

FINDING SAFE HARBOR: ELIMINATING THE GAP IN COLORADO'S HUMAN TRAFFICKING LAWS

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In March 2014, the Colorado Court of Appeals acquitted Dallas Cardenas of all human trafficking charges. The court determined that under the 2014 version of Colorado's human trafficking statute, a defendant who sold the sexual services of a minor, as opposed to selling a minor for sex, did not commit the crime of human trafficking. Following the Cardenas decision, the state legislature passed House Bill 1273, which broadened the language of the statute and eliminated all possible affirmative defenses, including minor consent. Under the new law, a defendant can no longer argue that a minor consented to commercial sex. However, the new legislation failed to include what is colloquially referred to as a "safe harbor law"—a law that shields minors from unjust prosecution for prostitution-related offenses and connects victims with services, such as housing, counseling, and record sealing. In doing so, the state left a blatant gap in the law where a person who sells someone under the age of eighteen for sex can be convicted of child trafficking, while, simultaneously, the child victim can be arrested and charged with prostitution. This Comment argues that Colorado must pass a safe harbor law to remedy this legal inconsistency. Such a law would ensure that the state's sexually exploited youth are consistently treated as victims rather than criminals and would provide victims with access to the

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services and support they need in order to escape, once and for all, the world of commercial sex.

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INTRODUCTION

*Right now, there is a girl, somewhere trapped in a brothel, crying herself to sleep again, and maybe daring to imagine that someday, just maybe, she might be treated not like a piece of property, but as a human being.*¹

Dallas Cardenas does not look like a pimp.² In fact, at nineteen years old, he is hardly a man.³ He has a round, child-like face with narrow, deep-set eyes, and a smattering of acne that extends across his cheeks and chin.⁴ He looks like an average teenage boy who overslept and forgot to comb his hair. And yet, he is a convicted child trafficker.⁵ Correction—he was a convicted child trafficker.⁶ There is little argument that he knowingly recruited, raped, and sold the sexual services of a seventeen-year-old girl.⁷ However, the Colorado Court of Appeals determined that under the state’s applicable human trafficking statute,⁸ there was a decisive difference between the crime of selling a minor for sex,⁹ and merely selling the sexual services of a minor.¹⁰ Holding that Cardenas was only guilty of

1. President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative> [<http://perma.cc/PL73-LB46>].

2. *See Man Gets 8 Years Prison for Child Trafficking*, CBS DENVER (Aug. 16, 2011), <http://denver.cbslocal.com/2011/08/16/man-gets-8-years-prison-for-child-trafficking/> [<http://perma.cc/2H2P-S3TX>] (referring to Dallas Cardenas’s mug shot).

3. *See id.*

4. *See id.*

5. *People v. Cardenas*, 338 P.3d 430, 432 (Colo. App. 2014) (“A jury convicted defendant, Dallas Cardenas, of trafficking in children and several other prostitution-related felonies.”); *see also* Andrea Rael, *Dallas Cardenas Convicted of Sex Trafficking of Children, Awaiting Sentence*, HUFFINGTON POST (June 17, 2011, 1:30 PM), http://www.huffingtonpost.com/2011/06/17/dallas-cardenas-convicted_n_879168.html [<http://perma.cc/S3PF-4TNS>].

6. *Cardenas*, 338 P.3d at 432 (“[Cardenas] contends in this appeal that the evidence submitted at trial was insufficient to satisfy the elements of the crime of trafficking in children. We agree with this contention. We therefore reverse his conviction for that crime, vacate that conviction and the sentence for that conviction, and remand the case to the trial court to enter a judgment of acquittal on that charge.”).

7. *See* Rael, *supra* note 5.

8. *See* COLO. REV. STAT. § 18-3-502 (2013) (amended 2014).

9. Under the applicable Colorado law, a seventeen-year-old is a child. COLO. REV. STAT. § 18-3-502(1) (2013) (amended 2014).

10. *Cardenas*, 338 P.3d at 436. The court found that while the plain language of section 18-3-502 of the 2013 statute prohibited “the sale, exchange, barter, or

the latter, on March 27, 2014, the Colorado Court of Appeals acquitted him of all child trafficking charges.¹¹

Although human trafficking has been a federal crime since 2000,¹² many states, and Colorado in particular, have struggled to implement legislation to address the issue.¹³ For many states, the *Cardenas* acquittal underscored the need for reform¹⁴ by highlighting the inherent flaws in the language of Colorado's anti-trafficking statute, which was significantly different from that of other states.¹⁵ Immediately following the *Cardenas* reversal, parties on both sides of the political spectrum quickly aligned to amend and revise Colorado's

lease of a *child*," it did not explicitly prohibit "the sale, exchange, barter, or lease of a child's services." *Id.* at 434.

11. *Id.* at 432 ("Does proof that a defendant arranged for another person to purchase sexual services performed by a child satisfy the elements of the crime of trafficking in children? Based on the statute's plain language, we conclude that the answer to this question is 'no.'). Although Dallas Cardenas was acquitted on all human trafficking charges, he was still convicted for pimping an adult, pimping a child, pandering a child, and inducing child prostitution. *Id.* at 437. Because his sentences ran concurrently, no reduction in sentencing time resulted from the Court of Appeals acquittal. *Id.* He was sentenced to a total of eight years. *Id.*

12. See Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 7102 (West, Westlaw through Pub. L. No. 114-49).

13. U.N. OFFICE ON DRUGS & CRIME, PROMOTING HEALTH, SECURITY AND JUSTICE: 2010 REPORT 23 (2010) [hereinafter UNODC], http://www.unodc.org/documents/frontpage/UNODC_Annual_Report_2010_LowRes.pdf [<http://perma.cc/9QM6-VZEX>]. To combat this growing epidemic, states and local governments have begun to implement human trafficking laws, often with federal incentives. See Ally Marotti, *Colorado Lacks Adequate Human Trafficking Laws, Report Says*, DENVER POST (Aug. 15, 2013, 12:01 AM), http://www.denverpost.com/news/ci_23865106/colorado-lacks-adequate-human-trafficking-laws-report-says [<http://perma.cc/58L2-JZG2>]; see also Tierney Sneed, *Anti-Human Trafficking Bills Advance in Senate*, U.S. NEWS (Feb. 26, 2015, 5:15 PM), <http://www.usnews.com/news/articles/2015/02/26/safe-harbor-other-anti-human-trafficking-legislation-advance-in-senate> [<http://perma.cc/Y9QZ-MQ4R>].

14. See Jesse Paul, *Colorado's New Human Trafficking Laws Aimed to Boost Convictions*, DENVER POST (Aug. 29, 2014, 12:01 AM), http://www.denverpost.com/news/ci_26429075/colorados-new-human-trafficking-laws-aimed-boost-convictions?source=infinite [<http://perma.cc/JPG7-65ZY>] ("Cardenas' acquittal outraged law enforcement and activists who called for better laws and a better understanding of trafficking. . . . 'The Dallas Cardenas case is a perfect example of why thoughtful legislation is important,' said Amanda Finger, executive director of the Denver-based Laboratory to Combat Human Trafficking.").

15. *Cardenas*, 338 P.3d at 436 ("We also note that the language used in Colorado's trafficking in children statute is unusual when compared to the language used in other jurisdictions' child trafficking statutes. Most of these statutes prohibit a person from 'recruiting,' 'enticing,' 'soliciting,' 'inducing,' 'threatening,' or 'transporting' a child for sexual purposes, or otherwise 'benefitting from' any of those acts if they were committed by another.").

human trafficking laws.¹⁶ Democrats and Republicans alike advocated the passage of Colorado House Bill 1273 (“HB 1273”).¹⁷ Supporters of the bill argued that it would significantly improve the state’s ability to respond to trafficking situations and provide prosecutors with a broader, more inclusive definition of the crime.¹⁸ Sixty-three days after the *Cardenas* opinion was issued, HB 1273 was signed into law.¹⁹

Under the new law, a defendant accused of trafficking can no longer argue as an affirmative defense that the minor sold for sex consented.²⁰ However, even after HB 1273, minors can still be prosecuted for prostitution.²¹ Since its passage, HB 1273 has left a blatant gap in the law: in one context, it treats a minor as a victim, incapable of consenting to commercial sex;²²

16. Two big proponents of a broader human trafficking law were Jim Daly, president of the conservative, evangelical ministry in Colorado Springs, Focus on the Family, and Ted Trimpa, a prominent gay activist in Denver. See John Schroyer, *Political Opposites Team to Push Colorado Human Trafficking Law*, GAZETTE (May 2, 2014, 2:23 PM), <http://gazette.com/political-opposites-team-to-push-colorado-human-trafficking-law/article/1519318> [<http://perma.cc/RCG2-VYC5>] (“I don’t care if you’re gay, straight, Republican, Democrat—if you can’t step up and defend innocent children, something is wrong.”).

17. *Id.*; see also H.B. 14-1273, 69th Gen. Assemb., 2nd Reg. Sess. (Colo. 2014).

18. See DENVER ANTI-TRAFFICKING ALL., HOUSE BILL 14-1273 “HUMAN TRAFFICKING” (2014), http://denveralliance.org/wp-content/uploads/2014/03/Fact-Sheet_HB14-1273-FINAL.pdf [<http://perma.cc/QNA8-MWZ7>].

19. HB 14-1273, OPEN STATES, <http://openstates.org/co/bills/2014A/HB14-1273/> [<http://perma.cc/U2PY-97GG>] [hereinafter OPEN STATES]; see also H.B. 14-1273.

20. See COLO. REV. STAT. § 18-3-504(2)(c) (2014).

21. COLO. REV. STAT. § 18-7-201 (2014). Although HB 1273 passed without a safe harbor law, SB 15-030 did pass, permitting a person charged with prostitution to argue as an affirmative defense that he or she is a victim of human trafficking. S.B. 15-030, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015) (codified at COLO. REV. STAT. ANN. § 18-7-201.3)); see also *infra* Section II.C.

22. See COLO. REV. STAT. § 18-3-502(3) (2014) (defining commercial sexual activity as “sexual activity for which anything of value is given to, promised to, or received by a person”); see *id.* § 18-3-502(8) (defining minor to mean “a person less than eighteen years of age”). It is important to note that under federal law, any person under the age of eighteen who participates in commercial sex—not sex generally speaking, but sex in exchange for money—is always treated as a victim. Victims of Trafficking and Violence Protection Act, 22 U.S.C.A § 7102(15) (West, Westlaw through Pub. L. No. 114-49); see also Cheryl Nelson Butler, *Kids For Sale: Does America Recognize Its Own Sexually Exploited Minors as Victims of Human Trafficking?*, 44 SETON HALL L. REV. 833, 838 (2014) (“Under the TVPRA, consent to commercial sex is irrelevant to the legal definition of trafficking in cases where the prostituted person is a minor.”). In fact, “Congress has expressed concern over this ‘legal dichotomy in America in which the Federal Government views prostituted children as victims, yet, most states treat them as criminals.’”

in another, it treats a minor as a criminal who can consensually agree to have sex in exchange for compensation.²³ Under this legal dichotomy, Dallas Cardenas could be charged with child trafficking, making him unable to argue that his victim consented, while his seventeen-year-old victim could, simultaneously, be prosecuted for prostitution.²⁴

To remedy this legal inconsistency and establish a framework that protects, rather than prosecutes, minors,²⁵

Id. at 839. To align its state policy with federal law, Minnesota recently amended its safe harbor law to distinguish the age of consent for statutory rape and the age of consent for commercial sex. Compare Minn. Stat. § 609.342(1)(b) (2014) (codifying the age of consent for statutory rape to be 16 years of age) with H.F. No. 1233, 88th Gen. Assemb., Reg. Sess. (Minn. 2013), <https://www.revisor.mn.gov/laws/?year=2011&type=1&doctype=Chapter&id=1> [<https://perma.cc/PQ34-R2F3>] (recognizing that all persons under the age of eighteen involved in commercial sex are victims and, therefore, are immune from prosecution for prostitution). Although Colorado's age of consent for statutory rape is seventeen, see COLO. REV. STAT. § 18-3-402(e) (2014), its safe harbor law can and should distinguish between minors who consent to sexual intercourse, and minors who contract to sell their bodies or sexual services in exchange for money or goods, as Minnesota has successfully done. H.F. No. 1233, 88th Gen. Assemb., Reg. Sess. (Minn. 2013), <https://www.revisor.mn.gov/laws/?year=2011&type=1&doctype=Chapter&id=1> [<https://perma.cc/PQ34-R2F3>]. In fact, Colorado law already provides certain exceptions regarding what a person under eighteen can and cannot consent to. See, e.g., COLO. REV. STAT. § 13-22-101(a) (2014) (a person cannot enter into a legal contract until they have reached the age of eighteen); see also *id.* § 13-22-101(d) (a person cannot “make decisions in regard to his own body and the body of his issue, whether natural or adopted by such person, to the full extent allowed to any other adult person,” before he turns eighteen). Additionally, while Colorado's recent attempt to pass a safe harbor law failed, the original draft of the proposed bill provided that all minors—not just those under the age of seventeen—would be immune from prosecution for all prostitution-related offenses. See H.B. 15-1019, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015), http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont3/F198F347D281D85787257DB10065D8E4?open&file=1019_01.pdf [<http://perma.cc/TYR5-BKEA>] (containing the version of the bill as introduced).

23. See Peggy Nelson Byrd, *Human Trafficking: Not in Colorado?*, DENVER POST (Dec. 25, 2013, 5:01 PM), http://www.denverpost.com/opinion/ci_24788821/human-trafficking-not-colorado [<http://perma.cc/EZ6K-4RPV>] (“The problem intensifies when these children are arrested for prostitution and treated as criminals, rather than the victims they are.”).

24. See COLO. REV. STAT. § 18-3-504(2)(c)(I)–(II) (2014); see also Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 97 (2008) (“In almost all fifty states, a minor's selling of him or herself for sex, or prostitution, is a criminal offense. By contrast, the federal Trafficking Victims Protection Act (TVPA) considers all minors engaged in commercial sex acts as victims of trafficking. This inconsistency presents a problem because at the same time, federal and state statutes regarding prostitution do not distinguish between adult and child prostitution and criminalize both.”).

25. It is unclear how many minors have been prosecuted for prostitution in Colorado, but we do know that some minors have been prosecuted and

Colorado must pass a “safe harbor law.”²⁶ Generally speaking, a safe harbor law is implemented to address legal “inconsistencies with how children that are exploited for commercial sex are treated.”²⁷ Although safe harbor laws have been implemented in many different formats, fundamentally they consist of two components: legal protection for minors from prosecution and access to specialized services.²⁸ A safe harbor law that immunizes minors from unjust prosecution and connects victims with access to well-funded and fully-staffed services—such as housing, counseling, and record sealing—helps ensure that sexually exploited youth have the requisite resources and support to permanently escape the world of commercial sex.²⁹

In light of these considerations, Colorado should adopt a safe harbor law that will: (1) immunize minors from

theoretically, more could be prosecuted. *See* COLO. LEGISLATIVE COUNCIL STAFF, STATE AND LOCAL FISCAL IMPACT OF HB15-1019, 70th Gen. Assemb., 1st Reg. Sess. at 1 (Colo. 2015) [hereinafter H.B. 1019 FISCAL NOTE], http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont3/F198F347D281D85787257DB10065D8E4?Open&file=HB1019_00.pdf [<http://perma.cc/BW3P-9J44>] (“In the past three years, there have been 94 cases that included a conviction of prostitution [in Colorado]. It is not known how many cases involved minors, and [we can assume] that the majority of these cases involved adults. However, recent reports indicate that there may be a large number of sex workers in Colorado that are minors.”). Colorado House Bill 15-1019 was a failed attempt by state legislators to pass a safe harbor law. The final version of the bill was signed into law on May 29, 2015. H.B. 15-1019, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015) [hereinafter Final H.B. 15-1019], http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont/F198F347D281D85787257DB10065D8E4?Open&file=1019_enr.pdf [<http://perma.cc/4D33-B27B>]. Although it omitted a safe harbor law, it created a human trafficking council and assigned them with the task of evaluating whether Colorado should enact safe harbor legislation. *Id.* The council must present its findings and recommendations on or before January 1, 2016. *Id.*

26. *See* POLARIS PROJECT, HUMAN TRAFFICKING ISSUE BRIEF: SAFE HARBOR 1 (2014) [hereinafter SAFE HARBOR], http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/2014/2014_Safe_Harbor_Issue_Brief_Final_1.pdf [<http://perma.cc/S4LT-AT99>] (describing the structure and function of typical safe harbor laws).

27. *Id.*

28. *Id.*

29. *See* Angela L. Bergman, Note, *For Their Own Good? Exploring Legislative Responses to the Commercial Sexual Exploitation of Children and the Illinois Safe Children Act*, 65 VAND. L. REV. 1361, 1364 (2012) (discussing the particular vulnerability of juvenile trafficking victims); *see also* Joe Markman, *Girls Rescued from Sex Trade Have Few Options to Get Help*, BOS. GLOBE (Dec. 9, 2009), http://www.boston.com/news/health/articles/2009/12/09/girls_rescued_from_sex_trade_have_few_options_to_get_help [<http://perma.cc/S5SX-VV74>] (describing the lack of resources available to victims rescued from trafficking).

prosecution, thereby recognizing that all minors are victims within the context of commercial sex; (2) provide underage victims with access to necessary services, such as rehabilitation facilities, housing, and record sealing; (3) adequately train social workers, juvenile advocates, and law enforcement; (4) organize a state-wide task force to connect victims to services; (5) increase penalties for traffickers and johns; and (6) allocate enough funding to keep victims safely off the streets. By doing so, local law enforcement will be able to shift their focus away from victims to the real culprits of human trafficking and prostitution³⁰—the pimps and johns.³¹

Part I of this Comment provides a brief overview of the human trafficking epidemic, defining the practice and identifying its victims and perpetrators, as well as clarifying the distinction between trafficking and prostitution. Part II examines human trafficking as it specifically relates to Colorado, explaining its impact on legislation and subsequent case law. It also analyzes recent changes in the law, looking closely at HB 1273 and its lack of safe harbor provisions. Finally, Part III argues that a successful safe harbor law must give equal consideration to victims' services as it does to decriminalization, if not more, and discusses the six parameters, delineated above, that will best realize the rehabilitation of Colorado's sexually exploited minors.

Although Colorado has undoubtedly come a long way in its fight to end human trafficking, it must enact a comprehensive safe harbor law that protects its youth and provides them with the resources and support necessary to permanently escape their abusers.

30. See Michelle Madden Dempsey, *Decriminalizing Victims of Sex Trafficking*, 52 AM. CRIM. L. REV. 207, 208–09 (2015) (“[C]riminal law too often penalizes victims, rather than those who victimize them. Specifically with regard to criminal laws prohibiting prostitution and related activities like solicitation, police and prosecutors spend far more time and money targeting those who sell sex, often under conditions amounting to sex trafficking, rather than targeting those who profit from or drive demand for the commercial sex markets where trafficking takes place.”).

31. Commonly used in the dialogue of human trafficking and prostitution, a “pimp” refers to a person who sells the sexual services of another, often through methods of coercion and control. Similarly, “john” refers to a person who purchases the sexual services of another. It can be analogized to the relationship between an employer (the pimp), an employee (the prostitute or trafficking victim), and a customer (the john). See Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 111 (2006).

I. BACKGROUND

Dallas Cardenas's acquittal was not an anomaly. Across the nation, legislators are struggling to implement laws to help victims of human trafficking.³² To understand and assess the various laws that have been implemented throughout the country, it is first important to take a step back and examine human trafficking as it exists on a global and national scale. Section A addresses the epidemic of human trafficking, its definition, and how lawmakers have begun to think about prostitution within the same framework as human trafficking. Section B explains the legal distinction between human trafficking and prostitution. Finally, Section C discusses the people who make up the sex-trafficking industry: (1) the victims, (2) the johns, and (3) the pimps. Specifically, it focuses on how pop culture has desensitized the public to the violence inherent in the sex trade by glorifying the perpetrators of human trafficking and minimizing the plight of the victims. As a result, the national conversation has tended to attribute the problem of sex trafficking to the victim, and not the men and women who buy and sell the victim.

A. *A Global Epidemic*

Human trafficking is the severe form of exploitation (labor or sexual) of another human being.³³ The statistics are staggering. According to the International Labour Organization (ILO), an estimated 4.5 million people in the world are victims

32. Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 30 (2011).

33. Trafficking Victims Protection Act, 22 U.S.C.A. § 7102(9)(A)–(B) (West, Westlaw through Pub. L. No. 114-49); *see also* G.A. Res. 55/25, annex II, at 32, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, (Nov. 15, 2000), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> [<http://perma.cc/T733-SBQM>] [hereinafter Protocol to Prevent] (“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”).

of human trafficking.³⁴ Each year, between 600,000 and 800,000 men, women, and children are trafficked across international borders; 80% are female and approximately 50% are minors.³⁵ In the United States sex trade, more than 50,000 victims are recruited, bartered, or sold annually.³⁶ According to the United Nations Office on Drugs and Crime (UNODC), human trafficking is considered the second most profitable and fastest growing criminal enterprise in the world—above the sale of arms and below the sale of drugs.³⁷ It is truly a “global phenomenon,”³⁸ implicating broad “social issues, including labour, urban management, immigration and foreign policies.”³⁹ Although this Comment focuses exclusively on the most common form of human trafficking, that of young women and children for sex,⁴⁰ human trafficking encompasses many other forms of exploitation, including labor, body organs, and child soldiers.⁴¹

The U.S. Trafficking Victims Protection Act of 2000 (TVPA) defines “severe forms of trafficking in persons,” as follows:

[S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the

34. INT’L LABOUR ORG., ILO 2012 GLOBAL ESTIMATE OF FORCED LABOUR: EXECUTIVE SUMMARY 1 (2012), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf [<http://perma.cc/C8EU-9CMW>].

35. Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2982 (2006); see also 22 U.S.C.A. § 7101(b)(1) (West, Westlaw through Pub. L. 114-49).

36. § 7101(b)(1) (Westlaw).

37. See May Li, Note, *Did Indiana Deliver in Its Fight Against Human Trafficking?: A Comparative Analysis Between Indiana’s Human Trafficking Laws and the International Legal Framework*, 23 IND. INT’L & COMP. L. REV. 277, 278 (2013).

38. U.N. OFFICE ON DRUGS & CRIME, THE GLOBALIZATION OF CRIME: A TRANSNATIONAL ORGANIZED CRIME THREAT ASSESSMENT, at 39, U.N. Sales No. E.10.IV.6 at 39 (2010), https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf [<http://perma.cc/K89H-A28K>].

39. *Id.* at 52.

40. UNODC, *supra* note 13, at 23 (“The most commonly reported purpose of human trafficking is sexual exploitation (79 percent), followed by forced labour (18 percent), but many types of trafficking may be underreported . . .”).

41. See generally U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2014) [hereinafter TIP Report], <http://www.state.gov/documents/organization/226844.pdf> [<http://perma.cc/H876-H5GQ>].

recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁴²

Thus, under federal law, a victim need not be physically transported from one location to another in order to qualify as a victim of human trafficking.⁴³ This distinction creates a natural overlap between human trafficking cases and the crime of prostitution, which has resulted in much discussion amongst advocates and politicians about *who* actually qualifies as a victim in trafficking cases.⁴⁴

B. Human Trafficking versus Prostitution: A Matter of Choice

In application, factual circumstances that implicate the crime of trafficking often implicate prostitution as well—however, most states statutorily define them as two distinct crimes. Prostitution typically requires an element of consent or voluntariness.⁴⁵ But, in the last couple of years, the distinction between the two crimes has become increasingly convoluted.⁴⁶ This is largely attributable to the federal human trafficking statute; under the TVPA, a woman who has been forced,

42. Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 7102(9) (West, Westlaw through Pub. L. 114-49).

43. TIP Report, *supra* note 41, at 29.

44. See generally Tessa L. Dysart, *Child, Victim, or Prostitute? Justice Through Immunity for Prostituted Children*, 21 DUKE J. GENDER L. & POL'Y 255 (2014); see also SHARED HOPE INT'L, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK METHODOLOGY 3 (2011), http://sharedhope.org/wp-content/uploads/2012/09/SHI_ProtectedInnocence_Methodology_FINAL.pdf [<http://perm.a.cc/JSF5-JT4V>]; Adelson, *supra* note 24, at 111 (noting that many states have recognized the link between abuse in the home and commercial sexual activity and have begun providing increased rehabilitative services for juvenile offenders); Francesca Garrett, *Rescued Children Shouldn't Be in Handcuffs*, CNN (Aug. 8, 2013, 10:04 AM), <http://thecnnfreedomproject.blogs.cnn.com/2013/08/08/rescued-children-shouldnt-be-in-handcuffs/> [<http://perma.cc/NYY6-P9DU>].

45. See COLO. REV. STAT. § 18-7-201(1) (2014) (“Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange for money or other thing of value commits prostitution.”); see also *People v. Braley*, 879 P.2d 410, 416 (Colo. App. 1993) (noting that, although not present in that case, evidence of financial gain would have demonstrated consent).

46. See Adelson, *supra* note 24, at 106–07 (describing states’ varying approaches to criminalizing child trafficking).

fraudulently induced, or in any way coerced into prostitution is considered a victim of sex trafficking.⁴⁷ Arguably, a woman who has been “coerced” into prostitution cannot consent; and if she cannot consent to commercial sex, she becomes a victim of human trafficking or, at the very least, rape.⁴⁸ Both federal and international law have acknowledged the lack of distinction between sex trafficking and prostitution:

For the most part, prostitution as actually practiced in the world usually does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty. Put simply, the road to prostitution and life within “the life” is rarely one marked by empowerment or adequate options.⁴⁹

Thus, in identifying and discussing the “victims” of human trafficking, it would be a misstep to disregard the victims of prostitution, because in many cases, particularly those involving minors who cannot legally consent to commercial sex under federal law, they are one and the same.

C. Identifying the Women and Children, and the Men Who Prey on Them

Society and pop culture have historically minimized the plight of human trafficking victims and glorified the perpetrators. In 1990, one of the most successful movies of the year was *Pretty Woman*, a story about a prostitute with a heart of gold who was rescued from her life on the streets by a debonair john.⁵⁰ The “modern day fairy tale” featured a young, beautiful prostitute, played by then twenty-one-year-old Julia

47. *Id.* at 118; § 7102(9) (Westlaw); *see also* Butler, *supra* note 22, at 846.

48. Adelson, *supra* note 24, at 118.

49. *See* Dempsey, *supra* note 30, at 214 (quoting Sigma Huda (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Integration of the Human Rights of Women and a Gender Perspective*, ¶ 42, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006)).

50. *See* JULIAN STRINGER, *MOVIE BLOCKBUSTERS* 33 (2003); *see also* PRETTY WOMAN (Touchstone Pictures 1990).

Roberts, who was swept up in a whirlwind romance with the wealthy, handsome, and notably kind, thirty-nine-year-old Richard Gere.⁵¹ Twenty-five years after it first premiered, *Pretty Woman* is considered one of America's most "iconic" films.⁵²

Similarly, in 2006, the rap group Three 6 Mafia's song, *It's Hard Out Here for a Pimp*,⁵³ won one of the music industry's most coveted awards: an Oscar for Best Original Song.⁵⁴ The lyrics included the verse:

I got a snow bunny, and a black girl too
 You pay the right price and they'll both do you
 That's the way the game goes, gotta keep it strictly pimpin'
 Gotta keep my hustle tight, makin' change off these
 women.⁵⁵

As evidenced by this brief passage, references to "pimps" and "whores" permeate much of our pop culture; however, society knows very little about the real victims and their perpetrators.⁵⁶ Thus, the rest of this Section will explore in more depth the people who make up the sex industry: (1) the victims, (2) the johns, and (3) the pimps.

51. Iona Kirby & Jennifer Pearson, *Julia Roberts Greets Richard Gere with Kiss on the Lips as Pretty Woman Cast Reunites After 25 Years . . . and Reveal Film Was Meant to Be a Dark Tale About Drugs*, DAILY MAIL (Mar. 24, 2015), <http://www.dailymail.co.uk/tvshowbiz/article-3009664/Julia-Roberts-greets-Richard-Gere-kiss-lips-Pretty-Woman-cast-reunites-25-years-reveal-film-meant-dark-tale-drugs.html> [<http://perma.cc/TUP9-2AFK>].

52. *Id.* See also Ree Hines, *Julia Roberts, Richard Gere Re-Crete Iconic 'Pretty Woman' Scenes During 25th Reunion*, TODAY (Mar. 25, 2015, 6:53 AM), <http://www.today.com/popculture/julia-roberts-richard-gere-re-create-iconic-pretty-woman-scenes-t11006> [<http://perma.cc/Y2KR-BU6Q>].

53. THREE 6 MAFIA, *It's Hard Out Here for a Pimp*, on HUSTLE & FLOW: MUSIC FROM AND INSPIRED BY THE MOTION PICTURE (Atlantic Grand Hustle 2005).

54. See Avis Thomas-Lester, *Oscar Winner Hits Angry Chord*, WASH. POST (Mar. 7, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/06/AR2006030601461.html> [<http://perma.cc/KQ3Q-PTL2>]; see also RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE, AN ACTIVIST FINDS HER CALLING AND HEALS HERSELF* 89 (2011).

55. Cedric Coleman et al., *Hard Out Here for a Pimp Lyrics*, METROLYRICS, <http://www.metrolyrics.com/hard-out-here-for-a-pimp-lyrics-three-6-mafia.html> [<http://perma.cc/2XRS-TSW5>].

56. Tom Keckemethy, *Our Very Real Problem with Human Trafficking*, PAC. STANDARD (May 7, 2015), <http://www.psmag.com/business-economics/five-studies-our-very-real-problem-with-human-trafficking> [<http://perma.cc/4YEP-L67E>].

1. The Victims

While most victims of human trafficking are women,⁵⁷ no single profile is applicable—each victim has a different story, a different scenario or set of circumstances that led them to the world of sex trafficking and prostitution. That is not to say that their stories do not share similarities: one staggering similarity among victims' narratives is how young they were when they started.⁵⁸ While the ages of sex-trafficking victims vary immensely, most research indicates that the average age of entry into the United States is between eleven and fourteen years old,⁵⁹ with some recruits as young as nine.⁶⁰ And although the majority of child prostitutes have a history of abuse and neglect,⁶¹ children with “normal” upbringings are not necessarily exempt.⁶² Each year, 100,000 to 300,000 children in the United States are at risk of being recruited or forced into prostitution.⁶³

57. UNODC, *supra* note 13, at 23.

58. See Marihug Cedeno, Note, *Pimps, Johns, and Juvenile Prostitutes: Is New York Doing Enough to Combat the Commercial Sexual Exploitation of Children?*, 22 CORNELL J. L. & PUB. POL'Y 153, 157 (2012) (“Approximately eighty percent of current adult prostitutes began their profession when they were younger than eighteen.”); see also Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1061 (2011).

59. See Birckhead, *supra* note 58, at 1061.

60. Suzanne Smalley, *This Could Be Your Kid*, NEWSWEEK (Aug. 17, 2003), <http://www.newsweek.com/could-be-your-kid-135949> [<http://perma.cc/XMM5-F5MD>] (“Solid numbers are difficult to come by—a government-sponsored study puts the figure in the hundreds of thousands—but law-enforcement agencies and advocacy groups that work with teen prostitutes say they are increasingly alarmed by the trend lines: the kids are getting younger; according to the FBI, the average age of a new recruit is just 13; some are as young as 9.”).

61. See Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235, 240 (2008); see also Ian Urbina, *Running in the Shadows: For Runaways, Sex Buys Survival*, N.Y. TIMES (Oct. 26, 2009), <http://www.nytimes.com/2009/10/27/us/27runaways.html?pagewanted=all&r=0> [<http://perma.cc/4CSL-88TN>].

62. See generally Smalley, *supra* note 60.

63. Schwartz, *supra* note 61, at 239; see also RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 4 (rev. 2002); see also Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1281, 1289-90 (2015) (“[D]istressed kids are not the only ones at risk. All minors are vulnerable to sexual exploitation precisely because they are young and impressionable—sometimes unable to foresee the consequences of trusting certain adults and peers.”).

Although human trafficking is undeniable, many Americans are hesitant to acknowledge its existence.⁶⁴ Much of this is attributable to society's perception of choice. Because the crimes of prostitution and human trafficking have become so convoluted, there is a belief that adults (and minors) make a mindful "choice" to enter into a life of commercial sex.⁶⁵ This assumption greatly impacts how participants in the sex trade are perceived—whether they are treated as "victims" or "criminals."⁶⁶ Although admittedly, not all people who find themselves trapped in prostitution were kidnapped and forced into the sex industry, this does not mean that their "choice" was voluntary.⁶⁷ "It is clear from the experiences of girls that, while they may have acted in response to individual, environmental, and societal factors, this may not necessarily be defined as choice."⁶⁸

This tension is explored at length in Rachel Lloyd's memoir, *Girls Like Us: Fighting for a World Where Girls are Not for Sale*,⁶⁹ where she discusses the classic dictionary definition of choice and how it is completely inapplicable to a sexually exploited person:

The American Heritage Dictionary describes the act of choosing as "to select from a number of possible alternatives; decide on and pick out." Therefore in order for a choice to be a legitimate construct, you've got to believe that (a) you actually have possible alternatives, and (b) you have the capacity to weigh these alternatives against one

64. See ESTES & WEINER, *supra* note 63, at 120.

65. See LLOYD *supra* note 54, at 89. ("Many people believe that girls 'choose' this life, and while it is true that most girls are not kidnapped into the sex industry, to frame their actions as choice is at best misleading.")

66. See Byrd, *supra* note 23.

67. This author is critical of the idea that adults consent or volunteer to participate in prostitution, instead aligning her beliefs with article 3 of the United Nations Protocol for the Prevention, Protection and Prosecution of Trafficking in Persons, Especially Women and Children, which advocates that any "abuse of power or a position of vulnerability" negates voluntariness. Protocol to Prevent, *supra* note 33. However, this larger and much more controversial debate regarding the capacity of adults to categorically consent to prostitution is outside the scope of this Comment.

68. LLOYD *supra* note 54, at 78.

69. *Id.* at 111. Lloyd is the founder and executive director of GEMS, Girls Educational and Mentoring Services in New York, and herself a survivor of sex trafficking. *Our Founder*, GEMS, <http://www.gems-girls.org/about/our-team/our-founder> [<http://perma.cc/G746-9A5H>].

another and decide on the best avenue.⁷⁰

As Lloyd makes explicitly clear, those who find themselves trapped in the sex trade often have neither alternatives nor the capacity to weigh them.⁷¹ Rather, “their choices are limited by their age, their family, their circumstances, and their inability to weigh one bad situation against another, given their developmental and emotional immaturity.”⁷² The idea that those victimized by trafficking or prostitution might actually “choose” a life of sexual exploitation, abuse, and fear simply ignores reality. However, society continues to cling to the idea that most women voluntarily decide to sell their bodies for sex, and sometimes, it is even glamorous.

America has fostered “a culture that continuously objectifies girls and women and that sexualizes and commodifies youth.”⁷³ With today’s movies and television shows, *Pretty Woman* has become the norm, not the exception. “It is little wonder that men prefer younger and younger girls when buying sex.”⁷⁴ The issue then, is how do we stop men from purchasing sex from young girls?

2. The Johns

*If a 45-year-old man had sex with a 14-year-old girl and no money changed hands . . . he was likely to get jail time for statutory rape . . . [I]f the same man left \$80 on the table after having sex with her, she would probably be locked up for prostitution and he would probably go home with a fine as a john.*⁷⁵

Nationwide, the men who buy sex—the demand-side of

70. LLOYD *supra* note 54, at 78.

71. *Id.*

72. *Id.*

73. *Id.* at 108.

74. *Id.* (describing the absurdity that some Americans would be genuinely shocked to find out that men prefer younger women, including children—“[w]hen the Olsen twins came of age, there was a countdown clock on the Internet salaciously marking the minutes until they were ‘legal.’”).

75. Urbina, *supra* note 61. *See also* H.R. REP. NO. 114-6, pt. 1, at 2 (2015) (using the same quote as support in favor of passing the Stop Exploitation Through Trafficking Act of 2015, H.R. 159, 114th Cong., which offers various incentives to states who successfully pass safe harbor statutes).

prostitution—face minimal consequences.⁷⁶ Whereas exploited women are commonly depicted as “drug addicted criminals,” johns have a much different narrative.⁷⁷ The average john is a white male in his forties or fifties who earns an average income of around \$140,000.⁷⁸ More often than not, he is seen as a “regular” person—“the guy next door”⁷⁹—a family man with “a wife, two kids, white picket fence and two dogs in the yard.”⁸⁰

Perhaps because of these diverging narratives, law enforcement has historically focused its efforts on the supply-side of prostitution.⁸¹ For decades, law enforcement’s strategy to combat commercial sex was to “arrest women and children in prostitution under the assumption that if [they] arrested them, it would stop.”⁸² But it didn’t. Rather, law enforcement’s focus on supply has allowed many men to feel relatively comfortable soliciting and purchasing sex.⁸³

From late-2006 to mid-2007, the Chicago Alliance Against Sexual Exploitation interviewed 113 men who had previously purchased sex.⁸⁴ Fifty-three percent of the men interviewed had purchased sex from women as frequently as once a month.⁸⁵ Thirty-two percent of those interviewed thought that the majority of women in prostitution entered the sex trade

76. RACHEL DURCHSLAG & SAMIR GOSWAMI, CHI. ALL. AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 24 (2008), <http://www.slaverynomore.org/wp-content/uploads/2011/07/Deconstructing-the-Demand-for-Prostitution.pdf> [<http://perma.cc/3JLF-XXCA>].

77. MEAGAN MORRIS ET AL., LAB. TO COMBAT HUMAN TRAFFICKING, PROSTITUTION AND DENVER’S CRIMINAL JUSTICE SYSTEM: WHO PAYS? 40 (2012), <http://www.combathumantrafficking.org/whopays> [<http://perma.cc/6HJQ-TH5B>].

78. Katie Baker, *The Prostitutes Aren’t the Problem: Targeting the Johns*, DAILY BEAST (May 22, 2013, 1:58 PM), <http://www.thedailybeast.com/witw/articles/2013/05/22/the-hookers-aren-t-the-problem-end-prostitution-by-targeting-the-johns.html> [<http://perma.cc/B83K-L2UH>]; see also MORRIS ET AL., *supra* note 77, at 39. Cf. DURCHSLAG & GOSWAMI, *supra* note 76, at 8 (finding that of the 113 johns polled, only 17% earned more than \$80,001).

79. Baker, *supra* note 78 (quoting Sgt. Daniel Steele, of the FBI Rocky Mountain “Innocence Lost” Task Force).

80. MORRIS ET AL., *supra* note 77, at 39.

81. Jesse Paul, *Denver Shifts Prostitution Policing to Buyers in National Initiative*, DENVER POST (Apr. 29, 2015, 12:01 AM), http://www.denverpost.com/news/ci_28009189/denver-shifts-prostitution-policing-buyers-national-initiative [<http://perma.cc/KBK9-QHTC>].

82. *Id.*

83. See *id.* (describing that in just one night, about 10,000 men posted online ads seeking to purchase sex in Denver).

84. DURCHSLAG & GOSWAMI, *supra* note 76, at 7.

85. *Id.* at 2.

before the age of 18.⁸⁶ Even more strikingly, 76% stated that the age of the prostitute was an important factor in their decision whether to purchase sex.⁸⁷ Eighty percent stated that they felt most men preferred young prostitutes.⁸⁸ Although “young” does not necessarily equal “minor,” it is telling that men want to buy young-looking prostitutes and acknowledge that the majority of prostitutes enter the sex trade as minors.⁸⁹

In the same study, more than half of the men surveyed believed that the majority of prostitutes have experienced some type of childhood sexual abuse.⁹⁰ One clear take-away from the study was that men expressed a high amount of awareness about the level of abuse and coercion, as well as the economic factors, that result from prostitution; yet, they still chose to purchase sex.⁹¹ In explaining their decision-making process in choosing to purchase sex, the majority cited the lack of consequences as a key factor.⁹²

In her memoir, Rachel Lloyd expressed her frustration with a justice system that seems to focus exclusively on the supply-side of prostitution:

When attention is paid to commercial sexual exploitation, law enforcement and public rhetoric focus their outrage on the pimps, rarely mentioning the johns, the buyers who fuel the industry. An assistant district attorney in New York tells me sincerely one day that “johns are not the problem.” To ignore the demand side of the issues makes no sense and trivializes the harm done by the buyers.⁹³

Not only does the lack of criminal penalties against johns fail to address the demand-side of prostitution, it also fails to

86. *Id.* at 20.

87. *Id.*

88. *Id.* at 18.

89. *Id.* at 20.

90. *Id.*

91. *See id.* at 19 (noting the contradictory feelings men report: although 76% of the men interviewed reported that there is nothing wrong with having sex for money, 85% said they would not marry a prostitute, and 94% said they would not want their daughter to grow up to be a prostitute).

92. *See id.* at 24 (reporting that only 7% of interviewees had been arrested). In Chicago, where the study took place, “of the approximately 4,500 individuals arrested annually on prostitution related charges, two-thirds are women selling sex and less than one-third are ‘johns.’” *Id.* at 5.

93. LLOYD *supra* note 54, at 111.

consider the immense amount of violence inflicted on women in the sex trade—violence that johns either directly or indirectly facilitate. Women in the sex industry are “40 times more likely to be murdered than other women.”⁹⁴ To the women and children who are bought and sold, there is little distinction between the man who sells them and the man who buys them.⁹⁵ “If asked who’s worse, pimps or johns, most [prostitutes] would not be able to choose. They’ve experienced rapes, gang rapes, guns in their faces, beatings, sadistic acts, kidnappings – all at the hands of johns.”⁹⁶

3. The Pimps

In 2006, *Rolling Stone* magazine dubbed the rapper Snoop Dogg, “America’s Most Lovable Pimp.”⁹⁷ In the same magazine interview, the multimillionaire bragged about his past life as “a real-life pimp”:⁹⁸

See, [pimping] was my natural calling and once I got involved with it, it became fun. It was like shootin’ layups for me. I was makin’ ‘em every time. ‘Cause pimpin’ ain’t a job, it’s a sport. I had a bitch on every exit from the 10 freeway to the 101 freeway, ‘cause bitches would recruit for me.⁹⁹

As of 2014, Snoop Dogg is currently one of the world’s highest paid hip-hop stars, earning just over ten million last year.¹⁰⁰ For those who read magazine articles like the one cited above, glorifying Snoop’s rags to riches journey, or who listen to Snoop’s songs describing how “gangster” it is to be a “P.I.M.P.,”¹⁰¹ it can be easy to forget that pimps play a large

94. *Id.* at 111–12.

95. *Id.* at 111.

96. *Id.*

97. See Touré Neblett, *America’s Most Loveable Pimp*, ROLLING STONE (Dec. 14, 2006), <http://www.rollingstone.com/music/news/americas-most-lovable-pimp-20061214> [<http://perma.cc/Z273-5FWG>].

98. *Id.*

99. *Id.*

100. Zack O’Malley Greenburg, *Cash Kings 2014: The World’s Highest-Paid Hip-Hop Acts*, FORBES (Sept. 23, 2014), <http://www.forbes.com/pictures/eeel45emedh/14-snoop-dogg-10-million/> [<http://perma.cc/6V67-B59C>].

101. Brandon Parrott et al., *P.I.M.P. (G-Unit Remix)*, AZLYRICS, <http://www.azlyrics.com/lyrics/50cent/pimpgunitremix.html> [<http://perma.cc/6X52->

role in facilitating the sale of women and children for commercial sex.

Just as there is no stereotypical prostitute, there is no stereotypical pimp. Many American adults might imagine that a pimp looks like a “cross between a caricatured seventies Huggy Bear or a sleazy, leather-jacket-wearing, drug-dealing scumbag from an early *Law & Order* episode.”¹⁰² Others may conjure up images of Snoop Dogg, draped in gold chains, surrounded by young, beautiful girls.¹⁰³ But more often than not, pimps are your typical, unassuming young man—not unlike Dallas Cardenas.¹⁰⁴ Many were abused as children.¹⁰⁵ Most tend to traffic girls and women from their own race and socioeconomic status.¹⁰⁶ They tend to utilize a tactical level of coercion and threat in order to maintain control, often through humiliation and degradation.¹⁰⁷ However, the relationships between young girls and their pimps are often “more nuanced than conventional wisdom would have it.”¹⁰⁸

In 2007, the New York Times sent letters to over a hundred incarcerated pimps in an attempt to learn how pimps

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102. LLOYD *supra* note 54, at 87.

103. See *Snoop Lion Opens Up About His Pimp Past*, ROLLING STONE (May 8, 2013), <http://www.rollingstone.com/music/news/snoop-lion-opens-up-about-his-pimp-past-20130508> [<http://perma.cc/XH79-3B8U>] (relating Snoop Dogg’s self-described lifestyle as a pimp).

104. See Christina Villacorte, *Prostitution in Los Angeles: Some Pimps Control Women with Violence, Others Turn on the Charm*, L.A. DAILY NEWS (May 18, 2014), <http://www.dailynews.com/social-affairs/20140518/prostitution-in-los-angeles-some-pimps-control-women-with-violence-others-turn-on-the-charm> [<http://perma.cc/TW4V-9YEW>] (describing pimps methods that capitalize on earning a woman’s trust).

105. See JODY RAPHAEL & BRENDA MYERS-POWELL, SCHILLER DUCANTO & FLECK FAMILY LAW CTR. OF DEPAUL UNIV. COLL. OF LAW, FROM VICTIMS TO VICTIMIZERS: INTERVIEWS WITH 25 EX PIMPS IN CHICAGO 1 (2010), http://newsroom.depaul.edu/PDF/FAMILY_LAW_CENTER_REPORT-final.pdf [<http://perma.cc/3QC2-NP5Z>] (finding that 88% of the men that they studied experienced physical abuse while growing up; 76% experienced childhood sexual assault).

106. See LLOYD *supra* note 54, at 94 (“We know that in every country, pimps/traffickers tend to prey upon those that they have the most access to, girls and women from their own culture. So it is not surprising that since the vast majority of girls I work with are girls of color, they have been under the control of street pimps who are men of color.”).

107. See Farley, *supra* note 31, at 111. (“Pimps and customers use methods of coercion and control like those of other batterers: economic exploitation, social isolation, verbal abuse, threats, physical violence, sexual assault, captivity, minimization, and denial of their use of physical violence and abuse.”).

108. Kecskemethy, *supra* note 56.

selected their victims and what methods they used to recruit them.¹⁰⁹ More than a dozen responded and agreed to participate in interviews via telephone or mail.¹¹⁰ Universally, the pimps described how they went after “girls with low self-esteem, prior sexual experience, and a lack of options.”¹¹¹ They explained the complicated roles that they played to recruit the girls; how they took on the role of “father figure, landlord, boss, and boyfriend,” in order to foster trust and maintain control.¹¹² One former pimp, who served a four-year sentence in Arizona for pandering a seventeen-year-old girl and three adult prostitutes in 2005, discussed how manipulation and romance played into his recruiting strategy.¹¹³ “With the young girls, you promise them heaven, they’ll follow you to hell . . . [i]t all depends on her being so love-drunk off of me that she will do anything for me.”¹¹⁴

With recent advances in technology, the recruitment, control, and trafficking of women and young girls is only getting easier for pimps.¹¹⁵ Girls are commonly recruited on social media websites like Facebook and Tagged,¹¹⁶ where “minors will accept friend requests from strangers just to appear to be popular.”¹¹⁷ Most users have their photos, personal information, and friend lists out in the open for the public to view.¹¹⁸ Pimps use these sites to look for “cracks where they can fill the holes” as a paternal figure.¹¹⁹

Additionally, they use the Internet as a tool to actually traffic girls, commonly posting ads in the personals on

109. Urbina, *supra* note 61.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. Erica Fink & Laurie Segall, *Pimps Hit Social Networks to Recruit Underage Sex Workers*, CNN MONEY (Feb. 27, 2013, 7:30 AM), <http://money.cnn.com/2013/02/27/technology/social/pimps-social-networks/> [<http://perma.cc/J6CT-DPK7>].

116. Tagged is a social media website that launched in 2004 as a “so-called “interactive social experience[.]” Nathan Chandler, *How Tagged Works*, HOWSTUFFWORKS.COM, <http://computer.howstuffworks.com/internet/social-networking/networks/tagged.htm> [<http://perma.cc/MAQ8-LS23>].

117. Fink & Segall, *supra* note 115.

118. *Id.*

119. *Id.*

Craigslist and Backpage.¹²⁰ “Backpage accounts for about 70 percent of prostitution advertising among five Web sites that carry such ads in the United States, earning more than \$22 million annually from prostitution ads.”¹²¹ Notably, these are not pornographic, or illegal sites.¹²² Thus, while awareness surrounding human trafficking is growing, the problem of human trafficking is also growing at an increasingly faster rate.¹²³ It is not a surprise that many states, including Colorado, have started to pass legislation to tackle the problem at the local level.

II. HUMAN TRAFFICKING IN COLORADO

“Few Coloradans are aware that in the natural beauty of our mountainous state lies an ugly invisible crime known as human trafficking.”¹²⁴ In order to explore the potential legislative approaches Colorado could implement, it is first necessary to understand the extent of Colorado’s illegal sex trade and its current legal landscape. Accordingly, Section A explores human trafficking in Colorado. Section B discusses how *Cardenas* catalyzed legislative reform. Finally, Section C analyzes the state’s more recent pieces of human trafficking legislation, specifically focusing on (1) the implications of HB

120. Nicholas Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES (Mar. 17, 2012), http://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html?pagewanted=all&_r=0 [http://perma.cc/Y3XY-ZPNJ]. Backpage is currently owned by Village Voice Media, which also owns the Pulitzer Prize winning Village Voice newspaper, a paper that was cofounded in 1955 by Norman Mailer to “promote independent journalism.” Rob McKenna, Wash. State Attorney Gen., Address at the National Association of Attorneys General (Mar. 6, 2011) (transcript available at <http://www.kirk.senate.gov/?p=blog&id=434> [http://perma.cc/9RSF-5WQM]).

121. Kristof, *supra* note 120. Because it has been difficult for the FBI and local law enforcement to go after Backpage directly, states have retargeted their focus on the johns themselves. See Manuel Gamiz, Jr., *Website Fuels Surge in Prostitution, Police Say*, MORNING CALL (July 12, 2014), <http://www.mcall.com/news/local/investigations/mc-website-fuels-surge-in-prostitution-police-say-story.html#page=1> [http://perma.cc/5UYU-GZ5Y]; Amanda Milkovits, “Operation Backpage”: Prostitution Sting at Providence Hotels Nets 22 Men, PROVIDENCE J. (Apr. 3, 2015), <http://www.providencejournal.com/article/20150403/NEWS/150409737> [http://perma.cc/G4M9-C66C].

122. Kristof, *supra* note 120.

123. Robbie Couch, *Human Trafficking Is Still Globe’s Fastest-Growing Crime Despite Increased Awareness*, HUFFINGTON POST (Jan. 7, 2015, 3:59 PM), http://www.huffingtonpost.com/2015/01/07/human-trafficking-increasing_n_6425864.html [http://perma.cc/4ZVB-H4TC].

124. Byrd, *supra* note 23.

1273; and (2) the state legislature's attempts to pass a safe harbor law and create an affirmative defense for trafficking victims accused of prostitution.

A. A Hub for Sexual Exploitation

In 2010, law enforcement estimated that they investigated 100–150 sex trafficking cases in the Denver Metro area.¹²⁵ Between January 2006 and December 2013, approximately “441 people aged 12–60 were confirmed or suspected to have been victims of sex trafficking in Colorado.”¹²⁶ And yet, from 2006 to 2014, only one human trafficker was convicted in the state.¹²⁷ It is estimated that “50–85% of victims exploited for sexual servitude” were, or currently are, in Colorado's child welfare system.¹²⁸ In 2012 alone, sixty children, some as young as eleven-years-old,¹²⁹ were rescued throughout the state from commercially sexually exploitative environments.¹³⁰

A 2014 study by the Urban Institute's Justice Policy Center determined that Denver had a thriving underground commercial sex economy (UCSE), valued at \$40 million annually.¹³¹ Although Denver's UCSE was significantly smaller than the other cities studied,¹³² the lead author and

125. MORRIS ET AL., *supra* note 77, at 11.

126. DENVER ANTI-TRAFFICKING ALL., *supra* note 18.

127. Currently, only Hassan Mayo, a thirty-nine-year-old Denver pimp who pled guilty to one count of human trafficking, has been convicted under the state's human trafficking laws. See John Ingold, *Pimp Gets 16 Years in Denver Human Trafficking Case*, DENVER POST (Feb. 17, 2012, 1:14 PM) http://www.denverpost.com/ci_19988623 [<http://perma.cc/C5B6-G6KH>]. Dallas Cardenas would have been the second, but his conviction was overruled. See Paul, *supra* note 14.

128. DENVER ANTI-TRAFFICKING ALL., *supra* note 18.

129. Byrd, *supra* note 23.

130. See Sadie Gurman, *Six Denver Pimps Arrested, 9 Children Saved as Part of Federal Sting*, DENVER POST (July 29, 2013, 10:36 AM) http://www.denverpost.com/ci_23753147/six-denver-pimps-arrested-nine-children-saved-part [<http://perma.cc/A5JL-ETPT>].

131. See MEREDITH DANK ET AL., THE URBAN INST., ESTIMATING THE SIZE AND STRUCTURE OF THE UNDERGROUND COMMERCIAL SEX ECONOMY IN EIGHT MAJOR CITIES 280 (2014), http://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view/full_report [<http://perma.cc/69CB-DAEE>] (reporting 2003 statistics); see also MATTHEW JOHNSON, THE URBAN INST., THE HUSTLE: ECONOMICS OF THE UNDERGROUND COMMERCIAL SEX INDUSTRY 2 (2014), <http://datatools.urban.org/features/theHustle/theHustle.pdf> [<http://perma.cc/9G3X-4CEP>]. Other estimates place Denver's UCSE closer to \$60 million. See MORRIS ET AL., *supra* note 77, at 11.

132. The seven other cities studied included San Diego, Seattle, Dallas, Washington, D.C., Kansas City, Atlanta, and Miami. DANK ET AL., *supra* note 131,

researcher hypothesized two plausible rationales for this discrepancy.¹³³ Either the size of a city's UCSE is a function of population (and because Denver was the smallest city studied, it also had the smallest UCSE),¹³⁴ or alternatively, local law enforcement did not accurately assess the size of Denver's sex trade, thereby estimating it to be smaller than it actually is.¹³⁵

According to the study, Denver hosts a diverse UCSE comprised of "Asian massage parlors, street and online prostitution, Latino brothels, and upscale escort services."¹³⁶ While African-American gangs are "beginning to play a more dominant role in the UCSE,"¹³⁷ most adult and child prostitution rings are unorganized, which makes it more difficult for local law enforcement to identify who is doing the trafficking.¹³⁸ One Denver officer who was interviewed for the study confirmed this problem:

I would say that we are only scratching the surface of what is out there. We have seen a drastic increase pretty much every year since we have at least keyed into it. Denver has done pimping cases since forever; it is in the statute. But really understanding it and the human trafficking aspect of it, probably really came around about in 2006.¹³⁹

For most Denverites, the study's findings may be surprising, but they should not be. According to the Center for Public Policy Studies, Colorado is a destination for human trafficking because of its international airport, large immigrant population, and convergence of major interstate highways.¹⁴⁰ As early as 2005, the state recognized its particular

at 1. The next largest UCSE was San Diego, at \$96.6 million. *Id.* at 280.

133. Elaine Grant, *Denver Sex Trafficking 'Economy' Valued at \$40 million or More*, COLO. PUB. RADIO (Mar. 12, 2014), <http://www.cpr.org/news/story/denver-sex-trafficking-economy-valued-40-million-or-more> [<http://perma.cc/DTZ9-7JE6>].

134. *Id.*

135. *Id.*

136. DANK ET AL., *supra* note 131, at 86.

137. *Id.*

138. *See id.* (describing how many of the trafficking and prostitution networks in Denver are not very organized and structured, and Denver police are only recently beginning to understand the scope of sex trafficking).

139. *Id.*

140. CTR. FOR PUB. POLICY STUDIES, COLORADO HUMAN TRAFFICKING FACT SHEET 1 (2014), <http://www.htcourts.org/wp-content/uploads/CO-HT-Fact-Sheet-3.12.13.pdf?Factsheet=HT-CO> [<http://perma.cc/H3TJ-WHB4>].

vulnerability as a source, destination, and transit route for human trafficking.¹⁴¹ Indeed, the Colorado legislature passed the state's first human trafficking law in 2006.¹⁴² But up until HB 1273 was enacted in 2014, Colorado was limited in its ability to prosecute human trafficking cases because its definition of human trafficking was so incredibly narrow.¹⁴³

B. The Tipping Point: People v. Cardenas Sparks Reform

Cardenas came at an opportune time for human trafficking reform in Colorado.¹⁴⁴ Prior to the Court of Appeals's decision, activists had been heavily lobbying for changes, and the *Cardenas* acquittal served to underscore the need for such change.¹⁴⁵ Since 2006, the crimes of human trafficking and trafficking in children had been charged thirty-eight times, with only two convictions, including *Cardenas*'s.¹⁴⁶ The appellate court's reversal effectively reduced that number to one.¹⁴⁷ Under the specific and narrow language of the statute, Colorado's anti-trafficking advocates argued that conviction was difficult, if not nearly impossible.¹⁴⁸

At the time of *Cardenas*'s conviction, the child trafficking statute provided:

A person commits trafficking in children if he “[s]ells, exchanges, barter, or leases a child and receives any money or other consideration or thing of value for the child as a result of such transaction. A child is a person under eighteen years of age.”¹⁴⁹

Contributing to the statute's ambiguity, the legislature had not defined “sell,” “exchange,” “barter,” or “lease.”¹⁵⁰ Thus,

141. *Id.*

142. *Id.* at 5.

143. *See* Paul, *supra* note 14.

144. *See* Jim Smithwick, *A Timely Ruling*, LABORATORY TO COMBAT HUMAN TRAFFICKING (Apr. 11, 2014), [http://www.combathumantrafficking.org/_blog/LCHT/post/a-timely-ruling/\[http://perma.cc/4F6E-6D6P\]](http://www.combathumantrafficking.org/_blog/LCHT/post/a-timely-ruling/[http://perma.cc/4F6E-6D6P]).

145. *Id.*

146. *Id.*

147. *Id.*

148. *See id.*

149. *See* *People v. Cardenas*, 338 P.3d 430, 434 (Colo. App. 2014) (internal citations omitted) (quoting COLO. REV. STAT. § 18-3-502 (2013) (amended 2014)).

150. *Id.* at 434.

the Colorado Court of Appeals found that, using the plain-meaning definitions of those terms, Cardenas did not sell, exchange, barter, or lease a child.¹⁵¹ Rather, he “arranged for the seventeen-year-old victim to provide sexual services.”¹⁵² Although the court concluded that this conduct was unquestionably “pimping” of a child, it determined that such conduct fell short of child trafficking because none of the johns who bought the victim’s services from Cardenas had obtained “any right to ‘possess’ her.”¹⁵³

In reaching its decision, the *Cardenas* court emphasized how different Colorado’s human trafficking statute was from that of other states.¹⁵⁴ Specifically, it found that other states’ comparable statutes included language prohibiting “a person from ‘recruiting,’ ‘enticing,’ ‘soliciting,’ ‘inducing,’ ‘threatening,’ or ‘transporting’ a child for sexual purposes, or otherwise ‘benefiting from’ any of those acts if they were committed by another.”¹⁵⁵ The Court of Appeals not only highlighted the impracticality of the statute by applying a plain-meaning interpretive canon, but it also provided ample evidence that Colorado’s human trafficking statute asserted significantly narrower language than a majority of other states.¹⁵⁶

Following *Cardenas*, the Colorado Court of Appeals ignited a statewide movement for reform.¹⁵⁷ And on May 29, 2014, HB 1273 was signed into law.¹⁵⁸

151. *Id.*

152. *Id.* at 436.

153. *Id.*

154. *Id.*

155. *Id.* at 436–37 (citing human trafficking laws in Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Washington D.C., Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming). Notably, all of the state human trafficking laws that the *Cardenas* Court cited were passed and/or updated in 2014. *Id.*

156. *Id.* at 437. The difference between Colorado’s statute and other states’ statutes led one commentator to observe that Colorado’s “odd” trafficking-in-children statute “may not . . . adequately capture[] all instances of domestic minor sex trafficking, which involves the sale of commercial sex rather than the sale of the actual child.” *Id.* (alterations in original) (quoting Tessa Dysart, *The Protected Innocence Initiative: Building Protective State Law Regimes for America’s Sex-Trafficked Children*, 44 COLUM. HUM. RTS. L. REV. 619, 649, 670 (2013)).

157. See Smithwick, *supra* note 144.

158. See OPEN STATES, *supra* note 19.

C. Current Statutory Landscape

Prior to the passage of HB 1273, the legislature attempted and failed several times to strengthen the state's 2006 human trafficking laws.¹⁵⁹ Because of this, while some human trafficking advocates were undoubtedly discouraged by the *Cardenas* decision, many used it as a clear example of why a new law was needed.¹⁶⁰ Implemented with warm public reception,¹⁶¹ HB 1273 featured broader, less ambiguous language designed to aid in the prosecution of human (and child) traffickers.¹⁶² This Section discusses the current legal landscape, focusing specifically on (1) the implementation, success, and shortfalls of HB 1273, and (2) Colorado's more recent attempts to remedy some of the legal inconsistencies created in the wake of HB 1273's passage.

1. Colorado House Bill 1273

Under HB 1273, "sexual servitude" now includes the actions of selling, recruiting, harboring, transporting, transferring, isolating, enticing, providing, receiving, obtaining, maintaining, or making available a minor for the purpose of sexual activity.¹⁶³ Notably, the new law parallels the terms suggested by the *Cardenas* court and the language used in many other states' statutes.¹⁶⁴

In addition to broadening the definition of human trafficking,¹⁶⁵ the law also implemented the following changes: it expanded the Rape Shield Act provisions to apply to crimes of human trafficking;¹⁶⁶ it eradicated several affirmative

159. See Paul, *supra* note 14; see also DENVER ANTI-TRAFFICKING ALL., *supra* note 18 ("Prior to House Bill 1273, there have been several legislative efforts in Colorado to address the issue of Human Trafficking.").

160. See Smithwick, *supra* note 144; see also Schroyer, *supra* note 16.

161. H.B. 14-1273, 69th Gen. Assemb., 2nd Reg. Sess. (Colo. 2014).

162. DENVER ANTI-TRAFFICKING ALL., *supra* note 18.

163. Compare COLO. REV. STAT. § 18-3-504 (2014) to COLO. REV. STAT. § 18-3-502 (2013) (amended 2014) (limiting trafficking in children to the sale, exchange, barter, or lease of a child); see also H.B. 14-1273, 69th Gen. Assemb., 2nd Reg. Sess. (Colo. 2014).

164. See *People v. Cardenas*, 338 P.3d 430, 436–37 (Colo. App. 2014).

165. See COLO. REV. STAT. § 18-3-503 (2014); *Id.* § 18-3-504(1)–(2)(a) (2014).

166. See *Id.* § 18-3-407 (2014); see also *People v. Weiss*, 133 P.3d 1180, 1185 (Colo. 2006) ("The rape shield statute deems the prior or subsequent sexual conduct of any alleged victim to be presumptively irrelevant to the criminal

defenses, including minor consent and mistaken age;¹⁶⁷ and it made sex trafficking of a minor a sex offense against a child.¹⁶⁸ It also created the Human Trafficking Council within the Colorado Department of Public Safety to:

[B]ring together leadership from community-based and statewide anti-trafficking efforts, to build and enhance collaboration among communities and counties within the state, to establish and improve comprehensive services for victims and survivors of human trafficking, to assist in the successful prosecution of human traffickers, and to help prevent human trafficking in Colorado.¹⁶⁹

The new law should greatly facilitate the successful prosecution of trafficking offenses, as it now offers a clearer and more meaningful definition of human trafficking.¹⁷⁰ This should ensure that future defendants, like Cardenas, are charged (and perhaps convicted) with a class 2 child trafficking felony—rather than a class 3 felony for the pimping of a child.¹⁷¹

With HB 1273's passage, Colorado has effectively aligned itself with the national movement to stop human trafficking, promote social justice, and protect human rights.¹⁷² Although

trial.”).

167. Prior to the passage of HB 1273, a defendant could argue two affirmative defenses. First, he could argue that the minor consented to participate in commercial sexual activity. *See infra* Section III.A. (where the idea that a minor cannot consent to commercial sex is juxtaposed against child prostitution laws that criminalize children who “willingly” participate in commercial sex). Second, he could argue that he did not know the person from whom he purchased the sexual act was a minor. *See Paul, supra* note 14. Under the new law, these affirmative defenses are no longer available to defendants. *See* § 18-3-504(2)(c).

168. COLO. REV. STAT. ANN. § 18-3-411(1) (West, Westlaw through First Regular Session of the 70th General Assembly (2015)).

169. *Id.* § 18-3-505(1)(a) (West, Westlaw through First Regular Session of the 70th General Assembly (2015)).

170. *See Paul, supra* note 14.

171. *Id. Compare* § 18-3-504(2)(b) (2014) (child trafficking is a class 2 felony) with § 18-7-405 (2014) (pimping of a child is a class 3 felony). Notably, a class 3 felony typically carries a presumptive sentence of four to twelve years, whereas a class 2 felony carries a presumptive sentence of eight to twenty-four years. BOULDER CTY BAR ASS'N, *Ch. 7: Sentencing*, in BAR MEDIA MANUAL, § 7.8 (2014), http://www.boulder-bar.org/bar_media_manual/procedures/7.8.html [<http://perma.cc/KTQ6-RVYB>].

172. *Id.*; *see also* LEGISLATIVE ACTION COMM., LEAGUE OF WOMEN VOTERS OF COLO., LEGISLATIVE WRAP-UP 6 (2014) [hereinafter LEAGUE OF WOMEN VOTERS], http://montrose.co.lwvnet.org/files/2014_lwvco_lac.pdf [<http://perma.cc/D43V-R2>]

its effectiveness is still untested,¹⁷³ the law has already been hailed a success. The Polaris Project, a Washington D.C.-based trafficking policy and victim's advocacy group,¹⁷⁴ ranked Colorado one of the most improved states for human trafficking in 2014.¹⁷⁵ In a *Denver Post* article following the reform, Colorado Attorney General John Suthers affirmed the state's feelings of success: "We feel we are now, legislatively, in pretty good shape to deal with cases going forward."¹⁷⁶ Clearly, HB 1273 is indicative of the state's desire to increase criminalization for human traffickers.

2. Incomplete Legislation and Colorado's Attempts to Remedy

Unfortunately, HB 1273 passed without safe harbor provisions, which would have precluded minors from prosecution for prostitution. Although the state legislature considered passing a safe harbor law when HB 1273 was enacted, it purposefully chose not to because: (1) safe harbor laws are still a relatively new concept, with only eighteen states having passed some variation of one;¹⁷⁷ and (2) it is unclear if any of the safe harbor laws implemented by other states have been effective.¹⁷⁸ Instead, the issue of a safe harbor

TR] ("The passage of [HB 1273] helps to align Colorado with the Federal TVPA").

173. See Jesse Paul, *Polaris Project Ran Ranks Colorado's Human Trafficking Laws in Top Tier*, DENVER POST (Sept. 17, 2014), <http://blogs.denverpost.com/thespot/2014/09/17/colorado-moves-top-tier-2014-polaris-human-trafficking-law-rating/112922/> [<http://perma.cc/Z8DJ-2VRS>] ("The statute will be used for the first time in Jefferson County, where Christopher Sullivan . . . is facing child sex-trafficking charges. Sullivan, 37, allegedly convinced a seventeen-year-old New Mexico girl to travel with him to Colorado this summer, helping sell her sexual services to men at a Lakewood motel . . .").

174. *Founding Story*, POLARIS PROJECT, <http://www.polarisproject.org/about-us/overview/founding-story> [<http://perma.cc/N52A-BPD5>].

175. POLARIS PROJECT, COLORADO STATE REPORT: STATE RATINGS 1 (2014), http://www.polarisproject.org/storage/documents/2014_State_Reports/Colorado_State_Report.pdf [<http://perma.cc/65BC-JX8A>].

176. Paul, *supra* note 173.

177. Since New York passed the first safe harbor law in 2008, seventeen other states have followed suit: Arkansas, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, Ohio, Tennessee, Vermont, and Washington. See Ashley Greve, *The Controversies Behind Safe Harbor Laws*, HUM. TRAFFICKING CTR. (July 23, 2014), <http://humantraffickingcenter.org/human-trafficking/controversies-behind-safe-harbor-laws/> [<https://perma.cc/J6AZ-REP4>].

178. See generally Lauren Jekowsky, *Un-Safe Harbor: Why U.S. State*

law was punted to the newly formed Colorado Human Trafficking Council.¹⁷⁹ More recently, a proposed House Bill 15-1019 (“HB 1019”) would have granted immunity to minors charged with prostitution.¹⁸⁰ But the legislature once again punted the issue, instead mandating that the Human Trafficking Council make a formal recommendation concerning the passage of a safe harbor law on or before January 1, 2016.¹⁸¹

The legislature did, however, successfully pass Senate Bill 15-030 (“SB 30”) in April 2015, which offers an affirmative defense for “any person charged with prostitution” on or after July 1, 2015, if such person can show by a preponderance of the evidence that he or she was a victim of human trafficking at the time of the offense.¹⁸² Additionally, the new law permits adults to “apply to the court for a sealing of [their] records” if they have been charged with, or convicted of, prostitution before July 1, 2015, and they were a victim of human trafficking at the time of the offense.¹⁸³ It also permits minors to apply for expungement of criminal records.¹⁸⁴

Legislation Is Ineffectively Addressing Sex Trafficking of Minors, HUM. TRAFFICKING CTR. (Mar. 10, 2014), <http://humantraffickingcenter.org/posts-by-htc-associates/un-safe-harbor-why-u-s-state-legislation-is-ineffectively-addressing-sex-trafficking-of-minors/> [<http://perma.cc/HC6V-BJ48>].

179. In the Senate Judiciary Committee, testimony was given regarding a potential safe harbor law. LEAGUE OF WOMEN VOTERS, *supra* note 172, at 6. “Safe harbor laws can provide safe housing and services for victims and/or immunity from criminal prosecution.” *Id.* Ultimately, lawmakers chose not include any version of safe harbor legislation in HB 1273, suggesting instead that the Human Trafficking Council should review and observe other states that have implemented safe harbor legislation. *Id.* See also Victoria Robertson, *Recap: First Colorado Human Trafficking Council Meeting*, HUM. TRAFFICKING CTR. (Oct. 10, 2014), <http://humantraffickingcenter.org/posts-by-htc-associates/recap-first-colorado-human-trafficking-council-meeting/> [<http://perma.cc/CF7F-A6LK>] (“[T]he Human Trafficking Council outlined priorities and goals for the upcoming year. These included . . . further exploring safe harbor legislation.”).

180. See H.B. 15-1019, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015) http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont3/F198F347D281D85787257DB10065D8E4?open&file=1019_01.pdf [<http://perma.cc/TYR5-BKEA>] (containing the version of the bill as introduced).

181. See *id.*; see also Eric Galatas, *Lawmakers Punt on Protecting Sex-Trafficking Victims*, PUB. NEWS SERV. COLO. (Apr. 23, 2015), <http://www.publicnewsservice.org/2015-04-23/human-rights-racial-justice/lawmakers-punt-on-protecting-sex-trafficking-victims/a45830-1> [<http://perma.cc/7NLM-D25N>].

182. S.B. 15-030, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015) (codified in COLO. REV. STAT. ANN. § 18-7-201.3(1) (West, Westlaw through First Regular Session of the 70th General Assembly (2015))).

183. § 18-7-201.3(2)(a) (Westlaw).

184. *Id.* § 18-7-201.3(2)(b).

Although SB 30 does not require an official determination that the defendant was a victim of human trafficking, “official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that his or her participation in the offense was a direct result of being a victim.”¹⁸⁵ Thus, depending on how long ago the offense occurred, and how detailed the report was, a victim of human trafficking may be able to get his or her record sealed or expunged under the new law. However, under the law, not only will minors be required to defend their case, but they will also have the burden of proving that they are in fact victims of trafficking.¹⁸⁶

Contextualized by the absence of a comprehensive safe harbor law, it is unclear how many minors have been or will be arrested, prosecuted, and/or incarcerated for prostitution.¹⁸⁷ It is clear, however, that minors are still being arrested under the presumption that, in some contexts, they can legally consent to commercial sex.¹⁸⁸ In August 2014, a thirty-seven-year-old man, Christopher Sullivan, was the first person to be charged for child trafficking under the new law.¹⁸⁹ However, his seventeen-year-old victim was also arrested and charged, with local law enforcement reporting that she had “sold herself to three men.”¹⁹⁰ Sullivan ultimately pleaded guilty to “contributing to the delinquency of a minor and pandering,” effectively avoiding a human trafficking charge.¹⁹¹ However, at the time of his plea, his teenage victim’s case was still pending

185. *Id.* § 18-7-201.3(1).

186. *Id.*

187. See H.B. 1019 FISCAL NOTE, *supra* note 25, at 1.

188. *Id.*

189. Jesse Paul, *Court Documents Outline Jeffco Crime Spree, Sex Trafficking Case*, DENVER POST (Aug. 24, 2014, 3:54 PM), http://www.denverpost.com/news/ci_26397992/ [<http://perma.cc/3LXC-22KC>]; Phil Tenser, *Lookout Mountain Chase Suspect Christopher Sullivan also Charged with Child Sex Trafficking*, 7 NEWS DENVER (Aug. 6, 2014, 10:28 PM), <http://www.denverchannel.com/news/local-news/lookout-mountain-chase-suspect-christopher-sullivan-also-charged-with-child-sex-trafficking> [<http://perma.cc/3ZMD-C2QY>].

190. Jesse Paul, *Man Pleads Guilty in Lookout Mountain Rampage, Sex Trafficking Case*, DENVER POST (Mar. 24, 2015, 3:29 PM), http://www.denverpost.com/news/ci_27777494/man-pleads-guilty-lookout-mountain-rampage-sex-trafficking?source=infinite [<http://perma.cc/XP76-5VGW>].

191. *Id.* It is worth noting that with Sullivan’s plea, there has been no successful prosecution of human trafficking in the state to date.

with the Jefferson County District Attorney's office.¹⁹²

With the passage of HB 1273 and SB 30, Colorado now finds itself confronted with a peculiar, but by no means novel, dilemma: can a minor *sometimes* consent to commercial sex? In 2010, the Texas Supreme Court overturned the conviction of a thirteen-year-old, holding that a minor who lacked the capacity to consent to sex as a matter of law could not be prosecuted as a prostitute.¹⁹³ The Texas court reasoned that the “[s]tate has broad power to protect children from sexual exploitation without needing to resort to charging those children with prostitution and branding them offenders.”¹⁹⁴ It went on to emphasize that children are not the perpetrators of child prostitution, but rather the victims, and therefore, they should be helped, not criminalized.¹⁹⁵ If Colorado really wants to help and not criminalize its sexually exploited youth, it must pass a full-fledged safe harbor law.

III. THE MISSING PIECE: A FULLY LOADED SAFE HARBOR LAW

*We must take proactive steps in identifying victims, delivering justice, and providing survivors the support and protection they need.*¹⁹⁶

In 2008, New York was the first state to pass a safe harbor law after a twelve-year-old girl, considered too young to consent to sex under the state's statutory rape law, was convicted of prostitution.¹⁹⁷ Since then, other states have followed suit, although not all have adopted the New York model.¹⁹⁸ This is why Colorado waited until now to consider passing a safe harbor law—the legislature was unsure whether or not a safe harbor law would even be effective, let alone which statutory

192. *Id.*

193. *In re B.W.*, 313 S.W.3d 818, 821–22 (Tex. 2010).

194. *Id.* at 825.

195. *Id.* at 826.

196. Hillary Rodham Clinton, *Fight Against Human Trafficking*, DENVER POST (June 29, 2011, 1:00 AM), http://www.denverpost.com/Opinion/ci_18371496/Fight-against-human-trafficking [<http://perma.cc/5XCT-TCQY>].

197. Lisa Holl Chang, Comment, *Reaching Safe Harbor: A Path for Sex-Trafficking Victims in Wisconsin*, 2013 WIS. L. REV. 1489, 1502 (2013); see also *In re Nicolette R.*, 779 N.Y.S.2d 487 (N.Y. App. Div. 2004).

198. LEAGUE OF WOMEN VOTERS, *supra* note 172, at 6; see also Chang, *supra* note 197, at 1502–04; Greve, *supra* note 177.

strategy to pursue.¹⁹⁹ Due to a variety of factors, including “incompleteness, poor implementation, and a lack of resources,” not all safe harbor laws have been considered a success by victim advocacy groups and state legislators.²⁰⁰

By studying the states with safe harbor laws, advocates of safe harbor laws have concluded that effective implementation requires the following six parameters: (1) decriminalization or diversion; (2) access to victims’ services, including, but not limited to, various rehabilitation facilities, housing, and record sealing; (3) mandatory training for officers and staff; (4) an organized task force to connect victims to services; (5) increased penalties for traffickers and johns; and (6) adequate funding to successfully implement and maintain services.²⁰¹ This Part addresses the elements of a successful safe harbor law in turn, and suggests Colorado should adopt a law that fully embraces the parameters delineated above, not unlike Minnesota.²⁰² Ultimately, this Part argues that Colorado will need to pass a comprehensive safe harbor law that goes beyond

199. See Jekowsky, *supra* note 178; see also *supra* Section II.C.2.

200. Jekowsky, *supra* note 78.

201. See *id.*; see also Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POLY BRIEF 67, 86–92 (2012), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1038&context=lpb> [<http://perma.cc/S3QT-D7BP>] (grouping and numbering the parameters in a different way, but including virtually the same substantive suggestions). Some victims’ advocacy groups have recommended a seventh measure: privilege for caseworkers. See POLARIS PROJECT, 2013 ANALYSIS OF STATE HUMAN TRAFFICKING LAWS: VICTIM ASSISTANCE 6 (2013), http://www.polarisproject.org/storage/documents/2013_Analysis_Category_8_-_Victim_Assistance.pdf [<http://perma.cc/NYW9-WGN2>]. The idea is that sexually exploited children need someone to confide in without fear that information will be leaked to prosecutors. *Id.* at 6–7. Kentucky state law, for instance, provides that a “human trafficking victim may refuse to disclose, and may prevent any other person from disclosing, confidential communications made to a counselor, psychotherapist, or person employed to render services to trafficking victims.” *Id.* at 7. Such a law could go a long way to foster trust between victim and caseworker. *Id.* at 6. However, it may also prevent prosecutors from obtaining helpful information about traffickers and johns, and therefore, it remains relatively controversial. See *infra* Section III.A.1.

202. The federal government has championed Minnesota’s safe harbor law as the model law. Shannon Prather, *New Federal Law Aids Underage Sex Workers, Targets Traffickers*, STAR TRIB. (May 30, 2015, 10:11 PM), <http://www.startribune.com/new-federal-law-aids-underage-sex-workers-targets-traffickers/305582631/> [<http://perma.cc/W5V2-4KXW>]; Safe Harbor for Sexually Exploited Youth Act of 2011, ch. 1, art. 4, 2011 Minn. Laws 1st Spec. Sess. 15. Because it incorporates many, if not all of the six parameters delineated below, it is used as a case study throughout this Part.

decriminalization and emphasizes victims' services, in order to help child victims escape the world of commercial sexual exploitation once and for all.

A. Decriminalization versus Diversion

Successful safe harbor laws are typically comprised of two key components: protection for minors from prosecution and access to specialized victims' services.²⁰³ States have approached the first goal in one of three ways: (1) decriminalizing prostitution for minors; (2) creating a presumption or affirmative defense of human trafficking; or (3) implementing a diversion program for minors.²⁰⁴ Under the first option, minors are neither arrested nor charged with prostitution.²⁰⁵ Instead, they are treated as victims of trafficking.²⁰⁶ Under the second option, minors arrested for prostitution are either prosecuted with the presumption that they are victims of sex trafficking, which the prosecutor would have to rebut in order to achieve a conviction,²⁰⁷ or they may argue as an affirmative defense that they are victims of human trafficking, placing the burden on the victims.²⁰⁸ Under the third option, they may be placed into a state diversion program, and if they fail to complete the mandated services, prostitution charges can be reinstated at the court's discretion.²⁰⁹

Some states have attempted to marry all three of these principles in one law, such as New York's Title 8-A Safe Harbour for Exploited Children Act.²¹⁰ Although New York law recognizes that "any person under the age of eighteen" who engages in prostitution, willing or otherwise, has been sexually exploited,²¹¹ it has not immunized all minors charged with

203. See SAFE HARBOR, *supra* note 26, at 1; see also Chang, *supra* note 197, at 1500–01.

204. See Chang, *supra* note 197, at 1501.

205. *Id.* at 1501–02.

206. *Id.* at 1502 n.95.

207. See *id.* at 1503.

208. See *supra* Section II.C.2. (discussing S.B. 15-030, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015)).

209. Chang, *supra* note 197, at 1503.

210. See Safe Harbour for Exploited Children Act, N.Y. SOC. SERV. LAW §§ 447-a to 447-b (McKinney 2012).

211. *Id.* § 447-a(1)(a)–(d).

prostitution.²¹² At a judge's discretion, a minor can still be convicted.²¹³ While the law operates under the presumption that a minor arrested for prostitution is a victim of sex trafficking, and replaces the charges with a diversion program, a judge may still find that certain exceptions were met and permit prosecution to proceed.²¹⁴ Additionally, even operating under the presumption that a minor is a sexually exploited youth, minors are still forced to litigate their case, which seems entirely inconsistent with their status as victims.²¹⁵

Victim advocacy groups often treat decriminalization as the gold standard, as it is the only option consistent with a minor being treated as a victim, not a juvenile delinquent. Additionally, decriminalization provides several substantial benefits since:

- (1) [It] brings state legislation in line with federal law and other statutory provisions regarding the sexual behavior of children;
- (2) it is consistent with modern understandings of coercion, particularly in the context of sex trafficking; and
- (3) it prevents the re-victimization of children who have been exploited, largely by facilitating social service intervention.²¹⁶

Whereas diversion programs tend to demand repentance from juveniles who have committed a crime, decriminalization "refuses to punish a child or label him or her with the pejorative term 'child prostitute' when he or she is truly the victim."²¹⁷

Furthermore, evidence suggests incarceration or detainment may revictimize sexually exploited minors, and deprive them access to much needed services:

There is overwhelming evidence that confinement does not

212. *Id.* § 447-a.

213. N.Y. FAM. CT. ACT § 311.4(3) (2012); Schwartz, *supra* note 61, at 243–44.

214. § 311.4(3).

215. *Id.* (noting that, although there is a presumption that the juvenile meets the criteria for a victim of trafficking, the juvenile must bring the motion to substitute a petition alleging the juvenile is in need of services in place of a delinquency petition).

216. Bergman, *supra* note 29, at 1384.

217. *See id.* (describing the effect of decriminalization achieved by the Illinois Safe Children Act, 2010 Ill. Legis. Serv. 96-1464, § 11-14).

succeed in assisting juveniles—particularly the vulnerable population of sexually abused girls—since it does not attend to their gender-specific problems. In particular, girls’ detention centers sorely lack programming relevant to the experiences of sexually exploited youth. In addition, sexual misconduct and harmful behavior by staff members in these facilities is well documented. Often, girls are released from detention with few referrals for services that will help them build a healthy life.²¹⁸

Thus, the more “successful” safe harbor laws,²¹⁹ like Minnesota’s, have enacted full decriminalization.²²⁰ However, those who oppose safe harbor laws are concerned that (1) full decriminalization will lead to a loss of prosecutorial discretion, or (2) it will be an inefficient means of ending child trafficking.²²¹ Both of these concerns warrant discussion.

1. A Loss of Discretion

Some state legislators are concerned that safe harbor laws “reduce the discretionary power of prosecutors and judges by restricting the available options in juvenile court.”²²² This is completely true. With decriminalization, minors are no longer juvenile delinquents at the mercy of the prosecutor or judge.²²³

218. Annitto, *supra* note 32, at 30.

219. For some, a safe harbor law is “successful” if it allows law enforcement and prosecutors to refocus their attention and resources on the perpetrators of trafficking: the traffickers, pimps, and johns. See Devin Henry, *Minnesota ‘Safe Harbor’ Law Serves as a Federal Model for Combating Sex Trafficking*, MINNPOST (May 14, 2014), <http://www.minnpost.com/dc-dispatches/2014/05/minnesota-safe-harbor-law-serves-federal-model-combating-sex-trafficking> [<http://perma.cc/E6PG-BG33>] (crediting the increase in convictions of traffickers with the passage of a safe harbor law and better relationships with the victims).

220. Minnesota’s initial safe harbor law limited prosecutorial immunity to children under sixteen years of age, and children between sixteen and seventeen years of age were referred to a mandatory diversion program. See MINN. STAT. § 609.322 (2014); *Id.* § 609.093 (2011) (repealed 2013); see also S.F. 1, 87th Leg., 1st Spec. Sess. (Minn. 2011), <http://www.house.leg.state.mn.us/hrd/as/87/2011-1/as001.pdf> [<http://perma.cc/PSE3-49W6>]. However, effective August 1, 2014, Minnesota’s safe harbor law now recognizes that all children under the age of eighteen are victims, and therefore, immune from prosecution. H.F. No. 1233, 88th Gen. Assemb., Reg. Sess. (Minn. 2013), <https://www.revisor.mn.gov/laws/?year=2011&type=1&doctype=Chapter&id=1> [<https://perma.cc/PQ34-R2F3>].

221. See, e.g., Bergman, *supra* note 29, at 1387.

222. *Id.*; see also Annitto, *supra* note 32, at 26–28.

223. Schwartz, *supra* note 61, at 243–44.

Rather, they are victims of commercial sex exploitation, whom prosecutors have little-to-no leverage over.

Prosecutors argue that without the threat of prosecution, it will be more difficult for law enforcement to gather information about traffickers and pimps.²²⁴ Historically, after minors are arrested for prostitution, they are offered a plea deal—a mandatory diversion program in exchange for intelligence.²²⁵ The concern is that once minors are exempt from prosecution, there is nothing to incentivize them to “rat” out their pimps.²²⁶ In fact, it has been argued (unsuccessfully) that decriminalization may actually increase a pimp’s motivation to recruit children, as opposed to adults, in order to avoid criminal liability for prostitution.²²⁷

These arguments overlook two key points.²²⁸ First, a safe harbor law only establishes immunity for minors.²²⁹ Adults who willingly sell themselves for sex can still be prosecuted; those who purchase sex, from adults or children, can still be prosecuted; and those who sell or coerce children or adults into the commercial sex trade can still be prosecuted.²³⁰ If anything, decriminalization for minors frees up time, resources, and law enforcement personnel to pursue the actual perpetrators of trafficking and prostitution. Second, “it is easier for law enforcement personnel to build a relationship of trust with children when they are not at risk of prosecution.”²³¹ By working with victims of trafficking instead of against them, law enforcement can gain valuable insight into the world of pimps and johns, leading to more convictions.²³²

In Minnesota, for example, sex crime convictions of pimps and johns in Ramsey County have nearly doubled since the state passed its safe harbor law in 2011, immunizing minors from prosecution for prostitution.²³³ One county attorney attributed this success to the fact that law enforcement

224. Annitto, *supra* note 32, at 27 n.15.

225. *Id.*

226. *Id.* at 28.

227. See *In re B.W.*, 313 S.W.3d 818, 824 (Tex. 2014) (rejecting the State’s argument that if minors are immune to prosecution, it would “encourage pimps to seek out young children”).

228. Annitto, *supra* note 32, at 28.

229. *Id.*

230. *Id.*

231. *Id.*; see also Henry, *supra* note 219.

232. Annitto, *supra* note 32, at 28.

233. Henry, *supra* note 219.

agencies must now cooperate and work with victims, as opposed to prosecuting them.²³⁴ “We are [no longer] saying, ‘we’re going to prosecute you,’ because we can’t. Instead, [we] develop a much more robust and trustful and meaningful relationship, and that has made all the difference.”²³⁵ Following the immunization of minor prostitutes, police have been able to “more aggressively pursue pimps and johns rather than focusing on the [minors] themselves.”²³⁶ For Colorado, which has only one conviction on the books since the conception of its human trafficking laws, a safe harbor law that emphasizes decriminalization could not possibly hurt the state’s conviction rate and may lead to more convictions.²³⁷

While there will always be concerns regarding the decriminalization of any crime, those who have studied the effects of safe harbor laws have found that the decriminalization of juvenile prostitution has been “far more consistent with our understanding of the coercive nature of exploitation, the need to build relationships of trust between victims and law enforcement, and the realities of harm that can result from detention rather than social service intervention.”²³⁸

2. An Inefficient Method

One general critique of safe harbor laws is the lack of uniformity on a national level.²³⁹ Because only eighteen states have adopted safe harbor laws, “it remains the case that thirty-two states continue to treat child victims of sex trafficking as criminals.”²⁴⁰ Thus, the lack of uniformity amongst decriminalization efforts of child sex-trafficking victims “is particularly troubling given that pimps and traffickers often transport child victims across state lines for the purpose of commercial sexual exploitation.”²⁴¹ For instance, minors may be protected from prosecution under their home state’s safe

234. *Id.*

235. *Id.* (quoting John Choi, the County Attorney in Ramsey County, Minnesota).

236. *Id.*

237. Ingold, *supra* note 127; Paul, *supra* note 14.

238. Bergman, *supra* note 29, at 1387–88.

239. Dempsey, *supra* note 30, at 223.

240. *Id.*

241. *Id.*

harbor law, but if a pimp or trafficker transports them across state lines, they may then be susceptible to prosecution under the destination state's laws.²⁴² Of course, this concern is largely unfounded. If a victim was in fact transported across state lines, federal jurisdiction would be implicated. Under the TVPA, all minors caught within the sex trade are classified as victims.²⁴³

As Colorado considers enacting a safe harbor law, it should consider adopting a law consistent with the federal statutory scheme: one that immunizes all minors charged with prostitution.²⁴⁴ Immunity is the only way for Colorado to acknowledge its sexually exploited youth for the victims that they are. By immunizing all minors, Colorado will create a bright-line rule that can be clearly implemented and executed going forward.

However, decriminalization is just one aspect of a safe harbor law. If Colorado does in fact acknowledge that minors can never consent to commercial sex, it must then consider what becomes of the victims after they are arrested. To prevent sexually exploited minors from returning to the streets and being victimized again, Colorado must pass a safe harbor law that also allocates sufficient funds to provide the necessary support to trafficking victims.

B. Access to Victims' Services

Currently, "there is a critical gap in the law for those that are identified by police or social service agencies as abused or exploited."²⁴⁵ Children who are arrested for prostitution often find themselves either incarcerated in juvenile detention, or else "dumped" into group homes and foster care.²⁴⁶ Because of this prevalent trend, specialists have underscored the need for well-funded housing, counseling, and other victims' services in order to ensure that trafficking victims escape the sex industry

242. *Id.*

243. Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 7102(9)(A) (West, Westlaw through Pub. L. No. 114-49).

244. See H.B. 15-1019, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015), http://www.leg.state.co.us/clics/clics2015a/csl.nsf/fsbillcont3/F198F347D281D85787257DB10065D8E4?open&file=1019_01.pdf [<http://perma.cc/TYR5-BKEA>] (as an example of the kind of law Colorado has previously considered).

245. Bergman, *supra* note 29, at 1394.

246. See *id.* at 1394 n.225.

once and for all.²⁴⁷ While decriminalization is easily the most controversial parameter of the six delineated above, the remaining five deserve as much, if not more, consideration. Without access to victims' services, such as stable housing or a strong support system, many children return to their abusers, disappearing, once again, "into the underground of prostitution with no voice."²⁴⁸

While most advocacy groups agree that victims require services, there is no clear consensus regarding what types of services are most appropriate or effective.²⁴⁹ Recently, there has been a push, both by courts and local advocacy groups, to expand victim-led services.²⁵⁰ There is also a strong movement to find and create services that adequately address the specific needs of sexually exploited minors.²⁵¹ Victims of trafficking must be treated as trauma victims, and often times, the most helpful services are tailored to each victim's cultural background.²⁵²

Victims are dealing with trauma that may take a lifetime to overcome They need housing that will allow them to make the transition from children to productive adults Part of the process of helping children make that successful transition are [sic] the type of culturally appropriate services they receive that will help them reintegrate into their community Other needed services include family counseling and chemical dependency assessments²⁵³

Minnesota, for instance, boasts at least thirteen victims'

247. See *id.* at 1397–99; see also HEATHER J. CLAWSON ET AL., U.S. DEPT OF HUMAN SERVS., STUDY OF HHS PROGRAMS SERVICING HUMAN TRAFFICKING VICTIMS 27 (2009) [hereinafter CLAWSON STUDY], <http://aspe.hhs.gov/sites/default/files/pdf/75966/index.pdf> [<http://perma.cc/RG7N-PYK8>].

248. Markman, *supra* note 29.

249. *Id.*; CLAWSON STUDY, *supra* note 247, at 35, 37–39.

250. LLOYD, *supra* note 54, at 253 (describing how survivor-led programming, allows those leading group sessions to “find their own voice, power, and strength,” and to impress on those they are leading that a “happy and healthy future” is a true possibility); CLAWSON STUDY, *supra* note 247, at 23–24.

251. SHARED HOPE INT'L, *supra* note 44, at 27; CLAWSON STUDY, *supra* note 247, at 25–26.

252. Andrea Parrott, *Funds Needed to Implement Minnesota's Safe Harbor Law*, SOUTHWEST J. (Mar. 20, 2014), <http://www.southwestjournal.com/news-feed/funds-needed-to-implement-minnesota%E2%80%99s-safe-harbor-law> [<http://perma.cc/47XF-GB4R>].

253. *Id.*

services organizations, some of which are tailored specifically for “Southeast Asian sexually exploited youth,” “boys 17 and under,” “West African girls,” or “American Indian girls.”²⁵⁴ In addition to providing culturally-specific case management, Minnesota offers victims comprehensive healthcare, including mental health and chemical dependency support, education and employment services, civil legal services, aftercare and relapse support, and counseling.²⁵⁵

Looking outside of Minnesota, state programs offering alternatives to traditional therapies for victims have reportedly seen improved client recovery times and outcomes.²⁵⁶ “These alternatives include offering organized religious or spiritual activities, acupuncture, meditation, and music/art therapy.”²⁵⁷ After considering the needs of its sexually exploited youth, and with proper funding, there is no reason Colorado could not implement similar programs.

Finally, in order for victims’ services to be successful, the state should consider whether or not it needs to build additional shelters, hire additional staff, or allocate new or existing resources to accommodate the influx of juveniles. Overworked, under-staffed facilities will only negate many positive aspects of victims’ services—such as individualized treatment.²⁵⁸ Although decriminalization and the implementation of rehabilitative services are both important components of a successful safe harbor, on their own they may not be enough. Other considerations contribute substantially to fully realizing the purpose of safe harbor laws and ensuring the effectiveness of victims’ services. These include specialized training for personnel who come in contact with victims, the formation of a task force to connect individual victims to appropriate support programs, increased penalties for the perpetrators responsible for human-trafficking, and adequate funding from the state.

254. *Supportive Services*, MINN. DEPT HEALTH, <http://www.health.state.mn.us/injury/topic/safeharbor/services.html> [<http://perma.cc/SF9D-HMMB>].

255. *Id.*

256. CLAWSON STUDY, *supra* note 247, at 38.

257. *Id.*

258. *See id.* at 39 (discussing how victims benefit from consistency amongst case workers and service providers, but such consistency is at risk when a lack of funding results in high turnover rates).

C. Mandatory Training for Officers and Victims' Services Staff

Training is important and should not be overlooked in the implementation of a safe harbor law.²⁵⁹ Historically, states' failure to properly train their officers has resulted in further criminalization of victims.²⁶⁰ When officers are not trained in identification techniques, they "may mistakenly identify potential victims as simply engaged in the commercial sex trade—'prostitutes'—and thus arrest them and charge them with prostitution-related offenses."²⁶¹ However, as of August 2013, only twenty-one states require human trafficking training for law enforcement.²⁶²

To effectively combat human trafficking and shift law enforcement's focus to the johns and pimps, training is required across agencies.²⁶³ Because there is often substantial overlap between the illegal drug market and the sex trade, states should emphasize training across narcotics, gang, and sex trafficking police departments.²⁶⁴ "Simply sharing information about suspects across units could help build local evidence [against potential traffickers.]"²⁶⁵

Throughout the United States, human trafficking education has begun to increase, with entire systems of care receiving training, including "social service agencies, child welfare systems, juvenile justice systems, [and] healthcare systems," in addition to local law enforcement agencies.²⁶⁶ Because of this increase in training, "[m]any agencies, including law enforcement and shelter providers, have instituted better screening and interviewing procedures and protocols to assist in identifying potential victims."²⁶⁷ However, more can still be done to promote dialogue between agencies,

259. See Dempsey, *supra* note 30, at 212–13.

260. *Id.*

261. *Id.*

262. See DANK ET AL., *supra* note 131, at 281. "The [twenty-one] states requiring training are Alaska, Arkansas, California, Connecticut, Florida, Georgia, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Texas, Washington, and Wyoming." *Id.* at 281 n.81.

263. See Dempsey, *supra* note 30, at 212–13.

264. See DANK ET AL., *supra* note 131, at 281.

265. *Id.*

266. CLAWSON STUDY, *supra* note 247, at 42.

267. *Id.*

spread awareness amongst communities, and coordinate assistance to victims of human trafficking, ensuring that no one falls through the cracks.²⁶⁸ Much of this could be accomplished by creating a statewide task force.

D. Organized Task Force to Connect Victims to Services

As mentioned above, a safe harbor law should utilize a statewide task force, comprised of local law enforcement, social workers, and other juvenile advocates, to ensure that victims are connected with services and not sent back to the streets.²⁶⁹ Any safe harbor law that contemplates the need for victims' services must ensure that, in its actual implementation, there is an infrastructure in place to identify victims and connect them with the right services, or at least help clarify what services are available and to whom.

Minnesota, for example, has adopted a "No Wrong Door" service model, which was incorporated into its safe harbor bill in 2014.²⁷⁰ Hailed as a "comprehensive, multidisciplinary, and multi-state agency approach," its purpose is to ensure that "communities across Minnesota have the knowledge, skills and resources to effectively identify sexually exploited and at-risk youth."²⁷¹ As part of its multidisciplinary approach to sex trafficking, the county attorney's office works closely with local law enforcement, as well as child protection workers, doctors, nurses, and victim advocacy groups.²⁷² All of these professionals come together to participate in a series of conferences designed to address the "best practices for identifying and intervening with youth and traffickers."²⁷³

More recently, the federal government enacted a law that allows the

268. *Id.* at 42–43.

269. *See id.* at 40 (reporting that "collaboration among law enforcement, juvenile and family court judges, child protection services, and youth shelters and programs was a promising and necessary practice for identifying and meeting the needs of these child victims.").

270. *Safe Harbor Minnesota*, MINN. DEP'T HEALTH, <http://www.health.state.mn.us/injury/topic/safeharbor/> [<http://perma.cc/ZG8T-NG6S>].

271. *Id.*

272. *Protocol Development and Training*, MINN. DEP'T HEALTH, <http://www.health.state.mn.us/injury/topic/safeharbor/protocol.html> [<http://perma.cc/96M5-32B9>].

273. *Id.*

Attorney General [to make] grants to eligible entities to develop, improve, or expand domestic child trafficking deterrence programs that assist law enforcement officers, prosecutors, judicial officials, and qualified victims' services organizations in collaborating to rescue and restore the lives of victims, while investigating and prosecuting offenses involving child human trafficking.²⁷⁴

Under the new law, Colorado would be eligible to receive federal grant money to assist in its creation of an organized sex-trafficking task force.²⁷⁵

E. Increased Penalties for Johns

Currently, “[y]oung girls are prosecuted at reportedly higher rates than even the men who exploit them.”²⁷⁶ With a move towards decriminalizing minor prostitutes, it is crucial for a safe harbor law to address all sides of the trafficking machine, including the buyers and sellers who fuel the illegal sex trade. “For every buyer there has to be a product to sell and pimps and traffickers are continuously trying to fill that product That means our children, everybody’s children, are at risk.”²⁷⁷ Under a decriminalization statutory scheme, minors who are arrested for prostitution will not face criminal penalties—however, there must be safeguards in place to prevent their traffickers from continuing to abuse them.²⁷⁸

Minnesota has addressed this parameter by implementing a step-up penalty scheme for johns.²⁷⁹ Under the law, anyone who purchases an individual under thirteen years of age for the

274. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, § 103(a), 129 Stat. 227.

275. *Id.*

276. Anitto, *supra* note 32, at 18.

277. Galatas, *supra* note 181 (quoting Kimberly Love, a volunteer lobbyist with the League of Women Voters of Colorado).

278. See LLOYD *supra* note 54, at 180 (discussing a study that found 67% of the 475 people studied, all of whom worked in the commercial sex industry, “met the criteria for PTSD, a figure that rivals that of combat veterans”); see also Parrott, *supra* note 252 (discussing the need for long-term, secure housing or shelter because “traffickers continue to seek their victims; victims are encouraged to recruit other youth sometimes with the threat of repercussions if they do not comply; and the trauma of the victims’ experiences can make it difficult to prevent them from running away”)

279. MINN. STAT. ANN. § 609.324 (West, Westlaw through end of the 2015 Regular and First Special Sessions).

purposes of engaging in “sexual penetration or sexual contact” faces a maximum prison sentence of twenty years and a fine of not more than \$40,000, or both.²⁸⁰ Alternatively, if the individual hired was under the age of sixteen, but at least thirteen years of age, the penalty would be up to ten years in prison and a fine up to \$20,000.²⁸¹ Finally, if the individual hired was under the age of eighteen, but at least sixteen years of age, the maximum penalty faced is five years in prison and a fine up to \$10,000.²⁸² While there may be better ways to hold johns accountable (perhaps by not drawing distinctions amongst age groups), increased penalties of some kind should accompany a safe harbor law.

Although Colorado has already increased criminal penalties for trafficking or buying the sexual services of a minor,²⁸³ it should also establish a statutory right to civil penalties.²⁸⁴ Minnesota has a bill pending in its legislature that would allow a victim to sue an accused trafficker, pimp, or john for damages, both actual and special, including damages for emotional distress, as well as injunctive relief.²⁸⁵ Although the bill imposes a six-year statute of limitations, it does allow a victim to sue regardless of whether or not criminal charges have been brought or conviction has been obtained.²⁸⁶ While harsher penalties may deter human trafficking and save state resources from a criminal justice perspective, Colorado will need to allocate adequate funding to victims’ services for them to be successful.

F. Adequate Funding to Implement and Maintain Services

Finally, and perhaps most importantly, Colorado must back its legislation with the funding necessary to ensure success. For instance, Minnesota lawmakers ensured the success of its safe harbor law with an initial investment of \$2.8 million.²⁸⁷ Although \$2.8 million was only 21% of the funding

280. *Id.* § 609.324(1)(a)(2).

281. *Id.* § 609.324(1)(b)(2).

282. *Id.* § 609.324(1)(c)(2).

283. Paul, *supra* note 14.

284. H.F. 829, 89th Leg., Reg. Sess. (Minn. 2015) (introduced on Feb. 12, 2015 to replace section 609.284 of the Minnesota Code).

285. *Id.*

286. *Id.*

287. Parrott, *supra* note 252.

that advocates initially requested, it has nonetheless been an essential aspect of Minnesota's accomplishments under its law.²⁸⁸ Of the \$2.8 million, \$1 million went towards housing and shelter; \$1 million went towards hiring, retaining, and training staff, including a Safe Harbor director; and \$800,000 went to the Department of Public Safety to train local law enforcement.²⁸⁹ This money has allowed Minnesota to increase the number of beds in its women's shelters²⁹⁰ and to provide culturally-appropriate victims' services, as well as other needed services, such as family counseling and chemical dependency assessments.²⁹¹

In contrast, Colorado previously budgeted only \$170,948 to accompany its proposed safe harbor law.²⁹² Although the bill failed to pass with the safe harbor provisions, the sizeable difference between Minnesota's budget and Colorado's budget is telling. Colorado's proposed bill allocated \$75,000 to best practices research, \$70,000 to an expert consultant, and \$25,948 to training.²⁹³ The bill did not account for additional beds at women's shelters, the hiring and training of new staff, or the cost of improving existing services, or adding new ones.²⁹⁴ Had it passed, its success would have been doubtful.

Going forward, if Colorado desires its safe harbor law to be successful, it needs to invest more money. According to research conducted by the Indian Women's Resource Center at the University of Minnesota, "[e]arly intervention to avoid sex trading and trafficking of Minnesota's female youth passes a rigorous benefit-cost test with a return on investment of \$34 in benefit for each \$1 in cost."²⁹⁵ Although the study had wide variation, as the issue of adolescent sex trafficking is complex and not well-documented, it found that state investment in safe harbor laws would greatly reduce public expenses otherwise

288. *Id.*

289. *Id.*

290. It costs approximately \$500,000 a year to fully fund six additional beds at a secure emergency shelter. *Id.*

291. *Id.*

292. H.B. 1019 FISCAL NOTE, *supra* note 25, at 2.

293. *Id.*

294. *Id.*

295. LAURENT MARTIN, ET AL., EARLY INTERVENTION TO AVOID SEX TRADING AND TRAFFICKING OF MINNESOTA'S FEMALE YOUTH: A BENEFIT-COST ANALYSIS, EXECUTIVE SUMMARY 4 (2012), <http://www.castla.org/templates/files/miwr-benefit-cost-study-summary.pdf> [<http://perma.cc/Q7VW-H9CW>].

paid for by taxpayers over the life of a prostitute.²⁹⁶ These expenses include the cost of “untreated medical issues, poor mental health, pain and suffering, the impact of multi-generational trauma and poverty, the full cost of welfare payments, and lost human potential.”²⁹⁷ The study concluded that not only does financing a safe harbor law ensure its successful implementation but it actually saves the state money in the long run.²⁹⁸

Statistics suggest that not only are Colorado and Minnesota relatively the same size, but their populations are also equally wealthy. Therefore, a strong argument could be made that Colorado should adopt a safe harbor budget like that adopted in Minnesota. In 2014, Colorado’s population was approximately 5,355,866,²⁹⁹ and Denver was its most populous city, with 663,862 residents.³⁰⁰ Comparatively, Minnesota’s 2014 population was approximately 5,457,173,³⁰¹ and Minneapolis was its most populous city with 400,270 residents.³⁰² While population is not the only indicator of the city’s sex-trafficking economy, it is certainly a major factor.³⁰³

Although the size of Minnesota’s underground sex economy is unknown, it is likely similar in size to Colorado’s, if not a little smaller due to Minnesota’s smaller population. Additionally, the 2013 income per capita in Colorado was \$46,897,³⁰⁴ and the 2013 income per capita in Minnesota was \$47,500.³⁰⁵ In the fiscal year of 2014–2015, Colorado allocated

296. *Id.*

297. *Id.* at 6.

298. *Id.*

299. *State & County QuickFacts: Colorado*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/08000.html> [<http://perma.cc/7UCM-MEQC>].

300. *State & County QuickFacts: Denver (city), Colorado*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/08/0820000.html> [<http://perma.cc/3DS4-YGFR>].

301. *State & County QuickFacts: Minnesota*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/27000.html> [<http://perma.cc/7YEH-2BLJ>].

302. *Quick Facts Beta: Minneapolis City, Minnesota*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045214/2743000,00> [<http://perma.cc/CN82-43QM>].

303. See DANK ET AL., *supra* note 131, at 51 (noting that part of the reason why Dallas has an underground sex economy that is reportedly 2.5 times greater than Denver’s is that in 2007, the population of the Dallas metro area was 2.5 times greater than the population of the Denver metro area).

304. *Graph: Per Capita Personal Income in Colorado*, FED. RES. BANK ST. LOUIS, <https://research.stlouisfed.org/fred2/graph/?id=COPCPI> [<https://perma.cc/ZM5H-BWZ9>].

305. *Graph: Per Capita Personal Income in Minnesota*, FED. RES. BANK ST.

\$9.78 billion to the Department of Health and Human Services, and \$1.82 billion to the Department of Public Safety/Courts.³⁰⁶ While further economic analysis would be appropriate, the state legislature should consider allocating a budget on par with Minnesota's \$2.8 million, in order to ensure the success of its safe harbor law.

Finally, it is important to note that Minnesota's success has inspired federal legislation that offers financial incentives for states to implement their own, similar safe harbor laws.³⁰⁷ The Justice for Victims of Trafficking Act, which was signed into law by President Obama on May 29, 2015, provides incentives for states that pass safe harbor laws in line with the TVPA.³⁰⁸ By adopting a law that encompasses all or most of the parameters discussed above (specifically granting all persons under the age of eighteen immunity from prosecution for prostitution), Colorado should qualify for federal funding, which would supplement the state's budget.³⁰⁹

Without an adequately funded safe harbor law, many victims will likely find themselves back on the streets and into the arms of their exploiters, perpetuating the cycle of abuse. The system will continue to fail them. Looking at the big picture, \$2.8 million seems like a small price to pay to protect Colorado's sexually exploited youth, especially considering the possibility of saving the state money in the long-run.

CONCLUSION

For a safe harbor law to be effective long-term, meaning that it assists minors currently trapped in the sex trade and prevents them from falling back in after rehabilitation, a safe harbor law must do more than just decriminalize prostitution for minors. It should build a network that can address the physical, emotional, and psychological needs of victims.³¹⁰

LOUIS, <https://research.stlouisfed.org/fred2/graph/?id=MNPCPI> [<https://perma.cc/EFA3-ZNHT>].

306. JOHN W. HICKENLOOPER, OFFICE OF THE GOVERNOR, FY 2015-16 BUDGET REQUEST 11 (2014), <https://docs.google.com/a/colorado.edu/file/d/0B0TNL0CtD9wXZ1JoTU8wZ0wxWlU/edit> [<https://perma.cc/X3ZQ-TAXE>].

307. Prather, *supra* note 202.

308. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, § 601, 129 Stat. 227.

309. Prather, *supra* note 202.

310. See Parrott, *supra* note 252 (noting that physical and emotional support is necessary to prevent trafficking victims from returning to their traffickers).

Reporting a child to social services is not enough.³¹¹ A victim of human trafficking has unique needs—needs that require specialized training for the law enforcement personnel and social workers involved.³¹² Without access to victims' services, a minor is unlikely to gain traction outside of the sex trade.³¹³ Thus, an adequate safe harbor law not only protects minors, but also provides them with access to well-funded victims' services.³¹⁴

To remedy inconsistencies currently present in the law, Colorado must implement a comprehensive safe harbor law that takes into consideration the six parameters discussed herein. Such a law should include the following provisions:

- (1) Full decriminalization of all minors under the age of eighteen who are arrested for prostitution-related offenses, specifically those that involve consent to commercial sex;
- (2) Recognition by local law enforcement, social services, and the state that all minors arrested for prostitution-related offenses are victims of sex trafficking, and therefore, should not be treated as juvenile delinquents, but as trauma-victims, with access to well-funded and fully-staffed services;
- (3) Specialized training for local law enforcement officers, first responders, health care officials, child welfare officials, juvenile justice personnel, prosecutors, and judicial personnel;
- (4) Implementation of a comprehensive, multidisciplinary, and state-wide agency approach to ensure that communities across Colorado have the knowledge, skills, and resources to effectively identify sexually exploited and at-risk youth. Under this agency, youth will be provided with victim-centered, trauma-informed services, record sealing, and safe

311. *See id.*

312. Minnesota's safe harbor law recognizes the importance of training, as indicated by the \$800,000 allocated to the training. *Id.*

313. *See id.*

314. *See* MINN. STAT. § 145.4716 (2014) (requiring the director of child sex trafficking prevention to seek funding that will benefit victims); Parrott, *supra* note 252.

housing;

(5) Increased criminal and civil penalties for traffickers, pimps, and johns; and

(6) Adequate funding.³¹⁵

As Colorado considers whether or not to enact a comprehensive safe harbor law, it should look at what has worked well for other states. A model like Minnesota's, which emphasizes decriminalization and sufficient state assistance,³¹⁶ would create continuity in Colorado's legal system; protect minors from unjust prosecution; provide minors with much needed access to victims' services; and free-up resources so that local law enforcement can turn their focus to the traffickers, pimps, and johns who make up Denver's \$40–60 million underground commercial sex economy.³¹⁷

Although Colorado has made great strides in its struggle to end human trafficking, it still has a long way to go to ensure that its children, like Dallas Cardenas's victim, are always treated as victims, not criminals.

315. See *supra* Part III.

316. See Safe Harbor for Sexually Exploited Youth Act of 2011, ch. 1, art. 4, 2011 Minn. Laws 1st Spec. Sess. 15.

317. Grant, *supra* note 133; MORRIS ET AL., *supra* note 77, at 11.