

---

---

## Note

### **From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad**

*Moira Heiges\**

In congressional hearings on the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005, Leisa B. testified about her experiences as a “victim of domestic [sex] trafficking.”<sup>1</sup> Leisa is a U.S. citizen who was trafficked at the age of seventeen, when a boyfriend she met through a chat service persuaded her to move to Washington D.C.<sup>2</sup> Instead of the promised cars, clothes, and freedom, her boyfriend introduced her to a violent world of street prostitution.<sup>3</sup> Over the next few years, Leisa experienced rape and beatings at the hands of her customers and pimps.<sup>4</sup> She was arrested and detained several times before ending up at a social service agency that offered her shelter and counseling.<sup>5</sup> As presented to the members of Congress, Leisa B. is a “victim” of sex trafficking.<sup>6</sup> However, to state and local law enforcement officials across The U.S., Leisa is simply a prostitute, more deserving of jail time than social services.

---

\* J.D. Candidate 2010, University of Minnesota Law School; B.A. 2004, Yale University. The author thanks Professor Beverly Balos, Angela Bortel, Karen Stauss, and Police Officers John Bandemer, Matt Wentz, and Heather Weyker for their guidance and insight. Thanks also to Elizabeth Borer and Anna Richey-Allen for their feedback throughout the writing process. Finally, the author is grateful to her parents Mike and Cecilia Heiges, and to her friends and family for their encouragement and support. Copyright © 2009 by Moira Heiges.

1. *Exploiting Americans on American Soil: Domestic Trafficking Exposed: Hearing on H.R. 972 Before the Commission on Security and Cooperation in Europe*, 109th Cong. 22–23 (2005) [hereinafter *2005 Commission Hearing*] (statement of Leisa B., survivor of domestic trafficking).

2. *Id.* at 22.

3. *Id.* at 22–23.

4. *Id.* at 23.

5. *Id.*

6. *Id.* at 22.

Since the passage of the Trafficking Victims Protection Act (TVPA) of 2000,<sup>7</sup> federal anti-trafficking policy has expanded in scope to address abusive practices and the exploitation of minors in the U.S. prostitution industry.<sup>8</sup> Yet, while federal law now prioritizes protecting victims and deterring traffickers, state prostitution enforcement still indiscriminately targets persons in prostitution, largely to the exclusion of those who engage in, legitimize, and finance trafficking.<sup>9</sup> The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 explicitly addresses state prostitution enforcement.<sup>10</sup> Yet while reiterating the illegality of *all* prostitution-related conduct, like its predecessors, the 2008 Act ultimately fails to implement reforms that would bring current prostitution enforcement practices into alignment with anti-trafficking goals.<sup>11</sup>

The federal government's failure to coordinate sex trafficking and prostitution enforcement represents a loss not only for domestic trafficking victims, but also for American leadership in the international counter-trafficking movement. Although the U.S. threatens sanctions against nations who fail to combat trafficking,<sup>12</sup> and casts itself as a champion in the crusade against modern slavery,<sup>13</sup> it remains the only industrialized

7. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at 22 U.S.C. §§ 7101–7110 (2006)).

8. See, e.g., Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 201, 119 Stat. 3558, 3567–69 (2006) (codified as amended at 42 U.S.C. § 14044) (enacting provisions aimed at preventing domestic trafficking).

9. See, e.g., Kate DeCou, *U.S. Social Policy on Prostitution: Whose Welfare is Served?*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 427, 434–36 (1998) (noting historical and continuing trends of unequal enforcement both nationally and in select U.S. cities).

10. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 225, 122 Stat. 5044, 5072 (codified as amended at 22 U.S.C.A. § 7101 (West 2009)).

11. *Id.* § 225(b) (promoting a “comprehensive” approach to modernize the language used in state prostitution laws, rather than a reformative approach that addresses counterproductive prostitution enforcement practices).

12. See Victims of Trafficking and Violence Protection Act of 2000 § 7107 (enabling the President to withhold aid from nations that fail to comply with minimum U.S. anti-trafficking standards).

13. See U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2006, at 1 (2007) [hereinafter 2007 DOJ REPORT] (“[T]he United States has led the world in the fight against this terrible crime.”).

democracy where the majority of trafficking victims are its own citizens.<sup>14</sup> Without acknowledging the ways in which the dominant prostitution enforcement paradigm obstructs anti-trafficking policies, it is unlikely that the U.S. will achieve significant success in reducing sex trafficking either in this country or abroad.

This Note argues that reforming counterproductive prostitution enforcement should be an explicit and central, rather than implicit and peripheral, feature of federal anti-trafficking policy. Part I defines “trafficking” in contrast to “prostitution,” and examines the evolution of related federal and state policies. Part II demonstrates how current state prostitution enforcement practices frustrate anti-trafficking goals, and analyzes the arguments against federal involvement in prostitution reform. Part III demonstrates how victim-centered, demand-targeted prostitution reforms would promote both local and national interests and provide a useful model for other nations.

## I. PROSTITUTION AND SEX TRAFFICKING IN U.S. LAW

Recent research has begun to shed light on the market-based nature of sex trafficking, and the significant incidence of trafficking within the domestic prostitution industry.<sup>15</sup> As this increasingly intertwined relationship between prostitution and sex trafficking emerges, law enforcement’s response to commercial sex violations should adjust proportionately.

### A. SEX TRAFFICKING: CURRENT DEFINITIONS

Although “traffic” commonly denotes movement, modern legal definitions of trafficking hinge upon the use of force,

---

14. See TEX. OFFICE OF THE ATTORNEY GEN., THE TEXAS RESPONSE TO HUMAN TRAFFICKING 1 (2008), [http://www.oag.state.tx.us/AG\\_Publications/pdfs/human\\_trafficking.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/human_trafficking.pdf) [hereinafter 2008 TEXAS REPORT] (“Though many victims are trafficked into the United States each year, many more are trafficked domestically within the U.S.”); Andrew F. Tully, *Experts Say Human Trafficking A Major Problem In U.S.*, RADIO FREE EUR./RADIO LIBERTY, July 11, 2008, [http://www.rferl.org/content/experts\\_say\\_human\\_trafficking\\_a\\_major\\_problem\\_in\\_us/1183179.html](http://www.rferl.org/content/experts_say_human_trafficking_a_major_problem_in_us/1183179.html) (“[W]e are the only advanced democracy in the world that has the preponderance of its victims be its own citizens . . .”).

15. See, e.g., JANICE G. RAYMOND & DONNA M. HUGHES, COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS 9 (2001) (noting results from a study of U.S. women in prostitution revealing that ninety percent had been verbally threatened, eighty-six percent had been physically abused, and seventy percent had been sexually assaulted by their pimps).

fraud, or coercion to exploit another for labor or sex.<sup>16</sup> According to a 2001 United Nations protocol, the crime of “human trafficking” involves the recruitment, receipt, or harboring of another person for prostitution or exploitative work, by means of threat, force, abduction, deception, coercion, the giving or receiving of benefits, abuse of power, or abuse of another’s position of vulnerability.<sup>17</sup> With respect to U.S. definitions, the 2000 TVPA criminalizes “severe forms of trafficking,” in which force, fraud, or coercion is used to exploit a person for prostitution, including the exploitation of a minor for prostitution by any means.<sup>18</sup>

Sex traffickers tend to target children and women, using creative schemes “designed to trick, coerce, and win the confidence of potential victims” in order to profit from the consumer demand for commercial sex.<sup>19</sup> Thus, victims may be subject to physical assault, rape, and psychological abuse, including threats, deceit and coercion.<sup>20</sup> In focusing on these exploitative practices, U.S., federal law regards those who employ such tactics as “traffickers”<sup>21</sup> and the prostituted persons against whom such tactics are employed as “victims.”<sup>22</sup> This designation, however, falls in tension with state laws which criminalize all prostitution acts without exempting juveniles, or adults who have been prostituted through force, fraud, or coercion.<sup>23</sup>

---

16. See U.S. DEPT OF STATE, *TRAFFICKING IN PERSONS REPORT 6* (2008) [hereinafter 2008 TIP REPORT] (“A victim need not be physically transported from one location to another in order for the crime to fall within [trafficking] definitions.”).

17. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, art. 3(a), U.N. Doc. A/RES/55/25/Annex II (Nov. 15, 2000) [hereinafter 2000 U.N. Protocol].

18. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102 (2006).

19. 2008 TIP REPORT, *supra* note 16, at 7.

20. Victims of Trafficking and Violence Protection Act of 2000, § 7101(b)(6)–(7).

21. *Id.* §§ 7108–7109.

22. *Id.* § 7102(13) (defining as a “victim of a severe form of trafficking” anyone who is recruited, harbored, or provided for commercial sex acts through force, fraud or coercion, or any minor who is recruited, harbored, or provided through any means).

23. *But see* MINN. STAT. § 609.325 (2005) (providing an affirmative defense to prostitution where the defendant can prove that she or he acted under a credible threat of physical harm). Notably, this defense is narrower than the federal victim definition, which includes all minors, as well as any adult pros-

## B. PROSTITUTION: TRADITIONAL DEFINITIONS IN TENSION WITH MODERN TRENDS

Prostitution is generally understood as sexual activity for hire.<sup>24</sup> With the exception of several regulated counties in Nevada<sup>25</sup> and limited circumstances in Rhode Island,<sup>26</sup> prostitution is comprehensively outlawed in every state.<sup>27</sup> In contrast to sex trafficking, prostitution has traditionally been viewed as a prostitute's offense against publicly accepted sexual and social norms.<sup>28</sup> In early cases, a prostitute was defined as "a female given to indiscriminate lewdness for gain,"<sup>29</sup> and today, prostitution police units are still designated "vice" squads.<sup>30</sup> Whereas trafficking laws address the harms *inflicted upon* prostituted persons, prostitution laws are intended to combat moral corruption, and the spread of disease, crime, and other collateral social harms thought to be *caused by* prostitutes.<sup>31</sup> Where trafficking laws presume nonconsent,<sup>32</sup> prostitution laws presume prostitution acts to be voluntary<sup>33</sup> and therefore criminally sanctionable.

---

tituting through coercion or fraud. See Victims of Trafficking and Violence Protection Act of 2000 § 7102(13).

24. See 63C AM. JUR. 2D *Prostitution* § 1 (2008) (offering several definitions of "prostitution").

25. See NEV. REV. STAT. § 201.354 (2007); NEV. REV. STAT. § 244.345 (2007).

26. See R.I. GEN. LAWS § 11-34-1 to -11 (2002) (generally outlawing prostitution). *But see* Tracy Breton & Amanda Milkovits, *State Law Foils Efforts to Thwart Prostitution*, PROVIDENCE J. BULL., May 24, 2005, at A01, available at 2005 WLNR 8288112 (noting a loophole in Rhode Island law that decriminalizes prostitution acts that occur indoors).

27. See Daniel J. Franklin, *Prostitution and Sex Workers*, 8 GEO. J. GENDER & L. 355, 356 & n.5 (2007) (listing state prostitution statutes).

28. See, e.g., *L'Hote v. New Orleans*, 177 U.S. 587, 596 (1900) (upholding the prohibition of prostitution as a valid exercise of state police power to protect against the corruption of public morals).

29. *State v. Stoyell*, 54 Me. 24, 27 (1866).

30. See Heidi Machen, *Women's Work: Attitudes, Regulation, and Lack of Power Within the Sex Industry*, 7 HASTINGS WOMEN'S L.J. 177, 196 n.172 (1996) (noting the connection between the labeling of police units assigned to combat prostitution as "vice" squads, and the equation of commercial sex with immorality).

31. See, e.g., *State v. Schultz*, 582 N.W.2d 113, 117 (Wis. Ct. App. 1998) (upholding the state prostitution statute's "clear secular purpose to protect public health and welfare" and prevent other forms of criminal activity).

32. See 2000 U.N. Protocol, *supra* note 17, art. 3(b) (indicating the irrelevance of victims' "consent" to be trafficked).

33. See Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN'S L.J. 137, 156 (2004) (noting the opinion of the U.N. Special Rapporteur that prostitution

The 2000 TVPA however, has created substantial legal ambiguity between presumably “voluntary” prostitution acts and “coercive” forms of sex trafficking. According to the TVPA, any juvenile prostituting under a pimp is now considered a victim of trafficking,<sup>34</sup> and anecdotal reports suggest that these “victims” represent a growing demographic among persons in prostitution.<sup>35</sup> Researchers estimate that some 300,000 U.S. children are currently involved in, or at risk for, commercial sexual exploitation, including trafficking for prostitution.<sup>36</sup> According to one Justice Department representative, juveniles are now involved in domestic prostitution in “every major city and in suburbia.”<sup>37</sup>

Experts attribute the recent proliferation of juvenile prostitution to the ease with which pimps can access and market youth for sex in today’s commercial and media-savvy culture.<sup>38</sup> Pimps target vulnerable minors in internet chat rooms or shopping malls,<sup>39</sup> and then involve them in romantic relationships that cater to their emotional needs.<sup>40</sup> To establish loyalty and obedience, pimps often “season” minors into increasingly severe forms of exploitation through threats, violence, and gra-

---

should be regarded as consensual in the absence of proof of coercion, force, or abuse of power).

34. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1487 (codified as amended at 22 U.S.C. § 1591 (2006)).

35. See, e.g., AMY FARRELL ET AL., NE. UNIV. INST. ON RACE AND JUSTICE, UNDERSTANDING AND IMPROVING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING 206 (2008) (noting the increase in trafficking of minors for prostitution in Boston); Geneva O. Brown, *Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds Against Teenaged Prostitutes*, 57 CATH. U. L. REV. 471, 494 (2008) (noting that arrests for teen prostitution in Las Vegas have “soared” since the mid-1990s).

36. See RICHARD J. ESTES & NEIL ALAN WEINER, CTR. FOR THE STUDY OF YOUTH POLICY, UNIV. OF PA., THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 144 (2001) (estimating that between 244,000 and 325,000 U.S. children may be at risk of commercial sexual exploitation).

37. Suzanne Smalley, *This Could Be Your Kid*, NEWSWEEK, Aug. 18, 2003, at 44, 46.

38. See *2005 Commission Hearing*, *supra* note 1, at 33 (statement of Frank Barnaba, President, Paul & Lisa Program) (highlighting a 2001 Pew Study finding that up to eighty-nine percent of prostitution solicitations occur online).

39. *Id.* at 32.

40. *Id.* at 26 (statement of Norma Hotaling, Director, Standing Against Global Exploitation (SAGE) Project).

dual socialization in the sex industry.<sup>41</sup> At the same time, the growing market for child pornography<sup>42</sup> and prostitution makes pimping minors increasingly profitable,<sup>43</sup> while the lack of criminal enforcement ensures a relatively low level of risk.<sup>44</sup>

Experts have also indicated that a significant percentage of adults in prostitution may also be victims of sex trafficking.<sup>45</sup> According to one State Department expert, the majority of women in prostitution have been subject to forceful tactics in connection with their work in prostitution.<sup>46</sup> Local community policing studies have estimated that one-third of persons in domestic prostitution are trafficked women.<sup>47</sup> In this sense, the enactment of federal sex trafficking statutes has articulated an undefined but substantial area of overlap between persons in prostitution and victims of trafficking. Prostitution is no longer simply a morality offense perpetrated by prostitutes; it is also the primary nexus of victimization for more serious sex trafficking crimes.<sup>48</sup>

---

41. *Id.*; see also *id.* at 47 (statement of Ernie Allen, President, National Center for Missing and Exploited Children) (“[Child sex trafficking] tends to be more seduction than abduction.”).

42. See, e.g., Robert D. Richards & Clay Calvert, *Untangling Child Pornography from the Adult Entertainment Industry: An Inside Look at the Industry’s Efforts to Protect Minors*, 44 CAL. W. L. REV. 511, 513 (2008) (noting that in 2007, the congressionally mandated CyberTipline “received its 500,000th report of suspected child pornography and other child exploitation crimes”).

43. See 151 CONG. REC. H11,570 (daily ed. Dec. 14, 2005) (statement of Rep. Scott) (citing a study in Oakland, California that identified 155 pimps who each generated an average revenue of approximately \$200,000 per year by exploiting minors between eleven and fifteen years of age).

44. See 2005 Commission Hearing, *supra* note 1, at 35 (statement of Ernie Allen, President, National Center for Missing and Exploited Children) (adding that pimping carries “far less risk” than selling drugs or firearms).

45. John R. Miller, Op-Ed., *The Justice Department, Blind to Slavery*, N.Y. TIMES, July 11, 2008, at A17 (“Those who work with trafficking victims and those who have interviewed survivors believe that most prostitutes are poor, young, abused, harassed, raped, beaten and under the control of pimps against their will.”).

46. Paula Goode, U.S. Dep’t of State, Office to Monitor and Combat Trafficking in Persons, Letter to the Editor, *Prostitution’s Brutality*, N.Y. TIMES MAG., Mar. 18, 2007, at 11.

47. GRAEME R. NEWMAN, U.S. DEP’T OF JUSTICE, THE EXPLOITATION OF TRAFFICKED WOMEN 31 (2006), <http://www.cops.usdoj.gov/files/ric/Publications/e02061007.pdf>; see also *id.* at 6 (noting the need for local police to “identify trafficking victims who are hidden in their communities”).

48. Cf. Catrien Bijleveld, *Sex Offenders and Sex Offending*, 35 CRIME & JUST. NETH. 319, 321 (2007) (noting that sex offenses in the Netherlands used to be seen as moral violations, but are now increasingly viewed as violent

## C. FEDERAL AND STATE POWER IN THE REGULATION OF SEX TRAFFICKING AND PROSTITUTION

Criminal law enforcement relating to public morality has traditionally fallen within the province of the states' police powers.<sup>49</sup> As early as 1884, the Supreme Court characterized state police powers as those regulations which "promote the health, peace, morals, education, and good order of the people."<sup>50</sup> Principles of federalism suggest that prostitution laws which are enacted to maintain social order and morality should be determined by state, rather than federal, legislation.<sup>51</sup> For example, in *United States v. Wolf*, the Seventh Circuit ruled that states bear "[t]he primary responsibility for policing sexual misconduct."<sup>52</sup> Legal precedent thus suggests that states, rather than the federal government, have the primary interest in regulating prostitution for the maintenance of public order and morality.

The federal government, however, has a long history of regulating prostitution. For example, early immigration laws prohibited the transport of foreign women into the U.S. for prostitution.<sup>53</sup> In 1910, Congress passed the Mann Act, making it a federal crime to transport any woman or girl in interstate commerce for the purpose of prostitution, "debauchery," or any other "immoral purpose."<sup>54</sup> More recent legislation has banned solicitation near military bases,<sup>55</sup> and with minors in foreign countries.<sup>56</sup>

---

crimes, particularly in cases involving the use of force or against vulnerable victims).

49. See, e.g., *Keller v. United States*, 213 U.S. 138, 144 (1909) (finding that while "the keeping of a house of ill-fame is offensive to the moral sense," jurisdiction over such moral offenses emanates from state police powers rather than Congress's enumerated powers).

50. *Barbier v. Connolly*, 113 U.S. 27, 31 (1884).

51. See U.S. CONST. amend. X ("[P]owers not delegated to the United States . . . are reserved to the States respectively, or to the people.").

52. *United States v. Wolf*, 787 F.2d 1094, 1097 (7th Cir. 1986).

53. See Act of Mar. 26, 1910, ch. 128, § 2, 36 Stat. 263–64 (codified as amended at 8 U.S.C. § 1328 (2006)). See generally Ariela R. Dubler, *Immoral Purposes: Marriage and the Genus of Illicit Sex*, 115 YALE L.J. 756, 769–71 (2006) (discussing the role of prostitution regulations in the Immigration Acts of 1875 and 1907).

54. See White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2006)).

55. See Act of May 24, 1949, ch. 139, § 35, 63 Stat. 94 (codified as amended at 18 U.S.C. § 1384 (2006)).

56. See Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 105, 117 Stat. 650, 653–54



Courts have generally upheld these interstate and international prostitution laws under Congress's immigration and commerce powers. For example, in *Hoke v. United States*, the Court upheld the Mann Act's prohibition of interstate travel for prostitution, since federal commerce powers include the power to prohibit the transport of goods or persons for immoral purposes.<sup>57</sup> Thus, motivated by security interests as well as concern for the well-being of prostituted persons, Congress has long exercised its Commerce Clause power to regulate prostitution.

#### D. THE FEDERAL APPROACH TO SEX TRAFFICKING UNDER THE TVPA

Congress passed the TVPA with broad bipartisan support in 2000 in an effort to abolish trafficking in persons, whether for prostitution or labor, as a "modern form of slavery."<sup>58</sup> The original 2000 TVPA "focused primarily" on prosecuting international traffickers and protecting foreign national victims.<sup>59</sup> With respect to sex trafficking, however, U.S. efforts since 2003 have increasingly emphasized *domestic* trafficking—that is, the trafficking of U.S. citizens for prostitution by U.S. pimps.<sup>60</sup>

For example, in 2003, the FBI, in partnership with the Department of Justice (DOJ) and the National Center for Missing and Exploited Children, created the Innocence Lost Initiative to combat the increasing incidence of juvenile prostitution.<sup>61</sup> This coalition subsequently established task forces comprised of

---

(codified as amended at 18 U.S.C. § 2423(c) (2006)).

57. See *Hoke v. United States*, 227 U.S. 308, 320 (1913). By analogy, the Court reasoned that if Congress could proscribe the interstate transport of lottery tickets, then it could likewise prohibit "the systematic enticement to and the enslavement in prostitution . . . of women, and, more insistently, of girls." *Id.* at 322.

58. Victims of Trafficking Violence Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466 (2000) (codified as amended at 22 U.S.C. § 7101 (2006)).

59. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 2(3), 119 Stat. 3558, 3558–59 (2006) (codified as amended at 22 U.S.C. § 7101 (2006)).

60. *Id.* § 2(6) (acknowledging that homeless and runaway children in The U.S. are particularly vulnerable to being trafficked for sexual exploitation).

61. See U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2007, at 22 (2008), available at <http://www.usdoj.gov/ag/annualreports/tr2007/agreporhumantrafficking2007.pdf> [hereinafter 2008 DOJ REPORT] (discussing the history and progress of the Innocence Lost Initiative).

law enforcement agencies and NGOs in forty-two cities to help identify victims and prosecute their traffickers.<sup>62</sup> In 2005 and again in 2008, Congress reinforced its commitment to address domestic sex trafficking by funding residential facilities for juvenile victims.<sup>63</sup> These policies reflect a growing understanding at the federal level that sex trafficking is a significant problem, not only in developing countries, but also in cities and states throughout the United States.

#### E. THE STATES' APPROACH TO TRAFFICKING AND PROSTITUTION

Since 2003, thirty-nine states have adopted their own anti-trafficking criminal provisions.<sup>64</sup> Because of the time and resources required to prove force, fraud, and coercion, however, prosecutors rarely charge defendants under these statutes.<sup>65</sup>

In contrast, prostitution crimes, which do not require proof of force, fraud, or coercion, are liberally enforced.<sup>66</sup> Unfortunately, rather than focusing on reducing the market for sex trafficking, police, prosecutors, and courts have typically viewed pimps and purchasers as trivial or derivative offenders,<sup>67</sup> while targeting prostituting persons for arrest and prosecution.<sup>68</sup> Traditionally, pimping laws merely aimed to discourage third parties from “expanding an existing prostitute’s

62. See 2008 TEXAS REPORT, *supra* note 14, at 5 (discussing the allocation of federal funding to local task forces).

63. See Trafficking Victims Protection Reauthorization Act of 2005 § 203(a); see also William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 213, 122 Stat. 5044, 5064–66 (codified as amended at 22 U.S.C.A. § 7105 (West 2009)) (requiring federal agencies to establish programs to “assist United States citizens” who are victims of trafficking).

64. POLARIS PROJECT, U.S. POLICY ALERT ON HUMAN TRAFFICKING 1 (2008), <http://www.polarisproject.org/images/docs/alerts/policy%20alert%20final%20june%2008.pdf>.

65. See, e.g., 2008 TEXAS REPORT, *supra* note 14, at 34 (citing federal experts who estimate that trafficking investigations average between 200 and 280 days).

66. See OFFICE OF LEGAL POLICY, U.S. DEP'T OF JUSTICE, DOJ POSITION ON H.R. 3887, at 1, <http://www.usdoj.gov/olp/pdf/doj-position-on-hr3887.pdf> (stating that local law enforcement agencies effect approximately 100,000 annual prostitution arrests nationally).

67. See, e.g., *People v. Patton*, 133 Cal. Rptr. 533, 537 (Cal. Dist. Ct. App. 1976) (noting the potential social harm of “encouraging an established prostitute” or otherwise promoting “the social evil of prostitution”).

68. See, e.g., Shay-Ann M. Heiser Singh, *The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice*, 56 DEPAUL L. REV. 1035, 1062 (2007) (noting the widespread enforcement bias against prostituted women).

operations or expanding the supply of available prostitutes.”<sup>69</sup> Similarly, early laws did not recognize “patronizing” as a crime,<sup>70</sup> and courts held that men could not be held as accessories to prostitution since “[o]bviously, a male cannot be a prostitute.”<sup>71</sup>

As a result, until quite recently, state laws and enforcement policies almost exclusively targeted persons in prostitution, and more specifically women in prostitution, rather than their customers or pimps.<sup>72</sup> Due to this long-standing history of biased enforcement, a significant gap persists between the traditional prostitution enforcement paradigm and new anti-trafficking mandates with respect to persons in prostitution, purchasers, and pimps.

## II. THE ARGUMENT FOR A FEDERAL ROLE IN REFORMING PROSTITUTION ENFORCEMENT PRACTICES THAT INTERFERE WITH ANTI-TRAFFICKING GOALS

The TVPA and related federal policies have established clear principles for law enforcement agents (LEAs) involved in trafficking cases.<sup>73</sup> With respect to victims, federal policy recognizes that identifying, protecting, and gaining the trust of victims is perhaps the most difficult, but also the most important step to combat trafficking.<sup>74</sup> Federal policy also addresses the demand side of trafficking by promoting enforcement

---

69. *People v. Maita*, 203 Cal. Rptr. 685, 688 (Cal. Dist. Ct. App. 1984).

70. *See* 63C AM. JUR. 2D *Prostitution* § 14 (2008) (noting that until recently prostitution statutes were “rarely, if ever” used to punish purchasers).

71. *People v. Brandt*, 306 P.2d 1069, 1070 (Cal. App. Dep’t. Super. Ct. 1956).

72. *See* Pantea Javidan, *Invisible Targets: Juvenile Prostitution, Crack-down Legislation, and the Example of California*, 9 CARDOZO WOMEN’S L.J. 237, 250 (2003) (noting that California law did not criminalize the acts of purchasers until 1986, nor did it comprehensively outlaw pimping until as recently as 1998).

73. *See, e.g.*, Victims of Trafficking Violence Protection Act of 2000, Pub. L. No. 106-386, § 108(b), 114 Stat. 1464, 1480–81 (codified as amended at 22 U.S.C. § 7106(b) (2006)) (establishing criteria for evaluating law enforcement efforts to eliminate trafficking in persons).

74. *See* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 37 (2007) [hereinafter 2007 TIP REPORT] (recognizing that victim-protection is at “the core” of U.S. anti-trafficking efforts). This “victim centered” approach also recognizes the United States’ commitment to the “assistance” and “protection” of trafficking victims under the 2000 U.N. Protocol. *See* 2000 U.N. Protocol, *supra* note 17, art. 6.

against traffickers,<sup>75</sup> as well as purchasers and pimps.<sup>76</sup> Without addressing both the overlap between trafficking and prostitution and the discrepancy between current enforcement models, federal anti-trafficking goals may continue to go unrealized.

#### A. ASYMMETRIC PROSTITUTION ENFORCEMENT HINDERS ANTI-TRAFFICKING GOALS

##### 1. Protecting Victims: The Centerpiece of Anti-trafficking Policy

As its name suggests, the ultimate goal of the Trafficking Victims Protection Act is to protect victims of trafficking.<sup>77</sup> Legislators recognized that due to their status as illegal immigrants (or their acts of criminal prostitution), trafficking victims are “repeatedly punished more harshly than the traffickers themselves.”<sup>78</sup> Because of the injustice and ineffectiveness of this approach, the TVPA endeavored to change the relational model between the government and trafficking victims from one of criminalization and incarceration to one of protection and cooperation.<sup>79</sup>

As a baseline standard, the 2000 TVPA states that if an individual has been subject to prostitution through force, fraud, or coercion, government officials should treat that person as a “victim” regardless of any prostitution offenses committed as a result of trafficking.<sup>80</sup> Instead of jail time or deportation, victims should receive medical attention, protection from traffick-

---

75. See Victims of Trafficking Violence Protection Act of 2000 § 112(a) (establishing serious penalties for traffickers).

76. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No 109-164, § 201(a), 119 Stat. 3558, 3568 (2006) (codified as amended at 42 U.S.C. § 14044c (2006)) (allocating funds to train LEAs to reduce demand for commercial sex acts in the U.S.); 2008 TIP REPORT, *supra* note 16, at 5, 11, 23 (discussing the connection between the market for prostitution and sex trafficking).

77. See Victims of Trafficking Violence Protection Act of 2000 § 107(c)(1)(a); 2008 TIP REPORT, *supra* note 16, at 5 (“Freeing those trapped in slave-like conditions is the ultimate goal . . . of the U.S. Government’s anti-human trafficking policy.”).

78. Victims of Trafficking Violence Protection Act of 2000 § 102(b)(17).

79. See Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2990 (2006) (discussing congressional objectives in passing the TVPA).

80. See Victims of Trafficking Violence Protection Act of 2000 § 107(c)(1)(a) (suggesting that victims should not be detained in facilities “inappropriate to their status as crime victims”).

ers,<sup>81</sup> and “sensitive” treatment<sup>82</sup> intended to gain their trust and cooperation for future investigations.<sup>83</sup> With respect to juveniles, the federal government’s position is that “children can never consent to prostitution. It is always exploitation.”<sup>84</sup>

Victim-sensitive law enforcement policies are important, both “as a matter of decency, and as an effective method for facilitating successful prosecutions.”<sup>85</sup> Without professional treatment from police and social service providers, victims remain vulnerable to being re-trafficked,<sup>86</sup> or becoming traffickers themselves after years of conditioning in the trade.<sup>87</sup> Finally, because victim testimony is essential to prosecuting traffickers, victim-centered enforcement practices are a crucial component of U.S. anti-trafficking policy.<sup>88</sup>

Unfortunately, there are substantial inconsistencies between victim-centered federal policies on the one hand, and prostitute-targeted local enforcement practices on the other. For example, in *federal* investigations, juveniles in prostitution generally receive “professional case management” and sensitive treatment with respect to their mental, emotional, and physical

---

81. *See id.* In addition, government officials should provide victims with access to counseling and reintegration assistance. *See* 2007 TIP REPORT, *supra* note 74, at 37.

82. *Trafficking in Persons: The Federal Government’s Approach to Eradicate this Worldwide Problem: Hearing on H.R. 972 Before the Subcomm. on Human Rights and Wellness of the H. Comm. on Gov’t Reform*, 108th Cong. 30 (2004) [hereinafter *2004 House Hearing*] (statement of R. Alexander Acosta, Assistant Att’y Gen., Department of Justice).

83. *See* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 201(a)(2)(iv), 119 Stat. 3558, 3568 (2006) (codified as amended at 42 U.S.C. § 14044(a)(2)(iv) (2006)).

84. *2005 Commission Hearing*, *supra* note 1, at 6 (statement of Chris Swecker, Assistant Director, Criminal Investigation Division, FBI) (referencing Victims of Trafficking Violence Protection Act of 2000 § 112(a)).

85. *2004 House Hearing*, *supra* note 82, at 46 (statement of R. Alexander Acosta, Assistant Att’y Gen., Department of Justice).

86. *See id.* at 30–31.

87. *See 2005 Commission Hearing*, *supra* note 1, at 3 (statement of Sen. Christopher H. Smith, Co-Chairman, Commission on Security and Cooperation in Europe) (reporting that sexually exploited boys are more prone to become pimps later in life); 2008 TIP REPORT, *supra* note 16, at 11 (noting the practice of “happy trafficking” wherein trafficked persons return to their home communities to recruit replacements).

88. *See* Victims of Trafficking Violence Protection Act of 2000 § 107(b)(1)(E), Pub. L. No. 106-386, 114 Stat. 1464, 1476 (codified as amended at 22 U.S.C. § 7105(b)(1)(E) (2006)) (conditioning eligibility for federal benefits on the victim’s willingness to cooperate with government agents in trafficking prosecutions).

needs.<sup>89</sup> However, at the state level, the dominant perception among law enforcement is that child prostitutes are delinquents rather than victims of exploitation.<sup>90</sup> Since most state prostitution laws do not contain an explicit defense for juveniles and other victims of trafficking,<sup>91</sup> when minors are picked up by local vice squads, they are often perceived and treated as “any other criminal or prostitute.”<sup>92</sup>

Moreover, due to the lack of alternatives to incarceration in many states,<sup>93</sup> juvenile victims are frequently exposed to secondary trauma during detention without the benefit of rehabilitative services.<sup>94</sup> As in Leisa’s case, these victims are typically “cycled through the criminal justice system,” thereby increasing their vulnerability to pimps and abusers, and decreasing their chances of successful rehabilitation.<sup>95</sup> In some states, victims charged with repeat offenses can receive felony upgrades that cannot be expunged, thus further restricting their options for leaving the sex industry.<sup>96</sup> In addition to enabling traffickers to escape detection, such policies represent a basic failure of the U.S. criminal justice system to demonstrate the first principle

---

89. 2005 Commission Hearing, *supra* note 1, at 15 (statement of Chris Swecker, Assistant Director, Criminal Investigation Division, FBI).

90. See David Finkelhor & Richard Ormrod, *Prostitution of Juveniles: Patterns from NIBRS*, JUV. JUST. BULL., June 2004, at 1–2, available at <http://www.ncjrs.gov/pdffiles1/ojdp/203946.pdf> (noting that police are more likely to categorize juveniles in prostitution as offenders than as crime victims).

91. See Franklin, *supra* note 27, at 361 (noting that courts currently only recognize prostitution defenses related to marriage and entrapment); see also Pam Louwagie, *Report Finds Gaps in Sex Trafficking Enforcement*, STAR TRIB. (Minneapolis), Sept. 23, 2008, at B1. According to one police spokesman in St. Paul, Minnesota, “If they’re breaking the law, we have to treat [prostitutes] as criminals.” *Id.*

92. 2005 Commission Hearing, *supra* note 1, at 15–16 (statement of Chris Swecker, Assistant Director, Criminal Investigative Division, FBI) (discussing the failure of many state systems to protect victims at this “critical period”).

93. See *id.* at 15–17 (indicating that there is only a “patchwork quilt” of services in different states, making treatment “sort of hit or miss” nationally); see also EMILY MUSKOVITZ SWEET, CITY OF CHI. MAYOR’S OFFICE ON DOMESTIC VIOLENCE, THE INTERSYSTEM ASSESSMENT ON PROSTITUTION IN CHICAGO, EXECUTIVE SUMMARY 4 (2006), available at <http://www.cfw.org/document.doc?id=168> [hereinafter 2006 CHICAGO EXECUTIVE ASSESSMENT] (citing a general lack of specialized services for prostitution, such as services providing housing, or treating substance abuse).

94. See Brown, *supra* note 35, at 501 (noting that juveniles are particularly susceptible to secondary victimization).

95. 2005 Commission Hearing, *supra* note 1, at 73 (statement of Norma Hotaling, Director, Standing Against Global Exploitation (SAGE) Project).

96. See 2006 CHICAGO EXECUTIVE ASSESSMENT, *supra* note 93, at 3.

of counter-trafficking law—the need to identify and protect victims.<sup>97</sup>

## 2. Reducing Demand for Prostitution: Deterring Pimps and Purchasers

By taking a lax approach to the demand side of prostitution (including pimps, traffickers, and purchasers), local LEAs fail to break the supply and demand chain that links traffickers to profits. In most states, pimping is defined as a felony crime with significant penalties, including enhanced punishments for pimping juveniles.<sup>98</sup> However, laws against pimping juveniles often include an affirmative defense for pimps who claim to have been ignorant of the minor's age,<sup>99</sup> and are thus easily evaded.<sup>100</sup> And in spite of otherwise tough laws, in many jurisdictions, police arrest fewer pimps than either purchasers or prostituting persons.<sup>101</sup> For example, from 2003 to 2005, only thirty-six individuals were arrested for pimping offenses throughout the city of Chicago.<sup>102</sup> Likewise, in Minnesota, from 2003 to 2006, only sixty-nine pimps were convicted under state law.<sup>103</sup> According to one public defender in Georgia, “[p]olice

---

97. See Victims of Trafficking Violence Protection Act of 2000, Pub. L. No. 106-386, § 108(b)(2), 114 Stat. 1464, 1481 (codified as amended at 22 U.S.C. § 7106(b)(2) (2006)) (establishing that government officials in other nations should ensure “that victims are not inappropriately incarcerated”).

98. See, e.g., IDAHO CODE ANN. § 18-5601 (2004) (establishing a maximum twenty-year prison sentence for interstate pimping); *id.* § 18-5609 (establishing a maximum life prison sentence for inducing a minor into prostitution). *But see* S.C. CODE ANN. § 16-15-110 (2003) (setting a thirty-day prison sentence or \$200 fine as the maximum penalty for a first-time pimping conviction).

99. See, e.g., 720 ILL. COMP. STAT. 5/11-15.1 (2009) (providing an affirmative defense if the pimp reasonably believed the juvenile was age seventeen or older).

100. See COOK COUNTY COMM'N ON WOMEN'S ISSUES, THE REALITIES OF HUMAN TRAFFICKING IN COOK COUNTY: STRATEGIES FOR ENDING THE EXPLOITATION OF WOMEN AND GIRLS 15 (2007).

101. See Jane O. Hansen, *Selling Atlanta's Children: The Pimps, Prostitution's Middle Men Usually Slide By*, ATLANTA J.-CONST., Jan. 7, 2001, at 9A (discussing how the combination of apathy from law enforcement and victims' fear of testifying renders pimps invulnerable to the law).

102. See CITY OF CHI. MAYOR'S OFFICE ON DOMESTIC VIOLENCE, THE INTERSYSTEM ASSESSMENT ON PROSTITUTION IN CHICAGO 47 (2006) [hereinafter 2006 CHICAGO COMPREHENSIVE ASSESSMENT].

103. THE ADVOCATES FOR HUMAN RIGHTS, SEX TRAFFICKING NEEDS ASSESSMENT FOR THE STATE OF MINNESOTA 119 (2008) [hereinafter 2008 ADVOCATES REPORT].

know who these guys are. They know where they hang out. There's just no enforcement."<sup>104</sup>

Laxity towards pimping frustrates anti-trafficking policies in a number of ways. First, the use of signature "trafficking" behavior, (including force, fraud, and coercion) may in fact be "the norm, not the exception" among pimps.<sup>105</sup> Thus to some extent, laxity towards investigating pimps may translate directly into laxity towards prosecuting traffickers.<sup>106</sup>

Second, even without proof of force, fraud, or coercion, federal policy indicates that anti-pimping laws should be aggressively enforced because leniency towards pimping facilitates sex trafficking.<sup>107</sup> By providing a "façade" behind which traffickers may operate with impunity, the toleration of pimping actually protects traffickers.<sup>108</sup> Taking into account the violent nature of pimping and its propensity to legitimize trafficking operations, federal policy characterizes pimping as a serious crime, rather than a petty infraction.<sup>109</sup> To the extent that casual local enforcement creates a permissive environment that enables traffickers to escape even minimal legal repercussions, such practices undermine federal anti-trafficking goals.

104. Hansen, *supra* note 101.

105. See 2000 Foreign Policy Overview and the President's Fiscal Year 2001 Foreign Affairs Budget Request: Hearings Before the Subcomm. on African Affairs and Subcomm. on Western Hemisphere, Peace Corps, Narcotics and Terrorism of the S. Comm. on Foreign Relations, 106th Cong. 121 (2000) (statement of R. James Woolsey, Former Director, CIA) (suggesting that the requirement of proof of force, fraud, or coercion creates loopholes for abusive pimps).

106. See Mark P. Lagon, Dir., Office to Monitor and Combat Trafficking in Perss., Remarks at the Hudson Institute, Fighting Demand for Sex Trafficking (Feb. 5, 2008), available at <http://2001-2009.state.gov/g/tip/rls/rm/2008/100169.htm> ("[M]ost pimps are in fact sex traffickers under federal law.").

107. See Victims of Trafficking Violence Protection Act of 2000, Pub. L. No. 106-386, § 103(9), 114 Stat. 1464, 1470 (codified as amended at 22 U.S.C. § 7106(b)(2) (2006)) (defining, but not criminalizing, all pimping acts as milder forms of "sex trafficking"); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 201(a)(2)(A)(iii), 119 Stat. 3558, 3568 (2006) (codified as amended at 42 U.S.C. § 14044(a)(2)(A)(iii) (2006)) (promoting the prosecution of pimps as "exploiters").

108. See U.S. STATE DEP'T, BUREAU OF PUBLIC AFFAIRS, THE LINK BETWEEN PROSTITUTION AND SEX TRAFFICKING 1 (2004), <http://www.state.gov/documents/organization/38901.pdf> [hereinafter STATE DEPT LINKS PROSTITUTION AND TRAFFICKING].

109. See 153 CONG. REC. H14,098, 14,114 (daily ed. Dec. 4, 2007) (statement of Rep. Conyers) (noting that the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 was targeted at "brutal street pimps").



State and local LEAs have shown a similarly blasé attitude towards enforcing solicitation laws against prostitution purchasers.<sup>110</sup> Since prostitution offenses are regarded as “crimes against society” rather than exploitative “crimes against persons,” national statistics do not distinguish between prostitutes, pimps, and purchasers.<sup>111</sup> However, because prostitution is a highly gendered industry with women making up the significant majority of persons in prostitution and men comprising the vast majority of purchasers,<sup>112</sup> disproportionate enforcement can be approximately quantified.

According to 2004 data, men comprised only about 30% of prostitution arrests nationally.<sup>113</sup> Some jurisdictions report particularly low rates of enforcement against purchasers. In Las Vegas, for example, men account for only 14% of prostitution arrests.<sup>114</sup> In Georgia, since 1972, men have received only 6% of prison sentences related to prostitution.<sup>115</sup> In addition, few, if any states use statutory rape or juvenile sexual offense laws to increase penalties for customers who pay for sex with minors.<sup>116</sup> With several notable exceptions,<sup>117</sup> research suggests that significant under-enforcement of purchasers, including those who patronize juveniles, is commonplace in many U.S. cities.

The U.S. government assesses other nations based on their “serious and sustained” efforts to reduce customer demand for

---

110. See, e.g., Evelina Giobbe & Sue Gibel, *Impressions of a Public Policy Initiative*, 16 HAMLIN J. PUB. L. & POL'Y 1, 23 (1994) (noting the failure of law enforcement agencies to target purchasers for “arrest, fines, and imprisonment”).

111. See 2004 Finkelhor & Ormrod, *supra* note 90, at 3 (noting how purchasers are sometimes categorized under the amorphous label of “other offenses,” thus remaining statistically invisible).

112. See Hansen, *supra* note 101.

113. See FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS 297 tbl.42 (2004), [http://www.fbi.gov/ucr/cius\\_04/documents/CIUS2004.pdf](http://www.fbi.gov/ucr/cius_04/documents/CIUS2004.pdf).

114. 2005 Commission Hearing, *supra* note 1, at 29 (statement of Norma Hotaling, Executive Director and Founder, Standing Against Global Exploitation (SAGE) Project). In Boston, men account for only 12% of prostitution arrests. *Id.*

115. See Hansen, *supra* note 101.

116. See 2005 Commission Hearing, *supra* note 1, at 29 (statement of Norma Hotaling, Executive Director and Founder, Standing Against Global Exploitation (SAGE) Project).

117. See *id.* (indicating that in Detroit and San Francisco, men account for 75% of prostitution arrests).

prostitution,<sup>118</sup> because, although most purchasers do not intentionally seek out victimized persons,<sup>119</sup> consumer demand for prostitution creates market incentives that drive sex trafficking.<sup>120</sup> Accordingly, the federal government has taken significant actions to reduce demand for prostitution abroad. As part of its “aggressive stand against sex trafficking” and “related activities,” the U.S. Department of Defense has initiated a zero-tolerance policy, banning the patronizing of prostitution by U.S. military personnel.<sup>121</sup> Civilian police and U.S. military personnel deployed to Iraq, Afghanistan, and other countries are also now required to receive trafficking-awareness training.<sup>122</sup> Internationally, the U.S. government also promotes educational programs aimed at reducing customer demand for prostitution.<sup>123</sup>

Although such initiatives are commendable, within the United States, where many people still view prostitution as a voluntary “victimless” crime,<sup>124</sup> similar efforts have yet to be

---

118. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 104(b)(1)(A), 119 Stat. 3558, 3564 (2006) (codified as amended at 22 U.S.C. § 7106(6)(3) (2006)) (requiring federal agencies to assess customer demand reduction strategies when evaluating those used in other countries); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 106, 122 Stat. 5044, 5048–49 (codified as amended at 22 U.S.C.A. § 7106 (West 2009)) (heightening this standard by requiring other countries to adopt “serious and sustained efforts” to reduce demand).

119. See William Finnegan, *The Countertraffickers*, NEW YORKER, May 5, 2008, at 44, 55 (noting that women are often punished for sullenness, and that “[e]nthusiasm, smiles, however faked, are thought to be good for business”).

120. *Combating Modern Slavery: Reauthorization of Anti-trafficking Programs: Hearing on H.R. 3887 Before the H. Comm. on the Judiciary*, 110th Cong. 44–45 (2007) [hereinafter *2007 House Hearing*] (statement of Bradley W. Myles, National Program Director, Polaris Project) (describing the phenomenon of sex trafficking as “a market-based issue that operates on principles of supply and demand”).

121. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEPT OF STATE, U.S. GOVERNMENT EFFORTS TO FIGHT DEMAND FUELING HUMAN TRAFFICKING (2008), <http://2001-2009.state.gov/g/tip/rls/fs/08/100208.htm>.

122. *Id.*

123. *Id.* (highlighting a recent partnership between the U.S. Agency for International Development and MTV to launch an Asia-wide anti-trafficking campaign targeted at reducing customer demand for prostitution).

124. See Julie Pearl, *The Highest Paying Customers: America’s Cities and the Costs of Prostitution Control*, 38 HASTINGS L.J. 769, 788 (1987) (citing a DOJ survey on perceptions of crime, in which respondents ranked prostitution 174 out of 204 offenses in terms of severity, followed by “a store owner kno-

made. Again, while holding up the international standard of a “serious and sustained”<sup>125</sup> commitment to reduce demand, the current U.S. approach to deterring prostitution purchasers is neither serious, nor sustained.

B. ASSESSING THE OPPOSITION TO INCREASED FEDERAL INVOLVEMENT IN REFORMING STATE PROSTITUTION ENFORCEMENT

1. Evidence of an Equivocating Approach

While clearly articulating the importance of demand-targeted prostitution enforcement, the federal government has repeatedly stepped forward and then backed away from policies that would put such enforcement measures into practice. For example, in 2005, both the House<sup>126</sup> and Senate<sup>127</sup> sponsored versions of the End Demand for Sex Trafficking Act of 2005. This Act would have authorized the training of local LEAs in victim-centered, demand-targeted prostitution enforcement,<sup>128</sup> but it failed to pass in both congressional bodies.

The 2005 TVPRA included several of the End Demand Act’s requirements for reforming local prostitution enforcement, but four years later, the DOJ has yet to implement the Act’s required measures. For example, the 2005 TVPRA allocated \$2.5 million annually for the Attorney General to conduct a biennial study of domestic prostitution,<sup>129</sup> yet there is no indication that such a study has even been undertaken.<sup>130</sup> Similar-

---

wingly puts ‘large’ eggs into containers marked ‘extra large’”). Respondents ranked patronizing prostitution even lower. *Id.*

125. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 106, 122 Stat. 5044, 5048–49 (codified as amended at 22 U.S.C.A. § 7106 (West 2009)).

126. End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. (2005).

127. End Demand for Sex Trafficking Act of 2005, S. 937, 109th Cong. (2005).

128. *See* H.R. 2012 § 4(a) (authorizing funding for the training of local LEAs in prosecuting purchasers and “exploiters” and assisting “victims of a commercial sex act”); S. 937 § 4(a) (containing similar language).

129. *See* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 201(a)(1)(B)(i)–(ii), (c)(1), 119 Stat. 3558, 3567–69 (2006) (codified as amended at 42 U.S.C. § 14044(a)(1)(B)(i)–(ii) (2006)). In particular, Congress was interested in research on: the demographics of persons in prostitution and their purchasers, total profits earned in the prostitution industry, and data on arrest and conviction patterns related to prostitution. *Id.*

130. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act § 237(c)(3) (requiring the DOJ to report to Congress on the status of

ly, the 2005 Act authorized the Attorney General to award up to \$25 million in annual grants for training law enforcement in prosecuting and educating prostitution purchasers.<sup>131</sup> While the DOJ has provided extensive training on *human trafficking* enforcement, it has not provided training on the use of *prostitution* laws to prosecute pimps or purchasers.<sup>132</sup> Likewise, the 2005 Act allocated \$1 million annually for the Attorney General to disseminate best practices for prosecuting pimps and purchasers at its annual “trafficking conference.”<sup>133</sup> Yet, rather than addressing prostitution, the Department’s annual conferences have focused on more “complex” and strategic issues related exclusively to trafficking.<sup>134</sup>

With the recent passage of the 2008 Wilberforce Act, Congress once again showed its ambivalence regarding prostitution enforcement reform. The original House version of the Act would have required the DOJ to issue a model statute encouraging state adoption of tougher pimping laws.<sup>135</sup> Tellingly, the final 2008 Act excluded this provision.<sup>136</sup> Rather than promoting a victim-centered, demand-targeted approach, the final Act simply requires the DOJ to create a model prostitution statute based on existing provisions in the Washington D.C. criminal

---

the 2005 mandated study within ninety days); *see also* Letter from Reps. Carolyn B. Maloney, Frank Wolf, John Lewis, Thelma Drake, and Hank Johnson, to Allan Mollohan and Rodney Frelinghuysen, House Comm. on Appropriations (Apr. 18, 2007) (requesting additional funding for the survey).

131. *See* Trafficking Victims Protection Reauthorization Act of 2005 § 204(a)(1), (d).

132. *See* 2008 DOJ REPORT, *supra* note 61, at 33–39 (discussing various law enforcement training programs focusing on trafficking, but failing to address the use of prostitution laws to further anti-trafficking goals); 2007 DOJ REPORT, *supra* note 13, at 21–26 (failing again to mention any training programs directed at improving or reforming prostitution enforcement).

133. *See* Trafficking Victims Protection Reauthorization Act of 2005 § 201(a)(2)(A), (c)(2).

134. *See* 2008 DOJ REPORT, *supra* note 61, at 34; 2007 DOJ REPORT, *supra* note 13, at 21–22 (discussing various topics covered at the annual national anti-trafficking conference, but failing to mention any treatment of the role of prostitution enforcement).

135. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 3887, 110th Cong. § 224 (2008) (requiring the DOJ to rewrite its Model State Anti-trafficking Statute to include a provision classifying pimping as a more serious “sex trafficking” crime).

136. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 225, 122 Stat. 5044, 5072 (2008) (codified as amended at 22 U.S.C.A. § 7101 (West 2009)) (omitting provisions regarding increased penalties for pimping).

code.<sup>137</sup> However, given the similarity of the D.C. laws to most state prostitution statutes, this provision seems to be more of an affirmation of the status quo than a step towards reform.<sup>138</sup>

Law enforcement agencies have raised two primary arguments in opposition to calls for greater federal leadership in reforming state prostitution enforcement. The first is that since prostitution is conceptually distinct from trafficking, it should continue to be enforced without regard to the newly adopted anti-trafficking policies.<sup>139</sup> The second argument is that federal involvement in state prostitution enforcement is either constitutionally impermissible or inappropriate within a federal system of government.<sup>140</sup> To the extent that these views are espoused by both federal anti-trafficking agencies and local prostitution enforcement agencies, they constitute a multilayer obstacle to prostitution enforcement reform.

## 2. Distinct, Not Disconnected: The Inseverable Relationship Between Prostitution Enforcement Practices and Trafficking Victim Protection Goals

At both the federal and state level, LEAs have repeatedly rejected the notion that prostitution enforcement should be modified in light of the TVPA's anti-trafficking agenda. The Fraternal Order of Police, representing over 325,000 federal and state officers nationally,<sup>141</sup> has argued that "simple prostitution" enforcement is "unrelated" to trafficking, and thus "in the absence of evidence" of trafficking, should continue to be

---

137. *Id.* § 225(b) (requiring the DOJ to promulgate a model prostitution statute based on Washington D.C. law). Like virtually all states, the Washington D.C. code criminalizes acts of offering, selling, or purchasing prostitution, as well as promoting or recruiting another individual for work in prostitution. *See* D.C. CODE §§ 22-2701, 22-2701.01; 22-2705 (2009).

138. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act § 225(a)(2) (affirming that nothing in the Act "shall preempt, supplant, or limit the effect of any state or federal criminal law").

139. *See* OFFICE OF LEGAL POLICY, U.S. DEP'T OF JUSTICE, *supra* note 66, at 2 ("Nothing [about local prostitution enforcement] suggests that federal intervention is necessary or would be more effective.").

140. *See e.g.*, Brian W. Walsh & Andrew M. Grossman, Human Trafficking Reauthorization Would Undermine Existing Anti-trafficking Efforts and Constitutional Federalism, Legal Memorandum No. 21 1, 1-3 (Heritage Foundation, Nov. 9, 2008), <http://www.heritage.org/Research/LegalIssues/lm21.cfm> (stating that Congress should respect the "long-standing authority of state and local governments" to define immoral conduct).

141. *See* Fraternal Order of Police, <http://www.grandlodgefop.org> (last visited Sept. 27, 2009).

addressed without federal interference.<sup>142</sup> Similarly, the national bodies representing the U.S. Attorneys General and the U.S. District Attorneys have indicated that prostitution is already “adequately”<sup>143</sup> and “effectively” prosecuted<sup>144</sup> at the local level. In support, the DOJ has pointed to the 100,000 annual prostitution arrests as evidence of effective enforcement, without regard to how these arrests were effected or against whom they were directed.<sup>145</sup> In essence, the dominant view among law enforcement seems to be that since prostitution and trafficking are legally and conceptually distinct, they may reasonably elicit opposite enforcement responses.<sup>146</sup> The first problem with such a formalistic and fragmented approach is that, until LEAs are trained to view prostitution in light of more serious sex trafficking crimes, they will continue to misidentify trafficking victims as criminal prostitutes. The Justice Department has recognized that local LEAs must be the “eyes and ears” for recognizing situations that “appear to be a routine street crime, but may ultimately turn out to be a human trafficking case.”<sup>147</sup> However, in order to identify sex trafficking victims, local agencies must change the way they perceive and react to prostitution cases. Unlike crimes that involve firearms or drugs, the only physical evidence of a trafficking crime is the victim herself (or himself), and unfortunately, trafficking victims do not always look like “victims.”<sup>148</sup>

---

142. See Letter from Chuck Canterbury, National President, Fraternal Order of Police, to Sen. Patrick J. Leahy, Chairman, Senate Comm. on the Judiciary (Dec. 6, 2007), available at <http://www.usdoj.gov/olp/pdf/fop-hr3887.pdf>.

143. See Letter from Nat'l Ass'n of Attorneys Gen. to Sen. Patrick J. Leahy, Chairman, Senate Comm. on the Judiciary (Mar. 7, 2008), available at <http://www.usdoj.gov/olp/pdf/naag.pdf>.

144. See Letter from James P. Fox, Dist. Attorney, San Mateo County, Cal., to Sen. Patrick J. Leahy, Chairman, Senate Comm. on the Judiciary (Jan. 22, 2008), available at <http://www.usdoj.gov/olp/pdf/ndaa.pdf>.

145. See OFFICE OF LEGAL POLICY, U.S. DEP'T OF JUSTICE, *supra* note 66, at 2.

146. See Letter from Brian Benczkowski, Principal Deputy Assistant Attorney Gen., U.S. Dep't of Justice, to Rep. John Conyers Jr., Chairman, House Comm. on the Judiciary (Nov. 9, 2007), available at <http://www.usdoj.gov/olp/pdf/dept-view-letter-hjc-on-hr3887.pdf>. In the words of the Justice Department, trafficking laws should simply “supplement” rather than “supplant” state prostitution laws. *Id.*

147. See FARRELL ET AL., *supra* note 35, at 1 (citing a 2004 DOJ anti-trafficking news bulletin).

148. See 2007 House Hearing, *supra* note 120, at 14 (statement of Laurence E. Rothenberg, Deputy Assistant Attorney Gen., U.S. Dep't of Justice) (noting

On the surface, victims of sex trafficking may be indistinguishable from “voluntary” persons in prostitution.<sup>149</sup> Due to their commission of illegal prostitution acts, sex trafficking victims are rarely candid with LEAs<sup>150</sup> and tend not to self-identify as crime victims.<sup>151</sup> Some trafficking victims may also experience Stockholm’s Syndrome, a condition wherein a captive person becomes emotionally and psychologically attached to his or her captor.<sup>152</sup> These individuals are unlikely to accuse their traffickers, and often view police as adversaries rather than rescuers.<sup>153</sup> Other victims may be unwilling to answer questions or cooperate in criminal investigations for fear of retribution from their traffickers.<sup>154</sup>

Because of the relative novelty of trafficking laws, most local enforcement agencies have yet to adopt anti-trafficking protocols that would require officers to ask potential victims about their working and living conditions, or to look for more subtle signs of trafficking.<sup>155</sup> Therefore, when faced with a schizophrenic body of federal and state law which simultaneously classi-

---

that trafficking crimes can be perpetrated against “any vulnerable person,” including adult males and persons with substantial levels of education).

149. See FARRELL ET AL., *supra* note 35, at 211 (noting that after becoming hardened to life in prostitution, victims may cease to show any signs of exposure to “force, fraud or coercion”).

150. See 2005 Commission Hearing, *supra* note 1, at 6 (statement of Chris Swecker, Assistant Director, Criminal Investigative Division, FBI) (reporting that sex-trafficked juveniles often use fraudulent identification and are “reluctant to help authorities determine their true age and identity”).

151. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(20), 114 Stat. 1464, 1468 (codified as amended at 22 U.S.C. § 7101 (2006)) (stating that victims are unlikely to seek aid because they are often unfamiliar with the laws that could help them and fearful of retribution or legal sanctions).

152. See Gordon Hill, *The Use of Pre-Existing Exclusionary Zones as Probationary Conditions for Prostitution Offenses: A Call for the Sincere Application of Heightened Scrutiny*, 28 SEATTLE U. L. REV. 173, 201–02 (2004). Symptoms include denying the captor’s violence, taking on the captor’s perspective, and finding it “difficult or impossible to physically leave or emotionally detach from the captor, particularly if the captor does not want [the victim] to leave.” *Id.*

153. See Finnegan, *supra* note 119, at 49 (citing one extreme example of a trafficking victim who “insisted on being handcuffed to her trafficker” when he was arrested).

154. See Victims of Trafficking and Violence Protection Act of 2000 § 102(b)(20).

155. See FARRELL ET AL., *supra* note 35, at 39 (finding that nationally, only about 9% of law enforcement agencies have a formal trafficking protocol or policy in place). Only 17.9% of agencies have received any specialized training on trafficking, and only 4.3% have specialized trafficking personnel or units. *Id.*

fies prostituting persons as both potential victims and per se criminals, LEAs are more likely to rely on time-tested and clear-cut prostitution routines, as opposed to unfamiliar anti-trafficking mandates that hinge upon the elusive concept of “coercion.”<sup>156</sup>

Indeed, recent research indicates that local law enforcement officers are currently failing to identify both juvenile<sup>157</sup> and adult trafficking victims.<sup>158</sup> Such studies refute the DOJ’s sanguine assertion that the mere adoption of state anti-trafficking laws will ensure that trafficking cases are not labeled as prostitution offenses.<sup>159</sup> To the contrary, the persistent failure of LEAs to identify and respond appropriately to victims demonstrates that sex trafficking can no longer be viewed as separate or merely supplementary to prostitution law. Rather, LEAs must learn to “re-categorize and re-prioritize [prostitution] behavior” in light of modern trafficking realities.<sup>160</sup> Only by integrating anti-trafficking awareness and principles into local enforcement practices will the U.S. make progress towards identifying and protecting more trafficking victims.<sup>161</sup>

### 3. Filling the Gap: Why Prostitution Enforcement Reform Is Necessary to Deter Traffickers

Besides failing to protect victims, the dominant state enforcement model also frustrates federal goals of punishing traffickers and reducing the market for trafficking. Because sex trafficking cases are extremely difficult to prove, without effective enforcement of pimping laws, the vast majority of traffick-

156. *Id.* at 22 (noting the tendency for police to rely on established routines, especially for crimes with ambiguous definitions).

157. See HOWARD N. SNYDER, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE ARRESTS 2006, at 3 (2008), <http://www.ncjrs.gov/pdffiles1/ojjdp/221338.pdf> (showing at least 1,600 juvenile arrests for prostitution in 2006).

158. See Suzanne L. Tiapula & Melissa Millican, *Identifying the Victims of Human Trafficking*, PROSECUTOR, Jan.–Mar. 2008, at 34, 36 (referencing a multi-jurisdictional study which found that LEAs failed to identify and respond to trafficking in eleven out of twelve cases).

159. See Letter from Brian Benczkowski to Rep. John Conyers, *supra* note 146.

160. FARRELL ET AL., *supra* note 35, at 22.

161. See 2005 Commission Hearing, *supra* note 1, at 16 (statement of Rep. Smith) (suggesting the need for a “sea change” in the “minds and hearts” of law enforcement, particularly with respect to viewing trafficked persons as “victims rather than criminals”).



ers will never face criminal consequences.<sup>162</sup> Trafficking cases tend to be complex and resource-intensive operations for law enforcement personnel.<sup>163</sup> In particular, the vagueness of the elements (especially “coercion”), lack of physical evidence, and heavy reliance on victim testimony make these cases burdensome for police and prosecutors.<sup>164</sup> These barriers are exacerbated by the fact that victims are often reluctant to testify, and when they do, prosecutors and fact-finders often believe (however inaccurately) that only young, helpless, and morally blameless persons can be victims of trafficking.<sup>165</sup> Thus, “practically speaking, [the proof requirement for trafficking cases] is a *virtual bar* to prosecution.”<sup>166</sup>

As a result, both federal and state agencies are highly restricted in their capacity to achieve convictions. Of the 555 suspects investigated by the DOJ from 2001–2005, only seventy-five were convicted under federal human trafficking statutes.<sup>167</sup> Even with a \$23 million budget for domestic anti-trafficking efforts in 2007,<sup>168</sup> the combined U.S. Attorneys General offices secured only eighty-six convictions related to sex trafficking.<sup>169</sup> States have been even less successful.<sup>170</sup> Washington and Texas

---

162. See 2008 TEXAS REPORT, *supra* note 14, at 33; 2006 CHICAGO EXECUTIVE ASSESSMENT, *supra* note 93, at 3 (“[S]ex trafficking cases have been difficult to prosecute.”).

163. See U.S. DEP’T OF STATE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 10–11 (2003) [hereinafter 2003 STATE DEP’T ASSESSMENT] (indicating that trafficking cases are among the U.S. government’s “most labor- and time-intensive criminal investigations”).

164. See FARRELL ET AL., *supra* note 35, at 229 (“The elements of [the] crime[] are not as clear as in federal drug or firearms cases and perhaps most importantly, they lack physical evidence and rely on the testimony of individuals initially identified as offenders.”).

165. See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 195 (2007) (noting the tendency to identify only “iconic” victims who have “been robbed by the trafficker of all free will . . . and thus [are] blameless”).

166. See William J. Bennett & Charles W. Colson, *The Clintons Shrug at Sex Trafficking*, WALL ST. J., Jan. 10, 2000, at A26 (emphasis added) (quoting a former prosecutor with the New York District Attorney and U.S. Department of Justice).

167. See MARK MOTIVANS & TRACEY KYCKELHAN, U.S. DEP’T OF JUSTICE, FEDERAL PROSECUTION OF HUMAN TRAFFICKING, 2001–2005, at 1–2 (2006), <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf>.

168. See 2008 TIP REPORT, *supra* note 16, at 51.

169. See 2008 DOJ REPORT, *supra* note 61, at 27–28.

170. See FARRELL ET AL., *supra* note 35, at 7 n.3. According to a recent national study, only eight state law enforcement agencies have filed charges for human trafficking violations of any kind at the state level. *Id.*

were the first states to pass trafficking legislation in 2003,<sup>171</sup> but after five years, Washington has achieved zero trafficking convictions<sup>172</sup> and the Texas anti-trafficking law is “rarely used.”<sup>173</sup>

Meanwhile, pimping crimes are generally easier to prove and require fewer investigative resources.<sup>174</sup> Particularly at a time of budgetary constraint, when local agencies are under pressure to respond to violent crime, drug offenses, and Homeland Security initiatives with less personnel and fewer resources,<sup>175</sup> pimping laws may provide the next-best means of prosecuting traffickers who would otherwise never be convicted.<sup>176</sup> If aggressively enforced, pimping laws would function as a strong secondary deterrent to traffickers.<sup>177</sup> At the same time, if solicitation laws were effectively enforced against purchasers, the prostitution industry, and consequently, the market for sex trafficking would decrease substantially.<sup>178</sup>

With an estimated 1.3 million missing or runaway youth, many of whom may be at risk for juvenile prostitution,<sup>179</sup> a national response that relies solely on Thirteenth Amendment-based trafficking laws is like a Homeland Security strategy modeled on nineteenth century defense technology. Trafficking

171. TEX. PENAL CODE ANN. § 20A.02 (Vernon 2003); WASH. REV. CODE § 9A.40.100 (2003).

172. See Ruth Teichroeb, *State’s Human Trafficking Law Fails to Snag a Conviction*, SEATTLE POST INTELLIGENCER, July 22, 2008, available at [http://seattlepi.nwsourc.com/local/371716\\_law22.html](http://seattlepi.nwsourc.com/local/371716_law22.html).

173. See 2008 TEXAS REPORT, *supra* note 14, at 33.

174. See Letter from Jennifer Korn, Dir., U.S. Dep’t of Justice Office of Intergovernmental and Pub. Liaison, to Dorchen Leidholdt, President, Coal. Against Trafficking in Women-Int’l (Nov. 27, 2007), available at <http://www.usdoj.gov/olp/pdf/coalition-letter.pdf> (noting that prostitution cases do not require proof of force, fraud, or coercion).

175. See FARRELL ET AL., *supra* note 35, at 20 (discussing the myriad of competing concerns to which local enforcement agencies must respond).

176. *Cf.* Cynthia Shepherd Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT’L & COMP. L. 503, 512–13 (2006) (noting that prosecutors may also charge traffickers with assault, tax, or labor violations).

177. See 2007 House Hearing, *supra* note 120, at 43 (statement of Bradley W. Myles, Director, Polaris Project) (explaining the effectiveness of local pimping and pandering laws in prosecuting sex traffickers).

178. See *id.* at 55 (statement of Amy Farrell, Researcher, Northeastern University) (noting the importance of using laws that do not require force, fraud, or coercion to prosecute traffickers).

179. See End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. § 2(a)(4), (9)–(11) (2005) (noting the “alarming number of individuals” who are exploited by or at risk for exploitation in the commercial sex industry).

laws may be necessary and appropriate particularly in interstate cases, or cases involving multiple victims, large sums of money, or especially heinous forms of violence and coercion.<sup>180</sup> However, because they are so hard to maneuver, these laws cannot be efficiently leveraged on behalf of all domestic trafficking victims.<sup>181</sup> If the federal government is serious about reducing rates of violence, coercion, and child exploitation in the U.S.'s prostitution industry (i.e., sex trafficking), then it must begin to cultivate a more flexible and cost-effective arsenal of law enforcement strategies. Promoting the vigorous enforcement of prostitution laws against pimps and purchasers is the most logical place to start.

#### 4. Involved, Not Interfering: Why a Federal Role in Promoting State Prostitution Reform Is Constitutionally Permissible, Historically Appropriate, and Necessary

Because our constitutional framework limits the scope of federal legislation and reserves significant powers to the states,<sup>182</sup> LEAs have argued that the federal government should not interfere with intrastate prostitution regulation.<sup>183</sup> The Attorneys General have argued that, in accordance with the constitutional distribution of power and historic precedent, states should bear exclusive responsibility for regulating prostitution.<sup>184</sup> Meanwhile, the DOJ has argued that because federal anti-trafficking authority is grounded in the Thirteenth Amendment, “the federal government should not be diverted from its core anti-trafficking mission” of addressing slavery-like conditions involving force, fraud, and coercion.<sup>185</sup> Though the

---

180. See 2003 STATE DEP'T ASSESSMENT, *supra* note 163, at 10–11 (discussing the federal role in cases involving multiple jurisdictions or foreign investigations, or involving the severe traumatization of victims and witnesses, where the expertise of various professionals may be required).

181. See, e.g., *Child Prostitutes Rescued in U.S.*, BBC NEWS, Feb. 23, 2009, <http://news.bbc.co.uk/2/hi/americas/7906616.stm> (reporting on recent raids that resulted in the rescue of more than fifty child prostitutes, “some as young as thirteen,” and the arrest of more than 570 suspected traffickers, one who was only sixteen years old); Bob Young, *Seattle Schools Scramble to Outsmart Gangs*, SEATTLE TIMES, Mar. 2, 2009, [http://seattletimes.com/html/localnews/2008800988\\_gangsandschools02m.html](http://seattletimes.com/html/localnews/2008800988_gangsandschools02m.html) (noting that Seattle school officials are concerned that former students, once trafficked for prostitution themselves, are now recruiting minors for prostitution on school grounds).

182. See U.S. CONST. amend. X.

183. See Letter from Nat'l Ass'n of Attorneys Gen. to Sen. Patrick J. Leahy, *supra* note 143.

184. See *id.*

185. See OFFICE OF LEGAL POLICY, U.S. DEP'T OF JUSTICE, *supra* note 66,

first argument aims to protect states' rights while the second focuses on conserving federal resources, both disfavor federal involvement in state prostitution enforcement.

Both arguments are unfounded. Not only is a federal role in promoting state prostitution reform constitutionally permissible, it is historically appropriate and strategically essential. The suggestion that the Constitution prohibits federal involvement in intrastate prostitution enforcement is dubious. Courts have consistently relied upon Congress's Commerce Clause powers, rather than its Thirteenth Amendment jurisdiction, in upholding anti-trafficking legislation against constitutional challenges.<sup>186</sup> Based on the Supreme Court's expansive Commerce Clause jurisprudence, (in contrast with its much stricter reading of the Thirteenth Amendment) even direct federal regulation of intrastate prostitution would likely pass constitutional muster. As the Court has noted, local activity may be within congressional reach "if it exerts a substantial economic effect on interstate commerce."<sup>187</sup> As Justice Scalia stated in his *Gonzales v. Raich* concurrence, although the regulation of drugs (or prostitution) may be an area of traditional state control, "that is not enough to render federal regulation" constitutionally inappropriate.<sup>188</sup> Thus, although it may well be imprudent to "federalize pimping,"<sup>189</sup> current Commerce Clause jurisprudence would likely enable Congress to do so.<sup>190</sup>

---

at 1; see also Letter from Brian Benczkowski to Rep. John Conyers Jr., *supra* note 146 (suggesting that federal involvement in prostitution should be limited to interstate prostitution and trafficking cases, which implicate the Thirteenth Amendment).

186. See *United States v. Chang Da Liu*, 538 F.3d 1078, 1084 (9th Cir. 2008); *United States v. Evans*, 476 F.3d 1176, 1179–80 (11th Cir. 2007); *United States v. Paris*, No. 03:06-CR-64 (CFD), 2007 WL 3124724, at \*7–8 (D. Conn. Oct. 24, 2007); *Roe I v. Bridgestone Corp.* 492 F. Supp. 2d 988, 998 (S.D. Ind. 2007).

187. See *Wickard v. Filburn*, 317 U.S. 111, 125 (1942).

188. See *Gonzales v. Raich*, 545 U.S. 1, 41 (2005) (Scalia, J., concurring); see also *Morgan's S.S. Co. v. Bd. of Health*, 118 U.S. 455, 464 (1886) ("[W]hile it may be a police power . . . where such powers are so exercised as to come within the domain of [f]ederal authority as defined by the Constitution, [federal authority] must prevail").

189. See, e.g., Walsh & Grossman, *supra* note 140, at 7 (noting for example that the federal judiciary lacks the capacity to hear the "large numbers of additional criminal cases" that prostitution enforcement would require).

190. See *Victims of Trafficking Violence Protection Act of 2000*, Pub. L. No. 106-386, § 102(b)(2)–(12), 114 Stat. 1464, 1466–67 (codified as amended at 22 U.S.C. § 7101 (2006)). The Act explicitly references the role that prostitution ("commercial sex acts") plays in interstate commerce, and indicates that many

In addition to being constitutionally permissible, federal involvement in state prostitution enforcement is also historically appropriate. Though now considered within the domain of state police powers, the initial adoption of state prostitution laws was actually a direct consequence of Progressive Era federal anti-prostitution initiatives.<sup>191</sup> Before 1910, few states had criminalized prostitution.<sup>192</sup> However, following Congress's passage of the Mann Act in 1910 and the Standard Vice Repression Law of 1919, states quickly followed suit; by 1925, every state had enacted some form of legislation outlawing prostitution.<sup>193</sup> The fact that most states only passed prostitution measures as a response to federal legislation disabuses the characterization of prostitution as an exclusively local matter. Indeed, given its historical role in promoting the adoption of state prostitution laws, the federal government may well have a present-day responsibility to mitigate the unintended negative impact that these laws and policies have on trafficking victims.

Besides being constitutionally permissible and historically appropriate, a limited federal role may also be necessary. Without federal intervention, it is unlikely that state and local agencies will uniformly take initiative to realign prostitution enforcement methods with anti-trafficking goals. In the past, LEAs have demonstrated reluctance to reassign a heightened status to previously low-priority crimes.<sup>194</sup> For example, researchers have documented the initial resistance of LEAs to reprioritize simple assault and vandalism cases when these crimes were reclassified under domestic violence, stalking, and hate crime statutes.<sup>195</sup>

A similar trend is likely to occur with respect to pimping and patronizing crimes, where the victimized class consists of persons who have traditionally been viewed as unworthy of social protection. This may be particularly problematic with re-

---

persons are trafficked internationally to support the rapidly expanding "sex industry," which includes "activities related to prostitution." *Id.*

191. See generally Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 SUFFOLK U. L. REV. 235, 242-43 (2000) (providing a general history of the evolution of federal and state prostitution laws).

192. *Id.*

193. *Id.* (citing JOHN F. DECKER, PROSTITUTION: REGULATION AND CONTROL 71 (1979)).

194. See FARRELL ET AL., *supra* note 35, at 23.

195. *Id.*

spect to immigrant and minority groups who comprise a disproportionate percentage of persons in prostitution,<sup>196</sup> and who have a historically distrustful relationship with law enforcement.<sup>197</sup> To the extent that such persons are coerced or abused, LEAs and courts may view them as being responsible for their own victimization,<sup>198</sup> and therefore unwilling to charge or convict those who traffic them.<sup>199</sup>

Because of bureaucratic inertia against revaluing low-priority crimes, and the deep-rooted legal bias against persons in prostitution, without clear, consistent, and unified leadership, widespread national reforms are unlikely. While individual state attorneys general or city mayors may promote localized reform initiatives,<sup>200</sup> federal agencies are better positioned to collect data and promote national best practices. Over the past five years, the federal government has successfully motivated states to adopt anti-trafficking laws.<sup>201</sup> There is no reason why it should not be equally effective in encouraging states to reform prostitution enforcement priorities in light of these new laws. In addition, because trafficking is a market-based crime that ebbs and flows in direct response to law enforcement pressures, demand-targeted reforms in a limited number of jurisdictions would only push the problem to less proactive states.<sup>202</sup> Thus, as with anti-trafficking laws, prosti-

---

196. See, e.g., RAYMOND & HUGHES, *supra* note 15, at 42 (reporting studies showing that minorities are overrepresented among persons in prostitution).

197. See Professor Donna M. Hughes, Univ. of R.I., Keynote Address Before the Northeast Women's Studies Association, *Combating Sex Trafficking: Advancing Freedom for Women and Girls 8* (Mar. 5, 2005) (transcript available at <http://www.uri.edu/artsci/wms/hughes/pubtrfalks.htm>) (noting that in Chicago, African-Americans represent only 28% of the population but account for 75% of prostitution arrests).

198. See, e.g., 2008 ADVOCATES REPORT, *supra* note 103, at 33. According to one police officer, any individual who knowingly accepts money for prostitution should be prosecuted rather than treated as a victim. *Id.* at 35.

199. See, e.g., *United States v. Holte*, 236 U.S. 140, 145 (1915) (Harlan, J., concurring) (expressing concern about the injustice of allowing a "professional prostitute" to succeed in "blackmailing" her pimp); *People v. Brandt*, 306 P.2d 1069, 1072 (Cal. App. Dep't. Super. Ct. 1956) (noting that if the legislature wanted to categorize an otherwise respectable man as a "vagrant," it would require a "much clearer expression of legislative intent").

200. See, e.g., Fran Spielman, 'Go After Johns,' *Daley Says; Prostitution Fines Soar*, CHI. SUN TIMES, Aug. 29, 2002, at 22 (highlighting local leadership efforts to shift prostitution enforcement efforts toward purchasers).

201. See 2008 DOJ REPORT, *supra* note 61, at 35 (discussing the DOJ's rapid success in achieving state compliance with its Model State Anti-trafficking Statute).

202. See generally Hanh Diep, *We Pay—the Economic Manipulation of In-*

tution enforcement reforms will be most effective when adopted uniformly and on a national scale.<sup>203</sup>

### III. INCORPORATING COUNTERTRAFFICKING PRINCIPLES INTO PROSTITUTION ENFORCEMENT PRACTICE

In the future, the federal government should play a greater role in promoting victim-centered, demand-targeted prostitution enforcement at the state and local level. With respect to persons in prostitution, local police and prosecutors should begin to cultivate a more nuanced approach that incorporates victim screening and rehabilitative alternatives to incarceration, particularly for juveniles. With regards to pimps, law enforcement officers should start to make the vigorous investigation and prosecution of all pimps a priority. Finally, with respect to purchasers, government officials, LEAs, and courts should pursue creative and committed solutions to educate the public and deter future offenders.

#### A. A COUNTER-TRAFFICKING APPROACH TO PROSTITUTION ENFORCEMENT WOULD BENEFIT BOTH FEDERAL AND STATE INTERESTS

At the national level, the federal government views sex trafficking not only as a human rights concern,<sup>204</sup> but also as a foreign policy<sup>205</sup> and national security issue.<sup>206</sup> Meanwhile, state and municipal governments claim a long-held interest in reducing prostitution as a public nuisance, a corollary to drug activity, and a primary source of income for gangs and organized crime.<sup>207</sup> While these interests may seem to be in tension,

---

*ternational and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. INT'L L. REV. 309, 326–30 (2005) (discussing how inconsistent enforcement across jurisdictions creates an enabling environment for traffickers).

203. See MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE explanatory notes (Dep't of Justice 2003), available at [http://www.usdoj.gov/crt/crim/model\\_state\\_law.pdf](http://www.usdoj.gov/crt/crim/model_state_law.pdf) (addressing the “strong need for uniformity in definitions and concepts across state lines”).

204. See 2007 TIP REPORT, *supra* note 74, at 37 (recognizing the core “human rights principle” that trafficking victims should be protected from further trauma).

205. See 2008 TIP REPORT, *supra* note 16, at 2 (noting that the central aims of U.S. foreign policy—promoting democracy and just governance—require that the U.S. take action to combat trafficking).

206. See *id.* at 5 (suggesting that trafficking threatens the “health, safety, and security” of every nation it touches).

207. See, e.g., *Frieling v. State*, 67 S.W.3d 462, 474 (Tex. App. 2002) (sug-

studies suggest that victim-centered, demand-targeted enforcement policies may further both national and local interests by reducing the overall incidence of sex trafficking and prostitution.<sup>208</sup>

The purest form of a “victim-centered” approach to prostitution is found in Sweden, where in 1999, the government passed a law that criminalizes pimps, traffickers, and purchasers, while immunizing prostitutes from prosecution.<sup>209</sup> Though Swedish law enforcement initially opposed the law, just two years after its passage, the estimated number of women in prostitution had dropped by 50%, and the number of men purchasing prostitution had decreased by about 75%.<sup>210</sup> According to Europol undercover investigations, Sweden is no longer an attractive market for trafficking due to the increased risks and costs that the new law imposes on purchasers and pimps.<sup>211</sup>

Meanwhile, in countries where the purchasing of commercial sex has been decriminalized, both legal prostitution and illegal trafficking for prostitution have been shown to thrive.<sup>212</sup> For example, while prostitution has declined in Sweden, the number of women in prostitution in neighboring Denmark—where it is legal to purchase commercial sex—has doubled since the 1990s.<sup>213</sup> The Swedish model thus provides one example of how states can actually reduce prostitution and its attendant social harms through a victim-centered, demand-targeted approach.

---

gesting the benefit of prostitution regulation to the “health, safety, and welfare” of the State); see also Robin Shulman, *N.Y. Struggles to Aid Child Prostitutes*, WASH. POST, July 13, 2008, at A3 (noting that as compared with drugs, prostitutes can be sold many times, making pimping a “better business model” for criminal groups).

208. See JODY RAPHAEL & JESSICA ASHLEY, ILL. CRIMINAL JUSTICE INFO. AUTH., DOMESTIC SEX TRAFFICKING OF CHICAGO WOMEN AND GIRLS i (2008), available at <http://www.icjia.state.il.us/public/pdf/ResearchReports/Sex%20Trafficking%20Report%20May%202008.pdf>.

209. The Act Prohibiting the Purchase of Sexual Services, Brottsbalken [BrB] [Criminal Code] 6:11 (Swed.).

210. Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for the Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1193–94 (2004).

211. *Id.* at 1201. According to a National Criminal Investigation Department report, traffickers “do not sell women in Sweden because of the negative effects of the Law on their potential business.” *Id.*

212. See STATE DEP’T LINKS PROSTITUTION AND TRAFFICKING, *supra* note 108, at 2 (pointing to studies linking the legalization of prostitution with increased market demand and an increased rates of sex trafficking).

213. See Ekberg, *supra* note 210, at 1193–94.



Not surprisingly, several U.S. states have already begun to implement victim-centered, demand-targeted reforms. Some states are increasing social services and expanding alternatives to incarceration for persons in prostitution. For example, in Georgia, the government-funded Regional Assessment Center provides treatment and services for teens formerly involved in prostitution.<sup>214</sup> A recent legislative proposal would tax patrons of adult entertainment clubs to provide supplementary funding for similar programs throughout the state.<sup>215</sup> In Chicago and St. Paul, judges now have the option to refer persons arrested for prostitution to rehabilitative classes as an alternative to prosecution.<sup>216</sup> Proposed Illinois legislation aimed at reducing rates of recidivism and increasing exit options for prostituting persons would also allow prostitution charges to be sealed from the public record.<sup>217</sup>

States are also taking steps to more aggressively prosecute pimps.<sup>218</sup> In the wake of several high profile child prostitution scandals, the pimping of minors is now a felony crime in Georgia.<sup>219</sup> An Ohio bill currently awaiting the Governor's signature includes a "human trafficking" provision that will mandate jail time for convicted pimps.<sup>220</sup> And in Nevada, proposed legislation would allow state officials to seize pimps' assets to fund

---

214. See Shannon McCaffrey, *GOP Lawmaker Suggests Strip Club Fee*, ONNIDAN FAN FORUM, Jan. 5, 2009, <http://onnidan1.com/forum/index.php?topic=22834.msg71974>.

215. *Id.*

216. See RAPHAEL & ASHLEY, *supra* note 208, at i (highlighting the *Unhooked* program in Chicago); 2008 ADVOCATES REPORT, *supra* note 103, at 6 (citing St. Paul's *Breaking Free* program).

217. See Belkys Garcia, *Reimagining the Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161, 180 (2005).

218. See, e.g., *Allen v. Stratton*, 428 F. Supp. 2d 1064, 1072–73 (C.D. Cal. 2006) (finding no equal protection violation in a California statute that punishes pimping more severely than prostitution since the government has a legitimate interest in deterring pimps who criminally exploit prostitutes).

219. See GA. CODE ANN. § 16-6-13 (2007); see also *id.* § 16-6-13(d) (providing enhancements for pimping near school grounds or child recreation locales). See generally Paul Menair, *Prostitution: Increased Penalties for Offenses of Pimping and Pandering of a Minor*, 18 GA. ST. U. L. REV. 32, 39 (2001) (chronicling the passage and details of the Georgia prostitution law that made pimping minors a felony).

220. See Associated Press, *Strickland Poised to Sign Human Trafficking Bill*, NBC4I, Jan. 4, 2009, [http://www2.nbc4i.com/cmh/news/local/article/strickland\\_poised\\_to\\_sign\\_human\\_trafficking\\_bill/11415](http://www2.nbc4i.com/cmh/news/local/article/strickland_poised_to_sign_human_trafficking_bill/11415).

trafficking investigations and build secure housing facilities for prostituted youth.<sup>221</sup>

A number of states and cities are also experimenting with demand-reduction strategies intended to deter and educate purchasers. In Portland, police are now authorized to seize the cars of purchasers who use their vehicles in prostitution offenses.<sup>222</sup> In 2006, the city of Atlanta established a campaign to increase public awareness about the role that purchasers play in fueling sex trafficking.<sup>223</sup> Other cities have instituted offender-funded “John Schools” which have been shown to successfully deter attendees from subsequent solicitation acts.<sup>224</sup>

While these initiatives still represent a minority of jurisdictions, they indicate the willingness of local officials to rethink traditional assumptions about prostitution enforcement. Such efforts also demonstrate the creative potential of local governments and the variety of information available for policy research. With additional data collection, analysis, and informed leadership from the Justice Department, many more states and municipalities would likely adopt demand-targeted enforcement methods, to the benefit of would-be trafficking victims.

#### B. A COUNTER-TRAFFICKING APPROACH TO PROSTITUTION ENFORCEMENT WOULD INCREASE U.S. CREDIBILITY AND PROVIDE A USEFUL MODEL FOR OTHER NATIONS

The disproportionate targeting of enforcement resources against persons in prostitution and the correspondingly tolerant treatment of pimps and purchasers is far from unique to the U.S. legal system.<sup>225</sup> In Cambodia, a trafficking hub for

221. See Ed Vogel, *NV Bill Would Use Pimps' Proceeds to Fund Shelter*, LAS VEGAS REV. J., Jan. 02, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/01/02/state/n000024S25.DTL>.

222. See Associated Press, *Portland to Seize Cars in Drive on Drinking*, N.Y. TIMES, Dec. 8, 1989, at A35.

223. See Lagon, *supra* note 106, at 1.

224. See *2005 Commission Hearing*, *supra* note 1, at 29 (statement of Norma Hotaling, Director, Standing Against Global Exploitation (SAGE) Project) (highlighting the San Francisco First Offender Program's success in deterring 98% of attendees). In addition, funds generated through convicted purchasers' arrest fines go to support services for minors and adults seeking to exit prostitution. See *id.* at 21 (statement of Sen. Smith).

225. See, e.g., Prabha Kotiswaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21 B.C. THIRD WORLD L.J. 161, 169 (2001) (noting that prostituting women in India are more often arrested and subject to higher penalties than either pimps or brothel owners).

Southeast Asia, police have used the country's new anti-trafficking laws to harass and abuse women in prostitution.<sup>226</sup> In Moldova, a locus for trafficking in Eastern Europe, many of the most powerful pimps are actually former police.<sup>227</sup> Both domestically and abroad, such distorted practices enable traffickers to expand their activities while further reducing victims' access to already limited public justice systems.

The U.S. has established a sophisticated bureaucratic infrastructure, allocated funding, and strategically positioned itself to play a lead role in international counter-trafficking efforts.<sup>228</sup> Meanwhile, the U.S. prostitution market continues to draw thousands of foreign victims annually,<sup>229</sup> in addition to the estimated "hundreds of thousands to well over a million" domestic trafficking victims.<sup>230</sup> Without an effective model for reducing the trafficking of children and adults at home, it is unclear on what basis the U.S. can continue to authorize and monitor funding to combat sex trafficking abroad.<sup>231</sup> According to one representative: "When we try to get [the] cooperation of other countries to go after sex trafficking in their country, some point to our toleration of this brutal system of prostitution in this country to suggest that we have no moral authority to criticize them."<sup>232</sup> Of course the converse is also true: if the U.S. can demonstrate a model that reduces the market for prostitution and its attendant harms, American legitimacy to evaluate and lead anti-trafficking efforts abroad will increase markedly.

---

226. See Kuch Naren & Katie Nelson, *Sex Workers Protest New Law, Claim Abuse*, THE CAMBODIAN DAILY, June 5, 2008, at 26 (on file with the author).

227. See Finnegan, *supra* note 119, at 50 (quoting a former prosecutor).

228. See 2008 TIP REPORT, *supra* note 16, at 2 (noting that from 2001 to 2007, the U.S. government provided \$528 million in assistance to help combat trafficking in foreign countries).

229. See U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003, at 3 (estimating that between 14,500–17,500 persons are trafficked into the U.S. each year). Among them, approximately 80% are women and girls and 50% are minors, many of whom are trafficked for prostitution. See 2008 TIP REPORT, *supra* note 16, at 7.

230. See 151 CONG. REC. H11,570 (daily ed. Dec. 14, 2005) (statement of Rep. Scott) (emphasizing in particular the victimization of minors in prostitution).

231. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 107A(c), 122 Stat. 5044, 5048 (codified at amended at 22 U.S.C. § 7105a(c) (West 2009)) (requiring the President to establish a system to evaluate the effectiveness of U.S. anti-trafficking funding).

232. 151 CONG. REC. H11,570 (daily ed. Dec. 14, 2005) (statement of Rep. Scott).

C. NEXT STEPS: THREE THINGS THE FEDERAL GOVERNMENT SHOULD DO TO BRIDGE THE GAP BETWEEN SEX TRAFFICKING PRIORITIES AND PROSTITUTION ENFORCEMENT POLICIES

The topic of prostitution is fraught with moral, ideological, and therefore political controversy.<sup>233</sup> Domestically, as well as internationally, a small but outspoken minority perceives prostitution as a freely chosen profession that should be protected as a legitimate form of work.<sup>234</sup> Meanwhile, an opposing though equally powerful lobby sees it as an inherently violent form of sexual exploitation that is particularly harmful to women.<sup>235</sup> Yet in spite of the inherent political pitfalls, leaders at all levels of government have a vested interest in addressing both voluntary and coercive forms of prostitution in their jurisdictions.<sup>236</sup>

Over the last eight years, the U.S. government has made remarkable strides to combat sex trafficking. Yet urgent needs remain, particularly with respect to the domestic sex trafficking of juveniles. Moving forward, there are three things that Congress can do to promote prostitution enforcement reform in the next TVPRA. First, Congress should increase accountability within the Justice Department to take on demand-targeted prostitution enforcement reform as a counter-trafficking priority. Second, it should provide guidelines to ensure that the DOJ's Model State Prostitution Statute becomes a tool for reforming imbalanced practices, rather than reinforcing the status quo. Third, it should promote public education on the social harms of prostitution, and in particular, its connection to juvenile and adult sex trafficking.

233. See generally Holly B. Fechner, *Three Stories of Prostitution in the West: Prostitutes' Groups, Law and Feminist "Truth,"* 4 COLUM. J. GENDER & L. 26 (1994) (analyzing competing views on prostitution from the liberal, socialist, and radical feminist perspectives); John M. Glionna, *Proposition to Protect Sex Work Splits S.F.; Backers Say Measure Would Help Public Health. Foes Contend it Will Attract Criminals,* L.A. TIMES, Sept. 15, 2008, at B6 (discussing opinions of a proposition in San Francisco to legalize prostitution).

234. See, e.g., Margo St. James, *Economic Justice for Sex Workers,* 10 HASTINGS WOMEN'S L.J. 5, 6-7 (1999).

235. See, e.g., 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, 109 (2006) (describing prostitution as "gender-based violence").

236. See 2008 TIP REPORT, *supra* note 16, at 29 (noting that Denmark and Scotland, as well as South Korea, have recently considered or implemented measures to limit the legality of purchasing commercial sex). The Amsterdam mayor has also moved to shut down parts of the city's red light district, after realizing that "big crime organizations are involved here in trafficking women, drugs, killings, and other criminal activities." *Id.*

### 1. Prioritizing Prostitution Enforcement Within the Anti-trafficking Paradigm

Congress should hold the DOJ accountable to complete the neglected mandates of the 2005 TVPRA: that is, to conduct the national demographic study on prostitution; to issue best practices for victim-centered, demand-targeted enforcement; and to authorize grants for training local LEAs in the use of such practices. Currently, the training requirements regarding prostitution and trafficking are lumped together within a single legislative provision.<sup>237</sup> In the next TVPA Reauthorization, Congress should create an independent provision that addresses training and best practices specifically related to prostitution enforcement. This would emphasize the centrality of demand-targeted prostitution enforcement reform. It would also facilitate accountability by enabling the DOJ to report back to Congress on the measures it has taken to promote demand-targeted reforms with greater precision.

### 2. Creating a Model Statute that Embodies Victim-Centered, Demand-Targeted Reforms

In the next Reauthorization Act, Congress should provide more guidance with respect to the DOJ's Model State Prostitution Statute. As suggested above, a model statute that is based on the Washington D.C. criminal code will likely have negligible impact, since most states already have "comprehensive" laws outlawing prostitution.<sup>238</sup> A future revised model prostitution statute could encourage beneficial reforms in state prostitution enforcement in several concrete ways. For example, the inclusion of defenses for prostituted juveniles and for adults prostituted through force, fraud, or coercion would help to bring state enforcement in line with the TVPA's victim-protection mandates. A provision allowing individuals to expunge prostitution convictions from their records would also remove bar-

---

237. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 201, 119 Stat. 3558 (2006) (codified as amended at 42 U.S.C. § 14044(a)(1)(A)) (establishing requirements for research and training on both prostitution and trafficking); see also William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 302, 122 Stat. 5044 (codified as amended at 22 U.S.C.A. § 14044 (West 2009)) (reauthorizing funding for the 2005 provisions).

238. See OFFICE OF LEGAL POLICY, U.S. DEP'T OF JUSTICE, *supra* note 66, at 2 (noting that states have had "comprehensive" laws prohibiting prostitution "for decades").

riers for convicted trafficking victims now trying to exit prostitution.<sup>239</sup>

To better address the demand side of prostitution, the revised model prostitution statute should suggest increased penalties for pimping, as well as a strict liability enhancement for pimping minors. Although pimping juveniles technically qualifies as “sex trafficking” under federal law, the TVPA currently requires “reckless disregard” of a minor’s age.<sup>240</sup> A strict liability offense that carries enhanced penalties at the state level would thus increase the risk for pimps who exploit minors but cannot be proven to have demonstrated “reckless disregard.” Likewise, the model statute should impose enhancements, or apply state statutory rape penalties to purchasers who pay for sex with minors.<sup>241</sup> Purchasers should not be able to evade state child exploitation laws simply because they have paid for such acts. A model statute that incorporated such provisions would serve to align state prostitution statutes with anti-trafficking objectives related to deterring pimps and reducing market demand.

### 3. Educating the Public About the Connection Between Prostitution and Sex Trafficking

Finally, Congress should allocate a portion of existing law enforcement training funds to educate the general public about the connection between prostitution and sex trafficking. Men who patronize prostitution typically reflect a lack of awareness about sex trafficking and the negative consequences that prostitution can have on communities and individuals.<sup>242</sup> Education

239. See, e.g., Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J.L. & FEMINISM 69, 79–80 (1998) (noting that even where legalized, persons in prostitution face legal and social barriers to alternative employment, health benefits, insurance, and parental rights).

240. William Wilberforce Trafficking Victims Protection Reauthorization Act § 222(b)(5) (asserting “reckless disregard” as the required mens rea for sex trafficking crimes).

241. See 2005 Commission Hearing, *supra* note 1, at 28 (statement of Norma Hotaling, Director, Standing Against Global Exploitation (SAGE) Project) (noting that purchasers are rarely, if ever, held accountable for exploiting minors under state sexual abuse or statutory rape laws).

242. See DONNA M. HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF TRAFFICKING 17 (2004), [http://www.uri.edu/artsci/wms/hughes/demand\\_sex\\_trafficking.pdf](http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf) (noting that in a study of 1342 purchasers, the majority felt that prostitution did not harm anyone and should be legalized); see also Laura Blumenfeld, *In Shift, Anti-Prostitution Effort Targets Pimps and Johns*, WASH. POST., Dec. 15, 2005, at A1 (quoting one “john,” a self-

has been surprisingly effective in reducing recidivism among arrested purchasers, and would likely have a similar deterrent effect on potential purchasers as well.<sup>243</sup>

Increased awareness would also likely stimulate local interest in expanding housing and social services for trafficked youth and adults. Additionally, since local police are responsive to local constituents and community groups, general education about the connection between customer demand and sex trafficking might also begin to shift the pressures placed on law enforcement. Rather than voicing concerns about the nuisance created by persons engaged in street prostitution, constituents might begin to pressure local LEAs to shift their focus to purchasers and pimps. By catalyzing changes in public attitudes, community education would thus be a deep, long-lasting, and ultimately cost-effective way to reduce the incidence of both domestic prostitution and sex trafficking.

### CONCLUSION

Over the last eight years, federal officials have given rousing speeches and leveraged significant resources to eliminate the incidence of human trafficking around the world. Yet on its home turf, the United States government has not achieved proportionate results, at least with respect to sex trafficking. In part, this is due to the government's persistent failure to acknowledge prostitution as an underlying root and strategic battlefield within its broader counter-trafficking mission. Rather than dismissing the issue as a political quagmire or wasteful distraction, the federal government should make prostitution enforcement reform a priority. While it may seem trivial when compared to "modern slavery," on a pragmatic level, recalibrating the dominant law enforcement approach to local prostitution crimes may be the most effective way to dismantle sex trafficking both in the U.S. and abroad.

---

described "law-abiding single white professional," in saying that lawmakers should focus on more important issues, such as the war in Iraq).

243. See Justin Berton, *Repentant Johns Taught Realities of the Sex Trade*, S.F. CHRON., Apr. 14, 2008, at A1 (noting the significant drop in recidivism among purchasers that has been correlated with such programs).