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Ending Sex Trafficking of Women and Children in America

Shanae Keys

1. INTRODUCTION:

Nearly 150 years after America's division over governance, America finds itself following the same path of division. Conventional wisdom has it that the Civil War was the result of a disagreement regarding whether or not slavery should be abolished.¹ While agriculture and industry were at the root of this problem, its cause was founded in commerce.² Despite the well-known conflicts surrounding the Civil War and its seeming resolution, the abolition of slavery, slavery still exists among the states. Today, it exists in a different form, known as human trafficking. Just as in the past, this form of trafficking is founded in commercial gains.³ Essentially, as it happened 150 years ago, it is happening again; states are divided when it comes to the laws regarding trafficking in persons. Ultimately, what is at stake here is the right to life, liberty and the pursuit of happiness. This issue of slavery and the variation of laws amongst the states regarding the regulation of slavery is of prime importance because it is in violation of the United States Constitution.

The Slavery Conventional Act of 1926 defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”⁴ In other words, this act states that slavery is the result of a person using his or her power to take ownership of another person. Therefore, the recruitment,

¹ Funk & Wagnalls New World Encyclopedia, Civil War (2012), *available at* <http://web.ebscohost.com/ehost/detail?sid=57b5ec54-8139-4c46-bb0a-347dc00c6190%40sessionmgr12&vid=1&hid=28&bdata=JnNpdGU9ZWlhvc3QtbGl2ZSZzY29wZT1zaXRl#db=funk&AN=C1149300>

² *Id.*

³ *Id.*

⁴ Slavery Convention art. 5, Sep. 25 1926, 60 L.N.T.S. 253, (Mar. 9, 1927).

transportation, transfer, harbouring or receiving of a person through the use of force, coercion, or deception for the purpose of exploiting them is called “trafficking in persons” and is considered a form of slavery.⁵ When it comes to modern day slavery, victims are acquired through coercion, kidnapping and under false pretenses. Once acquired, they are forced to become sex slaves. This is the cycle of sex trafficking. This form of slavery does not discriminate on the basis of race or religion. But, it does discriminate on the basis of age and gender.⁶ In fact, most of the victims of human trafficking are females under the age of 18.⁷ In the end, slavery, as defined by the Slavery Conventional Act suggests that sex trafficking is a form of slavery.

The Slavery Conventional Act of 1926 mandates that nations take actions to ensure that forced labor does not develop into slavery and to put an end to it expeditiously.⁸ However, research shows that human sex trafficking is not only slavery but it is a big business.⁹ It is the fastest-growing business of organized crime and the third-largest criminal enterprise in the world.¹⁰ These statistics are representative of the lack of global coordination to eradicate the problem, which is needed to prevent transporting victims into the U.S. It is also representative of lack of legislation amongst

⁵ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Human Trafficking* <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Nov. 28, 2012).

⁶ *Id.*

⁷ *Id.*

⁸ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Slavery Convention* <http://www2.ohchr.org/english/law/slavery.htm> (last visited Nov. 29, 2012).

⁹ Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking* 80 FBI LAW Enforcement Bull. N.3 1 (2011), available at http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking

¹⁰ *Id.*

the states. For example, there are states that do not have anti-trafficking laws. These are states such as Wyoming and South Dakota.¹¹

While some states do not have any laws, others have laws regarding human trafficking. However, these laws can be very different from one another, some more rigorous than others. For example, New York passed an anti-trafficking bill, N.Y. Penal Law §230.34, in May 2007.¹² This law also included safe harbor laws to protect trafficked minors, and made sex trafficking a Class B felony.¹³ Meanwhile, Pennsylvania lacks safe harbor laws.¹⁴

Commentators shed light on this discrepancy, noting that gender may play a key role in the variation of laws amongst the states. Gender, party affiliation, and diffusion¹⁵ play a significant role in the variation of anti-trafficking laws amongst the states.¹⁶ Studies show that as the percentage of women in the House and Senate increase, the more likely a state is to have comprehensive anti-trafficking legislation.¹⁷ Ultimately, commentators also suggest that states with anti-trafficking provisions are the result of having more women in government office.¹⁸

¹¹ POLARIS PROJECT, FOR A WORLD WITHOUT SLAVERY, *2012 State Ratings Map (2012)*, <http://www.polarisproject.org/what-we-do/policy-advocacy/current-laws> (last visited Dec. 1, 2012).

¹² N.Y. PENAL LAW §230.34.

¹³ *See infra* Part IV.

¹⁴ POLARIS PROJECT, FOR A WORLD WITHOUT SLAVERY, *Pennsylvania State Report State Ratings (2012)*, <https://na4.salesforce.com/sfc/p/300000006E4SIB.wdvG1aAzIMV4ZEJR69QO06mI> (last visited Dec. 1, 2012).

¹⁵ Diffusion is the spread of ideas and innovations from one area or group to another. Diffusion occurs in different policy areas. And in the context of human trafficking, as one state begins to adopt and test legislation, other states may follow close behind.

Diffusion Definition, MERRIAM-WEBSTER ONLINE DICTIONARY, (11th ed. 2012) <http://www.merriam-webster.com/dictionary/diffusion>

¹⁶ Vanessa Bouche & Dana Wittmer, *Human Trafficking Legislation Across the States: The Determinants of Comprehensiveness*, Oct. 1 2009, available at <http://digitalcommons.unl.edu/humtraffconf/6/>

¹⁷ *Id.*

¹⁸ *Id.*

This paper seeks both to educate and bring awareness to the issue of sex trafficking in the U.S. Moreover, it seeks to impose stricter laws surrounding sex trafficking in an effort to either prevent or to better protect victims from sexual exploitation. This paper proceeds as follows. Part II will discuss trafficking of U.S. women, immigrant women, and children. Part III will discuss how sex trafficking has become prevalent in America. It will demonstrate the various ways in which a victim may become trafficked. Part IV will discuss the impact that sex trafficking has on its victims. Many victims develop paranoia, psychological and emotional issues that should be addressed properly to help them assimilate back into society. Part V will discuss current laws and why they are insufficient and thus ineffective in developing anti-trafficking laws. Part VI will discuss issues with current laws. It will also introduce a new statute that should be followed to eradicate trafficking in America. Part VII will discuss proposals for what can be done to eliminate sex trafficking altogether. It suggests that federal involvement is necessary to eradicate the issue of trafficking, and will demonstrate how federal involvement can be achieved without violating laws or usurping the individual state sovereignty. It further illustrates that uniformity among the states is the better method to ending trafficking. Moreover, it will demonstrate the importance of changing the way victims are viewed; they should be viewed as victims and not criminals. As a result, victims could receive educational help, shelters, and independency skills from programs instead of being prosecuted. Ultimately, this paper will conclude that the U.S. needs a comprehensive approach both internationally and locally to end sex trafficking in America.

2. TRAFFICKING IN WOMEN AND CHILDREN

While the stories of how both American and immigrant women came into the trafficking life in the U.S. may be dissimilar, there are more similarities between them than not. The similarities include suffering from vulnerabilities such as, the lack of family support, want for love, and security, and poverty. This section will discuss such similarities and dissimilarities in trafficking U.S. women, immigrant women, and children.

a. Trafficking of Women

Social service providers reported that pimps use various means to recruit U.S. women into the sex industry, one being detection of vulnerability.¹⁹ Traffickers and pimps prey on women with vulnerabilities. Such vulnerabilities that are easily detected in women include being poverty-stricken, exhibiting low self-esteem, or being insecure.²⁰ Traffickers also recruit women in clubs, more specifically, strip clubs. They woo the women by first befriending them, and buying them gifts.²¹ Subsequently, once the pimps have gained the women's trust, the pimp convinces them to "do a little more" to earn extra cash.²² Alcohol and drugs also induce U.S. women, which then can lead to addiction and a certain dependency on the pimp.²³ U.S. women and immigrant women are trafficked by the same methods alike. However there are additional factors to consider with immigrant women.

Immigrants are first trafficked into America by one of three ways: 1) they are brought over by marriage to U.S. men, often arranged by mail order bride agencies;²⁴

¹⁹ Donna M. Hughes, *The Demand for Victims of Sex Trafficking* (June 2005).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

upon arrival their husbands sell them into sex trafficking;²⁵ 2) some women respond to ads for job prospects in the U.S. by alleged legitimate agencies;²⁶ upon arrival they realize the job involved sex with many men a night;²⁷ or 3) they are smuggled over to the U.S. Frequently, the immigrant's passport is taken away and she becomes entrapped and enslaved in the U.S. Indeed, U.S. officials are not always aware of trafficking because once smuggled into the country, these women disappear behind locked doors.²⁸ Therefore, the number of people trafficked into the U.S. is immeasurable. However, it is estimated that 14,500 to 17,500 people, primarily women and children are trafficked to the U.S. annually.²⁹

b. Trafficking in children

While trafficking in women and children have similarities, there are distinguishable methods used to employ children due to their dependent status. Thus, this section examines how children become trafficked. The majority of women trafficked are under the age eighteen. In fact, the average age of entry for female prostitutes in the U.S. is between twelve and fourteen years old.³⁰ Trafficking and exploitation of children under the age of eighteen for sex is a global problem.³¹ United Nations Children's Fund ("UNICEF"), the international nongovernmental organization for the protection of

²⁵ SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 7(2009).

²⁶ HUMANTRAFFICKING.ORG, *A Web Resource for Combating Human Trafficking* http://www.humantrafficking.org/countries/united_states_of_america (last visited Dec.6, 2012).

²⁷ See *infra* Part III.

²⁸ Mary A. Fischer, *The Slave in the Garage*, READER'S DIGEST, May 2008, available at <http://www.rd.com/true-stories/survival/slave-in-the-garage/>

²⁹ Humantrafficking.org, *supra* note 26.

³⁰ HUMA KHAN, *Child Sex Trafficking Growing in the U.S., I got My Childhood Taken From Me*, ABCNews.com, May 5, 2010, available at <http://abcnews.go.com/US/domestic-sex-trafficking-increasing-united-states/story?id=10557194#.T2S5uxF8BbE>

³¹ RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE, AN ACTIVIST FINDS HER CALLING AND HEALS HERSELF* 10 (2011).

children, estimates that 1.2 million children and youth are commercially sexually exploited each year worldwide.³²

Moreover, with increasing modern technologies human trafficking becomes more accessible and more anonymous.³³ This permits additional means for traffickers to exploit children. Accordingly, concealment allows abusers to purchase their victims off of the Internet, to be sold over the Internet, through websites such as Craigslist and Backpage. Men purchase children with the click of a computer mouse without care of how old they are. To illustrate, Backpage.com, is an Internet site accused of child trafficking online.³⁴ Backpage, a site operated from within Washington State, has become a target for activists due to its high volume of sex ads.³⁵ Washington attempted to reduce child trafficking online by passing a law that required sites, within the State, to obtain documentation that proved escorts were at least 18 years of age.³⁶ Backpage sought to invalidate any law passed that would require proof of age for any person posting the ads.³⁷ A federal judge granted a restraining order against its enforcement.³⁸ In the interim, other states, including New York and New Jersey, are considering legislation similar to the Washington Law.³⁹ As a result of the simplicity of purchasing children over

³² Donna M. Hughes, *The Demand for Victims of Sex Trafficking* (2005).

³³ Zachery Gappa, *Trafficking in Women*, Jan. 10 2012, <http://www.centerforajustsociety.org/2012/01/10/33321/blog/trafficking-in-women/#more-33321>

³⁴ Katie Hinman, *Backpage Sues over Wash. Sex-Trafficking Law* ABCNews.com, June 5, 2012, available at <http://abcnews.go.com/blogs/technology/2012/06/backpage-sues-over-wash-sex-trafficking-law/>

³⁵ *Id.*

³⁶ William Yardley, *Washington Is First State to Take On Escort Sites*, N.Y. TIMES, Apr. 1, 2012, at A11, available at <http://www.nytimes.com/2012/04/02/us/washington-passes-law-to-curb-sex-trafficking.html>, .

³⁷ Hinman, *supra* note 34.

³⁸ *Id.*

³⁹ *Id.*

the Internet, it intervenes with the ability of government officials to keep a track of such illegal activities.⁴⁰ Thus, the online purchases go unnoticed.⁴¹

Customers who purchase their victims whether in person or over the Internet are known as “opportunistic buyers.”⁴² Opportunistic buyers are those who purchase sex indiscriminately because they do not care, are willfully blind to the age or willingness of the girl, or are unable to differentiate between adults and minors.⁴³ A study in Georgia illustrates the demand, in that state, for sex with minors.⁴⁴ The study included a survey of men responding to advertisements for paid sex with girls.⁴⁵ In this survey, three warnings were given to callers seeking to buy sex with a young girl.⁴⁶ Each warning gave detailed information about the female, including the fact that she was underage.⁴⁷ The research revealed that 7,200 men commit 8,700 commercial sex acts with juvenile girls each month in Georgia. Six percent of these men actively and explicitly seek girls under the age of 18.⁴⁸ As a result of being trafficked early on in age, it quickly becomes a way of life for the children involved and it transitions into their adulthood.

This section has shown the similarities and dissimilarities between women, and children who are trafficked. However, to get a full understanding of how victims are chosen, it is also important to explore the recruitment methods used to traffic women and children.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Linda Smith & Samantha Healy Vardaman, *Domestic Human Trafficking Series: A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U.L. REV. 265, 279 (2010/2011).

⁴³ *Id.*

⁴⁴ *Id.* at 281.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

3. MEANS OF RECRUITMENT INTO THE SEX TRAFFICKING INDUSTRY

This section illustrates how traffickers obtain their victims, which is accomplished in a myriad of ways. In fact, recruitment enables the sex industry to continue to prosper despite laws prohibiting trafficking. Moreover, this section illustrates how women become dependent on pimps making it more unlikely for victims to escape.

The majority of the women and children who are trafficked are lured into the business by way of: 1) Poverty, which includes sale by family 2) deceit,⁴⁹ 3) abduction, and 4) seduction/romance.⁵⁰ Although not discussed extensively in this paper, other breeding grounds for sex slaves are through pornography, strip clubs and brothels. Each of these avenues exposes women to pimps who then exploit them.⁵¹ Consequently sexual exploitation and trafficking become their way of life.⁵²

a. Poverty

A combination of causes can lead one to become a victim of trafficking. However, the majority of women who are in the sex trafficking industry are desperate for income due to poverty.⁵³ The allure of a quick, steady income becomes irresistible.⁵⁴ Many of the female victims come from low economic backgrounds, and often times, the solicitor promises these women job opportunities such as nannies, maids, factory workers, restaurant workers, sales clerks, or models.⁵⁵ In this way, traffickers lure women and children away from their homes and families. On the other hand, for some women, stripping becomes a way out of poverty. These women are aware that stripping

⁴⁹ Deceit entails the false offer of a job, travel, or other income-generating opportunity for the purpose of acquiring a slave. *See* Kara, *supra* note 25 at 7.

⁵⁰ Kara, *supra* note 25, at 6.

⁵¹ Lloyd, *supra* note 31, at 13.

⁵² *Id.*

⁵³ Kara, *supra* note 25, at 7.

⁵⁴ *Id.*

⁵⁵ *Id.*

will provide them with adequate wages.⁵⁶ As noted, the need for money is a key reason why women make the decision to become a stripper. By one way or another, women in the strip club environment are more likely to be exposed to traffickers and pimps, which increases their chances of being sex trafficked. The Polaris Project, an anti-trafficking non-profit organization, listed strip clubs as one of the many venues where trafficking victims can be found.⁵⁷

In addition to the above factors, poverty causes family members to make desperate choices. For example, the inability to provide for one's family can lead a person to sell their children to a sex trafficker.⁵⁸ In most cases, women and children are sold into sex trafficking by family members as the result of both poverty and desperation. In cases where children are sold, the parents may be told that their children will be given work and in exchange for allowing their children to work, the parents are paid a small fee.⁵⁹ Unbeknownst to that family, the work entails forcing the child to have sex with men every night for pay.⁶⁰ While poverty is a major cause behind sex trafficking, there are other causes.

b. Abduction

Although abduction does not occur as often as the other methods for acquiring sex slaves, it does occur. Abduction is defined as either seizing or taking a person by force;⁶¹

⁵⁶ *Id.*

⁵⁷ POLARIS PROJECT, FOR A WORLD WITHOUT SLAVERY, *Hostess/Strip Clubs-Sex Trafficking*, <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/hostessstrip-clubs> (last visited Nov. 30, 2012).

⁵⁸ REN ALTHOUSE, MARY FULGINITI, & HARRY PHILLIPS, *Modern Day Slavery: Shyima's Story* ABCNews.com, June 30, 2007, available at <http://abcnews.go.com/Primetime/story?id=3409293&page=1#.ULbGqY5khIc>

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Abduction Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY. (11th ed. 2012), available at <http://merriam-webster.com/dictionary/abduct>

it results in women or children being forced to travel far from their home.⁶² Members of an organized crime networks abduct some women. In these instances, gang members will forcibly seize women off the road, drug them and sell them to traffickers.⁶³ One commentator illustrates an example of how a typical abduction may take place. In Mexico two fourteen year old cousins were abducted as they waited for their bus ride home.⁶⁴ Two men wearing black masks and hoodies jumped out of a van and grabbed them.⁶⁵ They then forced the young girls to take drugs that rendered them unconscious. Shortly thereafter, the girls woke up in a dark room.⁶⁶ They were kept in this room for days without food or water.⁶⁷ Soon after their abduction, they were subjected to beatings and forced to have sex with men every night.⁶⁸ In some cases, these girls had sex with twenty-three men in one night.⁶⁹ Eventually, one of the cousins escaped. She went home, and her family contacted authorities.⁷⁰ This story exemplifies the experience of abducted victims, the vast numbers of whom are abducted are underage girls who are then forced into prostitution.⁷¹ Not everyone is forced into the sex industry by way of poverty or abduction. Some women are brainwashed by the person they believed to be their boyfriend.

⁶² Walker-Rodriguez & Hill, *supra* note 9.

⁶³ April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. L. REV. 232 (2007).

⁶⁴ RAFAEL ROMO, *Teen's brothel escape triggers Mexico clampdown*, CNN.com, July 19, 2012, available at <http://thecnnfreedomproject.blogs.cnn.com/2012/07/19/teens-brothel-escape-triggers-mexico-clampdown/>

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Part II. Discussion of children trafficked.

c. The “boyfriend” influence

Another method women are coerced into prostitution is by men whom they believed to be their boyfriend. These men promise their victims love, and protection, by offering them gifts.⁷² Depending on the women’s age, seemingly basic items such as clothing, jewelry, and food can suffice.⁷³ Men spend money on their victims because they recognize the return of their low investment to be a profitable one.⁷⁴ Women and children become so brainwashed they believe they owe a debt to their boyfriend. As repayment for the gifts, women and children will do anything asked of them, including selling their bodies.⁷⁵ In one article, the victim described her experience, stating: “I desperately sought a father figure, and he wooed me right into his arms.”⁷⁶ This story is only one of many similar stories of young girls who are easily induced by meals, the promise to be a family, love, and protection. It follows, then, that men prey on girls who come from broken homes, or who have run away from home.⁷⁷ The rationale behind this is that they are more susceptible to respond to this type of love and attention, so it is easier to lure them away from their homes and families. The longer victims are away from their homes and families the harder the sex industry impacts their lives.

4. THE IMPACT SEXUAL EXPLOITATION HAS ON ITS VICTIMS

⁷² POLARIS PROJECT, FOR A WORLD WITHOUT SLAVERY, *Sarah/ Domestic Minor Sex Trafficking*, <http://www.polarisproject.org/what-we-do/client-services/survivor-stories/465-sarah-domestic-minor-sex-trafficking> (last visited Dec. 6, 2012).

⁷³ *Id.*

⁷⁴ Khan, *supra* note 30.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Polaris Project, For a World without Slavery, *supra* note 72.

This section will show the impact the sex industry has on women and children. First, it explores the emotional and psychological impact on victims. Second, it explores the physical impact through abuse and sexually transmitted diseases. Third, it identifies reasons for high recidivism rates in victims who escaped. This section will conclude by identifying reasons victims are less likely to report their abusers or try to escape.

It is often said that even a day spent in trafficking impacts its victims in unsavory and unfavorable ways. The result of having been trafficked leads to a life of desolation, and loneliness, which is followed by low-self esteem, low self-worth, and insecurity issues. Therefore, many women and children are negatively impacted as the result of trafficking. They become psychologically, and emotionally instable.⁷⁸ “In some cases the emotional consequences of trafficking and prostitution can be just as, and sometimes more, severe than the physical health effects.”⁷⁹ Statistics show that 85% of immigrant women, and 86% of U.S. women experienced depression or sadness as a result of being victims of sex trafficking.⁸⁰ Moreover, women who were sexually exploited continued to experience depression and sadness as a result of being victims of sex trafficking even after escaping the sex industry.⁸¹ In worse case scenarios, some women die, whether it was directly through homicide or indirectly through sexually transmitted diseases.⁸² Women and children are often subjected to violent beatings from both their traffickers and their buyers.⁸³ In fact, most commentators suggest that women in the sex industry received injuries similar to domestic violence victims, and reported incidences of

⁷⁸ Kara, *supra* note 25, at 15.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Smith & Healy Vardaman, *supra* note 42.

infectious diseases, such as hepatitis and tuberculosis.⁸⁴ Women also encounter other health problems, such as dental cavities, missing teeth, and general poor hygiene.⁸⁵ As a result, the life expectancy of someone sexually trafficked is short.

Some victims may escape their trafficker. Churches or other anti-trafficking organizations are renowned for helping victims escape. For example, Safe Horizon is the nation's leading victim assistance program, which provides a myriad of services such as 24-hour hotlines, and safe shelters to help victims in their escape.⁸⁶ Some women will conceal money earned from clients over long periods of time until enough money is accumulated to escape.⁸⁷ However, studies have shown that due to lack of support, victims may relapse.⁸⁸ Most women who escaped are forced to return to the same conditions of poverty, domestic violence, social bias, or lack of economic opportunity that precipitated their initial trafficking.⁸⁹ Naturally, women vie for a better resolution that could improve their life, but in realizing their disadvantaged position, they return to their traffickers in search of a better deal.⁹⁰

Alternatively, some victims do not try to escape. Battering and prostitution is not only used to initiate women into the sex industry, but it is also used to control them thereafter.⁹¹ Thus, women and children trafficked experience consistently high volumes of violence and abuse that it makes it easier for the traffickers to control them.⁹²

⁸⁴ JANICE G. RAYMOND, DONNA M. HUGHES, & CAROL J. GOMEZ, *Sex Trafficking of Women in the United States: Coalition Against Trafficking in Women* (March 2001).

⁸⁵ *Id.*

⁸⁶ SAFEHORIZON, *Anti-Trafficking Program*, www.safehorizon.org (Last visited December 4, 2012).

⁸⁷ Erica Pearson, *Sex trafficking survivor's dramatic tale of escape*, N.Y. DAILY NEWS, Feb. 12, 2012, available at http://articles.nydailynews.com/2012-02-12/news/31053355_1_livery-cab-johns-cab-driver

⁸⁸ Kara, *supra* note 25, at 16.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Raymond, Hughes, & Gomez, *supra* note 84.

⁹² Walker-Rodriguez & Hill, *supra* note 9.

Accordingly, women and children are too afraid and intimidated to speak out against their traffickers, even when faced with an opportunity to escape.⁹³ For example, traffickers make death threats to the victims or their families as a method of control or punishment.⁹⁴ Moreover, immigrant victims often have expired visas or stolen passports; traffickers use this to threaten to report them to the police.⁹⁵ Traffickers will also use financial methods to control their victims.⁹⁶ Victims may have little or no control of their money.⁹⁷ After being forced to work long hours the women must return their monies over to their pimps or traffickers.⁹⁸ Therefore, lack of money is yet another reason victims do not escape.

Current laws have been put into place to protect and help such victims who have escaped. Shelters have been established to provide a temporary home for such victims and to encourage them to escape. However, as mentioned, many U.S. women fail to report their traffickers for fear of retaliation and further abuse.⁹⁹ Immigrant victims also fail to report their traffickers due to unfamiliarity with the laws, languages, and cultures of the U.S.; they fear removal to other foreign countries where they could potentially face worse hardship, they find it difficult to report the crimes committed against them.¹⁰⁰

5. CURRENT LAWS

Current anti-trafficking laws exist at the international, federal, and state levels. This section will discuss current international, federal laws, and individual state laws

⁹³ *Id.*

⁹⁴ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Human Trafficking* <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Nov. 28, 2012).

⁹⁵ U.S. DEPARTMENT OF STATE, *Victims of Trafficking and Violence Protection Act of 2000* (Oct. 28, 2000) <http://www.state.gov/j/tip/laws/61124.htm>

⁹⁶ Walker-Rodriguez & Hill, *supra* note 9.

⁹⁷ U.S. Department of State, *supra* note 95.

⁹⁸ *Id.*

⁹⁹ *See supra* note 94.

¹⁰⁰ IMMIGRATION POLICY CENTER, *VAWA Provides Protection for Immigrant Women*, <http://www.immigrationpolicy.org/just-facts/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime> (last visited Dec. 6, 2012).

against human trafficking. This will include the involvement of: 1) the European Union, United Nations, and Convention on the Elimination of All Forms of Discrimination against Women; 2) The Victims of trafficking and Violence Protection Act of 2000, and 3) as an example of individual state laws this paper will look at New York and New Jersey State law approaches to anti-trafficking laws.

a. International laws

It is important to note that global initiatives are imperative to end trafficking. Human trafficking is a crime of such magnitude and atrocity that it cannot be dealt with successfully by any government alone.¹⁰¹ Global forces at the forefront of battling sex trafficking are: 1) The European Union, 2) the United Nations, and 3) the Convention on the Elimination of all forms of discrimination against women.

The European Union (“EU”) has focused on efforts to fight trafficking by strengthening its focus on prevention and protection of victims.¹⁰² EU Directive 2011/36/EU is the most recent directive put in place to combat trafficking.¹⁰³ It takes a human rights-based approach, acknowledging that human trafficking is both a crime and a human rights violation.¹⁰⁴ It also focuses on gender roles and differences; recognizing that such gender imbalances contribute to the vulnerabilities that make women more susceptible to abusive treatment, and sexual exploitation.¹⁰⁵ Also, the United Nations

¹⁰¹ UN.GIFT.HUB, *Global Initiative to Fight Human Trafficking, What is Human Trafficking* <http://www.ungift.org/knowledgehub/en/about/human-trafficking.html> (last visited on Dec. 1 2012).

¹⁰² UNITED NATIONS OFFICE ON DRUGS AND CRIMES: *EU Directive on Trafficking in Human Beings, A joint UN commentary* (2011), https://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

(“UN”) supports the efforts of the EU to provide guidance and implementation of EU directives.¹⁰⁶

The UN has committed to promote the global fight on human trafficking, on the basis of international agreements reached at the UN.¹⁰⁷ The UN aims to mobilize state and non-state actors to eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for an end to exploitation in all its forms.¹⁰⁸ It seeks to 1) ensure adequate protection and support to those who fall victim to trafficking and 2) support the efficient prosecution of the criminals involved, while respecting the fundamental human rights of all persons.¹⁰⁹

Meanwhile, the UN General Assembly adopted the Convention on the Elimination of All forms of Discrimination against Women (“CEDAW”) in 1979.¹¹⁰ CEDAW is often described as an international bill of rights for women.¹¹¹ CEDAW is an international treaty adopted to address the concerns relating to the discrimination¹¹² against women, one of which focuses on preventing trafficking, especially in women and children.

Congress created additional forms of government at the federal level to better protect women and children. The Trafficking Victims and Violence Protection Act of 2000 is the most renowned federal agency at the forefront of trafficking issues in the U.S.

¹⁰⁶ *Id.*

¹⁰⁷ UN. Gift. Hub, *supra* note 101.

¹⁰⁸ United Nations Office on Drugs and Crimes, *supra* note 94.

¹⁰⁹ *Id.*

¹¹⁰ DIVISION FOR THE ADVANCEMENT OF WOMEN, *CEDAW*, <http://www.un.org/womenwatch/daw/cedaw/> (last visited Nov. 27, 2012).

¹¹¹ *Id.*

¹¹² *Id.* The Convention defines discrimination against women as any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic social, cultural, civil or any other field.

b. Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”)

Congress enacted the Trafficking Victims Protection Act of 2000 (“TVPA”) in an effort to help combat human trafficking both domestically and internationally.¹¹³ TVPA is one of the most important anti-trafficking laws ever passed.¹¹⁴ Its purpose is to combat trafficking in persons, which is a contemporary manifestation of slavery, whose victims are predominantly women and children.¹¹⁵ It also ensures just and effective punishment of traffickers, and seeks to protect victims.¹¹⁶ The TVPA defines severe forms of trafficking as: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or when the person induced to perform the act is under age eighteen.¹¹⁷ The definition further denotes that a victim does not need to be physically transported from one location to another in order for the crime to fall within the definition.¹¹⁸ While the TVPA was signed into law in 2000, it subsequently has been reauthorized three times.¹¹⁹ The most recent amendment to the act was enacted in December 2008.¹²⁰ Therefore, TVPA needs to be reauthorized as it expired in September 2011.¹²¹ TVPA enhances pre-existing criminal penalties, affords new protections to trafficking victims and makes certain benefits and services available to victims of severe forms of trafficking.¹²²

¹¹³ U.S. DEPARTMENT OF STATE, *Office to Monitor and Combat trafficking in Persons, Report on Trafficking in Persons*, <http://www.state.gov/j/tip/rls/tiprpt/2009/123123.htm> (last visited Dec. 1, 2012).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ POLARIS PROJECT, FOR A WORLD WITHOUT SLAVERY, *Tell your Congressperson to Act on Critical Anti-trafficking Legislation*, <http://www.polarisproject.org/take-action/advocate/627-tell-congress-to-act-on-critical-anti-trafficking-legislation-now>, (last visited December 6, 2012).

¹²⁰ U.S. Department of State, *supra* note 113.

¹²¹ Jesse Eaves, *Opinion: Urge U.S. Congress to re-authorize Trafficking Victims Protection Act* The CNN Freedom Project, Sep. 14, 2011, available at <http://thecnnfreedomproject.blogs.cnn.com/2011/09/14/opinion-urge-u-s-congress-to-re-authorize-trafficking-victims-protection-act/>

¹²² U.S. Department of State, *supra* note 113.

Another important initiative that has become available under the TVPA is the newly created category of visa called T-visa.¹²³ This was enacted especially for those who were brought across the borders illegally or were forced to overstay their admission.¹²⁴ Under the T-Visa, the statute allows the victims to stay in the U.S. if it is determined that going back to their home country would result in severe hardship imposing severe harm on the victim.¹²⁵

One implication of federal involvement in ending trafficking is that it is of significant importance due to concern for the volumes of people victimized in the U.S. Such heightened scrutiny is illustrated through the involvement of the President of the U.S.

c. Presidential Acts to aid the states

The Obama Administration has begun new initiatives against human trafficking. Strong executive orders are aimed at ending human trafficking.¹²⁶ The most recent order in September 2012 contains simple, but fundamental provisions that will help enforce the zero tolerance policy against human trafficking.¹²⁷ This order provides that more than 20 million men, women and children throughout the world are victims of severe forms of trafficking in persons.¹²⁸ It further states that the U.S. has long had a zero-tolerance policy regarding persons engaging in any form of this criminal behavior.¹²⁹ This order sets out to provide additional tools such as training and guidance to law enforcement and

¹²³ U.S. Department of State, *supra* note 95.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *To Combat 'Modern Slavery'* N.Y. TIMES, Oct. 1, 2012, at A30,

<http://www.nytimes.com/2012/10/02/opinion/to-combat-modern-slavery.html>

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ THE WHITE HOUSE, *Executive Order: Strengthening Protections Against Trafficking in persons in Federal Contracts* (September 25, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>

federal prosecutors, to enforce and apply the existing policy.¹³⁰ Through this training, these professionals will be better equipped to detect trafficking, and to help ensure that victims are always treated as victims and not criminals.¹³¹

In addition to the Obama Administration's focus on human trafficking, the majority of the states are passing laws to combat trafficking.¹³² Passing strong state laws is a critical step to increasing prosecution of traffickers and providing support for survivors.¹³³

d. State Law

New York is one state known for its laws to end trafficking. New York has enacted recent amendments such as imposing stricter laws and penalties against traffickers. Specifically, the New York Penal Code §230.34 defines sex trafficking in summary as “a person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by: (1) unlawfully providing the victim with certain drugs with intent to impair said person's judgment; (2) making material false statements to induce victims to engage in prostitution; (3) withholding or destroying government identification documents; (4) requiring prostitution as a method for repayment of a debt; or (5) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in prostitution by making that person fearful of actions or consequences against him or her.”¹³⁴ Any person convicted of this crime is subject to a class B felony, with a

¹³⁰ THE WHITE HOUSE, *Fact Sheet: The Obama Administration Announces Efforts To Combat Human Trafficking Home and Abroad* (Sept. 25, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki>

¹³¹ *Id.*

¹³² *See infra.*

¹³³ POLARIS PROJECT, *Majority of States Actively Passing Laws to Combat Human Trafficking* (August 7, 2012) <http://www.polarisproject.org/media-center/press-releases/634-majority-of-states-actively-passing-laws-to-combat-human-trafficking>

¹³⁴ *See* N.Y. PENAL LAW §230.34, Appendix B.

maximum sentence of 25 years imprisonment.¹³⁵ In addition, a court may impose fines amounting to \$5000 or double the defendant's profit from the commission of the crime.¹³⁶ As a result, New York State's human trafficking law is said to be the most comprehensive in the country, providing law enforcement with new methods to fight modern day slavery.¹³⁷ Although the majority of states have anti-trafficking laws, not every state includes a provision that does not criminalize its victims. New York is one of the first states to include such a provision. This new law states New York Courts shall vacate convictions of those arrested for prostitution related offenses if they were sex trafficking victims at the time of the arrest.¹³⁸ In other words, under the New York Penal code, the victim "shall not be deemed an accomplice."¹³⁹ In *People v. G.M.*, for example, the Court applied this new law in their decision to vacate the Defendants convictions for prostitution, loitering, and drug possession.¹⁴⁰ The Defendant, in that case, demonstrated to the Court that her prior arrests were all the product of years of brutal physical, psychological, and sexual abuse by her husband, which led to her being trafficked.¹⁴¹ Despite this newly amended New York law, other states have chosen to criminalize trafficking in several ways.

Under New Jersey law, N.J.S. 2C:34-1, a person convicted of human trafficking for the purposes of engaging in sexual activity is guilty of a first degree felony offense.¹⁴² The maximum punishment for a trafficking offense is up to twenty years without parole

¹³⁵ *Id.*

¹³⁶ N.Y. PENAL LAW §135.35.

¹³⁷ N.Y. STATE DIVISION OF CRIMINAL JUSTICE SERVICES, *Human Trafficking*, <http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm> (last visited Nov. 5, 2012).

¹³⁸ *People v. G.M.*, 922 N.Y.S. 2d 761 (N.Y. 2011).

¹³⁹ N.Y. PENAL LAW §135.35

¹⁴⁰ *G.M.*, 922 N.Y.S. at 761.

¹⁴¹ *Id.* at 762.

¹⁴² N.J.S. 2C:34-1

or a life sentence with the possibility of parole after twenty years served.¹⁴³ The New Jersey Court may also order the trafficker to pay restitution to the victim relating to services he or she was forced to perform.¹⁴⁴ The trafficker may also have to forfeit any assets related to the trafficking violation.¹⁴⁵ Furthermore, on January 17, 2012, New Jersey State Legislature enacted a law that aids victims of human trafficking in New Jersey.¹⁴⁶ This bill that was enacted is called the “safe harbor” law, this legislation ensures that minors trafficked are not treated as criminals, but instead, as survivors of a crime.¹⁴⁷

In conclusion, then, as mentioned previously, there are various laws in place to combat the sex trafficking epidemic. Despite these initiatives at the international, federal, and state levels, little arrest has been made, and women and children continue to be victimized. The next section sheds light to the issues surrounding the current laws of anti-trafficking.

6. ISSUES WITH CURRENT LAWS

Though I concede that there are various trafficking laws at the international, federal, and state levels, the concern is that not all are effective to combat trafficking. This section will illustrate the current issues with anti-trafficking laws. First, on the international level not every country concedes to the European Union, United Nations, and CEDAW policies against trafficking. Second, at the federal level, TVPA does not grant all victims benefits of the services offered, and the Presidential initiative does not

¹⁴³ ERICA BOONSTRA, *Anti-Trafficking Legislation Passed in New Jersey!* Feb. 2, 2012, <http://www.ijm.org/news/anti-trafficking-legislation-passed-new-jersey>

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

grant all nonprofit organizations funding, which many victims have come to rely upon. Third, there is a lack of uniformity among the states. All in all, there is confliction between the policies as they each interpret the definition of trafficking differently.

a. International Law Issues

The main challenge to international laws is that not every country participates in efforts to end trafficking. This presents another difficulty with border control efforts. Presumably, the U.S. cannot force another country to partake in certain anti-trafficking initiatives. However, it can deny citizens of those countries entry into the U.S. While there are current border control laws in place to deny illegal immigrants entrance, the current polices are ineffective because there is still an exorbitant amount of people entering the U.S. illegally.¹⁴⁸ Therefore, stricter border controls followed by thorough investigation tactics are needed to prevent people from illegally entering the country. In addition, due to the global nature of sex trafficking, a consensus between nations is necessary. For example, sophisticated communication tools and relaxed banking laws make it possible to exchange assets internationally with ease.¹⁴⁹ Organized crime groups can take advantage of these tools to create more efficient overseas networks.¹⁵⁰

CEDAW focuses to eliminate discrimination against women and children, but it does not focus much attention specifically on human trafficking.¹⁵¹ Thus, it does not give adequate protection to women who are forced into the sex industry. It does not address the issue that many women are trafficked as a result of being subjected to stereotypes and

¹⁴⁸ See *supra* note 29 and accompanying text. Estimating the amount of women and children trafficked into the U.S.

¹⁴⁹ DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE AND HOW WE CAN FIGHT IT, 153 (2010).

¹⁵⁰ *Id.*

¹⁵¹ See Division for the Advancement of Women, *supra* note 110.

gender roles that society has placed on them. The international and federal laws alike take different approaches to battling trafficking. Ultimately, different standards are applied when dealing with victims. For example, it appears that the UN focuses on exploitation of women and children, while the TVPA focuses on how women and children are coerced into trafficking. Requiring victims to prove coercion is an extremely high standard, and can be hard to prove. When different standards are applied it prevents victims from receiving the most effective help and support that they may need. The next point raises further issues with federal laws.

b. Federal Law Issues

TVPA works to prevent trafficking both domestically and internationally. For example, it has a separate provision to monitor and eliminate trafficking internationally. Despite these laws, women and children are still brought into the U.S. for purposes of sexual exploitation.¹⁵² This demonstrates why federal anti-trafficking laws need reinforcement since the goals for protecting women and children have not been adequately accomplished. In addition, since the passage of the TVPA, very seldom do victims receive the benefit of its laws.¹⁵³ Fewer than one thousand victims of trafficking have received a T-Visa or have been granted continued presence in the U.S.¹⁵⁴ Those figures are anemic when compared to the tens of thousands of people who have been trafficked in the U.S. since it was enacted in 2000.¹⁵⁵ Moreover, the TVPA has established the most comprehensive worldwide report in 2009 on government efforts to

¹⁵² See *supra* Part III. and accompanying text.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Kara, *supra* note 25, at 232.

combat severe forms of trafficking in persons.¹⁵⁶ This report provides an updated global perspective of the nature and scope of trafficking in persons, and the government actions used to confront and eliminate trafficking. Yet, it does not address the concern of victims being transported between countries. In other words, traffickers, without the detection of coercion or enslavement, bring victims from other countries into the U.S. Another issue with the TVPA is that it needs reauthorizations; without it, its laws are ineffective. Currently, the TVPA has been expired since 2011.¹⁵⁷

Other failures of federal laws include limited federal funds to assist organizations in their efforts to provide services to victims of trafficking. The inadequate provisions set forth by the Obama Administration illustrate this. Specifically, the funds toward aiding trafficked victims by state and local agencies are limited. Although it is true that President Obama launched a six million dollar effort aimed at trafficking,¹⁵⁸ studies have shown that non-compliance of any of President Obama's mandates will result in limiting state funds towards anti-trafficking to induce compliance.¹⁵⁹ Although this is allowed through the use of the President's spending power, it is eliminating funds that would help remedy a world epidemic. Consequently, it further derails agencies, and other non-profit businesses from providing support to victims. Naturally, this restricts services that can be provided to victims to help them live a productive life. To put it another way, without the support of local agencies, many victims are left hopeless with nowhere to turn for support. For example, the United States Conference of Catholic Bishops ("USCCB") was

¹⁵⁶ U.S. DEPARTMENT OF STATE, *U.S. laws on trafficking in Persons* <http://www.state.gov/j/tip/laws/> (last visited Nov. 15, 2012).

¹⁵⁷ Eaves, *supra* note 121.

¹⁵⁸ *Id.*

¹⁵⁹ Elise Hilton, *Obama Administration leaves human trafficking victims out in the cold*, LifeSiteNews.com, October 8, 2012, available at <http://www.lifesitenews.com/news/obama-administration-leaves-human-trafficking-victims-out-in-the-cold>

one organization that received government funding for its anti-trafficking services.¹⁶⁰ This program was notified that it would no longer receive funding for its program because it refused to provide abortion, and birth control to its employees.¹⁶¹ The Obama Administration mandates that organizations receiving federal funding must offer FDA approved contraceptive methods, patient education and counseling for all women.¹⁶² Despite federal funding to accommodate anti-trafficking organizations, the slightest divergence from the President's proposal will decrease money awarded to these agencies. In addition to federal challenges to overcome, state challenges arise and are also important to address.

c. State Law Issues

Obstacles state laws face arise due to incomprehensive laws against trafficking. This is due to the state statutes varying in coverage. Despite this recognition, little has been done and few arrests have been made.¹⁶³ It follows, then that new law is needed that encompasses a narrower rule of law to be applied widely. This new law is outlined in this section.

Various laws between the states provide anti-traffickers the opportunity to flock to states with little to no anti-trafficking laws. Thus, traffickers are allowed to escape penalties and prosecution. Since all states do not take such a comprehensive approach they should mirror New York Law, which could provide adequate protection to women and children who have been forced into the sex industry. For example, there were 145 sex trafficking arrests in New York under the new bill, discussed earlier that was signed into

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Joseph Berger, *Despite Law, Few Trafficking Arrests*, N.Y. TIMES, Dec. 3, 2009, at A32, available at http://www.nytimes.com/2009/12/04/nyregion/04trafficking.html?_r=0&pagewanted=print

law in 2007, and all but thirteen arrests were in New York City.¹⁶⁴ This illustrates that the bill passed in that city is effective. Although New York law is proven to be among the most effective to ending sex trafficking within that state,¹⁶⁵ this law alone will not suffice.

Thus, a combination of the finest state laws across the country would be necessary to sufficiently provide a comprehensive approach. For example, in Ohio, the Senate bill, “The Safe Harbor Act” was passed.¹⁶⁶ This bill enacted several important laws, one being, to shield juvenile human trafficking victims from going to jail on prostitution charges.¹⁶⁷ It recognizes that children under the age of eighteen cannot legally consent, and thus should be treated as victims in need of services and support.¹⁶⁸ However, the problem with this is that not all states have enacted this law. Only Ohio and seven other states received full credit for having Safe Harbor Laws, which include provisions to protect children and provide services to them.¹⁶⁹ As such, more states would need to follow similar initiatives as Ohio, so that trafficked women and children are not treated as criminals. However, even with gathering the finest state laws, one state is not mandated to follow the laws of another state due to individual state autonomy. Therefore, the best comprehensive approach would be to allow federal involvement to enact a law for each state to follow.

A federal anti-trafficking statute that should be enacted for every state in the U.S. follows:

¹⁶⁴GARY CRAIG, *New York’s Trafficking law evolving*, October 17, 2012, <http://www.democratandchronicle.com/article/20120430/NEWS01/304300008/New-York-trafficking-laws>

¹⁶⁵ See *supra* Part V.D.

¹⁶⁶ INNOVATION OHIO, *Human Trafficking Bill Passes Senate, Governor Expected to Sign*, June 13, 2012, <http://innovationohio.org/women/human-trafficking-bill-passes-senate-governor-expected-to-sign>

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹POLARIS PROJECT: *Majority of States Actively Passing Laws to Combat Human Trafficking* (August 7, 2012) <http://www.polarisproject.org/media-center/press-releases/634-majority-of-states-actively-passing-laws-to-combat-human-trafficking>

1. A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:
 - (1) Unlawfully providing the victim with certain drugs with intent to impair said person's judgment;
 - (2) making material false statements to induce victims to engage in prostitution;
 - (3) withholding or destroying government identification documents;
 - (4) requiring prostitution as a method for repayment of a debt; or
 - (5) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in prostitution by making that person fearful of actions or consequences against him or her.
 - a. A person convicted for any of the foregoing is guilty in the first degree.
 - b. Prosecution for a violation of this section shall include a term of imprisonment for a minimum of twenty (20) years without the eligibility of parole, or the convicted shall serve twenty (20) years before eligibility of parole.
 - c. Increased penalties for a person who aids or abets a person in furthering their goals to traffic another.
 - i. This includes a person having knowledge of the existence of a criminal enterprise, and is aware of the nature of its activities, or being employed by or associated with such facility.
 - d. The defendant shall reimburse the victim for the services of her labor.
 - i. The amount of which can be determined according to the individual state's wage laws.
2. Protection for victims
 - a. Safe Harbor laws for minors, which will eliminate prosecution of trafficked minors, and provide the victims with social services.
 - b. Victim Assistance Programs to provide basic survival skills to enable victims to be independent.
 - c. Victims of sex trafficking shall have the right to vacate convictions, or criminal charges, in relation to prostitution or loitering. Thus, criminal records will be removed.
3. Extensive training of law enforcement that provides government officials with proper knowledge to identify sex traffickers and victims. Proper use of investigative tools such as eavesdropping warrant, or use of interceptive communication systems, which allows law enforcement to overhear conversations without consent of the parties.
4. International laws

- a. Any immigrant entering the U.S. shall be subject to strict scrutiny before admittance. Those entering the U.S. for work shall submit visas with detailed job description, such as nature of duties, duration of job, and shall provide information on where they will reside during his or her stay in the U.S.
- b. Thorough identification checks before allowing admittance into the U.S.,
 - i. Enforced penalties for law officials who do not properly recognize signs of trafficking at check points.

Although this proposed law may seem extensive, it is all-encompassing. The goal of the statute is to promote uniformity and cooperation both globally and among the states, to decrease trafficking worldwide. As mentioned throughout this paper, the biggest issue with current laws is that there is a division both internationally and among the states with respect to rules governing trafficking. Thus, the focus of this paper is to provide a comprehensive approach, and uniformity is the best line of attack. Hence, the above statute represents the best law relating to anti-trafficking and protection of its victims. It further represents a proposal for change in the existing laws.

7. PROPOSALS FOR CHANGE TO END TRAFFICKING

The U.S. has attempted to curtail the sex trafficking epidemic through numerous methods, including enacting statutes specifically focused on human trafficking.¹⁷⁰ Despite increased policy, law enforcement, and media attention on sex trafficking, little has been done to rectify the issue, and as a result the industry still thrives.¹⁷¹ This section illustrates recommendations that would help rectify the challenges with current laws. First, laws should begin with addressing the issue of supply and demand. By eliminating the demand for prostitutes it will eliminate the need to supply prostitutes. Second, it

¹⁷⁰ Amanda Walker-Rodriguez, *The Crime Next Door: An Examination of the Sex Trafficking Epidemic in the United States and How Maryland is Addressing the Problem*, 41, 51 U. BALT. L.F. 43 (2010).

¹⁷¹ Kara, *supra* note 25, at 37.

addresses the need for federal involvement. Third, it addresses the need to punish people who aid the industry by providing traffickers access to their facilities for purposes of sexual exploitation. It also demonstrates the need to eliminate corrupt law enforcement. Fourth, it suggests the need to eliminate how both women and children are labeled. This section will conclude with exploring the opposing side of my arguments.

a. Supply and Demand

One of the biggest challenges with current laws in the U.S. is that it does not deter either the supply or demand of sex trafficking.¹⁷² Accordingly, there is a high profitability for sexual trafficking with minimal risk.¹⁷³ As a result, traffickers and pimps accumulate an exorbitant amount of money off their victims with low chances of prosecution or fines for their actions.¹⁷⁴ However, supply or demand cannot function one without the other,¹⁷⁵ so addressing one side of the problem will not accomplish anything in the fight against sex trafficking.¹⁷⁶ To put it more succinctly, if the dollar amount for sex with trafficked victims increased, the buyer's demand to have sexual relations with victims would decrease. To illustrate, an example of pricing for sexual act is as follows: sitting naked (\$10.00); verbally abusing men (\$10.00); masturbation (\$20.00); Pee in a glass (\$100.00).¹⁷⁷ According to the proposal, if these prices were increased, the demand for these acts would likely decrease because buyers will be less inclined to pay for women they considered were overpriced. For example, at least one commentator has noted that buyers would complain if the women would not comply with their request to be kissed, or

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Walker-Rodriguez, *supra* note 170.

¹⁷⁶ *Id.*

¹⁷⁷ Raymond, Hughes, & Gomez, *supra* note 84.

touched in certain places if it was not included in the purchase price.¹⁷⁸ Also, consumers of sexual services should be exposed to the community. Perhaps, a newspaper section identifying men caught engaging in sexual exploitation of women and children would suffice. Nevertheless, as mentioned, if one state increased the demands and risks associated with sex trafficking, pimps and traffickers would flock to other states. Therefore, the next proposal is to create a federal anti-trafficking law that all states must follow.

b. Federal anti-trafficking laws are necessary

Federal involvement is needed to eradicate trafficking of women and children so that states will have a comprehensive approach to laws enacted to end trafficking. Federal involvement is appropriate to assist the states because the sex industry involves travel among state borderlines. Hence, invoking the use of commerce, which enables federal intervention. See *United States v. Todd*, where the courts found that sex trafficking affected interstate commerce due to advertisements conducted across state lines.¹⁷⁹

Many of the sex businesses are transient and mobile.¹⁸⁰ As a result, this calls for the attention of federal involvement. The federal government can become involved in individual state matters by one of two ways. One of which is by the use of its spending power. Therefore, in the event that an individual state refuses to enact a federal policy against trafficking, the government could use its spending power to take away government funded programs in that state. This would induce the state's compliance with the federal policy. The second method is through interstate commerce. As noted the sex

¹⁷⁸ *Id.*

¹⁷⁹ *United States v. Todd*, 627 F.3d 329 (Wash. 2010).

¹⁸⁰ Hughes, *supra* note 19.

industry involves moving victims across state lines. Therefore, the federal government can mandate and enforce its laws on the individual states.

Federal involvement not only provides a more uniform rule that each state will follow, it will also make it harder for the sex industry to continue to flourish. Symmetry of state laws will allow law enforcement to raid businesses and prosecute offenders; traffickers would no longer be able to relocate to different jurisdictions that enable them to avoid detection or repeat prosecution.¹⁸¹ However, many opponents have stated the transportation of victims across the states should not be the focus of elimination because it is not the main culprit, and it places more focus on movement instead of exploitation of the business. Thus, opponents would argue that trafficking is not about movement; it is about slavery. Although I agree the focus should be on exploitation of women and girls, emphasis should also be placed on the transportation aspect of the business. Exploitation is the end result of haven been trafficked. Meanwhile the movement of women and girls across borders is the means to the end (to exploitation). Therefore, focus should be on the movement across the borders while also seeking to close modern plantations to which those individuals are being moved.¹⁸²

c. Cracking down on facilitators

There is a high demand for slave trafficker's services, and a high demand for buyers alike; however, as noted early on, if the prices of a sex act increased, the demand by consumers will decrease. Therefore, using deploying tactics to decrease profitability of the sex trafficking business by focusing on both the consumer and the slave trafficker in the same manner will produce quicker results in defeating the sex trafficking scheme.

¹⁸¹ Hughes, *supra* note 19.

¹⁸² Kara, *supra* note 25, at 4.

To illustrate, New York statute §230.25 was amended to include the sale of traveled-related services.¹⁸³ Therefore, if a business is aware that the intended use of its facility is for the purpose of patronizing a prostitute, the owner of said business should be prosecuted.¹⁸⁴

Some police officers are also facilitators in that they abet traffickers in operating the business. For example, corrupt police accept bribes to allow brothels and clubs to continue to function, turn their heads when they see potential sex slaves “working”, or warn brothel owners when an investigation is being planned.¹⁸⁵ Such police officers should be fired indefinitely, fined, and/or receive jail time just as a convicted trafficker. Opponents may argue that police officers should be immune to punishment, or it would deter recruitment of officers. However, that would only enable the police officers to continue to act in collusion and corruption. This would enforce the idea that victims have nowhere to turn and that they cannot depend on the justice system for protection. If law enforcement supported the sex industry operation little would be done to fight sex trafficking. Additionally, lack of involvement would demonstrate apathy to the problem, ignorance of its prevalence, or a financial stake in its continuation.¹⁸⁶ In order to end the industry, abolitionists will need the help of the police officers.¹⁸⁷ Activists should be able to build alliances with honest police officers, using their support to establish a credible presence locally.¹⁸⁸ Thus, law enforcement should be properly trained on how to handle

¹⁸³ N.Y. PENAL LAW §230.25.

¹⁸⁴ *Id.*

¹⁸⁵ Kara, *supra* note 25, at 14.

¹⁸⁶ *Id.* at 169.

¹⁸⁷ *Id.* at 170.

¹⁸⁸ *Id.*

victims of trafficking. For example, they should be trained on changing their perspectives of the girls in the sex industry by not labeling them as prostitutes and instead as victims.

d. Women trafficked should be classified as victims not prostitutes

Women may not have other options but to enter this lifestyle.¹⁸⁹ This section will explore the reasons women lack alternatives due to poverty, discrimination or, violence. Also, police officers and government officials must be properly trained to identify victims of trafficking.

The question of choice impacts the way trafficked women are viewed and treated by society. Many people assume that women chose this life. While it is true as mentioned earlier, that most women are not kidnapped or abducted into the sex industry, to frame their actions as choice is misleading.¹⁹⁰ Desperation and lack of options make for poor decision-making, but provide ripe pickings for the traffickers. As such, this choice does not mean they deserve to be trafficked or want to be enslaved.¹⁹¹ Lack of viable alternatives can be due to 1) poverty 2) discrimination or 3) violence. As a result, women who are poor may feel survival of the fittest leaves no alternative but to succumb to the sex industry. Discrimination against women is due to the view that men and women are unequal, and that women deserve to be treated as inferior.¹⁹² Such idiosyncratic views of women by men result in buyers and pimps to mistreat women, and view them as objects opposed to equal beings.¹⁹³ Even further, the violent aspect of the industry leaves the

¹⁸⁹ Walker-Rodriguez, *supra* note 170.

¹⁹⁰ Lloyd, *supra* note 31, at 78.

¹⁹¹ *Id.*

¹⁹² Division for the Advancement of Women, *supra* note 103.

¹⁹³ *See supra* Part V. CEDAW's goal is to eliminate discrimination against women and children.

women helpless and subdued. The fear of being beat or killed keeps the women from running away, while shame or guilt keeps the women from seeking help.¹⁹⁴

Nevertheless, prostitutes are often criminalized, and they are usually charged with other offenses than prostitution such as for substance abuse or loitering. However, as mentioned, when women have no real choice or alternative but to submit to the demands of their trafficker, they should not be labeled as prostitutes. Police officers automatically assume the suspect woman is a prostitute, and that they chose to sell their bodies. Law enforcement should investigate further before labeling the woman as a prostitute. For example, police officers should engage in a thorough investigation by questioning and observing the women to determine whether the woman was drugged and forced into prostitution before deciding to arrest them. Such labeling prevents the women from receiving the proper treatment and further injures them. This decreases the woman's likelihood of recuperating from enduring sexual enslavement. It also prevents them from securing jobs as a result of a having a criminal record. Therefore as mentioned, police officers, and other officials should receive proper training to better handle women and children who have been trafficked.

e. Children trafficked should be classified as victims not prostitutes

The criminal justice system routinely responds to girls that have been prostituted as criminals. This results in the failure to give the child the protection and treatment that she needs.¹⁹⁵ Also, as seen in adults, it prevents them from getting or securing jobs because of the criminal record they were given.¹⁹⁶

¹⁹⁴ See *supra* Part IV. and accompanying text.

¹⁹⁵ Smith & Healy Vardaman, *supra* note 42.

¹⁹⁶ Khan, *supra* note 30.

As indicated, not all state statutes include the same provisions regarding its anti-trafficking laws; as such, some do not cover the sex trafficking of minors.¹⁹⁷ The New York Safe Harbour for Exploited Children Act prevents the criminalization of certain child sex trafficking victims by giving police the option of bringing the victim directly to a safe shelter designed for minors sex trafficked as opposed to labeling them as juvenile delinquents or prostitutes and placing them in jail.¹⁹⁸ Also, prosecution of buyers of children for commercial sex is a strong deterrent that is underutilized.¹⁹⁹ Therefore, men who engage in such activities are likely to avoid punishment. However, with increased legal consequences men will opt out of buying commercial sex with children.²⁰⁰ To enforce this, people who have been convicted of sex trafficking and commercial sex offenses should be required to register as a sex offender to provide further protection of children in the community.²⁰¹

In summary, the most important proposal is to increase the costs to engage in sexual acts with trafficked victims as it will eliminate a buyer's demand to continue to purchase women and children. Without the demand for engaging in sexual acts with women and children the industry will not be able to continue due to lack of business. It is also important to penalize people who aid or abet traffickers in their business. Such increased penalties will deter facilitators from lending their business to a trafficker. For example, while strip clubs are legal, if the owner is aware that trafficking occurs within the facility the owner should be prosecuted to the full extent of the law. Also, changing the way sex trafficked victims are viewed is significant. When sex trafficked women are

¹⁹⁷ Smith & Healy Vardaman, *supra* note 42.

¹⁹⁸ *Id.* at 293.

¹⁹⁹ *Id.* at 282.

²⁰⁰ *Id.* at 283.

²⁰¹ *Id.* at 288.

called victims instead of prostitutes they are no longer blamed for actions they were coerced into. Instead of receiving a criminal record, which may inhibit victims from obtaining jobs, victims can receive the appropriate help they need to pursue a better life. The victims are essentially given a second chance at life.

Yet, some readers may challenge the ideals set forth in this paper. After all, many may believe that victims of trafficking are accomplices, and should be treated as criminals. Indeed, the arguments set forth in this paper seems to ignore that all women engaged in commercial sex acts are not victims, and had alternatives besides entering the sex industry. Thus, opponents may disagree with providing additional support to local agencies aimed at helping end sex trafficking. Also, opponents will de-prioritize aiding victims of trafficking, and may argue to spend tax dollars on other areas deemed to be of higher concern. Moreover, opponents will argue a comprehensive federal law to be applied across the states is a usurpation of state power.

In addition, New York's statute, as well as in the proposed statute above, allows victims of trafficking to vacate charges relating to prostitution and loitering. However, some opponents may argue this would floodgate the courts by prostitutes bringing claims as victims of sex trafficking. Essentially, because the courts rely on the victim's testimony of haven been sex trafficked, it may be difficult to determine the truthfulness in the victim's stories without overt proof of enslavement. However, it is important to note that such proof that could suffice includes the victim's display of physical abuse, such as cigarette burns, or other bruises to the body.

Most states are in agreement that sex trafficking is illegal and have enacted some provision against sex trafficking. However, prostitution and sex trafficking remain

conflated due to the common engagement of using the body as a tool to gain income.²⁰² In other words, prostitution and sex trafficking involve the same infrastructure of engaging in sexual acts for money. It becomes difficult to differentiate between a woman willing to use her body as a form of income, and a woman who is coerced to sell her body by a third party. Moreover, opponents may argue that prostitution should not be illegalized across the states and may argue it is the women's autonomy to make decisions regarding her body. They may also argue that not everyone who sells sexual services is exploited. While I understand that perspective, prostitution should be made illegal due to the violent nature and major health risks associated with it, and by extension sex trafficking. In addition, it is hard to control and regulate the industry. To illustrate, Nevada is the only state in the U.S. where prostitution is legal.²⁰³ In *Kuban v. McGimsey*, the court rejected a constitutional challenge to an ordinance prohibiting prostitution within that county. Courts found that a county ordinance is within the power reserved for the people of its county by the Nevada Constitution.²⁰⁴ However, the threat to another person's life and safety should trump another person's autonomy to have consensual commercial sex. Even further, willful prostitutes can easily become trafficked by the very nature of the business. Nevertheless, opponents will still argue the importance of autonomy, and some may go the extreme and argue autonomy avoids tyranny.

Also, opponents will agree with states requiring victims to show proof of knowledge that force or coercion was used in sexual services in order to convict a buyer

²⁰² Nicole Franck Masenior & Chris Beyrer, *The US Anti-Prostitution Pledge: First Amendment Challenges and Public Health Priorities*, July 24, 2007, <http://dx.plos.org/10.1371/journal.pmed.0040207>

²⁰³ *Kuban v. McGimsey*, 605 P.2d at 626 (Nev. 1980).

²⁰⁴ *Id.* at 627.

or trafficker.²⁰⁵ Opponents may argue that without the intent element a person cannot be held with the proper mens rea behind committing the crime (trafficking). Nevertheless, this paper argues that mens rea should not be an element the victim must prove before receiving recourse. Such requirement would be hard to prove and would result in decreased convictions. Therefore, any definition based on the victim's consent places the burden of proof on the victim and offers a loophole for traffickers to use the alleged consent of the victim in their own defense.²⁰⁶

8. Conclusion

All forms of slavery are a violation of the Constitution and human dignity. Therefore, sex trafficking, a form of slavery, must be abolished. A holistic approach is needed to end the sexual exploitation of women and children. However, one of the biggest impediments to toughened anti-trafficking laws that can end sexual exploitation is that victims are labeled as prostitutes, and thus criminals. We must ensure that trafficking victims receive the help they need and stop labeling them as criminals. It not only staggers progress, but it further perpetuates the damage that has already been inflicted on the victims.

More funding should be allocated to programs and services that would help assimilate the victims back into society. Such programs include, educational assistance, hotlines in case of emergency, and shelters that provide temporary homes and basic survival tips. Programs are necessary because many women and girls are ashamed and feel as though they deserved the treatment. The right support can help victims move on

²⁰⁵ Smith & Healy Vardaman, *supra* note 42.

²⁰⁶ Edward J. Schauer & Elizabeth M. Wheaton, *Sex Trafficking Into the United States: A Literature Review*, 31 CRIM. L. REV. 2 150 (2006), available at http://www.worldwideopen.org/uploads/resources/files/631/TFGLO052_Lit_Review_Trafficking_into_the_US.pdf

with their lives. This is why it is imperative to have increased penalties for those convicted of trafficking, as well as clients and facilitators of the business so that they can no longer abuse these women. It would deter future traffickers, clients, and facilitators from participating in sexual exploitation of women and children, and it would put an end to the industry.

Ultimately, the goal is to give victims the opportunity to start over by reuniting victims back with their families, and providing them with skills necessary to become productive, law abiding citizens, and to lead them to a brighter future. This goal can be obtained by following the proposals set forth in this paper.