the trafficking laws created and defined the different offenses of human trafficking and defined a human trafficking victim.¹⁴⁰ Rather than the broad classification of trafficking, the newly established sex trafficking is defined as an individual "induced by force, fraud, or coercion...and anything of value is given, promised to, or received, directly or indirectly, by another person"¹⁴¹ to participate in a sexual performance or sexual conduct.¹⁴²

Wyoming

Wyoming approved a Human Trafficking Bill on February 27, 2013, which becomes effective on July 1, 2013. This long overdue act not only defines human trafficking offenses, but also provides for an affirmative defense against prosecution for victims of trafficking.¹⁴³ A victim of sexual servitude is defined under this law as an individual who is compelled through the use of "coercion, deception or fraud"¹⁴⁴ to engage in commercial sexual services.¹⁴⁵ Commercial sexual services are defined as

¹³⁹ 2013 Kentucky Laws Ch. 25 (HB₃).

¹⁴⁰ S.C. Code Ann. § 16-3-2010 (2013).

¹⁴¹ S.C. Code Ann. §16-3-2010(7) (2013).

¹⁴² S.C. Code Ann. §16-3-2010(7) (2013).

¹⁴³ 2013 Wyoming Laws Ch. 91 (H.B. 133), 6-2-708(a).

¹⁴⁴ *Supra* note 143.

¹⁴⁵ *Supra* note 143.

“any sexual act for which anything of value is given to, promised or received by a person.”¹⁴⁶ Any individual who committed criminal sexual acts “as a direct result of, or incident to, being a victim of human trafficking,”¹⁴⁷ is free of prosecution for such offenses.¹⁴⁸ Although Wyoming is only just establishing human trafficking laws, by providing for an affirmative defense, they are ensuring the victims of this crime are being protected.

DEFENSES

As a victim of sex trafficking, one is not freely choosing to participate in the crime of prostitution. Thus, there is a need for defenses for these victims. Within a portion of the states, a defense explicitly for victims of sex trafficking (or the state’s equivalent title) is given,¹⁴⁹ while others must go to general defenses of duress, necessity, compulsion, or coercion in which offenders claim to be free of criminal liability due to the circumstances surrounding the commission of the offense.¹⁵⁰ And some states failed to have a defense afforded to offenders

¹⁴⁶ 2013 Wyoming Laws Ch. 91 (H.B. 133), 6-2-701(a)(iii).

¹⁴⁷ 2013 Wyoming Laws Ch. 91 (H.B. 133), 6-2-708(a),

¹⁴⁸ *Supra* note 147.

¹⁴⁹ Ala. Code § 13A-6-159 (2013); Conn. Gen. Stat. § 53a-192b (2013); Conn. Gen. Stat. § 53a-82b (2013); Fla. Stat. Jury Inst. § 3.6(k) (2013); Ga. Code Ann. § 16-3-6b (2013); Ind. Code § 35-42-3.5-4(a) (2013); Iowa Code § 710A.3 (2013); La. Rev. Stat. Ann. § 14:82G (2013); Md. Code Ann., Crim. Law § 8-302 (West 2013); Mass. Gen. Laws ch. 265, § 57 (2013); Minn. Stat. § 609.325, Subd. 4 (2013); Mo. Rev. Stat. § 566.233 (2013); N.H. Rev. Stat. Ann. § 645:2, IV (2013); N.J. Stat. Ann. § 2C:13-8 (2013); Okla. Stat. tit. 21, § 748, A, 8D (2013); R.I. Gen. Laws § 11-34.1-2 (2013); S.D. Codified Laws § 22-23-1.2 (2013); Tenn. Code Ann. § 39-13-513 (2013); Vt. Stat. Ann. Tit. 13, § 2658 (West 2013); Wash. Rev. Code § 9A.88.040 (2013).

¹⁵⁰ Alaska Stat. § 11.81.320 (2013); Alaska Stat. § 11.81.440; Ariz. Rev. Stat. § 13-412 (2013); Ariz. Rev. Stat. § 13-417 (2013); Ark. Code Ann. § 5-2-208 (2013); Cal. Penal Code § 26 (West 2013); Colo. Rev. Stat. § 18-1-708 (2013); Del. Code Ann. Tit. 11, § 431 (2013); Idaho Code Ann. § 18-201 (2013); Ill. Comp. Stat. 5/7-11 (2013); Ind. Code § 35-41-3-8 (2013); Kan. Stat. Ann. § 21-5206 (2013); Ky. Rev. Stat. Ann. §501.090 (West 2013); La. Rev. Stat. Ann. § 14:18(6) (2013); Me. Rev. Stat. tit. 17A, § 103-A (2013); Mont. Code Ann.

with such extenuating circumstances surrounding the offense.¹⁵¹ While allowing a defense for these crimes, many of the states also place the burden on the ‘victim’ to prove they only committed the crimes relating to prostitution under the force, threat of force, compulsion, deception, etc. of another person.¹⁵² It is not the best situation to have the burden placed on the victim. Instead, having it proven by the state that an individual beyond a reasonable doubt committed the crime without being compelled by another, creates a better situation for any potential victims. The state of New Mexico places the burden on the state to prove “the defendant did not act under unreasonable fear.”¹⁵³

While many states provide an explicit defense to prostitution related crimes for victims of trafficking, there still lacks an efficient way to ensure a victim is not being further victimized. By taking the example of New Mexico and placing the burden on the state to prove an individual is not a victim, it allows for the victims to remain free of prosecution for crimes, which they were compelled to do.

§ 25-2-212 (2013); Neb. Rev. Stat. § 28-1407 (2013); Nev. Rev. Stat. § 194.010 (2013); N. M. Stat. Ann. § 14-5130 (2013); N.Y. Penal Law § 40.00 (McKinney 2013); N.D. Cent. Code § 12.1-05-10 (2013); Or. Rev. Stat. § 163.269 (2013); Tex. Criminal Code Ann. § 8.05 (West 2013); Utah Code Ann. § 76-2-302 (West 2013); Wis. Stat. § 939.46 (2013)

¹⁵¹ Hawaii, Michigan, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, and Wyoming – through extensive research – failed to show any form of defense for individuals claiming to have committed a crime under duress, necessity, coercion, or compulsion.

¹⁵² Minn. Stat. § 609.325, Subd. 4 (2013); S.D. Codified Laws § 22-23-1.2 (2013); Vt. Stat. Ann. Tit. 13, § 2658 (West 2013). Three of the states explicitly state it within the defense itself, while others it is implied when the defense is referred to as an affirmative defense. In a criminal trial, a defendant is able to assert an affirmative defense by showing additional facts that the circumstances surrounding a defendant’s illegal conduct releases them from criminal liability.

¹⁵³ N.M. Stat. Ann. § 14-5130 (2013).

INTERSECTION OF PROSTITUTION AND SEX TRAFFICKING

By referring to the previously discussed state law analysis's and Table 1, one is able to see an overlap of these two crimes. Through the analysis of the Prostitution and Sex Trafficking state laws, there were three basic characteristics found under each offense. Under prostitution, the following characteristics were found: Level of Engagement, Sexual Activity, and Exchange of Fee. Under sex trafficking, the following characteristics were found: Compulsion, Sexual Activity, and Exchange of Fee. These two offenses have two of the three characteristics in common. Both crimes require a form of sexual activity to take place and an exchange of fee or promise of exchange. Under sex trafficking laws, many states refer to prostitution as the sexual activity.¹⁵⁴ This goes to show the overlap and that sex trafficking is truly a crime of forced prostitution.

How many prostitutes are falsely charged due to their history as a victim of sex trafficking? Is an individual who entered prostitution as a result of sex trafficking, but is no longer under the influence of a trafficker still considered a victim? In the laws and policies of the states, there is no definitive line drawn. At the end of this research, a potential solution to the problem of the intersection of prostitution and sex trafficking is presented. This solution will not just look at how to decrease the rates of prostitution in the short-term, but will seek a long-term solution, which will both help decrease the rates and help the victims of the crimes. This research will be necessary

¹⁵⁴ Ariz. Rev. Stat. Ann. § 13-1307 (2013); Conn. Gen. Stat. § 53a-192a (2013); Conn. Gen. Stat. § 53a-192 (2013); Fla. Stat. § 787.06 (2013); Haw. Rev. Stat. § 712-1203 (2013); Ind. Code § 35-42-3.5-1 (2013); Ky. Rev. Stat. Ann. § 529.010 (2013) Ky. Rev. Stat. Ann. § 529.100 (2013); Me. Rev. Stat. tit. 17-A, § 301 (2013); Md. Code Ann., Criminal Law § 11-303 (West 2013); Minn. Stat. § 609.321, Subd. 7a-7b (2013); N.Y. Penal Law § 230.34 (McKinney 2013); Okla. Stat. tit. 21, § 1081 (2013); S.D. Codified Laws § 22-49 (2013); Tex. Penal Code Ann. § 20A.02 (West 2013); Utah Code Ann. § 76-5-308 (2013); Va. Code Ann. § 18.2-47 (2013).

to ensure the best method of deterrence for prostitution is being enforced throughout the United States.

SEXUAL EXPLOITATION

Proposed Adjustment to Prostitution Laws

There are endless possibilities to tackling the gap between prostitution and sex trafficking. Yet, one approach – discussed below – appears best. Sex trafficking involves the act of forcing another to participate in prostitution. Different instances of prostitution, such as pimping, tread into the area of sex trafficking, but are not considered as severe as sex trafficking. Pressures, such as economic necessity, history of sexual abuse, drug use, etc., can be viewed as even less severe forms of sex trafficking. These pressures cause an individual to enter and continue their involvement in prostitution. By maintaining a separation of prostitution and sex trafficking laws, we are not allowing individuals to receive the aid and resources they need. A potential solution is to merge the offenses of sex trafficking and prostitution together under one section, since these crimes intersect.¹⁵⁵

Incorporating prostitution under sex trafficking statutes is unrealistic, since sex trafficking is generally under the broader offense of human trafficking. Instead, incorporating sex trafficking into prostitution would be best. Then, human trafficking could be simplified to include a broad term of trafficking that incorporates labor trafficking and allows for instances of forced sexual acts without payment as a form of trafficking and would eliminate the need for specific classifying requirements.¹⁵⁶ In

¹⁵⁵ In addition, by classifying prostitution and sex trafficking laws under “Sexual Exploitation,” the states are able to incorporate other crimes of sexual exploitation (i.e. sex slavery, pornography, mail-order brides).

¹⁵⁶ This paper will not go into further details on the effects this would have on Human Trafficking laws, except for the brief change that could take place. Please see the following

addition, there should be two newly established sections entitled “Pressurized Prostitution” and “Forced Prostitution.”

Under prostitution laws, rather than typically incorporating the offense of the prostitute and the patron into one offense, they should be separated. The following is a proposed skeleton outline of the prostitution section I would like to see incorporated into state laws. It is an example of the minimum requirements a state law would need to satisfy the proposal of this paper; states could go further to incorporate more laws within the section as is seen fit.

Sexual Exploitation and Related Offenses

- 1. Prostitution; defined**
- 2. Patron of Prostitution**
- 3. Pressurized Prostitution**
- 4. Forced Prostitution**
- 5. Classification Method**

Under the title “Prostitution Offenses,” there are five subdivisions – prostitution, patron of prostitution, pressurized prostitution, forced prostitution and defenses to prostitution.

Part 1: Prostitution; defined

The first part, “Prostitution; defined” is an essential component to this new proposal. Through reading many of the statutes, it was most beneficial when the crime of prostitution was explicitly defined. A small portion of the states [refer to table 1] failed to give defining characteristics to the crime of prostitution. This proved to be extremely difficult, because lack of a clear definition creates confusion. So within this

article for further information regarding the benefits and impact of creating a catch-all Trafficking Law: Rebecca L. Wharton, *A New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act*, WILLIAM AND MARY JOURNAL OF WOMEN AND THE LAW, 16 (2010), at 753.

first part, the crime of prostitution would be explicitly defined. Based on my findings, the definition of prostitution I find most agreeable is:

Prostitution: The act of offering to, agreeing to, or engaging in sexual activity in exchange for anything of value. Sexual Activity is defined as any of the following acts: vaginal intercourse; anal intercourse; fellatio; cunnilingus; penetration by any body part or any object into any orifice of another person for purposes other than medical reasons; fondling or stimulation of the sex organs of another person for purposes of sexual gratification.

Part 2: Patron of Prostitution

The second part, “Patron of Prostitution” is the section that would provide for a definition of a patron, such as the following:

An individual buying the services in prostitution.

In addition, the punishments would be listed as each state believes to be sufficient.

Part 3: Pressurized Prostitution

The third part, “Pressurized Prostitution” is a newly formed version of prostitution. As indicated above, there are a multitude of reasons why individuals enter into prostitution. Some of the influencing factors surrounding a prostitute’s entrance or continuance into prostitution are the influence of another individual (i.e. pimp, trafficker), a history of sexual abuse, lack of an education (which creates an ability to find employment), and addiction to drugs. This section would exempt persons who enter prostitution from any punishment and instead assist them in receiving the care they require.

These individuals are entitled to the help they need. They should not be fined or charged, because they are already in a situation where money is scarce. Instead,

programs beneficial to their circumstances should be provided (i.e. prostitutes who have a history of sexual abuse prior to entrance should receive intensive psychological treatment/therapy; individuals with a low education level should receive education training/job skill help, etc.). The goal of the change to “pressurized prostitution” is not to let individuals skate by for engaging in prostitution but rather help them receive the care they require. Under this section, the purpose and process would be the following:

Recognizing the various influencing factors to an individual’s entrance into prostitution, an act as the “prostitute” in prostitution will place an individual under this section as completing the act due to “Pressurized Prostitution.” As a victim of pressurized prostitution, the offender will first attend a court-ordered therapy session to determine the services which will best suit their needs. These services will help an individual to provide them with the support system and skills needed to continue a life free of prostitution. It will be ordered by the courts that an individual attends the services determined to fit their needs for at least six (6) months or as may be deemed necessary. If an individual fails to comply with these requirements, then they will be found in contempt of court and given time (determined based on the circumstances surrounding their failure to comply) in jail.

In cases of “pressurized prostitution,” there may be instances in which a prostitute’s discovery involves the commission of other illegal crimes. An example would be a prostitute who is in possession or using illegal drugs. Ultimately, instances of such other illegal crimes depend on the circumstances – whether the offense was heinous or a simple speeding violation. Situations like this should be left to the prosecuting attorney and/or judge to determine the appropriate sentence. For crimes deemed inconsequential, a deal could be made to dismiss the charges upon completion of the mandated services as a part of their prostitution offense.

Part 4: Forced Prostitution

The fourth part of the “prostitution” statutes, is “Forced Prostitution.” This section is identical to the offense of sex trafficking; however, to avoid confusion with the general trafficking law, a new title is required. This section will utilize the same three element found under the sex trafficking laws. Yet, using prostitution as a term within the definition will combine the last two characteristics –sexual activity and exchange of fee –. Since prostitution had been previously defined in part one as engagement in sexual activity and exchange of anything of value, it is simpler to use the term prostitution. Under this section, a composition similar to the following could be used within the state laws:

Forced Prostitution is when an individual by any means forces or coerces another individual to engage in prostitution [see 1 for definition].

The definition of “forced prostitution” should also be accompanied by a description of the penalties as each state believes is adequate.

Part 5: Classification Method

The fifth and final part of the new “prostitution” statutes is “Classification Method.” This section is very important, because it helps to clarify the process for how an individual can be placed under the category of “pressurized prostitution” or “forced prostitution.” The need for this was found, based on the states different requirements surrounding establishing a defense of being a sex trafficking victim. Many times, it is the individual who has to prove they were a victim of sex trafficking, rather than the state proving beyond a reasonable doubt the individual’s engagement in prostitution was free of any force or coercion. Therefore, the classification section should go as follows:

Any individual who claims they should be classified under “Forced Prostitution” shall file a motion with the court. The burden of proof will then be placed on the prosecuting attorney to prove beyond a reasonable doubt that the individual should not be classified under “Forced Prostitution.” These individuals and other individuals who are found by the state to be classified under “Forced Prostitution” will be entitled to participate in the services that are offered to individuals of “Pressurized Prostitution.” However; victims cannot be punished to for failure to comply with the program and services set up for them.

The main reason for having this section is to help establish a method for classifying individuals under either “pressurized prostitution” or “forced prostitution.” This is essential, because then victims of “forced prostitution” are not obligated to complete the alternative sentencing program offered to individuals of “pressurized prostitution.” The current idea of keeping victims of sex trafficking free from punishment for crimes of prostitution will be fulfilled. In addition, the burden for proving or disproving an individual is a victim of sex trafficking will change through this defense. By placing the burden on the prosecution to establish an individual is not a victim of “forced prostitution,” an issue with the overlap of prostitution and sex trafficking can be improved. As stated earlier, there are many victims of sex trafficking that go unidentified. While creating a “pressurized prostitution” helps to solve this form of collateral damage, creating a less stringent consequence for victims of “forced prostitution” allows an easier method of being identified as a victim within the legal system.

CONCLUSION

As we continue into the year of 2013, more changes within the laws of prostitution and sex trafficking are being brought about.¹⁵⁷ Not only will passed legislation be taking effect, but also proposed legislature concerning prostitution and sex trafficking still is being brought before the different state legislatures.¹⁵⁸ An example of proposed legislation is in Minnesota. Some of the legislators are seeking to provide more aid and support to victims of sex trafficking – specifically to children.¹⁵⁹ As measures are taken to make progress forward, it is essential to complete an evaluation of the laws to ensure the possible gaps in the law are being addressed.

Both prostitution and sex trafficking have a long established history within the United States. Dating back to the 18th century, prostitution was once legal and up until the 20th century remained so. As views on prostitution as a crime of “fallen women” change to viewing the prostitutes as women of unfortunate circumstances, this change was brought about around the turn of the 20th century. In addition, at this time the awareness of “white slavery” or sex trafficking increased and there was a push for laws combating this issue. The establishment of laws helped to fight against the crimes of prostitution and sex trafficking.

This research has presented three basic characteristics to the current laws of prostitution. 1) A certain level of engagement must be present. 2) A form of sexual

¹⁵⁷ Please see Supplement to view new legislation on prostitution and sex trafficking laws that were recently passed by the State’s Legislatures and recently or will be taking effect.

¹⁵⁸ See Julie Sell, Legislators Consider Plans to Help Minors Caught Up in Sex Trafficking, MinnPost (3/26/2013 2:53 AM), <http://www.minnpost.com/politics-policy/2013/03/legislators-consider-plans-help-minors-caught-sex-trafficking>.

¹⁵⁹ Julie Sell, Legislators Consider Plans to Help Minors Caught Up in Sex Trafficking, MinnPost (3/26/2013 2:53 AM), <http://www.minnpost.com/politics-policy/2013/03/legislators-consider-plans-help-minors-caught-sex-trafficking>.

activity must take place. 3) There must be some exchange of a fee or form of payment. In the crime of sex trafficking, there were three characteristics to be found as well. 1) The use of compulsion mechanisms. 2) Forms of sexual activity taking place. 3) A form of payment is given through the exchange of a fee. A comparison of the three characteristics of the two separate crimes shows an overlap of two out of the three characteristics. This identified overlap prompts a change to prostitution and sex trafficking laws. Through my research, I found a solution that I believe fits the findings of my research. While discretion is left to the prosecuting attorneys and courts to decide whether an individual should be convicted of prostitution related offenses, having laws that clearly provide for the treatment of offenders is essential so there is no room for error.

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Alabama	Agree; Offer; Engage in	Sexual Intercourse; Deviate Sexual Intercourse; Sexual Contact	Monetary Consideration or Other Thing of Marketable Value	Coercion; Deception	Sexual Conduct	Anything of Value
Alaska	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Force; Threat of Force; Deception	Sexual Conduct (Genital or anal intercourse, cunnilingus, fellatio, or masturbation)	N/A
Arizona	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Money or Any Other Valuable Consideration	Deception; Force; Coercion 1, 2, 3, 4, 5, 6, 8, 9	Prostitution; Sexually Explicit Performance	N/A
Arkansas	Agree; Offer; Engage in	Sexual Intercourse; Deviate Sexual Activity; Sexual Contact	Fee	Force; Fraud; Coercion 1, 2, 3	Sexual Conduct: Acted or Stimulated Sexual Intercourse (including Oral and Anal Sex); Masturbation	N/A
California	Engage in	Sexual Contact; Sexual Intercourse	Money or Other Consideration	1, 2, 3, 4, 6, 7, 8, 9	Sexual Conduct	Anything of Value
Colorado	Agree; Offer; Engage in	Sexual Intercourse; Fellatio; Cunnilingus; Masturbation; Anal Intercourse	Money or Other Thing of Value	Coercion 3, 4	1, 2, Services (Does Not Specify)	Money or Other Consideration or Thing of Value

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Connecticut	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Coercion	Refers to Prostitution Laws	N/A
Delaware	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	1, 2, 3, 4, 5, 6, 7	Commercial Sexual Activity (Any sex act)	Anything of Value
Florida	Agree; Offer; Engage in	Sexual Activity	Fee	Coercion 1, 2, 4, 6, 7, 8	Commercial Sexual Activity: Violation of Prostitution Laws; Sexually Explicit Performances; Production of Pornography	Exchange of Fee
Georgia	Agree; Offer; Engage in	Sexual Act; Sexual Intercourse; Sodomy (including, but not limited to these acts)	Money or Other Items of Value	Coercion; Deception 1, 2, 3, 4, 5, 7, 8	Sexually Explicit Conduct	Anything of Value
Hawaii	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Force; Threat; Fraud; Intimidation	Prostitution	Fee
Idaho	Agree; Offer; Engage in	Sexual Intercourse; Sexual Conduct	Fee	Force; Fraud; Coercion	Commercial Sex Act	N/A

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Illinois	Agree; Offer; Engage in	Sexual Penetration; Touching/Fondling of Sex Organs	Anything of Value	1, 2, 3, 4, 6, 7, 8, 9	Commercial Sexual Activity (Any sex act)	Anything of Value
Indiana	Agree; Offer; Engage in	Sexual Intercourse; Deviate Sexual Conduct; Fondling of Genitals	Money or Other Property	Force; Threat of Force; Fraud	Prostitution	N/A
Iowa	Offer; Sells	Sex Act	For Sale	Force; Fraud; Coercion	Commercial Sexual Activity (Any sex act or sexually explicit performance)	Anything of Value
Kansas	Agree; Offer; Engage in	Sexual Intercourse; Sodomy, Manual or Other Contact Stimulation of Genitals	Exchange of Value	1, 2, 3, 4, 9	Sexual Gratification of Another	N/A
Kentucky	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Force, Fraud, or Coercion	Commercial Sexual Activity (Prostitution, participation in production of obscene material, engaging in sexually explicit performance)	N/A

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Louisiana	Practice	Sexual Intercourse	Compensation	Fraud; Force; Coercion 1, 2, 4, 5	Commercial Sexual Activity; Sexual Conduct	Anything of Value
Maine	Agree; Offer; Engage in	Sexual Act; Sexual Contact	A Pecuniary Benefit	1, 2, 4 <i>*Listed under Kidnapping Statute</i>	Prostitution	N/A
Maryland	Perform	Sexual Act; Sexual Contact; Vaginal Intercourse	For Hire	1, 2, 3, 4, 8	Prostitution	N/A
Massachusetts	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Subjects; Causes	Commercial Sexual Activity, Sexually Explicit Performance, or Production of Unlawful Pornography	Anything of Value
Michigan	Accost; Solicit; Invites	N/A	N/A	1, 2, 3, 4, 5, 6	Commercial Sexual Activity (Act of sexual penetration or sexual contact)	Anything of Value
Minnesota	Agree; Offer; Engage in	Sexual Penetration; Sexual Contact	For Hire	1, 2, 3, 4, 5, 6, 7, 8, 9	Prostitution	Anything of Value

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Mississippi	Engage in	N/A	N/A	1, 2, 3, 4, 5, 6	Commercial Sexual Activity; Sexually Explicit Performance; Production of Sexually Oriented Material	Anything of Value
Missouri	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Something of Value	1, 2, 3, 4, 5, 6, 7, 8	Sexual Conduct; Sexual Performance; Production of Explicit Sexual Material	Anything of Value
Montana	Agree; Offer; Engage in	Sexual Intercourse	For Compensation	1, 2, 3, 4, 5, 6	Commercial Sexual Activity; Sexually Explicit Performances	N/A
Nebraska	Agree; Offer; Engage in	Sexual Contact; Sexual Penetration; Any Intrusion by Any Body Part or Any Object into Genital or Anal Openings for Nonmedical/Nonhealth Purposes	Money or Other Thing of Value	1, 2, 4, 6	Commercial Sexual Activity; Sexually Explicit Performance	Anything of Value
Nevada	Engage in	Sexual Contact; Sexual Intercourse	Fee	1, 2, 3, 4, 5, 6	Services (Does Not Specify)	N/A

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
New Hampshire	Agree; Offer; Engage in	Sexual Contact; Sexual Penetration	For Consideration	1, 2, 3, 4, 8, 9	Commercial Sex Act (Any sex act)	Anything of Value
New Jersey	Agree; Offer; Engage in	Sexual Activity	Something of Economic Value	1, 2, 3, 4,	Sexual Activity	Anything of Value
New Mexico	Offer; Engage in	Sexual Act	For Hire	Force; Fraud; Coercion 1, 2, 3, 4	Commercial Sexual Activity (Any sexual act or sexually explicit exhibition)	Anything of Value
New York	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	1, 2, 3, 4, 5, 6, 7, 8, 9	Prostitution	N/A
North Carolina	Offer; Engage in	Sexual Intercourse	For Hire	Coercion; Deception 1, 2, 4, 7, 8	Sexual Activity	Anything of Value
North Dakota	Agree; Offer; Engage in	Sexual Activity	Money or Other Items of Pecuniary Value	1, 2, 3, 4	Sexual Acts; Sexual Conduct	N/A
Ohio	Engage in	Sexual Activity	For Hire	Force; Fear; Duress; Intimidation	Sexual Activity	For Hire
Oklahoma	Agree; Offer; Engage in	Sexual Intercourse; Fellatio; Cunnilingus; Masturbation; Anal Intercourse; Lewdness	Money or Other Thing of Value	Force; Threat; Coercion 1, 2, 3, 4, 5, 7	Commercial Sex (Sexually explicit performances, prostitution, participation in production of pornography, performance in strip club, or exotic dancing or display)	Anything of Value

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Oregon	Agree; Offer; Engage in	Sexual Conduct; Sexual Contact	Fee	1, 2, 3, 4, 5, 7, 9	Services (Activities performed by one person under the supervision or for the benefit of another person)	N/A
Pennsylvania	Loitering; Engage in	Sexual Activity	For Hire	1, 2, 3, 4	Services (Does Not Specify)	N/A
Rhode Island	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	1, 2, 3, 4, 5	Commercial Sexual Activity (Any sex act)	Money
South Carolina	Engage in	N/A	N/A	1, 2, 3, 6, 7, 9	Services (Does Not Specify)	N/A
South Dakota	Offer; Engage in	Sexual Activity	Fee	Force; Fraud; Coercion	Prostitution	N/A
Tennessee	Offer; Engage in	Sexual Activity	For Hire	1, 2, 3, 4, 5, 6, 7	Commercial Sex Act (Any Sex act)	Anything of Value
Texas	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Force; Fraud; Coercion	Prostitution	Fee

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
Utah	Loitering; Engage in	Sexual Activity	Fee	Force; Fraud; Coercion 1, 2, 3, 4, 6, 7, 8	Sexual Exploitation (commercial sexual activity, sexually explicit performance, prostitution, participation in production of pornography, performance in trip clubs, and exotic dancing or display)	Anything of Value
Vermont	Offer; Engage in	Sexual Intercourse	For Hire	Force; Fraud; Coercion 1, 2, 3, 4, 5, 6, 7, 8, 9	Commercial Sex Act (Any sex act or sexually explicit performance)	Anything of Value
Virginia	Offer; Engage in	Adultery; Fornication; Sexual Acts	Money	Force; Intimidation; Deception 1, 2, 4, 8 <i>*Listed as Abduction</i>	Prostitution	Money or Pecuniary Benefit
Washington	Agree; Offer; Engage in	Sexual Contact; Sexual Intercourse	Fee	Force; Fraud; Coercion	Commercial Sex Act	Anything of Value

Table 1: Elements of Prostitution and Sex Trafficking

STATE	PROSTITUTION			SEX TRAFFICKING		
	<i>Level of Engagement</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>	<i>Compulsion Mechanism</i>	<i>Sexual Activity</i>	<i>Exchange of Fee</i>
West Virginia	Engage in	N/A	N/A	Force; Threat; Deception 1, 2, 3, 4, 8	Sexual Acts; Sexual Conduct	N/A
Wisconsin	Agree; Offer; Engage in	Nonmarital Sexual Intercourse; An Act of Sexual Gratification; Masturbation; Sexual Contact	Anything of Value	1, 2, 3, 4, 5, 7, 8, 9	Commercial Sex Act (Sexual contact)	Anything of Value
Wyoming	Agree; Offer; Engage in	Sexual Intercourse; Cunnilingus; Fellatio; Analingus; Anal Intercourse; Intrusion of Genital or Anal Opening by Any Object or Body Part	Money or Other Property	N/A	N/A	N/A

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
Alabama	Prostitution – Motion to Vacate Ala. Code § 712.1209.6 (2013)	Victim of Promoting Prostitution or Severe Form of Trafficking
	Trafficking – Affirmative Defense Ala. Code § 13A-6-159 (2013)	Prostitution was a result of sexual servitude.
Alaska	General – Affirmative Defense Alaska Stat. § 11.81.320 (2013)	Conduct is justified by reason of necessity.
	General Affirmative Defense Alaska Stat. § 11.81.440	(1) Defendant was coerced by use of unlawful force. (2) Force was reasonably unable to be resisted. (3) Defendant did not put her/himself in a position in which duress was probable.
Arizona	General – Justification Ariz. Rev. Stat. § 13-412 (2013)	(1) Compelled to engage in conduct by threat or use of physical force which did or could result in serious physical injury. (2) Reasonable person would believe they were compelled and would not have resisted. (3) Person did not put her/himself in a position in which duress was probable.
	General -- Justification Ariz. Rev. Stat. § 13-417 (2013)	(1) Compelled to engage in illegal conduct to avoid imminent public/private injury. (2) Public/private injury was greater than the injury that might reasonably result from person’s illegal conduct. (3) Person did not put her/himself in a position in which it was probable they would have to engage in illegal conduct.

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
Arkansas	General – Affirmative Defense Ark. Code. Ann. § 5-2-208	(1) Engaged in conduct because person reasonably believed s/he was compelled by threat or use of unlawful force. (2) Another person of ordinary firmness in actor’s situation would not have resisted. (3) Actor did not recklessly place her/himself in situation in which force or threatened force was reasonably foreseeable.
California	General – Exception Cal. Penal Code § 26 (West 2013)	(1) Committed act under threats or menaces. (2) Had reasonable cause to believe and believed their lives would be endangered if they refused.
Colorado	General – Affirmative Defense Colo. Rev. Stat. § 18-1-708 (2013)	(1) Engaged in conduct due to the use or threatened use of unlawful force. (2) Reasonable person would not have resisted. (3) Did not place her/himself in a situation in which a reasonable person would have foreseen duress.
Connecticut	Trafficking – Affirmative Defenses Conn. Gen. Stat. § 53a-192b (2013)	(1) Actor engaged in conduct based on another person threatening to: accuse any person of a criminal offense, exposing any secret tending to seriously harm someone, or abuse authority as an official. (2) Actor believed the outcome was real. (3) Actor was limited to change the circumstances.
	Conn. Gen. Stat. § 53a-82b (2013)	Actor was coerced to committing the prostitution-related offense.
Delaware	General – Affirmative Defense Del. Code Ann. Tit. 11, § 431 (2013)	(1) Engaged in conduct due to coercion by the use of or threat to use force. (2) Reasonable person in situation would have been unable to resist. (3) Defendant did not place her/himself in situation in which duress was probable.

STATE	DEFENSE	
	Location	Requirements
Florida	<p>Jury Instructions – Defense Fla. Stat. Jury Inst. § 3.6(k) (2013)</p> <p>Case law: <i>Chestnut v. State</i>, 505 So. 2d 1352 (Fla. 1st DCA 1987), <i>Gahley v. State</i>, 567 So. 2d 456 (Fla. 1st DCA 1990), <i>Corujo v. State</i>, 424 So. 2d 43 (Fla. 2d DCA 1982), and <i>Hunt v. State</i>, 753 So. 2d 609 (Fla. 5th DCA 2000).</p>	<p>(1) Defendant committed act out of necessity or duress. (2) Must establish six elements: Reasonably believe danger existed; danger threatened significant harm; harm must have been real, imminent, and pending; defendant had no reasonable means to avoid danger; offense was committed out of duress/necessity to avoid danger; harm of offense outweighs the harm defendant avoided.</p>
Georgia	<p>Trafficking – Defense Ga. Code Ann. § 16-3-6b (2013)</p>	<p>(1) Conduct was committed under coercion or deception. (2) Person was being trafficked for sexual servitude.</p>
Hawaii	N/A	N/A
Idaho	<p>General – Defense Idaho Code Ann. § 18-201 (2013)</p>	<p>(1) Person committed the act under threats or menaces. (2) Had reasonable cause to believe their lives would be endangered if they refused.</p>
Illinois	<p>General – Defense Ill. Comp. Stat. 5/7-11 (2013)</p>	<p>(1) Person performed conduct under compulsion of threat or menace of imminent infliction of death or great bodily harm. (2) Reasonably believed death or great bodily harm would be inflicted upon her/him or her/his spouse or child if s/he did not perform.</p>

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
Indiana	Trafficking – Rights of Alleged Victims Ind. Code § 35-42-3.5-4(a) (2013)	Alleged victim of trafficking may not be jailed, fined, or otherwise penalized for being a victim of the offense.
	General – Defense Ind. Code § 35-41-3-8	(1) Person was compelled to do so by threat of imminent bodily injury or force or threat of force. (2) A person of reasonable firmness would be incapable of resisting the pressure. (3) Person did not place her/himself in a situation in which they would be subjected to duress.
Iowa	Trafficking – Affirmative Defense Iowa Code § 710A.3 (2013)	(1) Under compulsion by another’s threat of serious injury. (2) Reasonably believed that such injury was imminent.
Kansas	General – Defense Kan. Stat. Ann. § 21-5206 (2013)	(1) Conduct under compulsion or threat of the imminent infliction of death or great bodily harm to self or person’s spouse, parent, child, brother or sister. (2) Reasonably believes death or great bodily harm will be inflicted if they do not perform conduct. (3) Person did not place self in situation in which they will be subjected to compulsion or threat.
Kentucky	General – Defense Ky. Rev. Stat. Ann. §501.090 (West 2013)	(1) Defendant engaged in the proscribed conduct because s/he was coerced by the use of or a threat of unlawful physical force. (2) A person in her/his position could not reasonably be expected to resist. (3) Defendant did not place her/himself in a situation in which it was probable s/he would be subjected to coercion.

STATE	DEFENSE	
	Location	Requirements
Louisiana	Prostitution – Affirmative Defense La. Rev. Stat. Ann. § 14:82G (2013)	Defendant was a victim of trafficking of children for sexual purposes.
	General – Justification La. Rev. Stat. Ann. § 14:18(6)	(1) Crime committed through compulsion by threats of death or great bodily harm. (2) Offender reasonably believes the person is present and would immediately carry out the threats if they did not comply.
Maine	General – Defense Me. Rev. Stat. tit. 17A, § 103-A (2013)	(1) Compelled to engage in conduct by threat of imminent death or serious bodily injury or by force. (2) Reasonable person in the defendant’s situation would have been prevented from resisting the pressure. (3) Defendant placed her/himself in a situation in which it was reasonably probable that s/he would be subjected to duress.
Maryland	Prostitution – Motion to Vacate Judgment of Prostitution Md. Code. Ann., Crim. Law § 8-302 (West 2013)	May file a motion if the person committed the act of prostitution under duress.
Massachusetts	Trafficking – Affirmative Defense Mass. Gen. Laws ch. 265, § 57 (2013)	(1) Conduct committed as a human trafficking victim. (2) Victim was under duress or coerced into committing the offenses.
Michigan	N/A	N/A
Minnesota	Sex Crimes – Affirmative Defense Minn. Stat. § 609.325, Subd. 4 (2013)	Proven by a preponderance of the evidence: (1) Defendant is a sex trafficking victim. (2) Defendant compelled by explicit or implicit threats. (3) Under reasonable apprehension in the mind of the defendant that by not complying the person would inflict bodily harm upon the defendant.
Mississippi	N/A	N/A

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
Missouri	Prostitution – Affirmative Defense Mo. Rev. Stat. § 566.233 (2013)	(1) Coerced to commit conduct by the use of or threatened use of unlawful physical force. (2) A person of reasonable firmness in her/his situation would have been unable to resist.
Montana	General – Defense Mont. Code Ann. § 25-2-212 (2013)	(1) Person performed conduct under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm. (2) Person reasonably believes that death or serious bodily harm will be inflicted if the person does not comply.
Nebraska	General – Justification Neb. Rev. Stat. § 28-1407	(1) Conduct actor believes is necessary to avoid harm or evil to her/himself or another. (2) Harm or evil is greater than the harm or evil of conduct committed. (3) Actor recklessly or negligently brought about the situation requiring a choice of harms or evils.
Nevada	General – Defense Nev. Rev. Stat. § 194.010 (2013)	(1) Person committed the act under threats or menaces. (2) Person had reasonable belief their lives would be endangered or they would suffer great bodily harm if they refused.
New Hampshire	Prostitution – Affirmative Defense N.H. Rev. Stat. Ann. § 645:2, IV (2013)	Defendant engaged in conduct because s/he was the victim of trafficking in persons.
New Jersey	Trafficking – Affirmative Defense N.J. Stat. Ann. § 2C:13-8 (2013)	During the time of the offense, the defendant was a victim of human trafficking.

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
New Mexico	General – Defense N. M. Stat. Ann. § 14-5130 (2013)	(1) Defendant was forced to commit offense under threat. (2) Defendant feared immediate great bodily harm to himself or another person if he did not commit the crime. (3) A reasonable person would have acted in the same way under the circumstances. (4) Burden is on the state to prove beyond a reasonable doubt the defendant did not act under such reasonable fear.
New York	General – Affirmative Defense N.Y. Penal Law § 40.00 (McKinney 2013)	(1) Defendant engaged in conduct because s/he was coerced to do so by the use or threatened force. (2) A person of reasonable firmness in his situation would have been unable to resist. (3) Defendant did not intentionally or recklessly place himself in a situation in which duress is probable.
North Carolina	N/A	N/A
North Dakota	General – Affirmative Defense N.D. Cent. Code § 12.1-05-10 (2013)	(1) Actor engaged in conduct because he was compelled by force or threat of force. (2) A person of reasonable firmness would be incapable of resisting the pressure. (3) Person did not voluntarily or negligently enter into a criminal enterprise or willfully place himself in a situation in which duress was foreseeable.
Ohio	N/A	N/A
Oklahoma	Trafficking – Affirmative Defense Okla. Stat. tit. 21, § 748, A, 8D (2013)	Defendant was a victim of human trafficking during the time of the offense.

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
Oregon	General – Defense Or. Rev. Stat. § 163.269 (2013)	(1) Actor engaged in conduct due to coercion by the use or threatened use of unlawful physical force. (2) Force or threatened force was of such nature or degree to overcome earnest resistance. (3) Actor did not place oneself in a situation in which duress was probable.
Pennsylvania	N/A	N/A
Rhode Island	Prostitution – Affirmative Defense R.I. Gen. Laws § 11-34.1-2 (2013)	(1) Forced to commit commercial sexual activity by one of the following: threat or use of physical harm; physically restrained or threatened to be; subject to threats of abuse of law or legal process; subject to withholding or destruction of personal government identification documents; subject to intimidation, where accused’s physical well being was perceived as threatened.
South Carolina	N/A	N/A
South Dakota	Prostitution – Affirmative Defense S.D. Codified Laws § 22-23-1.2 (2013)	Defendant proves by preponderance of the evidence: (1) Defendant was victim of human trafficking. OR (1) Defendant committed the act under compulsion, with implicit or explicit threat, by another person. (2) Defendant had a reasonable apprehension that if defendant did not commit the act, the person would inflict bodily harm.
Tennessee	Prostitution – Defense Tenn. Code Ann. § 39-13-513 (2013)	Conduct occurred because the person was a victim of involuntary servitude or trafficking.

Table 2: Defenses

STATE	DEFENSE	
	Location	Requirements
Texas	General – Affirmative Defense Tex. Criminal Code Ann. § 8.05 (West 2013)	(1) Actor engaged in conduct because he was compelled to do so by force or threat of force. (2) A person of reasonable firmness would have been incapable of resisting the pressure. (3) Actor did not place himself in a situation in which subjection to compulsion was probable.
Utah	General – Defense Utah Code Ann. § 76-2-302 (West 2013)	(1) Person engaged in conduct because he was coerced by the use or threatened imminent use of unlawful physical force. (2) A person of reasonable firmness in his situation would not have resisted. (3) Person did not place himself in a situation in which duress is probable.
Vermont	Prostitution – Motion to Vacate by Victim of Human Trafficking Vt. Stat. Ann. Tit. 13, § 2658 (West 2013)	(1) May file a motion to vacate the conviction if it was a result of the person having been a victim of human trafficking. (2) Court shall grant the motion if it finds in favor of the person by a preponderance of the evidence.
Virginia	N/A	N/A
Washington	Prostitution – Affirmative Defense Wash. Rev. Code § 9A.88.040 (2013)	Actor committed the offense as a result of being a victim of trafficking or promoting prostitution.
West Virginia	N/A	N/A
Wisconsin	General – Affirmative Defense Wis. Stat. § 939.46 (2013)	Actor reasonably believes her/his act is the only means of preventing imminent death or great bodily harm to the actor or another. OR Offense committed was a direct result of being a victim of trafficking.
Wyoming	N/A	N/A

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