

CLEARFIELD CITY COUNCIL  
AGENDA AND SUMMARY REPORT  
March 12, 2019 – POLICY SESSION

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City Council Chambers  
55 South State Street  
Third Floor  
Clearfield, Utah

**7:00 P.M. POLICY SESSION**

CALL TO ORDER:

Mayor Pro Tem Peterson

OPENING CEREMONY:

Councilmember Phipps

APPROVAL OF MINUTES:

February 12, 2019 – Policy Session

February 26, 2019 – Policy Session

***PUBLIC HEARING:***

1. **PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE CDBG (COMMUNITY DEVELOPMENT BLOCK GRANT) ONE-YEAR ACTION PLAN FOR PROGRAM YEAR JULY 1, 2019 TO JUNE 30, 2020**

**BACKGROUND:** The Council was provided a copy of the proposed 2019/2020 CDBG (Community Development Block Grant) One-Year Action Plan. Citizens are given the opportunity to review the One-Year Action Plan at the Customer Service Center from March 13, 2019 to April 23, 2019. The final copy will be presented to the Council for consideration on April 23, 2019 at which time a second public hearing will be held.

**RECOMMENDATION:** Receive public comment.

***SCHEDULED ITEMS:***

2. **OPEN COMMENT PERIOD**

The Open Comment Period provides an opportunity to address the Mayor and City Council regarding concerns or ideas on any topic. To be considerate of everyone at this meeting, public comment will be limited to three minutes per person. Participants are to state their names for the record. Comments, which cannot be made within these limits, should be submitted in writing to the City Recorder at [nancy.dean@clearfieldcity.org](mailto:nancy.dean@clearfieldcity.org).

The Mayor and City Council encourage civil discourse for everyone who participates in the meeting.

Comments pertaining to an agenda item that includes a public hearing or public input should be given as that item is being discussed during the meeting.

3. CONSIDER APPROVAL OF RESOLUTION 2019R-10 ANNEXING SUNSET CITY INTO THE NORTH DAVIS FIRE DISTRICT'S SERVICE AREA FOR FIRE PROTECTION AND EMERGENCY MEDICAL AND AMBULANCE SERVICES

BACKGROUND: Sunset City petitioned the North Davis Fire District (NDFD) to consider its annexation into its service area for fire protection and emergency medical and ambulance services. The North Davis Fire District passed its Resolution 2018R-11 requesting Clearfield City, as the Governing Authority for the NDFD, take all the necessary and appropriate action to annex Sunset City into its boundaries. Notice of the proposed annexation was provided as required by law and a public hearing was held on January 8, 2019. No comments or protests were received.

RECOMMENDATION: Approve Resolution 2019R-10 annexing Sunset City into the North Davis Fire District's service area for fire protection and emergency medical and ambulance services and authorize the Mayor's signature to any necessary documents.

4. CONSIDER APPROVAL OF ORDINANCE 2019-09 ENACTING A TEMPORARY LAND USE REGULATION REGARDING MASSAGE PARLOR ESTABLISHMENTS APPLICABLE TO THE COMMERCIAL ZONED PROPERTIES LOCATED WITHIN THE CITY'S GEOGRAPHIC BOUNDARIES

BACKGROUND: The City has revoked five massage parlor businesses licenses located within City boundaries within the past four years as a result of criminal and administrative violations occurring on the premises of the massage parlors. Therefore, the City finds a compelling, countervailing public interest to regulate massage parlors within its boundaries in order to promote the health, safety, and welfare of the community; and to serve the best interests of the City's residents, visitors, and property and business owners.

RECOMMENDATION: Approve Ordinance 2019-09 enacting a temporary land use regulation regarding massage parlor establishments applicable to the commercially zoned properties located within the City's geographic boundaries and authorize the Mayor Pro Tem's signature to any necessary documents.

5. CONSIDER APPROVAL OF RESOLUTION 2019R-07 AUTHORIZING AMENDMENT NO. 3 TO THE INTERLOCAL COOPERATION AGREEMENT WITH DAVIS COUNTY FOR ANIMAL CONTROL SERVICES

BACKGROUND: Davis County Animal Care and Control provides animal control services for the City. This service is essential to the residents of Clearfield City in order to promote public health, safety and improve the City's image and livability. Each year the services and fees are reviewed and the agreement amended as necessary. Amendment No. 3 increases the fee for the services.

RECOMMENDATION: Approve Resolution 2019R-07 authorizing Amendment No. 3 to the Interlocal Cooperation Agreement with Davis County for animal control services and authorize the Mayor's signature to any necessary documents.

6. CONSIDER APPROVAL OF RESOLUTION 2019R-08 AUTHORIZING THE INTERLOCAL AGREEMENT WITH DAVIS COUNTY FOR ELECTION SERVICES

BACKGROUND: The City has successfully conducted its last two municipal elections by mail with the assistance of the Davis County Clerk's office. The County has the resources and equipment necessary to continue to assist in administering the election by mail. This Interlocal Agreement sets out the terms and fees for that service.

RECOMMENDATION: Approve Resolution 2019R-08 authorizing the Interlocal Agreement with Davis County for election services and authorize the Mayor's signature to any necessary documents.

***COMMUNICATION ITEMS:***

Mayor Pro Tem's Report  
City Councils' Reports  
City Manager's Report  
Staffs' Reports

***\*\*ADJOURN AS THE CITY COUNCIL\*\****

Dated this 7<sup>th</sup> day of March, 2019.

/s/Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the 'Americans with Disabilities Act' provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.

CLEARFIELD CITY COUNCIL MEETING MINUTES  
7:00 P.M. POLICY SESSION  
February 12, 2019

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Scott Hodge	Public Works Director
	Mark Baird	Deputy Public Works Director
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Trevor Cahoon	Communications Coordinator
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder

VISITORS: Cravin Mark Horrock, Dyson Strong, Jacque Strong, Lois Eberhard, Kristi Bush, Bob Bercher, Kathryn Murray, Robert Poirier, Jacob Taft, Garden Porter, Cameron Winquist, Natalie Winquist, Carah Porter

Mayor Shepherd called the meeting to order at 7:00 p.m.

Mayor Shepherd informed the audience that if they would like to comment during the Public Hearing or Open Comment Period there were forms to fill out by the door.

Councilmember Bush led the opening ceremonies.

APPROVAL OF THE MINUTES FROM THE DECEMBER 4, 2018 WORK SESSION AND THE JANUARY 8, 2019 POLICY SESSION

**Councilmember Phipps moved to approve the minutes from the December 4, 2018 work session and the January 8, 2019 policy session; as written, seconded by Councilmember**

**Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON A ZONING TEXT AMENDMENT TO AMEND THE PUBLIC NOTICE REQUIREMENTS FOUND IN TABLE 11.2 OF TITLE 11 CHAPTER 1 AS WELL AS TEXT AMENDMENTS TO TITLE 11, CHAPTER 4 SECTION 3, PARAGRAPH B IN THE CITY’S LAND USE ORDINANCE

Spencer Brimley, Community Development Director, stated generally public hearings and noticing were required for legislative items and not for administrative items as outlined in the Utah State Land Use Development and Management Act (LUDMA). He commented the City currently required a public hearing for conditional use permits and preliminary plats which were defined by State Law as administrative in nature and did not require public hearings. He explained in an effort to be more consistent with State Statute, the zoning text amendment proposed changes to the City’s public noticing and hearing requirements as outlined in Table 11.2 of Title 11 Chapter 1, as well as text amendments to Title 11, Chapter 4, Section 3, Paragraph B of the Clearfield Code.

Mr. Brimley reviewed the current and proposed public notice requirements as found in Table 11.2 of Title 11 Chapter 1. He explained the differences between a public meeting and public hearing. He indicated there would continue to be posted signs on the property so the public was aware of meetings or hearings prior to any considerations about a given project. He mentioned staff was reviewing options to improve the property noticing to continue its efforts with improving public education and transparency. Mr. Brimley stated the Planning Commission reviewed the item at its meeting on January 9, 2019 and recommended approval.

Mayor Shepherd opened the public hearing at 7:11 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Roper moved to close the public hearing at 7:12 p.m. seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE AMENDED SUBDIVISION PLAT FOR THE MASONIC TEMPLE SUBDIVISION LOT 2 LOCATED AT APPROXIMATELY 723 SOUTH DEPOT STREET (TINS: 12-066-0113, 12-066-0099, 12-850-0002)

Brad McIlrath, Senior Planner, stated a request was received to amend Lot 2 of the Masonic Temple Subdivision located at approximately 723 South Depot Street to create a 32-unit townhome subdivision. He reviewed the proposed plat amendments and explained the area was zoned T-C (Town Commercial) as part of the Form Based Code rezone, which allowed for townhome development. He mentioned previously the City Council had approved the

reorganization of the three properties: Lot 1, 2 and 3. Mr. McIlrath noted Lot 1 would not change other than some improvements to the parking lot, Lot 2 would be developed into the townhome subdivision, and Lot 3 was proposed for a commercial office building.

He reviewed the site plan, composition of the units, landscaping and proposed elevations. He reported the townhomes were designed to meet Form Based Code standards and included a pocket park, 10 visitor parking spaces and proposed street names that were likely to change but had been used as place holders. Mr. McIlrath commented on January 9, 2019, the Planning Commission reviewed the request and recommended approval subject to the four conditions included with the staff report.

Councilmember Bush asked if the secondary access road would be paved and remain open or would it be gated. Mr. McIlrath responded it would be paved into the parking lot for the Masonic Temple. He added the plat showed it as an emergency access, which UDOT required, and the decision about whether it would be a gated or open access would be left to the City but the language had to be on the plat.

Councilmember Bush wondered if the Fire District was okay with the proposed accesses. Mr. McIlrath answered so far there were no negative comments about the layout. He acknowledged the access was wider than what was required by the Form Based Code; however, it was a crucial element for the Fire District.

Councilmember Bush questioned how the land ownership was configured for the townhomes. Mr. McIlrath responded the owner of each townhome would own only the unit itself. He added all the property would be common area with private streets and sidewalks; thus, requiring a Home Owners Association (HOA) be established for the maintenance of those areas.

Councilmember Thompson wondered what the plans were for lighting. Mr. McIlrath stated staff was still working on the lighting with the applicant and it would be addressed during the site plan process. He anticipated there would be lighting on each of the units themselves and around the open space along the paths. He added Form Based Code required street light standards along the roads so Depot Street and 700 South would need decorative lighting added.

Mayor Shepherd opened the public hearing at 7:19 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Bush moved to close the public hearing at 7:20 p.m. seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE AMENDED SUBDIVISION PLAT FOR LARSEN COMMERCIAL SUBDIVISION LOT 2A SECOND AMENDMENT LOCATED AT APPROXIMATELY 325 WEST ANTELOPE DRIVE (TIN: 12-809-0001)

Brad McIlrath, Senior Planner, noted a request was received to amend Lot 2A of the Larsen Commercial Subdivision Plat to subdivide the existing lot into two (2) new lots for the property located at approximately 325 West Antelope Drive. He mentioned a similar request was reviewed by the City Council in its December 11, 2018 policy meeting and it was denied because it did not meet the landscaping standard for the C-2 (Commercial) Zone. He explained that because the property was already developed it made it difficult to meet that standard; however, there were two ways the applicant could move forward; either meet the standard or request a Development Agreement to authorize the reduction in landscaping.

Mr. McIlrath stated the applicant made some additional modifications to the landscaping since the December meeting. He reviewed the proposal with the Council, which included adding 506 square feet of landscaping to the existing 707 square feet which could be obtained by moving the parking areas currently on the north of the property to the rear and removing the asphalt on the north side to plant shrubs and trees in the park strip. He mentioned that even though the park strip landscaping did not count towards the total landscaping it was important to note the developer intended to make improvements to that area and maintain it which would create uniformity throughout the area. He continued the Planning Commission reviewed the proposed outlay at its meeting on January 9, 2019 and was forwarding a recommendation of approval subject to seven conditions. Mr. McIlrath pointed out the sixth condition was the applicant should execute a development agreement with the City to allow the existing site landscaping, along with additional frontage landscaping, to be less than the 10 percent as required in the C-2 Zone.

Mayor Shepherd opened the public hearing at 7:25 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Phipps moved to close the public hearing at 7:26 p.m. seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE AMENDED SUBDIVISION PLAT FOR THE JNH SUBDIVISION LOCATED AT APPROXIMATELY 360, 340, AND 320 WEST ANTELOPE DRIVE (TINS: 12-787-0001, 12-787-0002, 12-787-0003)

Brad McIlrath, Senior Planner, indicated the City received a request to amend a subdivision plat by combining Lots 1, 2 and 3 of the JNH Subdivision into a single new lot for the properties located at approximately 360, 340, and 320 West Antelope Drive. He reviewed the proposed

plan and pointed out the various easements which were probably dated to the World War II era. He stated the developer and applicant had not proposed any changes to the easements and confirmed they would be in the parking lot area once it was developed. Mr. McIlrath commented the Planning Commission reviewed the request on January 9, 2019 and forwarded a recommendation of approval subject to two conditions.

Councilmember Peterson wondered if there had been any word from the County about the lot designation numbers that were discussed during work session on February 5, 2019. Mr. McIlrath answered there had not yet been feedback about the lot numbering but staff would continue to reach out to the County. He noted if the County required another lot number other than Lot 1 which was previously used; it could be designated as Lot 11.

Councilmember Bush asked if there was an access planned for Antelope Drive. Mr. McIlrath responded access approvals along Antelope Drive would have to be approved by Utah's Department of Transportation (UDOT). He pointed out the site plan had three access points, but the applicant was aware it would have to work with UDOT standards and likely would need to reduce the number of accesses.

Mayor Shepherd opened the public hearing at 7:29 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Thompson moved to close the public hearing at 7:30 p.m. seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE VACATION OF AN ABANDONED WATERLINE EASEMENT LOCATED AT APPROXIMATELY 1335 EAST 3000 NORTH AND 1303 EAST 3000 NORTH IN LAYTON (TINS: 09-050-0089, 09-050-0014)

Brad McIlrath, Senior Planner, explained the City had a waterline easement that ran through various properties in Layton City; however, the easement was no longer in use and any lines in the easement had been abandoned. He continued a developer was interested in developing the two properties located at 1335 East 3000 North and 1303 East 3000 North and had requested the City vacate the abandoned easement for greater ease in development of the site. He noted no services offered by the City would be impacted by the proposed vacation of the waterline easement on the properties mentioned.

Mr. McIlrath mentioned Wright Development was the owner of the property and had provided a legal description for the easement on the properties it desired to develop. He commented there could be other properties in the future that would desire to have the waterline vacated as well, but the City would need to have the legal descriptions of those properties in order to proceed with a



vacation of any additional easements. He added staff recommended the City Council approve the requested waterline easement vacation.

Mayor Shepherd opened the public hearing at 7:32 p.m.

Mayor Shepherd asked for public comments.

**Councilmember Roper moved to close the public hearing at 7:33 p.m. seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

#### OPEN COMMENT PERIOD

*Jacob Taft*, resident, expressed his concerns about the code enforcement of residential properties. He indicated he had received a notice and felt the time for compliance was too short because his notice had arrived by mail and cut into the time period allowed for compliance. He expressed his opinion the language of the letter was harsh and unfriendly. He expressed his desire for the City to lengthen the compliance time period unless there were health hazards.

Mayor Shepherd thanked him for the comments and said it would be reviewed to see if there was a way to soften it. JJ Allen, City Manager, noted those were interesting points which coincided with discussions staff had been having recently. He mentioned one idea discussed was to outfit the Code Compliance Officers with a printer in the vehicle so the notices could be delivered personally when possible rather than by mail. He stated language of the notices was also being reviewed to try to soften it. Spencer Brimley, Community Development Director, added the Code Compliance Officers were willing to work and engage with the property owners to share information and try to have minor matters resolved quickly. He noted their willingness to extend time when needed. He offered to visit with Mr. Taft following the meeting to discuss the matter in more detail. He expressed appreciation for the comments expressed.

Mr. Brimley stated the City recognized if one property was suffering others residents might see it and allow their property to do the same, so generally Code Enforcement Officers were working with the public to resolve matters quickly while providing a better understanding of the City Code.

#### APPROVAL OF AND CONSENT TO THE MAYOR'S PROPOSED APPOINTMENTS OF INDIVIDUALS TO THE CITY'S PARKS AND RECREATION COMMISSION

Mayor Shepherd explained the City's Parks and Recreation Commission (PRC) currently had two vacancies created by the resignations of Devin Prouty and Stuart Jones. He noted two candidates were interviewed and discussed by the Council during work session on February 5, 2019. The Mayor recommended David Greaves, currently serving as an alternate member, be appointed as a regular member; Kristi Bush be appointed as regular member; and Andrea Bush be appointed to fill the alternate member position.

**Councilmember Peterson moved to approve and consent to the Mayor’s proposed appointments of David Greaves as a regular member of the Parks and Recreation Commission with a term expiring in December of 2019, Kristi Bush as a regular member of the Parks and Recreation Commission with a term expiring in December of 2021, and Andrea Bush as an alternate member of the Parks and Recreation Commission with a term expiring in December of 2019, and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Phipps. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

Mayor Shepherd congratulated the new members and expressed thanks to all members of the Parks and Recreation Commission for their willingness to serve.

APPROVAL OF ORDINANCE 2019-05 VACATING A WATERLINE EASEMENT FOR THE PROPERTIES LOCATED AT APPROXIMATELY 1335 EAST 3000 NORTH AND 1303 EAST 3000 NORTH IN LAYTON (TINS: 09-050-0089, 09-050-0014)

**Councilmember Roper moved to approve Ordinance 2019-05 vacating a waterline easement for the properties located at approximately 1335 East 3000 North and 1303 East 3000 North in Layton and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF THE AMENDED SUBDIVISION PLAT FOR THE MASONIC TEMPLE SUBDIVISION LOT 2 LOCATED AT APPROXIMATELY 723 SOUTH DEPOT STREET (TINS: 12-066-0113, 12-066-0099, 12-850-0002)

Councilmember Bush commented the City Engineers made good suggestions and as long as those conditions or recommendations were met the development would be good.

**Councilmember Bush moved to approve the amended subdivision plat for the Masonic Temple Subdivision Lot 2 located at approximately 723 South Depot Street subject to the four conditions recommended by the Planning Commission and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF THE AMENDED SUBDIVISION PLAT FOR LARSEN COMMERCIAL SUBDIVISION LOT 2A SECOND AMENDMENT LOCATED AT APPROXIMATELY 325 WEST ANTELOPE DRIVE (TIN: 12-809-0001)

**Councilmember Phipps moved to approve the amended subdivision plat for Larsen Commercial Subdivision Lot 2A Second Amendment located at approximately 325 West Antelope Drive subject to the seven conditions recommended by the Planning Commission which included the applicant executing a development agreement with the City to allow the**

**existing site landscaping, along with additional frontage landscaping, to be less than the 10 percent as required in the C-2 Zone; and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF THE AMENDED SUBDIVISION PLAT FOR THE JNH SUBDIVISION LOCATED AT APPROXIMATELY 360, 340, AND 320 WEST ANTELOPE DRIVE (TINS: 12-787-0001, 12-787-0002, 12-787-0003)

**Councilmember Thompson moved to approve the amended subdivision plat for the JNH Subdivision located at approximately 360, 340, and 320 West Antelope Drive subject to the two conditions recommended by the Planning Commission and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF ORDINANCE 2019-04 AMENDING TITLE 11, CHAPTER 1, SECTION 10, TABLE 11.2 – LAND USE, PUBLIC NOTICE REQUIREMENTS AND TITLE 11, CHAPTER 4, SECTION 3, PARAGRAPH B – LAND USE, APPLICATION REVIEW PROCESS OF THE CITY CODE

**Councilmember Peterson moved to approve Ordinance 2019-04 Amending Title 11, Chapter 1, Section 10, Table 11.2 – Land Use, Public Notice Requirements and Title 11, Chapter 4, Section 3, Paragraph B – Land Use, Application Review Process of the Clearfield City Code and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF THE AWARD OF BID FOR THE MABEY POND WATER SUPPLY PROJECT

Eric Howes, Community Services Director, explained the Mabey Pond Water Supply Project was intended to provide a water supply for Mabey Pond utilizing an existing well on 200 South Street that had been out of service. He stated the project would renovate the vault and connect a water line from the well that would run to the west along 200 South to 700 East and then to 300 South Street and west to Mabey Pond. He continued it also included an outfall on the southwest side of the pond, across the parking lot to a storm drain on 450 South. Mr. Howes commented the City solicited bids and received eleven which was much higher than the one received when it previously bid the project in the fall of 2018. He noted the lowest responsible bid was from NeZhoni Construction with a bid amount of \$296,154.43. He stated the City had not worked with the company in the past; however, had received good reviews for the contractor. He indicated staff was recommending a contingency of \$40,000, so the total project cost would be \$336,154.43.

Councilmember Bush stated the outfall line from the southwest corner went along private property and wondered if contact had been made with the property owners about the project. Mr. Howes said yes.

Councilmember Phipps asked if the park impact fees would be used to fund the entire project. Mr. Howes answered the park impact fees would be used to completely fund the project. Councilmember Phipps requested to know whether or not the costs fell into the original amount budgeted for the project. He recognized there had been additional funds added to the budget for the outfall. Mr. Howes responded the original budget money would have been very close to covering the bid amount for the water supply from the well to the pond; but, with the addition of the outfall the budget had been amended to cover that additional costs.

Councilmember Phipps questioned when the project was expected to begin. Mr. Howes reported contract execution and a pre-construction meeting would be held soon and anticipated it would begin towards the end of March 2019. He added the project had a 90 day construction period and it was intended to finish prior to the end of the Fiscal Year.

Councilmember Roper asked if the residents would be notified about the project. Mr. Howes responded the contractor would keep residents updated and advised about the project. There was a discussion about the helpful efforts in re-bidding the project to keep costs down, the use of impact fees, and the potential the project would have in revitalizing the area and add much needed water to the pond.

**Councilmember Thompson moved to approve the award of bid for the Mabey Pond Water Supply Project to NeZhani Construction with a bid amount of \$296,154.43, with a contingency of \$40,000 for a total project cost of \$336,154.43, and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

#### APPROVAL OF THE AWARD OF BID FOR JANITORIAL SERVICES

Curtis Dickson, Community Services Deputy Director, mentioned the City's current contract for janitorial services had expired. He noted staff had solicited bids for janitorial services and received six qualified bids and each bid had been reviewed and ranked by staff based on the guidelines included in the Request for Proposals (RFP). He indicated staff recommended the City split the award between two bidders and award the City's janitorial services for the Clearfield Aquatic and Fitness Center, Fisher Park tower and Steed Park tower to Premier Services with a bid amount of \$59,200; and award the City's janitorial services for the Clearfield City Hall, Clearfield Community Arts Center, and the Clearfield Maintenance and Operation Center to Ascent Crew, LLC with a bid amount of \$84,000.

**Councilmember Roper moved to approve the award of bid for the City's Janitorial Services for the Clearfield Aquatic and Fitness Center, Fisher Park Tower and Steed Park Tower, to Premier Services with a bid amount of \$59,200; approve the award of bid for the City's Janitorial Services for the Clearfield City Hall, Clearfield Community Arts Center,**

**and the Clearfield Maintenance and Operation Center, to Ascent Crew, LLC with a bid amount of \$84,000; for a total bid amount of \$143,200; and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

#### FINANCIAL UPDATE ON THE 2018/2019 FISCAL YEAR BUDGET

Rich Knapp, Finance Manager, reviewed the Fiscal Year 2019 (FY19) revenues, expenses, and net changes for the budget to date. He stated the City's budget was as planned, some items coming in higher or lower than anticipated, but overall in good shape. He indicated the FY19 budget had planned to spend down \$1.7 million of the City's reserves on one-time capital projects. He explained if everything came in as budgeted for the year the City would have about \$999,000 over its allowed reserves. Councilmember Phipps asked what percentage that was over the allowable amount. Mr. Knapp said it was about 4 percent, yet it likely would be higher because the City usually spent less than budgeted each year.

He reviewed the General Fund revenue summary highlighting taxes, licenses and permits, intergovernmental, fines and forfeitures, miscellaneous, and other services which were at 54 percent of the budgeted revenues for FY19.

- The tax revenue variance was \$279,624, which was 5 percent higher than last year in the first quarter.
- Sales Tax actual for July and August were 3.9 percent higher than the same time period last year.
- Energy Use Tax was \$184,000 or 15 percent higher.
- Building permit revenues were \$109,000 higher than last year's first quarter because of West Square, Clearfield Junction, and Jay Bird developments.
- Class C Roads were \$53,000 or 11 percent higher because of the revised formula.
- Zoning Fees and Plan Check Fees were \$66,000 higher because of development.
- Aquatic and Fitness Center revenues were \$80,000 less or 15 percent lower because of the extended closure in September; however, preliminary numbers show January was about \$18,000 higher than last year, so that was an area to watch.
- Recreation revenues were \$17,000 higher than last year and were also higher than two years ago.
- Fines and Forfeitures were \$30,000 lower than last year, but higher than 2017.
- Cell Tower lease added a new revenue source under Miscellaneous Revenue and explained why it was higher.

Councilmember Peterson requested Mr. Knapp explain some of the reasons why sales tax was trending higher than anticipated. Mr. Knapp explained sales tax revenues were higher because of the economy and consumer confidence which was generating sales tax, but when budgeting or estimating its sales tax dollars the City was conservative because it was the most volatile source of revenue. JJ Allen, City Manager, added the only sure source of revenue for the City was a percentage of the property tax dollars, but all of the other revenue sources were based on external factors and consumer spending; therefore, when estimated during budgeting season it was difficult to predict.

Councilmember Bush mentioned there was a legislative bill being reviewed which could affect the distribution rate for sales tax dollars which could affect the City. He wondered if it had been reviewed by staff to see what the impacts would be if it were passed. Mr. Allen said there were many variables in the sales tax discussion and currently there was not anything that could be projected because nothing had yet been determined.

Mr. Knapp reviewed the FY19 expenditures of personnel, materials and services, capital outlay, debt service, and transfers in comparison to the prior three years as well as total funds spent to date and the percentage of budget. He reviewed revenues and expenditure comparisons for the last three years of the CDRA, Water, Sewer, Storm and Garbage funds.

He highlighted United States (US) and Utah economy. Mr. Knapp indicated in the US there had been monthly job gains for 100 consecutive months. He noted Utah's employment growth had slowed to 2.9 percent a month ago but currently it was back up to 3.1 percent; which was the fourth fastest in the nation. He stated Utah's population had grown 57,987 and was mostly from births rather than migration. He pointed out Utah's quarterly point of sales data for 2019 was higher than previous years; however, the City's quarterly point of sales data was lower. He noted it was unclear why the trend but it would be something to watch. Mr. Allen mentioned it would be interesting to see if the recreation destinations recently opened in the City would have impacts on its sales tax dollars.

## COMMUNICATION ITEMS

### ***Mayor Shepherd***

1. Spent a day at the capitol with the Legislature which was enjoyable.
2. Represented the City at the Red Flag exercise held at the Nellis Air Force Base and was also able to attend two other award ceremonies for the Air Force recently.
3. Held lunch with the Mayor on February 6, 2019.
4. Spoke to kindergarten classes at Bravo Arts Academy on February 11, 2019.
5. Attended the ribbon cutting ceremony for the softball facility at Hill Air Force Base.
6. Attended the Lincoln Day Dinner with Councilmember Thompson on February 8, 2019.
7. Reported meetings would be held soon with the architect to help provide input on the new library at Clearfield Junction. He indicated he would be reaching out to some residents for participation on the design committee.

### ***Councilmember Bush***

1. Attended the transportation committee meeting held on January 23, 2019 discussing the Wasatch Front Regional Council's transportation projects planned through 2025. He indicated all of the City's projects were before that time frame so it would be important to look beyond 2025 to see if there might be projects worth considering.
2. Attended, with Mayor Shepherd and Councilmember Peterson, the ribbon cutting ceremony at Clearfield High School where Falcons Are Fabulous opened its food pantry.
3. Attended an open house meeting for the 300 North project and only a few West Point residents were in attendance.
4. Attended, along with Councilmember Phipps, an event where Wasatch Elementary was selected by the National Elementary and Secondary Education Act (ESEA) for its distinguished school award. He explained Wasatch Elementary was the best of 243 schools in the State and only the second school in the Davis District to be selected for such an award.

5. Participated with the ICS training and felt it was good and informative.
6. Attended Local Official's Day at the capitol on January 30, 2019.
7. Reported the North Davis Utah Kiwanis Club would be adding three new members from the Layton, Clinton and Syracuse Wal-Mart stores because of relations built recently at meetings that stemmed from the Club's coat purchases at Christmas time for school children which were donated.

***Councilmember Peterson***

1. Participated with the ICS training.
2. Reported the North Davis Fire District was moving forward through the annexation of Sunset City into its service area and requested contact if there were any questions about the annexation while that process was still in place.
3. Invited interested persons to attend the Community Networking Luncheons that would resume next week on February 19, 2019 at noon.
4. Expressed appreciation from residents to the police and fire personnel that responded to a tragic event recently and it was heartbreaking; however, handled well.
5. Thanked the Parks and Recreation crews and Public Works staff for the additional work done to keep the schools' sidewalks plowed and the interaction with the students provided on cold mornings.
6. Expressed appreciation to staff and recognized Nancy Dean, City Recorder, for her efforts with preparation of minutes.

***Councilmember Phipps***

1. Attended an event at Wasatch Elementary School where it was awarded the Distinguished School Award presented by the National ESEA.
2. Reported on February 6, 2019 Wasatch Integrated Waste Management District's board met and passed a bond resolution to pay for its waste recovery facility. He indicated the project had bid and was under review. He anticipated the bid would be awarded soon. He mentioned the transfer station would be completed in the spring, March or April of 2019. He anticipated the waste recovery facility construction would begin about that same time period and was expected to take about a year to complete. Councilmember Bush asked if a tour of the transfer station could be arranged for the Council. Councilmember Phipps responded it should be possible and felt it would be educational for any attending.

***Councilmember Roper*** – thanked everyone and expressed appreciation for those that participated with the Youth Commission at the Local Official's Day and made it possible. He explained the Youth Commission was able to go on a tour with Representative Lisonbee and were also involved with the debates. He commended the Youth Commissioners for their help with the library and working with the Circles Program as youth mentors because they wanted to make a difference.

***Councilmember Thompson***

1. Attended Local Official's Day on January 30, 2019.
2. Appreciated Police Chief Bennett for arranging the Incident Command Systems (ICS) training which provided him better insight.
3. Planned to attend a meeting with a Legislator regarding the use of taxpayer funds. He encouraged the City to continue to be conservative with its budgeting and ensure the software programs were accounting for spending as accurately as possible.
4. Attended the Lincoln Day Dinner with Mayor Shepherd. He thanked Senator Mike Lee's office for inviting him and providing the tickets to attend.
5. Thanked Governor Herbert for acknowledging Black History Month. He extended his wishes for all to have a happy Black History Month. He recognized it was a time to reflect not only the contributions and sacrifices of Black Americans but the sacrifices of all Americans. He encouraged remembering Dr. Martin Luther King's dream of trying to find a beacon on the hill and suggested America was a beacon of light for freedom.

## STAFF REPORTS

### ***JJ Allen, City Manager***

1. Informed the Council that all the cities in the County had started some discussions about important topics such as animal control, paramedic services, and dispatch. He expressed optimism it might be a good time for those discussion since there were newly elected County officials to make some needed changes that had the potential to resolve issues for every stakeholder. He stated he would keep the Council updated on any progress.
2. Reported staff was focusing time on the legislative session and any impacts for the City.
3. Announced recruitments were underway and City staff was busy due to staffing turn over.
4. Informed the Council that budget preparation was being done for the Fiscal Year 2020.
5. Met off-site with the department head team to begin working on the tier objectives discussed during the Council's retreat and planning necessary action items.
6. Reported the City Building would be closed on Monday, February 18, 2019 for President's Day.
7. Announced a retirement party for Chris Horrocks was on February 13, 2019 at 2:00 p.m.

### ***Nancy Dean, City Recorder*** –reviewed the Council's schedule:

- Work Session on February 19, 2019
- Work and Policy Sessions on February 26, 2019
- Utah League of Cities and Towns would be holding its conference in Saint George from April 24 – 26, 2019 and asked those councilmembers planning to attend to let her know.

### ***Trevor Cahoon, Communications Coordinator*** – reviewed upcoming events with the Council:

- Celebrate Clearfield Week would be in April beginning with an Arbor Day celebration.
- Everyone Matters Day was planned as part of Celebrate Clearfield Week. He indicated the Weber State University group helping with the week's events had changed its focus and shifted from the original idea of a mural to preparing activities geared to children for the Everyone Matters Day.
- The Police outreach evening would be held on May 2, 2019 as the culminating event for Celebrate Clearfield Week.
- The Fourth of July committee would be meeting next week and any new details would be shared at a later date.

There being no further business to come before the Council, **Councilmember Thompson moved to adjourn at 8:26 p.m., seconded by Councilmember Phipps. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**



CLEARFIELD CITY COUNCIL MEETING MINUTES  
7:00 P.M. POLICY SESSION  
February 26, 2019

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Scott Hodge	Public Works Director
	Mark Baird	Deputy Public Works Director
	Eric Howes	Community Services Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Trevor Cahoon	Communications Coordinator
	Nancy Dean	City Recorder
	Wendy Page	Deputy Recorder

VISITORS: Ruth Jones, Bob Bercher, Michael Rolow, Kayla Barriga, Kevin Leo – Utah Transit Authority, Greg Washburn – Scout Troop 6, Heather Ridenour, Tre Tolbert, Joseph Bernil

Mayor Shepherd called the meeting to order at 7:04 p.m.

Mayor Shepherd informed the audience that if they would like to comment during the Public Hearing or Open Comment Period there were forms to fill out by the door.

Councilmember Peterson led the opening ceremonies.

APPROVAL OF THE MINUTES FROM THE JANUARY 8, 2019 WORK SESSION;  
JANUARY 22, 2019 POLICY SESSION; JANUARY 22, 2019 WORK SESSION;  
FEBRUARY 5, 2019 SPECIAL SESSION; AND THE FEBRUARY 19, 2019 COMMUNITY  
NETWORKING MEETING

**Councilmember Roper moved to approve the minutes from the January 8, 2019 work session; January 22, 2019 policy session; January 22, 2019 work session; February 5, 2019 special session; and the February 19, 2019 community networking meeting; as written,**

**seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE REQUEST TO REORGANIZE THE NORTH DAVIS FIRE DISTRICT (NDFD) FROM A SPECIAL SERVICE DISTRICT TO A LOCAL DISTRICT SERVICE AREA

Mayor Shepherd explained the Administrative Control Board for the NDFD passed a resolution on December 20, 2018 petitioning the City to consider taking all necessary measures to reorganize it from a special service district to a local district service area. He noted the City Council approved Resolution 2019R-01 expressing its intent to reorganize the NDFD and provided notice of the public hearing to receive public input. He commented the proper noticing had been done as required by State Statute.

Mayor Shepherd opened the public hearing at 7:07 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Bush moved to close the public hearing at 7:08 p.m. seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON A REQUEST TO REZONE APPROXIMATELY 56 ACRES LOCATED AT 1250 SOUTH STATE STREET KNOWN AS CLEARFIELD STATION (TINS:12-067-0139, 12-066-0138, 12-882-0001, 12-882-0004, 12-882-0005, 12-882-0006, 12-882-0007) FROM C-2 (COMMERCIAL) AND M-1-SP (MANUFACTURING WITH A SPECIAL PURPOSE OVERLAY) TO MU (MIXED USE)

Brad McIlrath, Senior Planner, reviewed the background and history of the property owned by Utah Transit Authority (UTA) at 1250 South State Street known as Clearfield Station. He explained since 2013 the City had been working with UTA on its efforts to develop the property which included a previous conditional rezone to the MU zone; however, nothing had materialized so the zoning had reverted to its current status of C-2 (Commercial) and M-1-SP (Manufacturing with a Special Purpose Overlay). Mr. McIlrath commented UTA and the City collaborated with a consultant for the creation of a Station Area Plan in order to help facilitate further development of the site as a Transit Oriented Development.

He continued rezoning a property with the Mixed Use (MU) designation required a Master Development Plan and Agreement be in place. Mr. McIlrath stated it was recommended the Station Area Plan and Design guidelines serve as the guiding document and regulation until such time that a Master Development Plan and Agreement were in place for the remaining parcels. He reviewed the conceptual layout denoting what could be included in the area. He added the concept had been a collaboration effort between the City and other stakeholders.

Mr. McIlrath noted the rezone of the 56 acres from C-2 (Commercial) and M-1-SP (Manufacturing with a Special Purpose Overlay) to MU (Mixed Use) would potentially increase the opportunity for selection by UTA as one of its preferred sites and allow the development to move forward. He acknowledged a Master Development Plan would supersede the Small Area Plan and provide the direction for its further development.

He indicated on February 6, 2019, the Planning Commission reviewed the rezone request and recommended its approval with the following conditions:

- The rezone to MU (Mixed Use) would apply only to the remaining parcels owned by UTA of approximately 56 acres in total.
- The Station Area Plan and Design guidelines would serve as the guiding document and regulation until such time that a Master Development Plan and Agreement were in place for the remaining parcels.
- The rezone should not take effect without the approval and execution of a Master Development Agreement between the City, UTA and the master developer.

Mr. McIlrath reviewed the options for action by the Council and asked if there were any questions.

Mayor Shepherd opened the public hearing at 7:14 p.m.

Mayor Shepherd asked for public comments.

#### PUBLIC COMMENTS

##### *In Favor*

*Kevin Leo*, UTA, stated UTA was fully in support of the proposed rezone.

##### *Opposed*

None.

**Councilmember Bush moved to close the public hearing at 7:15 p.m. seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

#### PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON A ZONING TEXT AMENDMENT TO TITLE 11, CHAPTER 15, PARAGRAPH 8, SECTION C AMENDING THE STANDARDS FOR ON PREMISE FREESTANDING SIGNS

Brad McIlrath, Senior Planner, stated the City proposed amendment to Title 11, Chapter 15, Paragraph 8, Section C of the City Code to ensure on premise freestanding signs complied with the City's clear vision regulations. He reviewed examples of on premise freestanding signs and indicated the following changes were proposed as amendments to the City's current ordinance:

## 11-15-8: SIGNS THAT REQUIRE A PERMIT

- C. On Premises Freestanding Signs: Freestanding signs shall be allowed as follows:
1. Commercial or manufacturing parcels or centers less than ten (10) acres in size: No freestanding signs shall be allowed.
  2. Commercial or manufacturing parcels or centers ten (10) acres or larger in size: One freestanding sign shall be allowed per three hundred feet (300') of street frontage. Sign area shall not exceed three hundred (300) square feet, and sign height shall not exceed thirty five feet (35'). Signs shall comply with the clear vision regulations found in section 11-13-10 of this title.
  3. For centers with more than one sign, there shall be a minimum separation of two hundred and fifty lineal feet (250') between each sign.
  4. Reader boards, changeable copy areas and electronic message centers: No such devices shall exceed fifty percent (50%) of the total copy area of the freestanding sign.
  5. Signs must be integrated into the development with a common theme or integrated architecturally with the buildings.
  6. Signs shall have at least a one foot (1') pedestal that is constructed of materials such as stone, brick, or rock with landscaping around the base of each sign.

Mr. McIlrath noted the language for the proposed ordinance included the update to number two as discussed during work session on February 19, 2019 clarifying the parcel size as ten acres or larger. He mentioned the last two provisions were additions which should provide better aesthetics and promote high quality design and construction. He explained on February 6, 2019, the Planning Commission reviewed and recommended approval of the amendments.

Mayor Shepherd opened the public hearing at 7:19 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Thompson moved to close the public hearing at 7:20 p.m. seconded by Councilmember Phipps. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper and Thompson. Voting NO – None.**

### OPEN COMMENT PERIOD

*Michael Rolow*, resident, expressed his concern for the students' safety being dropped off at the school bus stop on 500 West at 300 North. He explained many of the students were crossing 300 North at 500 West to get to their homes on the south side of 300 North. He noted there was not a crosswalk at that location and the students were expected to walk quite a distance and go under the bridge to cross from the north to the south side of the street. Mr. Rolow requested the City do something about the intersection to provide added safety for students and help with the flow of

traffic for residents exiting from the neighborhoods on the north and south onto 300 North. He expressed his worry traffic and congestion would get worse in the area because of the townhome development on the northwest corner of the intersection.

Mayor Shepherd thanked him for the comments. JJ Allen, City Manager, responded staff would communicate with the Davis School District to see what options were available.

APPROVAL OF ORDINANCE 2019-07 REZONING THE PROPERTY LOCATED AT APPROXIMATELY 1250 SOUTH STATE (TINS: 12-067-0139, 12-066-0138, 12-882-0001, 12-882-0004, 12-882-0005, 12-882-0006, 12-882-0007) IN CLEARFIELD, DAVIS COUNTY, UTAH, FROM (C-2) COMMERCIAL AND (M-1-SP) MANUFACTURING WITH A SPECIAL PURPOSE OVERLAY TO (MU) MIXED USE, WITH ITS ASSOCIATED “CLEARFIELD CONNECTED STATION AREA PLAN AND DESIGN GUIDELINES” SERVING AS A GUIDING DOCUMENT UNTIL SUCH TIME THAT A MASTER DEVELOPMENT PLAN AND AGREEMENT ARE FORMALLY APPROVED; AND AMENDING THE CLEARFIELD CITY ZONING MAP ACCORDINGLY

Councilmember Phipps commented he had some concerns about the Station Area Plan and he would continue to have them for a long time. Mayor Shepherd commented it was nice to have the UTA advisory board approve the Station Area Plan for the site last week. He indicated UTA would consider accepting the recommendation at its meeting on February 27 2019, and he planned to attend. Councilmember Peterson explained there were many sets of approvals still needed in the process and ultimately it would hinge on the decision of the City Council as the land use authority to approve the Master Development Plan and Agreement. She expressed her excitement to be moving the process along and was glad it was moving forward. Councilmember Bush commented the parcels would need to be the MU Zone no matter what future development took place on the site. Mayor Shepherd agreed and said the only consideration at this time was the zoning request.

**Councilmember Peterson moved to approve Ordinance 2019-07 rezoning the property located at approximately 1250 South State (TINS: 12-067-0139, 12-066-0138, 12-882-0001, 12-882-0004, 12-882-0005, 12-882-0006, 12-882-0007) in Clearfield, Davis County, Utah, from (C-2) Commercial and (M-1-SP) Manufacturing With A Special Purpose Overlay to (MU) Mixed Use, with its associated “Clearfield Connected Station Area Plan And Design Guidelines” serving as a guiding document until such time that a Master Development Plan and Agreement are formally approved; and amending the Clearfield City Zoning Map Accordingly; and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF ORDINANCE 2019-06 AMENDING TITLE 11, CHAPTER 15, SECTION 8, PARAGRAPH C – LAND USE, SIGNS THAT REQUIRE A PERMIT OF THE CITY CODE

**Councilmember Bush moved to approve Ordinance 2019-06 amending Title 11, Chapter 15, Section 8, Paragraph C – Land Use, Signs That Require A Permit of the City Code, and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember**

**Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF ORDINANCE 2019-08 TO AMEND TITLE 2, CHAPTER 4, SECTIONS 5, 6, 7, AND 8 – REVENUE AND FINANCE, CITY DONATIONS OF THE CITY CODE

Stuart Williams, City Attorney, stated the amendments to Title 2, Chapter 4, Sections 5, 6, 7, and 8 – Revenue and Finance, City Donations were proposed to make clarifications about the processes necessary when a monetary donation was made on behalf of the City. He explained some donations were reoccurring from year to year and identified as line items during the budgeting process and others came up throughout the year. He mentioned the amendments to the ordinance would provide clarity there would be an exception to the procedures currently outlined in the City Code for donations addressed during the fiscal budgeting process.

Mr. Williams continued the current ordinance allowed for a donation only after a determination was made by the City Council, a study was performed to support the monetary donation, and a public hearing was conducted. He commented the procedures allowed for the City Council to create a record to establish that its decision to donate public funds was done through a transparent process and included an opportunity for public input through a public hearing. He explained the City followed the transparency requirements that existed for donations through its budgeting process and associated public hearings so amendments were made to clarify the exception. He acknowledged any donations made throughout the year would need to clearly announce the purpose of the donation and allow for public comment on the matter before any decisions were made.

Councilmember Phipps expressed his appreciated for staff looking at potential problems the Council could have and presenting a great solution. He thanked staff for supporting the Council in its position so well.

**Councilmember Phipps moved to approve Ordinance 2019-08 to amend Title 2, Chapter 4, Sections 5, 6, 7, and 8 – Revenue and Finance, City Donations of the City Code, and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF RESOLUTION 2019R-09 APPOINTING REPRESENTATIVES TO SERVE ON THE TAXING ENTITY COMMITTEE FOR PROJECT AREAS ESTABLISHED BY THE CITY’S COMMUNITY DEVELOPMENT AND RENEWAL AGENCY

JJ Allen, City Manager, stated the Clearfield City Community Development and Renewal Agency (CDRA) had begun the process to create the project area called Mabey Place. He explained as part of the project, the CDRA Board determined to consider the potential use of eminent domain; therefore, by State Statute a taxing entity committee needed to be created. He noted the taxing entity committee would be comprised of representatives of the City, School District, County, and State School Board, and Special Districts. Mr. Allen explained the CDRA

had provided notice to the taxing entities of its intent to create a CRA and the need to appoint representatives to the Taxing Entity Committee (TEC).

He indicated Mayor Shepherd recommended he and Mayor Pro Tem Nike Peterson be appointed to the Taxing Entity Committee (TEC) and Councilmember Kent Bush be appointed as an alternative member.

Mayor Shepherd clarified eminent domain would not be entertained lightly should it become a necessity and it would only be done as a last resort. Mr. Allen noted the project area was planned to be the heart of the City and it was an ambitious vision which would still require a lot of work and political will to accomplish. Councilmember Bush acknowledged eminent domain was not merely taking property but it allowed for it to be purchased at fair market value.

**Councilmember Roper moved to approve Resolution 2019R-09 appointing representatives to serve on the Taxing Entity Committee for Project Areas established by the City's Community Development and Renewal Agency, and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

#### COMMUNICATION ITEMS

##### *Mayor Shepherd*

1. Acknowledged the legislative session was a few weeks away from its completion and there were many bills to keep watching including sales tax reform. He explained the Utah League of Cities Towns Legislative Policy Committee (LPC) was working to help keep the cities whole which would be a challenge. He noted Senate Bill 179 was another thing to watch which outlined the truth in taxation requirements.
2. Planned to attend the UTA board meeting on February 27, 2019 to answer any questions as it considered the Small Area Plan for Clearfield Station.
3. Met with representatives from the County, Wasatch Front Regional Council, and other City officials representing the Davis County Council of Governments (COG) on the third quarter local option sales tax recently approved by Davis County. He commented the option would create about 12 to 14 million dollars annually to be used toward new roads or congestion improvements. He suggested the City would want to make application for some of the funding and more information would come as the application process was developed.
4. Attended meetings of the Promised Partnership subcommittee he served on which was looking at mobility of students. He explained the entire group was looking at financial issues students' families were facing. He expressed his excitement with trying to find something that would make an impact.
5. Thanked the members of the Council for the various boards and commissions they served on. He explained through that representation the Council was informed and able to make important decisions.
6. Attended a Davis Chambers of Commerce Board meeting where Layton City's Police Department conducted active shooter training and shots were fired for educational purposes. He recommended it would be a good addition to the City's next training so people could understand the feelings and sounds that are created by actual shots being fired. He thanked Chief Bennett for attending City Council meetings.
7. Reminded Mayor Pro Tem Peterson she would be conducting the City Council meeting on March 12, 2019 since he and Councilmember Roper would be out of town attending the National League of Cities Congressional City Conference in Washington D.C.

***Councilmember Bush***

1. Attended the Community Networking Luncheon on February 19, 2019. He thought it was a good meeting with many decisions being made.
2. Reported that on February 14, 2019 the Sewer District's Board meeting was held and the 2018 budget was preliminarily finalized. He explained there was ten percent excess money left from the estimates provided with the 2017 budget which would be kept in the reserve funds for future projects.

***Councilmember Peterson*** – nothing to report.

***Councilmember Phipps***

1. Reported Wasatch Integrated Waste Management District was currently selling the gases produced from its waste materials to Hill Air Force Base at a very low rate but its ten year contract would soon expire. He explained Wasatch Integrated would bring on an engineer to help completely utilize those gases. He indicated a study would be done to determine if the facility could generate renewable natural gas which was pipeline certified that could be sold at a commercially viable rate. Councilmember Bush commented the Sewer District produced gas as well and it was used at the plant to power some of its equipment which may be an option for Wasatch Integrated as well. Councilmember Phipps acknowledged it was a great point and was a viable option being considered. He indicated part of the study being conducted would provide models of what could be done with the gases. Mayor Shepherd stated he was aware of a facility that was self-sustained from the gases produced as well as its fleet.
2. Announced the Restoration Advisory Board had an opening for the community representative for Clearfield. He requested those interested in participating to contact him or there was a website to apply online.

***Councilmember Roper*** – thanked residents who came to meetings and commented and shared their concerns with the Council and others who reach out on an individual basis.

***Councilmember Thompson***

1. Reported there was one death from West Nile Virus in Davis County in 2018. He indicated there were five schools in the Davis County participating with the mosquito abatement education. He noted there were some bills opposing mosquito abatement and one was House Bill 59 which would require a study before a district was created. He indicated the Mosquito Abatement District for Davis County would be hiring night time sprayers and job opportunities would be posted at the local colleges.
2. Attended the Black History and Family Night Art Show at the Clearfield Branch library. He enjoyed hearing perspectives from black students and felt a confirmation that residents of the City are feeling a connection to the community.

**STAFF REPORTS**

***JJ Allen, City Manager***

1. Reported budget preparation was underway and thanked Rich Knapp, Finance Manager, and his staff for managing the budget and Tyler software conversion.
2. Participated in the School Board's work session discussion last week concerning the Lifetime Community Redevelopment Area. He reported it would be on Board's agenda next week for consideration. He anticipated the CDRA would have Interlocal Agreements with the School District and others for consideration on upcoming agendas.
3. Commented the City had a great team of staff. He shared an example of teamwork demonstrated through Trevor Cahoon, Communications Coordinator, as he organized a meeting with staff to review



lessons learned from Sandy City when it recently had water contamination issues. He said it was a good team exercise on how to communicate with the public immediately and effectively in any type of situation.

**Nancy Dean, City Recorder** –reviewed the Council’s schedule:

- No meeting on March 5, 2019
- Policy Session on March 12, 2019
- Work Session on March 19, 2019
- Policy Session on March 26, 2019

**Brad McIlrath, Senior Planner** – updated the Council on the collaborative efforts to date in preparing noticing signs that would be posted on the property sites to announce public meetings and public hearings. He explained the vision with the signage was to help draw attention and then direct people to a website where they could find additional information about the project. He anticipated the City’s website would have a map where people could click on the location and find the property notice with additional details. He explained if there were questions staff would also be available to respond to calls or emails. Mr. McIlrath mentioned the public hearing notice sign was an invitation for the public to stop and attend public hearings, collaborate with the Council, and listen to the opinions of others while participating in the public hearing process which was the forum in place to receive public comments.

Trevor Cahoon, Communications Coordinator, pointed out the new signage did not provide the date and time of the public hearing as the previous signage had; however, the State Statute did not mandate those items for on-site notices. He indicated the standardized signs would help train residents or those with questions to visit the City’s website to obtain information. He indicated the signs’ design process was an effort of teamwork with good conflict and staff was proud of the end result. Mr. McIlrath stated the signs should be ordered soon and staff would continue to work on getting the website ready for accessing noticing information.

**Trevor Cahoon, Communications Coordinator** – reviewed upcoming events with the Council:

- March 30, 2019 – Pruning event taught by Tyler Hill, City Arborist.
- April 26, 2019 – Kickoff for Celebrate Clearfield Week would be the Arbor Day event in the morning and the Summer Blitz in the afternoon to encourage summer recreation enrollment.
- April 27, 2019 – Take Pride in Clearfield Day for community based neighborhood projects in conjunction with the 30 dumpsters which would be delivered to areas of the City to help facilitate use during the cleanup efforts. The Wizard of Oz Junior auditions would also be this same date.
- April 29, 2019 – Everyone Matters event geared towards children kindergarten through 12<sup>th</sup> grade that Weber State University students and the City were planning called “treating your neighbor.”
- May 2, 2019 – Culmination event for Celebrate Clearfield Week would be the Police Department Outreach. He noted staff had discussed including the watermelon drop at this event rather than during the Fourth of July celebration to help incorporate the physics’ clubs at the high school or NUAMES which could engineer the vessel used for the night.

Mr. Cahoon asked if there were any questions about the upcoming Celebrate Clearfield Week. JJ Allen, City Manager, stated all the events could be found on the Trello board that Mr. Cahoon had shown to the Council during the retreat. Councilmember Roper indicated he had been using it and found it helpful. There was a discussion about the event details, conflicts in schedules due to the ULCT meetings, and the option for the Council to divide and conquer so that each event was represented by elected officials if possible.

Mr. Cahoon updated the Council on the progress of the Fourth of July events planned. He noted the bands had been scheduled with Foreign Figures as the headliner and Michael Barrow and the Tourists had requested to return again as the opening band. He indicated the vendor space was almost all reserved and the food truck league would be coordinating it this year. He stated there were some complaints received from vendors that had participated with a booth in prior years; however, each was notified early so other arrangements could be made in advance. Mr. Cahoon commented the marketing focus for the event would be in Davis and Weber Counties. Eric Howes, Community Services Director, added contact was made with a vendor that could supply gaming entertainment on the Fourth of July at Fisher Park at a reasonable amount. He continued the vendor had an air conditioned trailer with about 30 arcade style games as well as it had recently acquired laser tag or archery tag games that could be set up in parks. He reported in about a month it would be available for the Council to test and see if it would be worth adding to the event. Mayor Shepherd mentioned the proposed changes would be nice additions for the event as well as free up staff time previously utilized for vendor coordination.

Mr. Cahoon stated the Community Networking luncheon was held on February 19, 2019. He commented the feedback received was to hold a nighttime meeting to see if there was any increased participation in the evening. He indicated the next meeting would be on March 13, 2019 at the Art Center Building because the City Building multipurpose room was already scheduled. Mr. Cahoon stated dinner would be arranged by the City for the meeting. He reported following the March meeting, the City planned to transition to have the meetings facilitated by community leaders and the City would continue to provide the space and guidance discussed during the retreat meeting on January 17, 2019.

**Councilmember Bush moved to adjourn the policy session and reconvene in work session at 8:20 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members  
**FROM:** Brad McIlrath, Senior Planner/CDBG Coordinator  
**MEETING DATE:** Tuesday, March 12, 2019  
**SUBJECT:** 2019-2020 CDBG One Year Action Plan – First Public Hearing to open the public comment period.

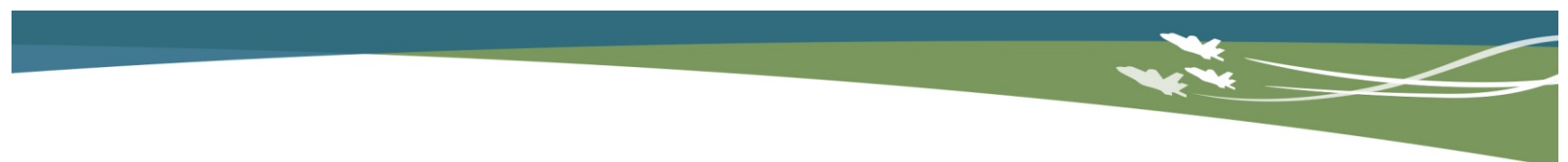
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### DESCRIPTION / BACKGROUND

Attached is a copy of the draft 2019-2020 Community Development Block Grant (CDBG) One Year Action Plan. As required, a public hearing must be held by the City Council to open the mandatory 30-day comment period and a second to close the public comment period and review the final plan. Citizens will be given the opportunity to review the One Year Action Plan at the Customer Service Center following the March 12, 2019 public hearing until April 23, 2019 public hearing. The final copy of the plan will be presented to the City Council on April 23, 2019 as part of the public hearing.

Applications for funding were received and reviewed by the CDBG Funding Committee on January 15, 2019. The committee included Mayor Shepherd and the following City Staff: JJ Allen (City Manager), Summer Palmer (Assistant City Manager), Spencer Brimley (Community Development Director), Stacy Millgate (Customer Service Manager), and Brad McIlrath (Senior Planner/CDBG Coordinator). With a conservative estimate of \$197,625 for 2019-2020 funding, the committee recommends the following allocations:

- **Open Doors (Family Connection Center) - \$10,000** Circles Program for low-income families to obtain job skills. **2,500** Food Services to at-risk low income persons and families.
- **Davis Community Learning Center - \$12,143.75** The funds will help fund two part-time Family Support Specialists (FSS) at Holt and Wasatch Elementary. The FFS work directly with school principals and families in need or crisis to address needs and provided assistance.
- **Safe Harbor - \$5,000** Case management, self-sufficiency support, educational and supportive groups, like skills classes, and connections to other resource agencies.
- **Housing Rehabilitation - \$58,456.25** Funds will be used towards a housing rehabilitation program for Clearfield residents.
- **Purchase of Lot – \$70,000** City will purchase building lot and will partner with an agency to construct a home for low to moderate income family.
- **Administration - \$39,525** Administrative expenses in order to oversee the CDBG program at Clearfield City and create the next 5-Year Consolidated Plan and perform the Analysis of Impediments.



Modifications to these proposed allocations can be recommended by the City Council. For example, if the City Council would prefer that funding for Open Doors not be split to two programs, the funds may be directed solely to the Circles Program or the Food Bank. If additional funding is provided than the estimated amount the additional funds will be allocated towards the Circles Program; if less funding is received than anticipated then the Davis Community Learning Center funding will be reduced.

### **IMPACT**

- a. **FISCAL** – The proposed allocations are based on funding granted by the United States Department of Housing and Urban Development. No local funds are required to provide the assistance.
- b. **OPERATIONS / SERVICE DELIVERY**- No Impact.

### **ALTERNATIVES**

No alternatives are being presented at this time.

### **SCHEDULE / TIME CONSTRAINTS**

CDBG hearing and noticing standards require a notice to be placed in the newspaper 14 days prior to this item being discussed by the City Council in a policy session. A notice was posted on February 24, 2019 that the first public hearing to open the required 30-day comment would be held on March 12, 2019 and that the second public hearing to close the comment period would be held on April 23, 2019. Following that comment period the City Council will be able to take action on the plan at the policy session held on April 23, 2019.

### **LIST OF ATTACHMENTS**

- 2019-2020 CDBG One Year Action Plan

CDBG  
ONE YEAR  
ACTION PLAN



2019-2020

2019– 2020  
ANNUAL ACTION PLAN

COMMUNITY DEVELOPMENT BLOCK  
GRANT (CDBG) PROGRAM



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## Executive Summary

### *AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)*

#### **1. Introduction**

Clearfield City expects to receive approximately **\$197,625** in Community Development Block Grant (CDBG) funds for the **July 1, 2019 to June 30, 2020** funding cycle. This is a 5% decrease in CDBG funds than Clearfield City received from the last funding cycle. No other federal, state or county funds are anticipated. Over the next year CDBG funds will be utilized as follows:

- **Open Doors (Family Connection Center) - \$10,000** Circles Program for low-income families to obtain job skills. **2,500** Food Services to at-risk low income persons and families.
- **Davis Community Learning Center - \$12,143.75** The funds will help fund two part-time Family Support Specialists (FSS) at Holt and Wasatch Elementary. The FFS work directly with school principals and families in need or crisis to address needs and provided assistance.
- **Safe Harbor - \$5,000** Case management, self-sufficiency support, educational and supportive groups, like skills classes, and connections to other resource agencies.
- **Housing Rehabilitation - \$58,456.25** Funds will be used towards a housing rehabilitation program for Clearfield residents.
- **Purchase of Lot - \$70,000** City will purchase building lot and will partner with an agency to construct a home for low to moderate income family.
- **Administration - \$39,525** Administrative expenses in order to oversee the CDBG program at Clearfield City.

#### **2. Summarize the objectives and outcomes identified in the Plan**

The Strategic Plan outlines the following priority needs. These needs are based on the information from the needs assessment and market analysis that was conducted in 2015.

Consolidated Plan Priority Needs:

- Case Management and Supportive Services - Low
- Homeless Prevention - Low
- Affordable Housing for Extremely and Very Low Income Households - High
- Job Creation and Retention - High



- Public Improvements - High
- Public Services - High

### **3. Evaluation of past performance**

Each year, Clearfield City reports its progress in meeting the five-year and annual goals in the Consolidated Annual Performance Evaluation Report (CAPER). The CAPER is submitted to HUD within 90 days after the start of each new program year. At that time, HUD reviews the CAPER report and feedback is provided. The most recent feedback provided indicated "Clearfield City is meeting the primary objective of the Community Development Block Grant which is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-and-moderate income" It also stated "Projects funded in the current program year are consistent with strategies and goals in the Consolidated Plan and Annual Action Plan. The City's programs benefited an assortment of different organizations and projects and included down payment assistance, emergency home repairs, food bank assistance, street improvements, day care, and domestic violence victim assistance."

### **4. Summary of Citizen Participation Process and consultation process**

Clearfield City has adopted a Citizen Participation Plan that is implemented in conjunction with the One Year Action Plan. The Citizen Participation Plan is designed to provide for public input into the allotment of CDBG funds granted to Clearfield City. The Participation Plan seeks to reach out to minorities and others by putting notice of the public hearing on diverse location in the community. Also, notice of the public hearing is published in the Ogden Standard-Examiner, which is the local newspaper. Anyone can freely attend the public hearing and give comment on the One Year Action Plan. The first public hearing on the One Year Action Plan was held on March 12, 2019. Another hearing, to adopt the final plan, was held on April 23, 2019.

The notice of the public hearing was published in the newspaper at least 14 days before the hearing. In addition to the publication, public notices are posted at the Clearfield Post Office, Davis North Library Branch, Freeport Center Post Office, Clearfield City Hall, and on the City's website. Prior to adoption of the One Year Action Plan, the City informed the public of the anticipated amount of federal funds expected from HUD, and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low and moderate income. This information is always available in the Community Development Department of City Hall.

Residents of public and assisted housing developments, predominantly moderate or low income neighborhoods, minorities, non-English speaking persons, and persons with disabilities are especially encouraged to participate in the One Year Action Plan. In an effort to broaden participation, public hearing notices on the One Year Action Plan were provided to households on the utility bill, as well as posted on the City's website.

## **5. Summary of public comments**

The public comments received through the Community Needs Assessment Survey, which was conducted in 2015, can be found in the Citizen Participation section of this plan. Public comments received as follows:

30-day comment period from March 13, 2019 to April 23, 2019:

- TBD

Public hearing held on March 13th, 2019:

- TBD

Public hearing held on April 23, 2018:

- TBD

## **6. Summary of comments or views not accepted and the reasons for not accepting them**

Comments received are listed above.

## **7. Summary**

This most recent Consolidated Plan used broad participation and outreach efforts in order to identify the City's future housing, community, and economic development needs. All of the comments from the Community Needs Assessment Survey, which was conducted in 2015, were reviewed and categorized into common or recurring themes in order to help establish funding priorities and goals.

This Plan also outlines a strategy for implementing the goals and objectives identified in the Plan. The City will utilize CDBG funds to leverage other public and private investments to implement priority goals.

## PR-05 Lead & Responsible Agencies – 91.200(b)

### 1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
CDBG Administrator	CLEARFIELD	Community Development

Table 1 – Responsible Agencies

### Narrative (optional)

The City of Clearfield's Community Development Department is the lead agency for preparing and administering the Consolidated Plan, One Year Action Plans, and Consolidated Annual Performance Evaluation Reports (CAPER).

### Consolidated Plan Public Contact Information

Clearfield City Corporation  
Community Development  
55 South State Street  
Clearfield, Utah 84015  
Telephone: (801)525-2784  
Email: [brad.mcilrath@clearfieldcity.org](mailto:brad.mcilrath@clearfieldcity.org)

## **AP-10 Consultation – 91.100, 91.200(b), 91.215(l)**

### **1. Introduction**

The City of Clearfield conducted outreach and consultation efforts with citizens, local municipal officials, non-profit agencies, public housing agencies, governmental agencies, private organizations, and the Continuum of Care in preparing the Consolidated/Annual Plan.

#### **Provide a concise summary of the jurisdiction’s activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l))**

In order to enhance coordination efforts between the City and the public housing providers, private industry, governmental health, mental health, and other service agencies the City sought their feedback and suggestions. The City incorporated these suggestions into the Annual Action Plan.

#### **Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.**

Utah has 3 Continuum of Care's (CoC): Salt Lake and Tooele, Utah Balance of State, and Mountainlands. The City of Clearfield is part of the Balance of State CoC. The City is supportive of existing and future efforts and activities that are accomplished through the following service providers that address the needs of homeless persons: Balance of State Continuum of Care, Open Doors, and the Davis Community Housing Authority. One such effort is the Regional Coordinated Assessment plan. The plan allows for a coordinated effort among providers in order to prioritize the needs of their clients across organizational boundaries. Each provider uses the same assessment tool when individuals and families are in need of services. All persons are assessed by acuity. Those persons with the highest need, or that have the most vulnerability, are prioritized. Those with the highest priority of need are given the first opportunity to receive housing with supportive services. The providers in Davis County that currently participate include: Open Doors, Safe Harbor, Davis Behavioral Health, and the Davis Community Housing Authority.

The City of Clearfield does not operate any homeless facilities or provide homeless services directly. However, in addition to the efforts above, the City supports the programs and

facilities offered by other local and state agencies through sales tax re-distribution. The City levies a 1% sales and use tax on all transactions in the City. The state withholds a small portion of this tax from Clearfield City to be distributed for the benefit of emergency food and shelter programs. Additionally, over the next several years, the City will increase coordination efforts by participating in the County's Local Homeless Coordinating Committee meetings. This will help ensure that local and regional goals and objectives are met, efforts are not duplicated, and communication is improved.

**Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS**

The City of Clearfield does not receive ESG funds.

In Utah, membership of the Balance of State Continuum of Care (of which Davis County is a member) is comprised of Local Homeless Coordinating Councils (LHCC) of which Clearfield City participates. Each region's LHCC is inclusive of stakeholders committed to the goal of ending homelessness. These include prevention, outreach, shelter, housing providers, ESG recipients and funders, faith organizations, government agencies, and law enforcement. Needs, service trends, HMIS and PIT data, HEARTH requirements, and goals are also discussed. CoC priorities and goals are discussed and information is provided to CoC leadership to incorporate into CoC wide plans. CoC staff provides training and support to the LHCCs to ensure that the makeup of the Council is reflective of the local community.

**2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities**

Refer to table 2 below.

**Table 2 – Agencies, groups, organizations who participated**

1	<b>Agency/Group/Organization</b>	Open Doors (Family Connection Center)
	<b>Agency/Group/Organization Type</b>	Services - Housing Services-Children Services-Homeless Services-Education Services-Employment Service-Fair Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Families with children Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Anti-poverty Strategy Lead-based Paint Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	City representatives met with agency representatives and the organization participated in the Needs Assessment Survey. Improved coordination can take place through the efforts of the Local Homeless Coordinating Committee.
2	<b>Agency/Group/Organization</b>	Midtown Community Health Center
	<b>Agency/Group/Organization Type</b>	Services-Health Health Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Families with children Non-Homeless Special Needs Anti-poverty Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.

3	<b>Agency/Group/Organization</b>	Davis County Health Department
	<b>Agency/Group/Organization Type</b>	Services-Children Services-Elderly Persons Services-Health Health Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Families with children Non-Homeless Special Needs Anti-poverty Strategy Lead-based Paint Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
4	<b>Agency/Group/Organization</b>	Davis School District
	<b>Agency/Group/Organization Type</b>	Services-Education Other government - County
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Families with children Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs Anti-poverty Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
5	<b>Agency/Group/Organization</b>	Davis Community Learning Center
	<b>Agency/Group/Organization Type</b>	Services-Education Services-Employment

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Homeless Needs - Families with children Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs Anti-poverty Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
6	<b>Agency/Group/Organization</b>	Alzheimer's Association
	<b>Agency/Group/Organization Type</b>	Services-Elderly Persons Services-Health
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homelessness Needs - Veterans Non-Homeless Special Needs
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
7	<b>Agency/Group/Organization</b>	Davis County Senior Services
	<b>Agency/Group/Organization Type</b>	Services-Elderly Persons Services-Persons with Disabilities Services-Health



	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs Anti-poverty Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
8	<b>Agency/Group/Organization</b>	Davis County Sheriff's Office
	<b>Agency/Group/Organization Type</b>	Publicly Funded Institution/System of Care Other government - County
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
9	<b>Agency/Group/Organization</b>	McKay-Dee Hospital
	<b>Agency/Group/Organization Type</b>	Services-Health Health Agency Major Employer

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Participated in the Needs Assessment Survey that was conducted in 2015.
10	<b>Agency/Group/Organization</b>	Balance of State Continuum of Care
	<b>Agency/Group/Organization Type</b>	Services-homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs HOPWA Strategy Anti-poverty Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	City representatives met with agency representatives and the organization participated in the needs Community Needs Assessment Survey. Improved coordination can take place through the efforts of the Local Homeless Coordinating Committee.

11	<b>Agency/Group/Organization</b>	Davis Community Housing Authority
	<b>Agency/Group/Organization Type</b>	PHA Services - Housing Services-homeless Services-Education Service-Fair Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs HOPWA Strategy Anti-poverty Strategy Lead-based Paint Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	City representatives met with agency representatives and the organization participated in the needs Survey. Improved coordination can take place through the efforts of the Local Homeless Coordinating Committee.
12	<b>Agency/Group/Organization</b>	Wasatch Front Regional Council
	<b>Agency/Group/Organization Type</b>	Regional organization Planning organization Business Leaders Civic Leaders Business and Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Non-Homeless Special Needs Market Analysis Economic Development

<p><b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b></p>	<p>City representatives met with agency representatives</p>
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**Identify any Agency Types not consulted and provide rationale for not consulting**

Efforts were made to consult as broadly as possible. No particular agency was excluded from participating.

**Other local/regional/state/federal planning efforts considered when preparing the Plan**

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Utah Balance of State Continuum of Care	Homelessness services and strategies.
Clearfield/Layton Circulator Feasibility Study	Metro Analytics	Transportation and infrastructure services and strategies.
Davis County 2011-2016 Strategic Plan	Davis County	Housing, homelessness, non-housing community development needs and strategies.
Regional Analysis of Impediments to Fair Housing	Bureau of Economic and Business Research, University of Utah	Housing, special needs, homeless services and strategies.
Comprehensive Economic Development Strategy	Wasatch Front Economic Development District	Housing, non-housing community development, and economic development strategies.
Clearfield City, Utah Annual Plan	City of Clearfield	Housing, non-housing community development, and economic development strategies.

**Table 3 – Other local / regional / federal planning efforts**

## **AP-12 Participation – 91.105, 91.200(c)**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation**

#### **Summarize citizen participation process and how it impacted goal-setting**

One of the City's initial goals was to encourage broad participation in order to create a well-rounded priority needs and target area assessment, increase coordination among partners, leverage activities, expand upon existing efforts, increase citizen feedback, and seek feedback on the Consolidated Plan. To this end, the City of Clearfield encouraged and sought broad participation but especially encouraged participation from low and moderate income persons, residents of slum and blighted areas, residents of predominantly low and moderate income neighborhoods, minorities, non-English speaking persons, persons with disabilities, public housing residents, local and regional institutions, businesses, developers, nonprofit organizations, philanthropic organizations, and community or faith based organizations. The City used a variety of participation tools including an online and paper copy Community Needs Assessment Survey (2015), interviews, public hearing, utility billing, online tools, and a public open house.

The City's largest minority population is made of Hispanic and/or Latino persons. In order to encourage participation from these minorities, the public hearing announcement was published in the newspaper in both Spanish and English. Efforts were made to make the Survey available in Spanish and resources for translators were made available at the public hearing.

An online Community Needs Assessment Survey was created in 2015 to seek additional participation. The City delivered paper copies of the Survey to the senior center, health department, Open Doors, and the family resource centers in order to encourage participation from persons with disabilities.

The feedback and input the City received from the consultation and citizen participation was vital in identifying the Plan's goals and objectives. The input was sorted into common themes or recurring needs which were then used to identify strategies and objectives.

## Citizen Participation Outreach

See table 4 below.

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Public Hearing	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p> <p>Residents of Public and Assisted Housing</p>	<p>The City held a public hearing in conjunction with the City's Council meeting on March 12, 2019. The public hearing was noticed in the City's newspaper of general circulation, the Ogden Standard-Examiner, the City's website, the City Hall building, the Freeport Center Post Office, and the Davis North Library branch. The notice was published in both English and Spanish in order to garner as much participation as possible from the City's largest minority group. The intent of the hearing was to inform persons of the amount of federal assistance the City expects to receive and the range of activities the CDBG program can fund, and to provide a forum for residents, local officials, and others to contribute to the Plan.</p>	<p>Comments can be found under section AP-05, number 5.</p>	<p>None</p>	

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
2	Newspaper Ad	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p>	The notice was published in the Ogden Standard-Examiner in both English and Spanish.			
3	Utility Billing	<p>Minorities</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p> <p>Residents of Public and Assisted Housing</p>	A notice of public hearing went out to all residents that receive a utility bill.			
4	Internet Outreach	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish</p>	A notice of the hearing was posted on the City's website.			

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
5	Public Hearing	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p> <p>Residents of Public and Assisted Housing</p>	<p>The City held a public hearing in conjunction with the City's Council meeting on April 23, 2019. The public hearing was noticed in the City's newspaper of general circulation, the Ogden Standard-Examiner, the City's website, the City Hall building, the Freeport Center Post Office, and the Davis North Library branch. The notice was published in both English and Spanish in order to garner as much participation as possible from the City's largest minority group. The intent of the hearing was to inform persons of the amount of federal assistance the City expects to receive and the range of activities the CDBG program can fund, and to provide a forum for residents, local officials, and others to contribute to the Plan.</p>		None	

**Table 4 – Citizen Participation Outreach**



## Expected Resources

### AP-15 Expected Resources – 91.220(c) (1, 2)

#### Introduction

The following anticipated resources from the CDBG program will be available during the 2018-2019 program year.

#### Priority Table

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Reminder of ConPlan \$	Narrative Description
			Annual Allocation : \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	197,625	6,000 (To date)	0	203,625	0.00	It is difficult to project the amount of future CDBG funding. However, based on past funding appropriations, the City can expect to receive about \$200,000 per year.

**Table 5 - Expected Resources – Priority Table**

**Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied**

Though matching funds are not required in order to receive CDBG dollars the public service projects leverage additional resources. See below for a more detailed description of the funding resources.

Open Doors total project cost for the Circles Program is \$186,966. Open Doors will leverage the \$10,000 CDBG dollars with \$27,000 from State programs, \$40,000 from Davis County, \$29,000 from Cities and \$167,000 from private donors. In all, Open Doors leveraged \$263,000 in additional resources.

Open Doors total project cost for food bank services is \$580,782. Open Doors will leverage the \$2,500 CDBG dollars with \$355,185 from State programs, \$50,036 from Davis County, \$35,000 from Cities and \$98,500 from private donors. In all, Open Doors leveraged \$538,721.

The Davis Community Learning Center's total project cost is \$21,286.56 and the CDBG program will fund \$12,143.75 of the project. The additional funding will need to be leveraged with other sources or the scope of project will be adjusted to fit in with the funding amount.

The Safe Harbor's total project cost is \$47,062. The Safe Harbor will leverage the \$5,000 CDBG dollars with \$10,601 from other federal sources, \$9,282 from the State of Utah, \$11,134 from private donors, and \$10,045 will be other in-kind/volunteer hours. In all the Safe Harbor leveraged \$41,062 in additional resources.

In all, the leveraged resources totaled \$842,783.

**If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan**

## Annual Goals and Objectives

### AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3)&(e) Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Public Services	2015	2019	Affordable Housing Public Housing Homeless Non-Homeless Special Needs		Public Services	CDBG: \$29,643.75	Public service activities other than Low/Moderate Income Housing Benefit: 5,920 Persons Assisted Homelessness Prevention: 100 Persons Assisted
2	Housing Rehabilitation	2015	2019	Housing rehabilitation			CDBG: \$58,456.25	Homeowner Housing Rehabilitated: 16 Household Housing Unit
3	Housing Opportunity	2015	2019	Housing opportunities for persons/families of all life stages		Affordable Housing - Extremely and Very Low Income	CDBG: \$70,000	Homeowner Housing Added: 1 Household Housing Unit

**Table 6 – Goals Summary**

## Goal Descriptions

1	<b>Goal Name</b>	Public Services
	<b>Goal Description</b>	The City's 2019-2020 program goal is to fund service providers in order to prevent homelessness, reduce poverty, stabilize families, provide essential case management and self-sufficiency support, child abuse prevention and awareness, and educational support and like skills classes.
2	<b>Goal Name</b>	Housing Rehabilitation
	<b>Goal Description</b>	The City will allocate \$58,456.25 towards a Housing Rehab program for qualifying individuals/families.
3	<b>Goal Name</b>	Housing Opportunity
	<b>Goal Description</b>	The City will use \$70,000 to purchase a building lot in Clearfield. The City will then partner with an agency who will build a home for a qualifying family.

Table 7 – Goal Descriptions

### **Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.215(b):**

Through the Housing Rehabilitation the City estimates the following families to be served based upon the previous program year results:

**Extremely Low** -Income: 2

**Low**-Income: 4

**Moderate**-Income: 10

## AP-35 Projects – 91.220(d)

### Introduction

The following projects will be funded in 2019 using CDBG dollars:

- **Open Doors (Family Connection Center) - \$10,000** Circles Program for low-income families to obtain job skills. **2,500** Food Services to at-risk low income persons and families.
- **Davis Community Learning Center - \$12,143.75** The funds will help fund two part-time Family Support Specialists (FSS) at Holt and Wasatch Elementary. The FFS work directly with school principals and families in need or crisis to address needs and provided assistance.
- **Safe Harbor - \$5,000** Case management, self-sufficiency support, educational and supportive groups, like skills classes, and connections to other resource agencies.
- **Housing Rehabilitation - \$58,456.25** Funds will be used towards a housing rehabilitation program for Clearfield residents.
- **Purchase of Lot – \$70,000** City will purchase building lot and will partner with an agency to construct a home for low to moderate income family.
- **Administration - \$39,525** Administrative expenses in order to oversee the CDBG program at Clearfield City.

#### Table 8 – Project Information

### Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

The funding priorities have not changed from those outlined in the Strategic Plan. The City does not foresee any obstacles in addressing the needs of the underserved.

## Projects

### AP-38 Projects Summary

#### Project Summary Information

Table 9 – Project Summary

<b>1</b>	<b>Project Name</b>	Open Doors Circles Peer Mentoring
	<b>Target Area</b>	
	<b>Goals Supported</b>	Public Services
	<b>Needs Addressed</b>	Public Services
	<b>Funding</b>	CDBG: \$10,000
	<b>Description</b>	Open Doors Circles Program aids low-income individuals to carry out community economic development through job training and teaching job retention skills. The Circles Program supports low-income families and individuals with the relationship, confidence, and knowledge required to reach financial stability. The program connects community members with low-income families and individuals on their journey out of poverty. This is done by providing classes: teaching job skills, financial literacy, and how to survive not utilizing social services.
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The project benefited 80 individuals and their families last year. The program intends to provide support for 120 individuals and families. A new cohort of 20 individuals begins every three months.

	<b>Location Description</b>	525 East 200 South and 1360 East 1450 South, Clearfield, Utah
	<b>Planned Activities</b>	Individuals/families will be assisted by receiving course training in job skills, financial literacy, etc.
2	<b>Project Name</b>	Open Doors – Food Bank
	<b>Target Area</b>	
	<b>Goals Supported</b>	Public Services
	<b>Needs Addressed</b>	Public Services
	<b>Funding</b>	CDBG: \$2,500
	<b>Description</b>	Open Doors will provide food services to at-risk low income persons and families. - (05W Food Banks)
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The project will benefit about 5,800 total people including the youth, elderly, and elderly households.
	<b>Location Description</b>	1360 East 1450 South, Clearfield, Utah
	<b>Planned Activities</b>	Individuals/families will be assisted by receiving food from the Food Bank.
3	<b>Project Name</b>	Davis Community Learning Center
	<b>Target Area</b>	
	<b>Goals Supported</b>	Public Services
	<b>Needs Addressed</b>	Job Creation and Retention Public Services Case Management and Supportive Services

	<b>Funding</b>	CDBG: \$12,143.75
	<b>Description</b>	The Davis Community Learning Center project will fund the salaries of two volunteer and resource coordinators at Wasatch and Holt Elementary schools, both Title 1 schools. The project will assist with the administrative expenses in order to offer ESL, GED completion, parent involvement classes, citizenship, and computer classes. - (05 Public Services General)
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The Davis Community Learning Center expects to assist 800 people through this program.
	<b>Location Description</b>	Holt and Wasatch Elementary Schools
	<b>Planned Activities</b>	The project will fund two resource coordinators, one at Holt Elementary School and one at Wasatch Elementary School. Schools are Title 1 schools, Holt elementary is a "focus" school that struggles academically and was the lowest performing elementary school in the district in FY2013. The coordinators will work to support the families in crisis and increase volunteerism. They will connect families in need or crisis with various resources in the community and then follow-up with the clients to ensure they received the right services. They will work closely with the school principals to identify the needs of the families. They will provide the following services to low income students and families: tutoring, assisting with after-school programs, tutoring English as a second language, Sub for Santa program, collection and distribution of coats, backpacks, school supplies, shoes, etc.
4	<b>Project Name</b>	Safe Harbor
	<b>Target Area</b>	



	<b>Goals Supported</b>	Public Services
	<b>Needs Addressed</b>	Public Services
	<b>Funding</b>	CDBG: \$5,000
	<b>Description</b>	The Safe Harbor project will provide funds that will allow for case management, self-sufficiency support, educational and supportive groups, life skills classes, and connections to other resource agencies to victims of domestic violence. - (05G Battered and Abused Spouses)
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The Safe Harbor expects to assist 100 persons during the program year.
	<b>Location Description</b>	Crisis Center, 660 West Mutton Hollow Road, Kaysville, Utah
	<b>Planned Activities</b>	The Safe Harbor will use the CDBG funds to offer support services, shelter, intervention, and education to victims of domestic violence. The Center's clients will have access to the following services: protective shelter, case management, psycho-educational groups, 24-hour crisis services, safety planning, outreach services, children's services, food, clothing, and all other services that the Center offers designed to assist in ending the cycle of domestic violence.
5	<b>Project Name</b>	Housing Rehabilitation
	<b>Target Area</b>	
	<b>Goals Supported</b>	Housing Rehabilitation
	<b>Needs Addressed</b>	Housing Rehabilitation
	<b>Funding</b>	CDBG: \$58,456.25

	<b>Description</b>	The City will contract with the Davis Community Housing Authority, for the administering of the housing rehab program.
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The housing rehab program is expected to assist 10 households during the program year.
	<b>Location Description</b>	Clearfield City
6	<b>Project Name</b>	Purchase of a building lot
	<b>Target Area</b>	
	<b>Goals Supported</b>	Housing Opportunity
	<b>Needs Addressed</b>	Affordable Housing - Extremely and Very Low Income
	<b>Funding</b>	CDBG: \$70,000
	<b>Description</b>	The City of Clearfield will use CDBG funds to cover the planning and administrative expenses related to administering the CDBG program.
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Clearfield City expects to serve 1 household through this program.
	<b>Location Description</b>	Clearfield City
	<b>Planned Activities</b>	Clearfield City will use funds to purchase a building lot. Once purchased, the City will partner with an agency to build a home for a qualified low-mod income family.

7	<b>Project Name</b>	CDBG Administration
	<b>Target Area</b>	
	<b>Goals Supported</b>	Planning/Administration of CDBG Program
	<b>Needs Addressed</b>	
	<b>Funding</b>	CDBG: \$39,525
	<b>Description</b>	The City of Clearfield will use CDBG funds to cover the planning and administrative expenses related to administering the CDBG program. The funds will also cover the creation of the 5-Year Consolidated Plan and the Analysis of Impediments.
	<b>Target Date</b>	6/30/2020
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	N/A
	<b>Location Description</b>	N/A
	<b>Planned Activities</b>	Clearfield City will allocate \$20,000 to cover the planning and administrative expenses related to administering the CDBG program. The remaining funds will go towards the creation of the 5-Year Consolidated Plan and the Analysis of Impediments.

**AP-50 Geographic Distribution – 91.220(f)**

**Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed**

The City did not identify a geographic target area as a basis for funding allocation priorities.

**Geographic Distribution**

Target Area	Percentage of Funds

Table 10 - Geographic Distribution

**Rationale for the priorities for allocating investments geographically**

The City did not identify a geographic target area as a basis for funding allocation priorities.

## Affordable Housing

### *AP-55 Affordable Housing - 91.220(g)*

#### **Introduction**

The City of Clearfield plans to prevent homelessness by assisting 50 persons fleeing domestic violence by funding the Safe Harbor program's shelter and shelter services. This program is not reflected below as the services will not support rental assistance, nor the acquisition of units, new units, or rehabilitation of units.

<b>One Year Goals for the Number of Households to be Supported</b>	
Homeless	0
Non-Homeless	0
Special-Needs	0
Total	0

**Table 11 - One Year Goals for Affordable Housing by Support Requirement**

<b>One Year Goals for the Number of Households Supported Through</b>	
Rental Assistance	0
The Production of New Units	1
Rehab of Existing Units	16
Acquisition of Existing Units	0
Total	17

**Table 12 - One Year Goals for Affordable Housing by Support Type**

## **AP-60 Public Housing – 91.220(h)**

### **Introduction**

The City of Clearfield does not have action items planned in 2019 to address public housing needs.

### **Actions planned during the next year to address the needs to public housing**

Not applicable.

### **Actions to encourage public housing residents to become more involved in management and participate in homeownership**

Not applicable.

### **If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance**

Not applicable.

## **AP-65 Homeless and Other Special Needs Activities – 91.220(i)**

### **Introduction**

The City plans to work closely with and collaborate with the region's Local Homeless Coordinating Council and Continuum of Care.

### **Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including**

See below for the specific actions that the City will take to reduce and end homelessness.

### **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs**

The homeless person Point in Time Count, which was completed in January 2017, shows the total headcount as 71, during 2016 the total headcount was 68 and in 2015 it was 72. Therefore, the total headcount has been pretty consistent during the past three years. This report can be found attached. Over the next year, City staff will connect and coordinate services with the Balance of State Continuum of and Davis County Local Homeless Coordinating Council in order to identify and assess the individual needs of unsheltered homeless persons in the City.

### **Addressing the emergency shelter and transitional housing needs of homeless persons**

Victims of domestic violence are the primary type of person in need of an emergency shelter and transitional housing. Therefore, the City will fund the only domestic and sexual violence service provider, Safe Harbor/Davis Citizens' Coalition Against Violence. The project will allow Safe Harbor to offer a protective shelter, case management, psycho-educational groups, crisis services, safety planning, outreach services, children's services, food, clothing, and other necessary services designed to assist this vulnerable population.

### **Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from**

## **becoming homeless again**

The City of Clearfield will work with the Davis Community Housing Authority in order to continue to assist homeless persons make the transition to permanent housing and independent living. Though the City continually works with service providers, the City does not plan to allocate 2019 funding toward this activity.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.**

The City of Clearfield will continue to consult and coordinate with the Balance of State Continuum of Care, Davis County Local Homeless Coordinating Council, Safe Harbor, Davis Mental Health, County School District and Sheriff's Office, and Davis Community Housing Authority in order to continue to assist homeless persons make the transition to permanent housing and independent living. Though the City continually works with these organizations, the City does not plan to allocate 2019 funding toward this activity.



## **AP-75 Barriers to affordable housing – 91.220(j)**

### **Introduction**

The following barriers have been identified via conversation with the local public housing authority as well as based on data from the Regional Analysis of Impediments to Fair Housing Choice - Davis County and the City's former consolidated plan.

- The current Redevelopment Agency policy no longer requires that new developments include an affordable housing piece. Only one of the three RDA programs, the Urban Renewal Areas (URA) program, whose purpose is to remove blight sets aside a portion of the tax increment financing for affordable housing.
- The City's current ordinance does not allow for group homes, nursing homes, accessory dwelling units, or single room occupancy units.
- The City does not have a standard or requirement for new housing to be accessible, i.e. accessible or 'visit-able' by persons with disabilities.

The City's Good Landlord program has pros and cons. The program gives discounts on a required rental license to landlords that participate in "good landlord" training. The training provides information on fair housing topics and laws. However, some view the program as an impediment for certain persons to not receive fair housing opportunities, such as persons convicted of crimes.

### **Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment**

One strategy that would remove an affordable housing barrier is to update the City's Moderate Income Housing Plan. The Moderate Income Housing Plan provides a detailed analysis of the City's housing inventory, affordability, and need. The City recently completed the Moderate Income Housing Report which provides direction for the creation of a new Moderate Income Housing plan which will be completed this year.

To address housing and encourage redevelopment the Clearfield City Council has taken steps over the last year to expand housing and redevelopment opportunities along the State Street/Main Street corridor. This area identified as Downtown Clearfield is envisioned to redevelop as a mixed-use corridor with additional housing, community, and commercial uses. Additionally, the City Council has expanded the use of smaller lot single-

family housing in areas located outside of the downtown area. The City Council has also had discussions with City Staff regarding regulations for accessory dwelling units; although no ordinance has been brought forward to date.

## **AP-85 Other Actions – 91.220(k)**

### **Introduction**

The City plans to undertake the following activities in order to carry out the strategies outlined in the plan.

- Review the results from the AI and work toward a plan for implementation that will help address the obstacles to meeting the needs of the underserved population.
- Work with service providers from around the City and region in order to facilitate strategies that meet the needs of the underserved.
- Continue investing in the improvement and rehabilitation of older housing stock.
- Work toward creating more housing opportunities throughout the City to ensure housing is available to persons no matter their life cycles.
- Fund Open Doors which will allow the center to provide emergency food and case management to at-risk and low income families along with financial and work related training.
- Fund the Davis Community Learning Center in order to provide funding to two volunteer and resource coordinators at two Title 1 schools, Wasatch and Holt Elementary.
- Fund Safe Harbor in order to provide case management, self-sufficiency support, educational and supportive groups, life skills classes, and connections to other resource agencies to victims of domestic violence.
- Reach out to the Public Housing Agency, Davis Community Housing Authority, the Local Homeless Coordinating Committee, Open Doors, and Safe Harbor in order to create an ongoing opportunity to coordinate activities and resources.

### **Actions planned to address obstacles to meeting underserved needs**

Clearfield City updated its Analysis of Impediments in 2015. Since then the City has reviewed the results from the AI and are working toward a plan for implementation that will help address the obstacles to meeting the needs of the underserved population. Additionally, the Community Development Department will work with service providers from around the City and region in order to facilitate strategies that meet the needs of the underserved.

### **Actions planned to foster and maintain affordable housing**

The City will continue investing in the improvement and rehabilitation of older housing stock, both owner and renter occupied households. The City will also work toward creating more housing opportunities throughout the City to ensure housing is available to persons no

matter their life cycles.

### **Actions planned to reduce lead-based paint hazards**

The City will reach out to the County Health Department to identify a one-year strategy that could be implemented in 2019.

### **Actions planned to reduce the number of poverty-level families**

The City will fund Open Doors which will allow the center to provide emergency food and case management to at-risk and low income families. The funding will provide emergency assistance and educational efforts that will help youth, elderly, and low income persons escape poverty and homelessness.

The City will also fund the Davis Community Learning Center in order to provide funding to two volunteer and resource coordinators at two Title 1 schools, Wasatch and Holt Elementary. The resource coordinators will connect families in need or in crisis with various resources in the community. The coordinators will then follow up with the clients to ensure they received the services they needed. Some of the services include: tutoring, After School programs, tutoring English Language learners, Sub for Santa collection and distribution of coats, backpacks, school supplies, etc.

### **Actions planned to develop institutional structure**

The City does not have a plan to develop the institutional structure in 2019.

### **Actions planned to enhance coordination between public and private housing and social service agencies**

In order to enhance the coordination between public and private housing and social service agencies, the City will reach out the Public Housing Agency, Davis Community Housing Authority, the Local Homeless Coordinating Committee, Open Doors, and Safe Harbor in order to create an ongoing opportunity to coordinate activities and resources. City staff will coordinate internally to identify programs and other resources that can be coordinated in order to achieve common goals.

## Program Specific Requirements

### AP-90 Program Specific Requirements – 91.220(l)(1,2,4)

#### Introduction

The City of Clearfield plans to do the following actions in 2019:

- The City plans to prevent homelessness by assisting 100 persons fleeing domestic violence by funding the Safe Harbor program's shelter and shelter services.
- The City staff will connect and coordinate services with the Balance of State Continuum of Care and Davis County Local Homeless Coordinating Council in order to identify and assess the individual needs of unsheltered homeless persons in the City.
- The City will fund the only domestic and sexual violence service provider, Safe Harbor/Davis Citizens' Coalition Against Violence. The project will allow Safe Harbor to offer a protective shelter, case management, psycho-educational groups, crisis services, safety planning, outreach services, children's services, food, clothing, and other necessary services designed to assist this vulnerable population.
- The City will work with the Davis Community Housing Authority in order to continue to assist homeless persons make the transition to permanent housing and independent living. Though the City continually works with service providers, the City does not plan to allocate 2019 funding toward this activity.
- The City of Clearfield will continue to consult and coordinate with the Balance of State Continuum of Care, Davis County Local Homeless Coordinating Council, Safe Harbor, Davis Mental Health, County School District and Sheriff's Office, and Davis Community Housing Authority in order to continue to assist homeless persons make the transition to permanent housing and independent living. Though the City continually works with these organizations, the City does not plan to allocate 2019 funding toward this activity.

**Community Development Block Grant Program (CDBG)  
Reference 24 CFR 91.220(I)(1)**

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	6,000
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan.	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan	0
5. The amount of income from float-funded activities	0
<b>Total Program Income:</b>	<b>6,000</b>

**Other CDBG Requirements**

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	90.00%



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members  
**FROM:** Nancy Dean, City Recorder  
**MEETING DATE:** March 12, 2019  
**SUBJECT:** North Davis Fire District Annexation

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### **RECOMMENDED ACTION**

Consider approval of the annexation of Sunset City into the North Davis Fire District's service area for fire protection and emergency medical services.

### **DESCRIPTION / BACKGROUND**

In May of 2017, the Sunset City Council petitioned the North Davis Fire District (NDFD) for annexation into the District's service area for fire protection and emergency medical services. The NDFD subsequently passed a resolution requesting Clearfield City take all necessary and appropriate action to annex Sunset City and all real property within its corporate limits into the NDFD. The Clearfield City Council acted as the Governing Body for the North Davis Fire District and initiated the process on behalf of NDFD but the annexation never occurred because a Petition for Referendum was filed with Sunset City regarding its fire department ordinance.

During the interim, NDFD has continued to service Sunset City's needs for fire protection and emergency medical and ambulance services and consolidated 911 services through an already executed Interlocal Agreement. Also, Sunset City Council appointed Chief Becraft as its fire chief.

The issues surrounding the filed Petition for Referendum have been rendered moot and the issue withdrawn; therefore, Sunset City has again petitioned the North Davis Fire District to consider its annexation into the District's boundaries. On November 15, 2018, the NDFD passed its Resolution 2018R-11 requesting Clearfield City, as the Governing Authority of the NDFD, take all necessary and appropriate action to annex Sunset City and all real property within its corporate limits into the North Davis Fire District service area.

Notice of the annexation request was made the end of 2018 and a public hearing on the matter was held before the Clearfield City Council on January 8, 2019. No public comments have been received and the no protests have been filed.



**IMPACT**

- a. **FISCAL** – There is no imminent fiscal impact.
- b. **OPERATIONS / SERVICE DELIVERY** – There is no impact to operations or service delivery.

**SCHEDULE / TIME CONSTRAINTS**

- The 60-day protest period begins Wednesday, January 9, 2019.
- The 60-day protest period expires Monday, March 11, 2019.
- Subsequent to the 60-day protest period, the Clearfield City Council will need to consider action on the annexation request.

**LIST OF ATTACHMENTS**

- Resolution 2019R-10 – Annexing Sunset City into the service area for the North Davis Fire District



## **CLEARFIELD CITY RESOLUTION 2019R-10**

A RESOLUTION ANNEXING CERTAIN TERRITORY TO THE NORTH DAVIS FIRE DISTRICT, DAVIS COUNTY, UTAH; AND PROVIDING FOR RELATED MATTERS.

WHEREAS by Resolution No. 2004R-25 duly adopted on October 12, 2004, the Clearfield City Council (the "Council") acting as the Governing Body created the North Davis Fire District, a Special Service District in Davis County, Utah (the "District") to provide fire protection, emergency medical and ambulance, and emergency 911 services, as authorized by Article XI, Section 7 of the Utah Constitution and by the Utah Special Service District Act, Title 17A, Chapter 2, Part 13, Utah Code Annotated 1953, now known as the "Special Service District Act." Title 17D, Chapter 1, Utah Code Annotated, 1953 (the "Act"); and

WHEREAS, it appears to the Council that the public health convenience and necessity require the annexation to the District of the territory hereinafter described (the "Annexed Area") pursuant to the Act and Article XI, Section 7 of the Utah Constitution; and

WHEREAS pursuant to Resolution 2018R-16 (the "Intent Resolution") adopted on November 27, 2018, the City Council gave notice of its intention to annex into the District the Annexed Area comprised of the legal boundaries of Sunset City and having the boundaries set out in Section 2 hereof, by causing to be published in *The Standard-Examiner* on December 2, 2018, December 9, 2018, December 16, 2018 and December 23, 2018 a "Notice of Intention to Annex Certain Areas to the North Davis Fire District" in Davis County, Utah (the "Notice of Intention"); and

WHEREAS pursuant to the Intent Resolution, the City Council held a public hearing on January 8, 2019 at 7:00 p.m. (the "Hearing"), at the regular meeting place of the City Council at the Clearfield City Hall, 55 South State Street, in Clearfield, Utah, on the annexation of the Annexed Area into the District, public notice of the time and place of which was given through

publication of the Notice of Intention as described above, the first of such publications having been not less than twenty-one (21) days nor more than thirty-five (35) days prior to the date of the Hearing; and

WHEREAS the City Council considered at the Hearing all protests filed and heard (no protests were filed and no interested person came forward to be heard), and the time for filing protests as provided in the Act has expired; and

WHEREAS by Resolution duly adopted by the Administrative Control Board on November 15, 2018, the North Davis Fire District, Utah, requested and consented to the annexation into the District of the Annexed Area; and

NOW THEREFORE BE IT RESOLVED by the Clearfield City Council as follows:

*Section 1.* The Council does hereby find and determine that:

(a) Public notice of the Hearing on the annexation of the Annexed Area into the District was given by the City Recorder by publication of an appropriate notice (the Notice of Intention) in *The Standard-Examiner*, a newspaper published and of general circulation in Davis County, Utah, once a week for four consecutive weeks on December 2, 2018, December 9, 2018, December 16, 2018 and December 23, 2018; the first of said publications having been made not less than twenty-one (21) days nor more than thirty-five (35) days prior to the date of the Hearing.

(b) By resolution duly adopted on November 15, 2018, the Administrative Control Board of the North Davis Fire District, Utah, consented to the annexation of the Annexed Area into the District.

(c) The following persons filed written protests against the annexation of the Annexed Area into the District, at or prior to the Hearing, which written protests were not withdrawn prior to the adoption of this resolution:

NAME

ADDRESS

None.

(d) A public hearing on the annexation of the Annexed Area into the District was held and conducted by the Council as required by law and the Intent Resolution on January 8, 2019, at 7:00 p.m., at the regular meeting place of the Council in the Clearfield City Hall, in Clearfield, Utah, at which Hearing the Council gave full consideration to all protests that were filed and heard and considered all interested persons desiring to be heard (no protests were filed and no interested person came forward to be heard).

(e) After careful consideration of all factors involved and of all objections and protests, it has been and is hereby found, determined and declared that: (i) all property included within the boundaries of the Annexed Area, as such boundaries are set out in the Intent Resolution and in Section 2 hereof, will be directly benefitted by the services to be furnished therein by the District, (ii) none of the Annexed Area is also contained within the boundaries of any other special service district created under the Act to provide services, (iii) the public health, convenience and necessity requires the annexation to the District of the Annexed Area pursuant to the provisions of the Act and Article XI, Section 7 of the Utah Constitution, and (iv) all proceedings taken in annexing the Annexed Area into the District have been in compliance with law.

*Section 2.* The Annexed Area is hereby annexed into the District. The boundaries of the Annexed Area are described in Exhibit "A" which is attached hereto and by reference made a part hereof.

*Section 3.* The Annexed Area is annexed into the District for the purpose of providing fire protection, emergency medical and ambulance services and emergency 911 services within the Annexed Area.

*Section 4.* The Council hereby finds and determines that adequate protests have not been filed with the City Recorder to prevent such annexation (no protests were filed).

*Section 5.* Pursuant to the requirements of Title 17D, Chapter 1, Section 403, Utah Code Annotated 1953, as amended, the City Council shall file a notification of the annexation of the Annexed Area into the District with the Lieutenant Governor within 30 days after the adoption of this Resolution, which notification shall include the information and certification required by such statute.

*Section 6.* All acts and resolutions in conflict with this Resolution or any part thereof are hereby repealed.

*Section 7.* This Resolution shall take immediate effect upon its adoption and approval.

ADOPTED AND APPROVED this \_\_\_\_ day of March, 2019.

CLEARFIELD CITY CORPORATION

By: \_\_\_\_\_  
Mark R. Shepherd, Mayor

ATTEST:

\_\_\_\_\_  
Nancy R. Dean  
City Recorder

[SEAL]

VOTE OF THE COUNCIL

AYE:

NAY:

# **EXHIBIT “A”**

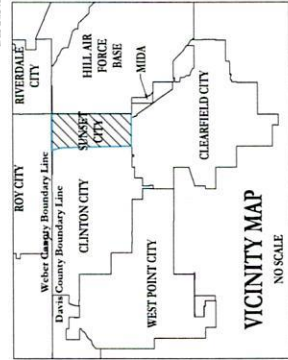
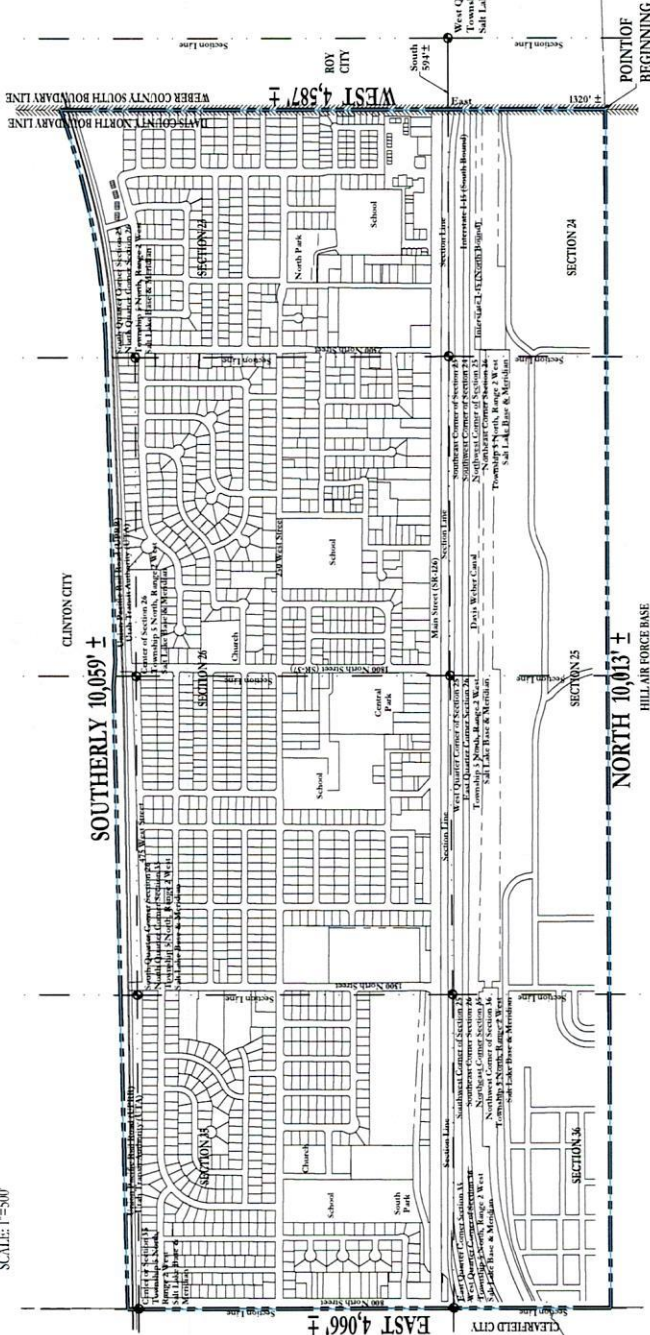
# BOUNDARY OF THE 2017 ANNEXED AREA TO THE NORTH DAVIS FIRE DISTRICT

## A PART OF SECTIONS 23, 24, 25, 26, 35 & 36, TOWNSHIP 5 NORTH, RANGE 2 WEST

### SALT LAKE BASE & MERIDIAN

#### SUNSET CITY, DAVIS COUNTY, UTAH

June 2017



**SURVEYORS CERTIFICATE**  
I, Dick N. Mechem, do hereby certify that I am a registered land surveyor, and that I hold license number 153649, as provided in the Utah State Code. This plat has been prepared under my direction and in accordance with the information obtained from the Davis County Recorders Office.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.



Dick N. Mechem

**SUNSET CITY CERTIFICATE**

I, hereby certify that this plat of annexation to the Boundary Line of the North Davis Fire District was accepted by the Mayor of Sunset City, Davis County, Utah, by a resolution passed on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

In witness whereof I hereby set my hand and affix the Corporate Seal of Sunset City as the Governing body for the North Davis Fire District.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Sunset City Mayor

Sunset City Recorder

**ANNEXED BOUNDARY DESCRIPTION**

A part of Sections 23, 24, 25, 26, 35 & 36, Township 5 North, Range 2 West, Salt Lake Base & Meridian and more particularly described as follows:

Beginning on the North boundary line of Davis County, State of Utah, which is approximately 598 feet more or less South and 1,320 feet more or less East from the West Quarter Corner of Section 24, Township 5 North, Range 2 West, Salt Lake Meridian and Meridian Thence West 4,587 feet more or less to the West line of the right-of-way of the Utah Transit Authority (UTA); Thence in Southeastery along the West line of the said Utah Transit Authority right-of-way 10,059 feet more or less to the South line of the North one-half (1/2) of Section 35, Township 5 North Range 2 West and the North boundary line of Clearfield City. Thence along the West line and North boundary line of Clearfield City 4,166 feet more or less to the West line of Section 36, Township 5 North, Range 2 West; Thence North 10,013 feet more or less to the point of beginning.

Contains: 962 acres, more or less.

**DAVIS COUNTY SURVEYOR**  
Approved by the Davis County Surveyor Office on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
Davis County Surveyor

**SUNSET CITY ENGINEER**  
This is to certify that the requirements of all applicable statutes and ordinances pertaining to City Engineers is approved of the foregoing plan and delineation as completed only.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
Sunset City Engineer

**MtWest Surveying & Mapping, Inc.**  
1835 W. 4400 S., PO Box 207  
Roy, Utah 84067  
Email: mwh@readynck.net

**CIVIL ENGINEERING CONSULTANTS, PLLC.**  
514 SOUTH 1500 WEST  
RIVERDALE, UTAH 84405  
PHONE: 801.866.0520  
FAX: 801.866.0551

**DAVIS COUNTY RECORDER**  
Entry No. \_\_\_\_\_ for paid \_\_\_\_\_ filed \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
Book or official records page: \_\_\_\_\_ Recorded for \_\_\_\_\_  
Pj: \_\_\_\_\_ County Recorder



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members

**FROM:** Spencer Brimley, Community Development Director  
Stuart Williams, City Attorney

**MEETING DATE:** March 12, 2019

**SUBJECT:** Temporary Land Use Regulations for Massage Parlor (Moratorium)

---

### **RECOMMENDED ACTION**

Staff is recommending the adoption of an ordinance enacting a temporary land use regulation prohibiting the approval of applications for, development, erection, construction, reconstruction, installation, alteration, licensing, or relocation of any massage parlor on commercially zoned property throughout the City.

### **DESCRIPTION / BACKGROUND**

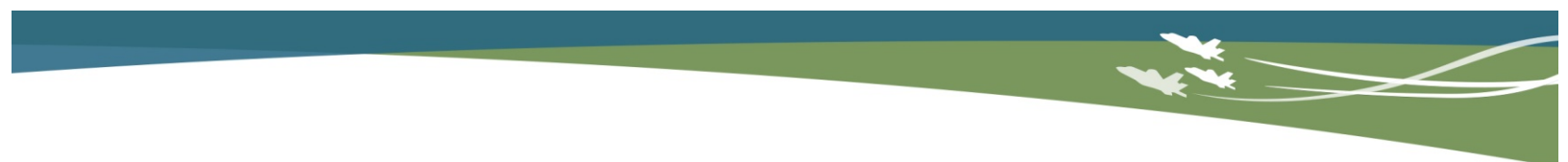
**A. General Information:** The City currently has a total of 9 licensed massage parlor businesses in the City. Within the past 4 years, the City's Business License Official has revoked 5 massage parlor business licenses, 3 of which were based on confirmed reports of individuals within each of those establishments performing sexual acts in exchange for money. On each occasion, the criminal investigations are performed by an undercover police officer based on the City receiving numerous complaints, as well as reviewing internet posts of individual ("clients") that review, rank, and provide details of the alleged sexual activity within the establishments. Our police department has performed 3 different undercover operations with the same officer, and in each operation, 100% of the time, they are able to solicit a sexual act in exchange for money on the first attempt.

Staff is aware that numerous studies support the position that some massage parlors engage in the type of criminal activity that the City has recently discovered at three different businesses locations. Exacerbating the problem is that there are also a number of studies that conclude that a number of massage parlors exploit women that are victims of human trafficking. The City has and will continue to work with the Utah Trafficking in Persons Task Force operated by the Attorney General's Office.

Staff acknowledges that many legitimate massage parlors exist within the City that do not engage in this type of criminal behavior. Staff is supportive of the law abiding establishments that exist. Staff believes that any proposed changes made to the City Code will not place an undue burden on the ongoing success of an existing business, nor dissuade new legal establishments from moving into the City.

**B. Prior City Massage Parlor Revocations:** As stated above, within the past 4 years, the City's Business License Official has revoked 5 massage parlor business licenses, 3 of which were based on





confirmed reports of individuals within each of those establishments performing sexual acts in exchange for money. Below is a brief summary of each:

1. *Sunshine Day Spa*

- On July 29, 2015, the City was made aware from a state investigator for the Department of Occupational Licensing that the massage therapists performing massages at 290 South State Street were not properly licensed with the State.
- The Sunshine Day Spa Business License was revoked on July 31, 2015

2. *Sunshine Day Spa*

- On December 15, 2015, after having received numerous complaints of sexual activity at the Sunshine Day Spa located at 290 South State Street, the City discovered three individuals to be employed, working, and offering massages without the legally required licensure as mandated by the Utah Department of Occupational and Professional Licensing.
- The Sunshine Day Spa Business License was revoked on December 21, 2015.

3. *Relax Health Center*

- On May 23, 2016, the police department received a complaint of a possible sexual assault having occurred at the Relax Health Center, 290 South State Street. The police department then conducted an undercover operation and an individual was arrested for agreeing to perform a sexual act in exchange for money.
- The Relax Health Center Business License was revoked on June 27, 2016.

4. *Eliza Massage*

- In early May 2018, the police department received a complaint that sexual activity was occurring at the Eliza Massage, including public information found online. The police department then conducted an undercover operation on May 17, 2018, and an individual was arrested for agreeing to perform a sexual act in exchange for money.
- The Eliza Massage Business License was revoked on May 25, 2018.
- Subject to a fine and number of conditions, the business license for Eliza Massage was returned on a twelve-month probationary status on June 14, 2018.



5. *Eliza Massage*

- In early January 2019, the police department received a complaint that sexual activity was occurring at the Eliza Massage, including public information found online. The police department then conducted an undercover operation on January 23, 2019, and an individual was arrested for agreeing to perform a sexual act in exchange for money.
- The Eliza Massage Business License was revoked on January 29, 2019.

**C. Intent:** The intent of Clearfield City Ordinance 2019-09 is not to reduce, limit, or eliminate massage parlors within the City. Staff is seeking this moratorium to allow for an in-depth review of other municipalities codes, both local and national, in hopes of creating a specific licensing section within Title 4 that will provide future massage parlor business license applicants with a more clear understanding of expectations, procedures, and punishments specific to this industry.

**CORRESPONDING POLICY PRIORITY (IES)**

Staff believes the adoption of Clearfield City Ordinance 2019-09 is consistent with the City’s overall goal of “Improving Clearfield’s Image, Livability and Economy,” as well as “Providing Quality Municipal Services,” specifically tier 2, Zoning Ordinance Updates.

**FISCAL IMPACTS**

Negative Fiscal Impact: There is little to no anticipated negative fiscal impact to the City by enacting Clearfield City Ordinance 2019-09.

Positive Fiscal Impact: It is anticipated that the staff time to be devoted to reviewing ordinances and making suggested changes will be significantly less than responding, monitoring, and enforcing the ongoing criminal activity and the resulting prosecution and administrative actions resulting therefrom.

**ALTERNATIVES**

Subject to alternative direction, staff believes the following to be viable alternatives:

1. Enact or Deny Clearfield City Ordinance 2019-09 as proposed.
2. Enact or Deny Clearfield City Ordinance 2019-09, with alternative direction/language.



## **SCHEDULE / TIME CONSTRAINTS**

Pursuant to Utah State Code Ann. §10-9a-504, the City “shall establish a period of limited effect for the ordinance not to exceed six months.”

Staff is hopeful that this moratorium will take less than the six months allowed by law.

## **LIST OF ATTACHMENTS**

- Proposed Ordinance
  - Clearfield City Ordinance 2019-09
- Selected Article/Studies
  - Polaris- Human Trafficking in Illicit Massage Businesses
  - US Department of Health and Human Services- Sex Trafficking Fact Sheet
  - The New York Times, March 2, 2019- Behind Illicit Massage Parlors Lie a Vast Crime Network and Modern Indentured Servitude
  - Fox 13, 2015 Article- Massage parlor raids believed to be the biggest human trafficking bust in Utah history
  - 22 Regent U.L. Rev. 297- Domestic Human Trafficking Series: Addressing Demand: Why and How Policymakers should utilize land and law enforcement to target customers of commercial sexual exploitation.
  - 77 Alb. L. Rev. 1039- Online Prostitution and Trafficking
  - 9 Intercultural Hum Rts. L. Rev. 229- Human Trafficking in Finland

(In addition to the attached article/studies provided, staff would also point to almost any internet search related to sex and massage parlors as an example of the prevalence and severity of this issue.)

# **CLEARFIELD CITY ORDINANCE 2019-09**

## **AN ORDINANCE ENACTING A TEMPORARY LAND USE REGULATION REGARDING MASSAGE PARLOR ESTABLISHMENTS PURSUANT TO UTAH CODE ANN. § 10-9a-504 APPLICABLE TO ALL OF THE COMMERCIAL ZONED PROPERTIES LOCATED WITHIN THE CITY'S GEOGRAPHIC BOUNDARIES**

**PREAMBLE:** This Ordinance temporarily prohibits approving applications for, development, erection, construction, reconstruction, installation, alteration, licensing, or relocation of any massage parlor, (as defined herein as a commercial establishment providing any type of massage) on commercially zoned property throughout the Clearfield City (the "City").

### **RECITALS**

WHEREAS, the City has total of 9 massage parlor businesses located within the City's boundaries at this time; and

WHEREAS, the City has revoked 5 massage parlor businesses licenses located within the City's boundaries within the past 4 years, 3 of which were the result of multiple complaints of criminal sexual activity occurring on the premises of the massage parlors; and

WHEREAS, the criminal sexual activity occurring on the premises of the massage parlors has resulted in the City charging multiple individuals working at massage parlors within the City with the crime of prostitution within the past 4 years; and

WHEREAS, the City has received no information of prostitution at any other type of licensed business located within the City's boundaries within the past 4 years; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in protecting its residents and visitors from criminal activity; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in fostering positive perceptions of the City and pride in the community; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in protecting those lawfully licensed and legitimate massage parlors operating within the City; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in encouraging appropriate patterns of development in the community which minimize the negative impacts of certain types of land uses, such as massage parlors; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in promoting economic investment in the community; and

WHEREAS, studies have indicated that massage parlors increase the frequency of crimes such as prostitution, fraud, and human trafficking in areas surrounding such land uses; and

WHEREAS, massage parlors often create or contribute to a negative perception for the neighborhood in which they are located; and

WHEREAS, the City finds a compelling, countervailing public interest to regulate massage parlors within the City in order to promote the health, safety, and welfare of the community and to serve the best interests of Clearfield’s residents, visitors, property and business owners; and

WHEREAS, in order to protect both its current and future residents and businesses from the negative effects of massage parlors within the City, pursuant to Title 10, Chapter 9a, Sections 504 and 509 of the Utah Municipal Code, as well as Title 11, Chapter 1, Section 8 of the Clearfield City Code, the City either has or will very shortly formally initiate proceedings to amend its current land use ordinances to further regulate the development, erection, construction, reconstruction, installation, alteration, licensing, or relocation of any massage parlors (as defined herein as a commercial establishment providing any type of massage) on commercially zoned property throughout the City;

**NOW THEREFORE BE IT ORDAINED BY THE CLEARFIELD CITY COUNCIL:**

**Section 1. Enactment:**

Based upon the City Council’s finding of a compelling, countervailing public interest as enumerated above, and pursuant to Title 10, Chapter 9a, Section 504 of the Utah Municipal Code, this Clearfield City Ordinance 2019-09 is hereby enacted to establish a temporary land use regulation prohibiting the approval, development, erection, construction, reconstruction, installation, alteration, licensing, or relocation of any massage parlors (as defined herein as a commercial establishment providing any type of massage) on commercially zoned property throughout the City.

**Section 2. Period of Effect:**

Pursuant to state law, the temporary land use regulation enacted by this ordinance shall be in effect until it is either repealed by the Clearfield City Council, or until a period of six months has passed from this 12<sup>th</sup> day of March, 2019.

**Section 3. Repealer:** Any provision or ordinances that are in conflict with this ordinance are hereby repealed.

Passed and adopted by the Clearfield City Council this 12<sup>th</sup> day of March, 2019.

ATTEST:

CLEARFIELD CITY CORPORATION

\_\_\_\_\_  
Nancy R. Dean, City Recorder

\_\_\_\_\_  
Nike Peterson, Mayor Pro Tem

VOTE OF THE COUNCIL

AYE:

NAY:

# Human Trafficking in Illicit Massage Businesses



## About Polaris

Polaris is a leader in the global fight to eradicate modern slavery. Named after the North Star that guided slaves to freedom in the United States, Polaris systemically disrupts the human trafficking networks that rob human beings of their lives and their freedom. Our comprehensive model puts victims at the center of what we do — helping survivors restore their freedom, preventing more victims, and leveraging data and technology to pursue traffickers wherever they operate.

Polaris  
PO Box 65323  
Washington, DC 20035  
202-790-6300  
[info@polarisproject.org](mailto:info@polarisproject.org)  
[www.polarisproject.org](http://www.polarisproject.org)



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## Letter from Rochelle Keyhan Director, Disruption Strategies, Polaris

*Dear Readers,*

The United Nations estimates that more than 40 million people in the world today are living in some form of modern slavery. That staggering figure makes one thing abundantly clear: We cannot end human trafficking one victim, one case, one incident at a time. We have to scale up.



The Disruption Strategies team at Polaris has taken on the challenge of scaling up by developing ways to make life difficult for human traffickers. We are finding, testing and refining approaches that make it more risky and less lucrative for traffickers to do business, and bringing those approaches to stakeholders in cities, suburbs, and rural areas — anywhere we find dedicated, invested partners.

Our work is guided by a groundbreaking 2017 Polaris report, *The Typology of Modern Slavery*, which identifies 25 individual types of human trafficking in the United States today. Each type has its own business model, defying a one-size-fits-all approach to ending human trafficking. If we want to disrupt trafficking, we have to do it one type at a time.

Currently, the Polaris Disruption Strategies Team is focusing on illicit massage businesses (IMBs), a unique form of trafficking that operates in plain sight in communities across the country. Our mission is close to my heart. As a prosecutor for six years, I saw many potential trafficking victims arrested for prostitution in IMBs. In some cases, they were deported before

I even had the chance to assess whether they might be trafficking victims. Meanwhile, the business owners and operators who exploited and abused them walked free, having manipulated the system to punish the victim — not the trafficker. I knew this was a cycle that we could end.

Today, our team approaches the work of ending IMB trafficking by identifying exploiter-focused, victim-centered strategies that work. We build off of the work of Polaris' National Human Trafficking Hotline's engagement with survivors, consulting and working with survivors and direct service providers to assess the needs and realities articulated by victims of human trafficking. We also meet with invested local heroes around the country doing innovative, effective work to shut down trafficking in their communities, and we connect them to each other as well as to communities who are ready to learn from them. Sometimes we connect agencies within a single jurisdiction to help them understand how — and why — they can work together. We provide research and best practices to make sure that local anti-trafficking efforts are both informed by national trends and responsive to local community needs, producing sustainable and relevant shifts in their local systems.

I am proud to say that there are countless communities that want to do this work, and do it right. There are also, of course, significant barriers, including lack of knowledge, resources, and support to serve survivors and keep them safe.

In the past two years, we have assisted with the passage of dozens of local laws, as well as three statewide laws that increase protections for survivors and accountability for traffickers in 709 U.S. cities. We have engaged more than 100 law enforcement jurisdictions across 31 states, helping them understand the difference between human trafficking and prostitution and both how and why to adopt an exploiter-focused, victim-centered approach to human trafficking in IMBs. This approach ensures that every future operation represents another step away from repetitious low-level arrests that typically only penalize potential victims, towards a future where traffickers are held accountable and our communities become inhospitable to them. As a result of consulting directly with survivors themselves, we have also empowered and connected more than two dozen service providers to improve the cultural humility and diversity of their services for IMB survivors, and to form a national safety net for survivors.

I am incredibly proud of the work we do, and of the people who have collaborated with us, opened their hearts and eyes to new ways of doing things, and asked for and offered invaluable help. We are constantly learning, together. With this report, we invite you to join us.

**Rochelle Keyhan**

Director, Disruption Strategies, Polaris

## Acknowledgements

This report was a collaborative effort, spearheaded by Rochelle Keyhan, Director of Disruption Strategies, and the Disruption Strategies team including Meghan Carton, Anna Kegler, Veronica Buckley, Sydney Boone, Francheska Loza and Alexa Schaeffer who together produced the original research and analysis, and were instrumental to the creation of this report. Bradley Myles, Nancy McGuire Choi, Caren Benjamin, and Sara Crowe generously provided input and edits throughout, and we are also grateful to the many others across Polaris who helped make this report a success. We would like to thank the National Human Trafficking Hotline team for its dedication in serving survivors, with a special thanks to Samantha Gillis for working to ensure calls related to potential IMB trafficking are consistently handled in a way that is culturally-competent and sensitive to the particular needs of IMB survivors.

We are grateful to the NoVo Foundation, whose generous financial support made this report possible.

We would never have been able to complete this report without help from many passionate, dedicated individuals and partnerships. We would like to thank our law enforcement partners for sharing their knowledge and experience investigating and prosecuting IMB trafficking cases. Thank you specifically to the **Los Angeles Sheriff's Department, Seattle Police Department, King County Prosecutor's Office, and the San Francisco Department of Public Health** for their contributions. Thank you to **Demand Abolition** for sharing buyer data and insights in advance of its upcoming report. We would also like to thank our partners in business and finance for sharing their invaluable expertise with us.

Thank you to **Attorney General Bob Ferguson (WA), Attorney General Sean Reyes (UT),** and the **National Association of Attorneys General (NAAG)** for their early support, including leading the recruitment of their colleagues to partner with Polaris to disrupt trafficking in IMBs on a national scale. Thanks to their efforts, partnership among Attorney General Offices has ranged from making efforts to understand the footprint of IMBs in a given state, to joining a dialogue with other communities who are also undertaking this work, to deploying different investigative strategies and prosecutorial tools to increase risk and decrease the profits for traffickers.

We would like to thank all of the dedicated contract researchers and volunteers who helped us map IMBs across the country, investigate recruitment patterns, and research laws and other aspects of IMB trafficking.

Thank you to Eliza Carmen, Cristina Kinsella, Raydia Martin, Andrea Martino, Leigh Creighton Bond, Stephanie Bagnell, Erica Avery, Annie Khan, Alison Aminzadeh, and Victoria Ruby for researching laws and ordinances across the country. Thank you to Klara Wisniewska, Sarah Zalonis, Alisha Malkani, and Lori Sturdivant for helping us map IMBs nationally, and Bailey Powe for analyzing recruitment data, and to Megan Rigabar for researching how Yelp and Groupon allow IMBs to create a veneer of legitimacy.

Most importantly, we would like to extend our gratitude to the survivors of trafficking who have found the courage to share their experiences with our hotline advocates and service provider partners around the country. Without their testimony, this report would not exist.

# Special Acknowledgements: Service Providers

We would like to extend special gratitude to the following service providers across the country who shared their knowledge and experience gained working directly with IMB survivors. Their generosity with time, resources and data has helped ensure that survivor voice and experience is elevated throughout this report.

## California

### **Asian Pacific Islander Legal Outreach (APILO):**

Since 1975, Asian Pacific Islander Legal Outreach has worked to level long-standing barriers that have denied Asians and Pacific Islanders equal justice and equal access to the legal system in San Francisco and the Bay Area. APILO's community-based model means that leadership on vital issues, and its mission to instill in the community a sense of legal rights and protections while advocating against injustice, have always been driven from the community upward.

### **Coalition to Abolish Slavery and Human Trafficking (CAST):**

The Coalition to Abolish Slavery and Trafficking (CAST) is a Los Angeles-based nonprofit organization that is working to put an end to modern slavery and human trafficking through comprehensive, lifesaving services to survivors and a platform to advocate for groundbreaking policies and legislation. Over the past two decades, CAST has supported thousands of survivors through every phase of their journey to freedom from counseling, to legal resources, to housing, educational and leadership training and mentorship.

**International Institute of Los Angeles (IILA):** The International Institute of Los Angeles was founded in 1914 to help newly arrived immigrants integrate into their new lives in Los Angeles. Throughout the years, IILA has helped hundreds of thousands of immigrants and other low-income people overcome the barriers they face in becoming contributing members of society.

**San Francisco Department of Public Health's Newcomers CONNECT Project:** Newcomers CONNECT Project provides needed resources and linkages to populations vulnerable to exploitation, specifically foreign-born workers at massage establishments and restaurants, and their families and friends. Activities include conducting door to door outreach, focus groups, one-on-one needs assessments, educational material development, social media networking, and navigating linkages to community organizations for English as a Second Language and job opportunities.

**Opening Doors:** Opening Doors helps those escaping human trafficking and newly-arrived refugees to restart safe and healthy lives in Sacramento, California. With their multicultural staff and volunteers, Opening Doors provides outreach, training and technical assistance on human trafficking; case management and immigration legal services for human trafficking victims; comprehensive resettlement services for refugees; and tools for immigrants, refugees, and low-income citizens to build or grow small businesses, and to gain greater control over their personal finances.

## New York

**Garden of Hope NY:** From rescuing and counseling battered women and their children to servicing families experiencing dysfunction, Garden of Hope NY achieves its goals through a hotline, counseling, legal aid, emergency shelter, support groups, employment training, parenting education, and summer camp for exposed children.

**Korean American Family Services Center:** The Korean American Family Service Center (KAFSC) is a leading nonprofit organization that supports and empowers adults, youth and children to lead safe and healthy lives based on dignity, compassion and mutual

respect. KAFSC is committed to preventing and ending domestic violence, sexual assault, and relationship abuse, and creating a violence-free society. KAFSC's counseling, education and advocacy programs for individuals and families in the New York Tri-State Area are provided in a culturally and linguistically appropriate setting.

**RestoreNYC:** RestoreNYC serves foreign national survivors of sex trafficking with a holistic, trauma-informed, and culturally sensitive approach. It is committed to ensuring that survivors experience greater independence and well-being. As one of the primary nonprofits providing counseling and advocacy through the New York City Human Trafficking Intervention Courts, RestoreNYC's services include educating clients about their legal rights, trafficking, and community resources.

**Safe Center Long Island:** The Safe Center offers a broad spectrum of services including counseling, housing, advocacy and referrals through a highly trained, nurturing and compassionate staff of professionals well-qualified to provide the highest level of services to enhance the recovery of trauma victims and their non-offending family members.

**Sanctuary for Families:** Sanctuary for Families is a service provider and advocate for survivors of domestic violence, human trafficking, and related forms of gender violence in New York. Every year, it empowers thousands of adults and children to move from fear and abuse to safety and stability, transforming lives through a range of comprehensive services and advocacy.

## Ohio

**Asian American Community Services (AACS):** Asian American Community Services (AACS) is the premier non-profit community-based organization serving the needs of all Asian Pacific Islanders in Central Ohio. Since 1976, AACS has led efforts to empower and develop the local Asian community through its expansive and proactive programs and services.

## Texas

**YMCA International:** YMCA International Services is a unique center of the YMCA of Greater Houston that delivers client-centered programs to refugees, immigrants and other vulnerable populations to advance their economic independence, social integration and civic participation. The Y helps newcomers restore hope, build stability, create opportunity, and change futures.

## Utah

**Refugee and Immigrant Center - Asian Association of Utah (RIC-AAU):** The Refugee and Immigrant Center - Asian Association of Utah was founded in 1977 and is a private, non-profit, community-based organization located in Salt Lake City. Originally established to support Asian immigrants and refugees in their transition to life in the United States, the organization has expanded its resources and services over the past 40 years to assist refugees and immigrants from around the world. Today, it serves more than 2,000 refugees, immigrants, and other community members each year.

# Introduction

Illicit massage businesses (IMBs) that front for commercial sex operations have been ubiquitous in the American landscape for decades, with an estimate of more than 9,000 operating today. Commonly called “massage parlors,” these businesses dot the sides of highways and are tucked into suburban strip malls between fast food restaurants and dollar stores and behind darkened windows in storefronts in some of



↑ Spa in Tampa, Fla

America’s biggest cities. While some keep a low profile, many others blatantly advertise “Asian gals,” or bear sexualized names like “Good Girl Spa.” Anyone looking to purchase commercial sex is just a few clicks away from any number of review sites that offer extremely detailed information about both the businesses themselves and the individual women exploited within them.

The sheer number of fake massage businesses, coupled with the impunity with which they operate, has over time fostered widespread — if tacit — cultural acceptance of the industry. The frequent wink, wink, nudge, nudge references to “happy endings,” in popular culture is just one manifestation of perception that while commercial sex is illegal, in this context, it is essentially harmless.

That perception is wrong. There may be women who choose to sell sex either along with or under the guise of massage therapy, but evidence suggests that many

of the thousands of women<sup>1</sup> engaging in commercial sex in IMBs or “massage parlors” are victims of human trafficking.

To those women, the term “happy ending,” with its faint whiff of fairy tale, is cruelly ironic. Most of them are immigrants, chasing a dream of financial stability in a faraway land, seeking not a prince but a steady job with decent wages. So they answer an ad for a massage therapist and discover, too late, that “massage” is a euphemism

and that they are expected to provide services for which they will be paid some portion of the tips they earn, if they are lucky, or less, if they are not. They live in substandard conditions, work illegal hours “on call,” and many feel they have no choice but to comply with the mandate to perform sex acts. They are told they will be deported by immigration, or their families will be hurt; that they owe the owner money and that if they leave, police will arrest them for prostitution. Every story is a little different but they all share a common pattern that combines fraud, threats and lies with poverty, fear and the potential for violence.

The information gathered here comes from published sources, intensive interviews with survivors of human trafficking, law enforcement, and service providers as well as from Polaris’s historic work in the field and analysis of cases reported to the National Human Trafficking Hotline (NHTH).

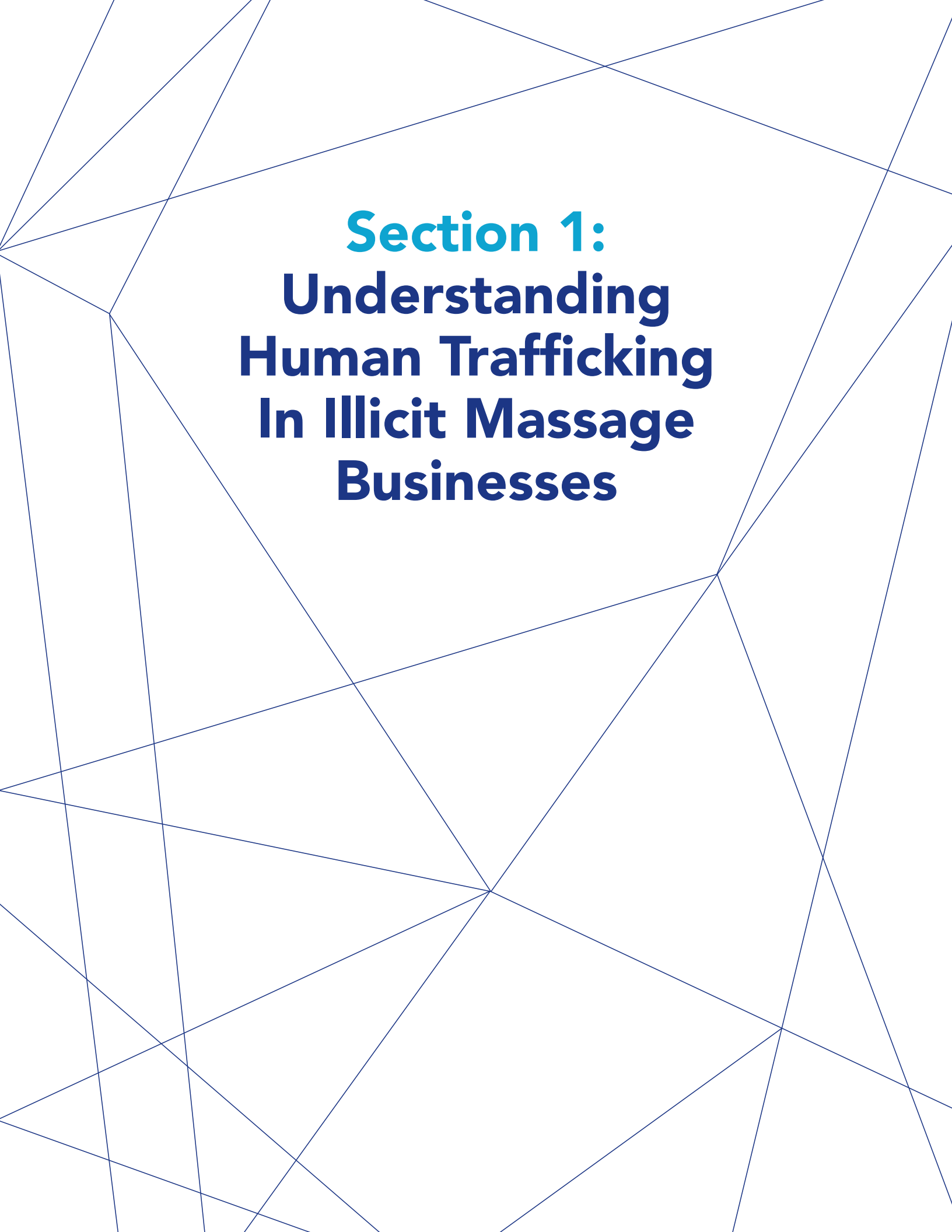


↑ Haunting poster reading "Today's the day to believe in fairy tales" found taped to the bedroom door of women living on-site in an IMB in Washington, D.C., during a 2008 police raid

Polaris created the term "illicit massage business" to describe a very specific type of exploitative, organized, commercial-front trafficking venue that we saw implicated over and over in cases reported to the Hotline. The term does not encompass legal, therapeutic massage businesses, nor does it include consensual sex work that may incorporate massage.

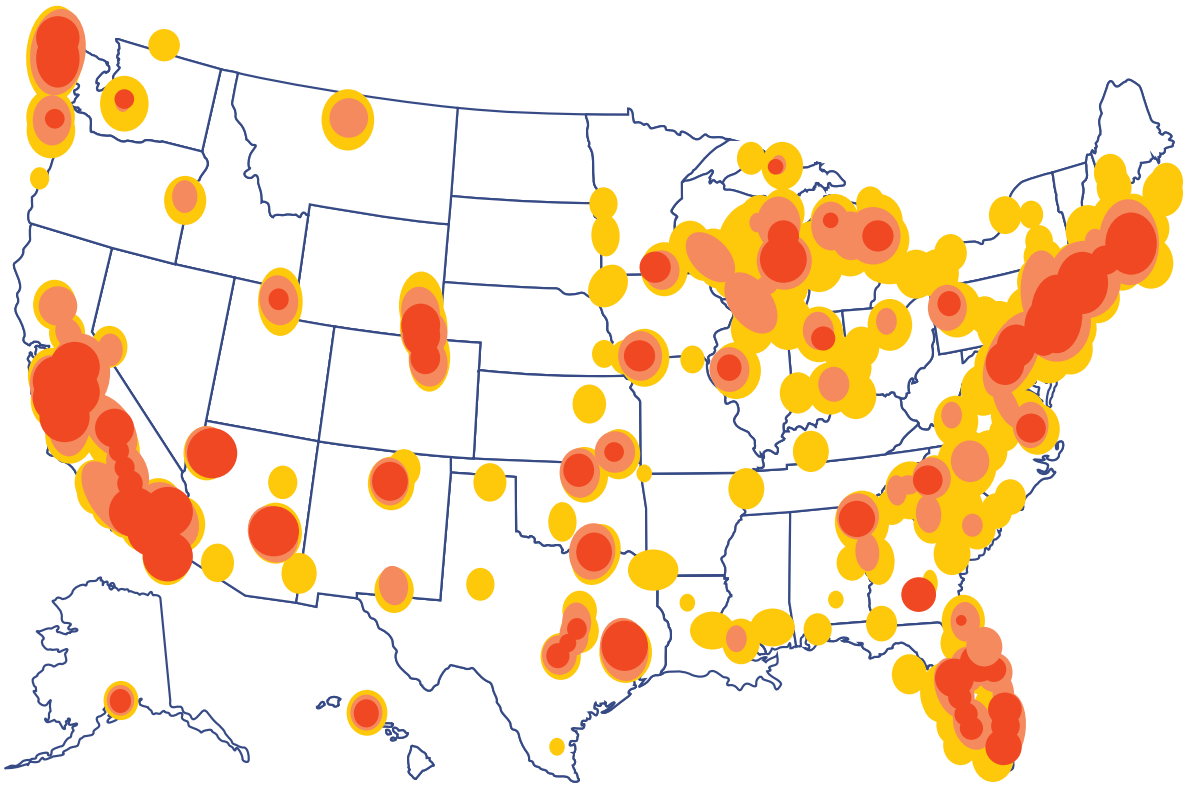
Our goal in compiling this information is to provide a resource guide for law enforcement, policy makers, media and others in the broader community. We seek to provide the tools to recognize the problem and help these audiences consider what steps they might be able to take to combat human trafficking in illicit massage businesses and provide better options for women who want them.





**Section 1:**  
**Understanding**  
**Human Trafficking**  
**In Illicit Massage**  
**Businesses**

# Overview of Illicit Massage Businesses in the United States



## Scope of the illicit massage industry in the United States

According to Polaris's research, there are more than 9,000 illicit massage parlors currently open for business in America, and they can be found in every state.

The illicit massage industry appears to be booming. A 2014 report on the underground commercial sex economy found that "the number of erotic massage parlors is increasing in the United States ... and they are proliferating beyond the West and East coasts where the majority of them are clustered."<sup>2</sup> Our analysis suggests that total annual revenue of illicit massage



**9,000+**  
illicit massage  
businesses currently  
open for business in  
America



**2.5**  
billion  
annual  
revenue

businesses (IMBs) in the United States hovers around \$2.5 billion annually.<sup>3</sup> This figure aligns with recent research by Vanessa Bouché, who found that the illicit massage industry in the city of Houston alone was \$107 million per year, and extrapolated this to a potential national figure of \$2.8 billion annually.<sup>4</sup>

## Indicators that a massage parlor is engaging in commercial sex and potential human (sex or labor) trafficking include:

- Prices significantly below market-level (e.g. \$40 for a one-hour massage in a city where \$80 is the norm)
- Women report that they need a large tip (e.g. for expenses, food, family), sometimes even expressing distress if they do not receive a tip
- Women typically serving customers excessive hours, or even being on call at all times
- Women appear to be living in the business or women living in trafficker-controlled secondary site (e.g. apartment, house)
- Serves primarily or only male clientele
- Locked front door, customers can only enter if buzzed in, or enter through back or side doors that are more discreet
- Windows are covered so passersby cannot see into the establishment
- Regular rotation of women; new women coming in every several weeks
- Advertising on commercial sex websites like Rubmaps.com, backpage.com, or aampmaps.com



Extremely low prices in Los Angeles



Discreet rear entrance and parking in Tampa, Fla



Security-camera surveilled, buzzer-controlled entrance in Philadelphia

Licensing and regulation of these businesses is an easily exploitable patchwork of state and local laws and ordinances that allows this blatantly illegal industry to survive and thrive in such a public way. This is in part due to the variation of these regulations

across locations. As will be discussed in more detail later in this report, changing the legal and regulatory framework will go a long way toward shutting down illicit massage businesses.

## Scope of trafficking in illicit massage businesses

In 2017, Polaris analyzed more than 32,000 cases of human trafficking and developed a classification system that identifies 25 distinct types of human trafficking in the United States. Each one has its own business model, trafficker profiles, recruitment strategies, victim profiles, and methods of control that facilitate human trafficking. They all fall roughly into categories of sex trafficking, labor trafficking or a hybrid of the two — that is, venues that involve both sex and labor trafficking. Trafficking related to illicit massage parlors accounted for 2,949 cases — second in prevalence only to trafficking in escort services.<sup>5</sup> Most of the victims are women in their mid-thirties to late fifties from China and South Korea. Additionally, most are mothers struggling to support their children. According to data from Restore NYC, 80 percent of the IMB survivors it has served have at least one child, and 84 percent of their children are overseas.<sup>6</sup>

It is not known exactly how many women working in massage parlors today are trafficked. The data from the National Human Trafficking Hotline almost certainly does not represent anything close to the scope of the problem. By its very nature, human trafficking is a difficult, if not impossible, crime to quantify with precision. Traffickers operate in the shadows, and the tools they use to exploit victims are such that the victims themselves often do not know that what is happening to them is against the law.

### Force, Fraud and Coercion

To be considered human trafficking, a situation must include one of the following:<sup>7</sup>

- **Force:** Violence or the threat of violence.
- **Fraud:** Deceitful recruitment practices, fraudulent debt accumulation.
- **Coercion:** Emotional manipulation, document confiscation, threats of law enforcement, deportation, exposure and shaming, consequences to family members.

Both sex and labor trafficking can happen in illicit massage businesses. As explored in greater depth later in this report, cultural shame combined with elements of force, fraud, and coercion — the very elements that make up the crime of trafficking — often lead women arrested at illicit massage businesses to insist to police that they are performing commercial sex acts of their own free will. Even when law enforcement is familiar with this type of trafficking and prepared for this answer from potential victims, it can be very difficult for victims to speak about sex or sexual exploitation at all.

Victims are much more likely to share information about labor exploitation they have experienced. For example, in a recent raid of two massage parlors in Waco, Texas, where police had been offered commercial sex acts, the three victims spoke in terms of work,<sup>8</sup> not sex. They disclosed that they were not aware of the type of work they would be performing until they arrived at the business. They reported being housed in the parlor by traffickers to “save money” and were charged \$300 per month to stay there. They were allowed to keep 20 percent of their earnings, but had to give the boss their whole first week’s pay as a “deposit.”<sup>9</sup>

The unlikelihood that women will self-identify as victims of sex trafficking deeply skews the public impression of how many women are trafficked in these venues, as trafficked women who do not self-identify are often reported as “prostitutes.” It also makes it very difficult for researchers to estimate the total number of victims of sex and labor trafficking in these venues.

What we do know with a high degree of certainty is that labor trafficking is pervasive. Across calls to the NHTH hotline, conversations with dozens of service providers and legislators, and officials from over 100 law enforcement agencies, we have yet to hear of an IMB case that did not involve labor trafficking. Labor trafficking in IMBs takes the form of business owners coercing women into commercial activity without adequate payment — or any payment at all. They may be forced to endure illegal or exploitative conditions — long hours a day, seven days a week, without provision of any required benefits or employee protections — and made to believe these are in fact normal working conditions in the United States, thereby adding the elements of fraud and coercion.



↑ Massage parlor in mall, McAllen, TX

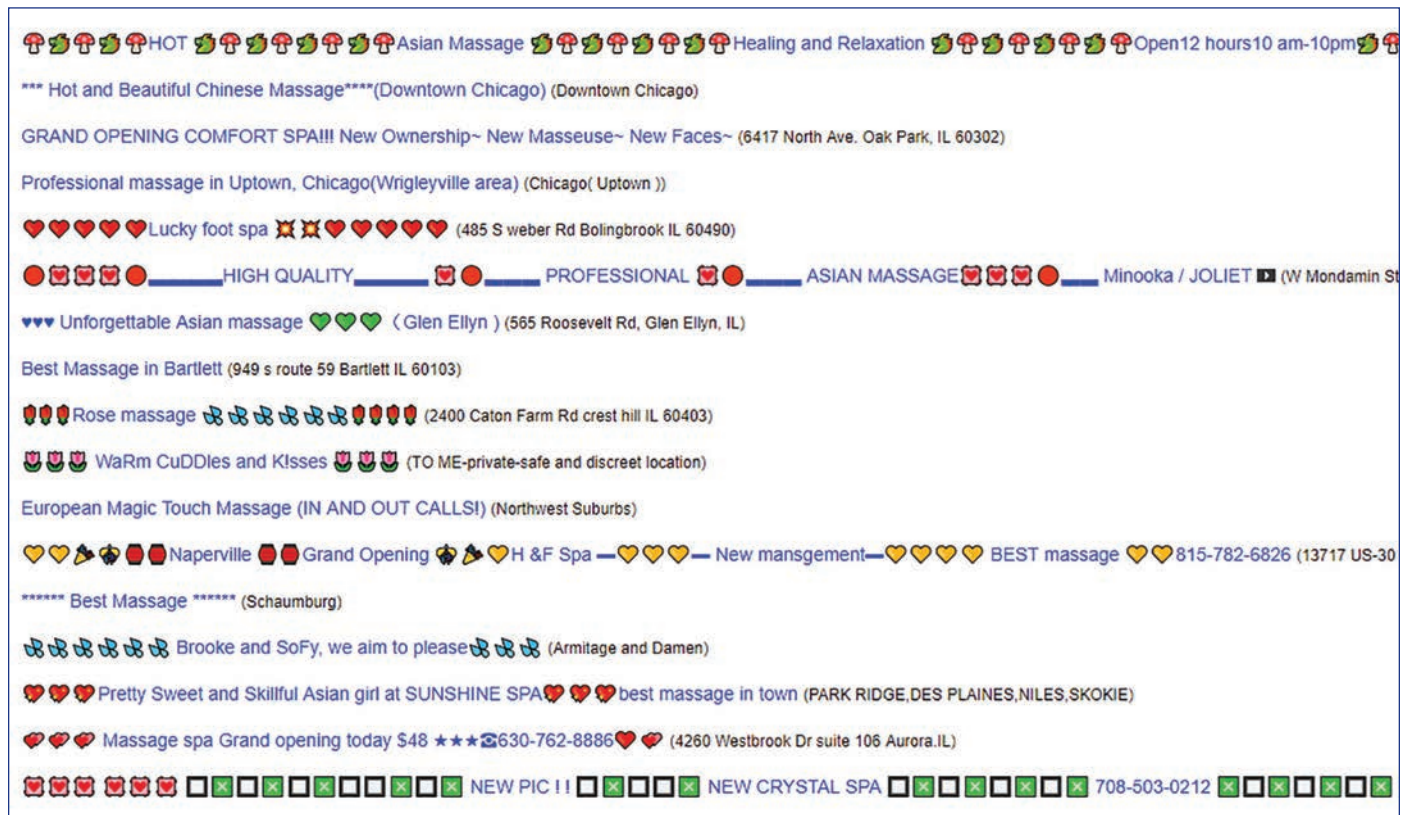
# Marketing Illicit Massage Businesses to Buyers

Illicit massage businesses are designed specifically to provide the comfort of a built-in cover story for buyers — that they just “wanted a massage” and had no idea that this business offered any other services. This creates a psychological comfort zone as well as a very real one.

**Buyers at illicit massage businesses are rarely targeted by law enforcement, and are rarely shamed, or even talked about, in the media.<sup>10</sup>**

It is very likely that without the availability of such businesses, this particular subset of risk-averse commercial sex buyers would remove themselves from the commercial sex marketplace.

## Ads from the Massage section of Backpage in Chicago<sup>11</sup>



The image shows a screenshot of a list of massage advertisements from the Backpage website. The ads are arranged vertically and feature various icons such as mushrooms, hearts, and butterflies. The text of the ads includes:

- Hot and Beautiful Chinese Massage\*\*\*\*(Downtown Chicago) (Downtown Chicago)
- GRAND OPENING COMFORT SPA!!! New Ownership~ New Masseuse~ New Faces~ (6417 North Ave. Oak Park, IL 60302)
- Professional massage in Uptown, Chicago(Wrigleyville area) (Chicago( Uptown ))
- Lucky foot spa 🍄🍄🍄🍄🍄🍄🍄🍄🍄🍄 (485 S weber Rd Bolingbrook IL 60490)
- HIGH QUALITY PROFESSIONAL ASIAN MASSAGE Minooka / JOLIET (W Mondamin St)
- Unforgettable Asian massage (Glen Ellyn) (565 Roosevelt Rd, Glen Ellyn, IL)
- Best Massage in Bartlett (949 s route 59 Bartlett IL 60103)
- Rose massage (2400 Caton Farm Rd crest hill IL 60403)
- WaRm CuDDles and Kisses (TO ME-private-safe and discreet location)
- European Magic Touch Massage (IN AND OUT CALLS!) (Northwest Suburbs)
- Naperville Grand Opening H & F Spa — New mangement— BEST massage 815-782-6826 (13717 US-30)
- \*\*\*\*\* Best Massage \*\*\*\*\* (Schaumburg)
- Brooke and SoFy, we aim to please (Armitage and Damen)
- Pretty Sweet and Skillful Asian girl at SUNSHINE SPA best massage in town (PARK RIDGE, DES PLAINES, NILES, SKOKIE)
- Massage spa Grand opening today \$48 ★★☎630-762-8886 (4260 Westbrook Dr suite 106 Aurora.IL)
- NEW PIC !! NEW CRYSTAL SPA 708-503-0212

# Online advertising and marketing

Buyers commonly find out about IMB locations via word-of-mouth or online,<sup>12</sup> where many advertise in the “massage” or “therapeutic” sections of classified ad sites like Backpage.com and Craigslist.

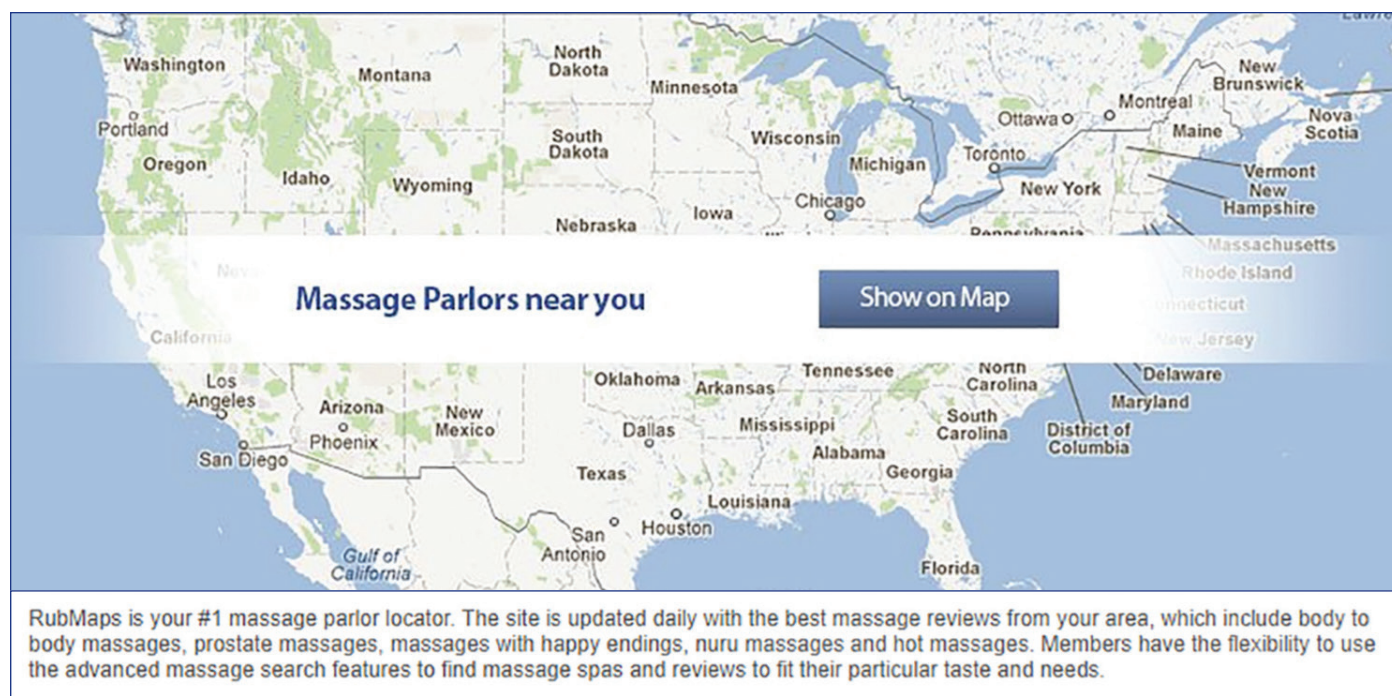
## Review sites

Those looking for references or to ensure that these businesses are in fact selling commercial sex, not massages, can get some information about potential IMBs to visit from mainstream review sites like Yelp. For even more detail, there are IMB-specific online communities, or “review boards” such as RubMaps.com, usalsexguide.com, MPReviews.com, aampmaps.com, and spahunters.com.

On these review boards, buyers share information about their experiences with the businesses, including

details of which women provide which sex acts, how much to tip, reviews of their experiences, and ratings of the physical attributes of the women. Other aspects of the sites include advice on ways to, for example, pressure a woman for additional sexual activity than she is initially willing to provide. Unfortunately, the very existence of these review boards normalizes and empowers sex buying, giving buyers a sense of community and invincibility that feeds this harmful behavior.

RubMaps.com, the most popular of the national review boards, receives more than 325,000 estimated unique visitors per month. It catalogues more than 7,200 open and active illicit massage businesses around the country, allowing paid subscribers to search by state and city.



The image is a screenshot of the RubMaps website. It features a map of the United States with various states and cities labeled. Overlaid on the map is a blue banner with the text "Massage Parlors near you" in white. To the right of this banner is a dark blue button with the text "Show on Map" in white. Below the map, there is a white box containing text that reads: "RubMaps is your #1 massage parlor locator. The site is updated daily with the best massage reviews from your area, which include body to body massages, prostate massages, massages with happy endings, nuru massages and hot massages. Members have the flexibility to use the advanced massage search features to find massage spas and reviews to fit their particular taste and needs."

↑ RubMaps.com, the most popular of the national review boards by web traffic, receives more than 325,000 estimated unique visitors per month.<sup>13</sup> It catalogues more than 7,200 open and active illicit massage businesses around the country, allowing paid subscribers to search by state and city.<sup>14</sup>

**The Advanced Search function on the RubMaps website.<sup>15</sup>**

Review details

<b>Age</b>	<b>Kitty</b>	<b>Breast size</b>	<b>Ass-play</b>	<b>Breast-Play</b>
<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>
<b>Handjob</b>	<b>Blowjob</b>	<b>Kissing</b>	<b>FS</b>	<b>Lick The Pussy</b>
<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>
<b>Finger The Pussy</b>	<b>Hair Length</b>	<b>Build</b>	<b>Ass Rating</b>	<b>Extra tip</b>
<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>
<b>Prostate Massage</b>	<b>Date added</b>			
<input type="text" value="--Select--"/>	<input type="text" value="--Select--"/>			

↓ **Below is a typical review from a buyer.<sup>16</sup>**

I've been here a couple of times and had a few different girls. This time was Anna. I liked her a lot and was happy to have her. The place is clean and the tables are high quality so i like it. Anna took me back to the rooms and let me get naked by myself and ready for her. She came and started working on me. She gives a good massage but she doesn't like touching that much. She seemed to shy away from my hands a lot. No problem. On the flip I made sure she knew I wanted to leave happy and she didn't seem to mind. Anna is a trooper and got to work on my prick immediatly. I was really really happy with her work though I would like more next time. I am hoping if I go back a few times I could get some mouth action. I'll keep tryin.

A subset of the population of IMB sex buyers who spend time on sites like RubMaps style themselves as **"hobbyists"** or **"mongers."** They consider themselves connoisseurs of purchasing sex from these venues and tend to be repeat customers at the same IMBs.

These "mongers" are well aware of the pattern of massage parlors being shut down by the police, only to open up later under a different name, with a new owner. In a recent blog post, one RubMaps user shared the following advice with buyers:

*"Monger is here to offer some options when this happens to you. These places tend to re-open. They will be under a different name, with a different owner. But most will still be offering the same services as before. Wait it out for a few weeks. Then come on here and see what other people are saying. The board has pretty good chatter from fellow mongers about the latest update in each city. Remember you are not alone. There are others in the same exact situation as you. If you can't or won't wait, then check out the scene in the nearby cities. You might discover a hidden gem. So in conclusion, it's ok; no need to panic. Shit is going to happen, but they will never completely close every shop. Where there is a demand, there will always be a supply. Monger on brothers, monger on."<sup>17</sup>*



# Buyer demographics

When buyers are arrested, the media often highlights those that have what are considered reliable, or even well-respected careers. For example, in a recent demand sting in Seattle, arrested sex buyers mentioned by the media included “two bus drivers, six architects, dozens of technology employees, construction workers, two surgeons, a dentist, a nurse, a journalist, a couple of attorneys, an executive with a sports-management company and an aspiring law-enforcement officer.”<sup>18</sup> While these professionals are more likely to be mentioned in news articles, they are not the only members of the community partaking in this illicit activity. IMB buyers generally reflect the demographics of their communities, and therefore come from all walks of life.

To get a snapshot of the average IMB buyer who is active online, we took a look at page-visitor information for the most popular IMB buyer review board, RubMaps.

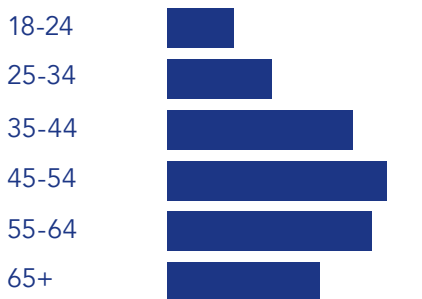
The average buyer participating in this online review board skews significantly more Caucasian, wealthier, and older than the general internet population.<sup>20</sup> While RubMaps is just one of many online review boards and is not representative of all buyers online, these demographics to provide a sense of the voices most represented by the RubMaps reviews analyzed for this report.

## ↓ RubMaps.com Audience Demographics from Alexa.com<sup>19</sup>

### Gender



### Age



### Has Children



### Education



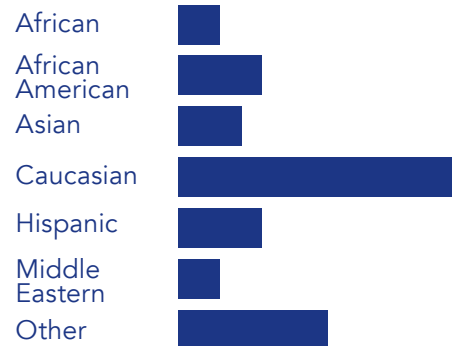
### Income



### Browsing Location



### Ethnicity



## Buyer purchasing patterns

Recent research on buyer habits in the city of Houston, Texas found roughly 2,869 customers per day at the city's 292 illicit massage businesses, yielding a total annual gross revenue of \$107 million.<sup>21</sup> These figures are based on identification of IMB sites through placement of cameras on public property outside 32 of them for a 24-hour period on random days of the week to gather information on how many people walked through the door, at what time, and how long they stayed. The research team found that the highest demand was during the lunch hour, from 12-2 p.m., and that the average IMB in Houston had 12 customers per day.

↓ Unmarked message parlor in Philadelphia



# Recruiting Women Into Illicit Massage Parlor Trafficking

Most immigrants come to America seeking jobs in a country that is thought to reward those willing to work hard and sacrifice. The women recruited into illicit massage parlors are no different.

## Traffickers exploit cultural patterns, financial vulnerabilities

The vast majority of women reported to have been trafficked in IMBs are from China, with a relatively high number coming from the Fujian province. The next highest group are women from South Korea. There is a notable minority of IMBs that have victims from Thailand or Vietnam.<sup>22</sup> The average age of victims in IMBs is 35-55, although we have also seen cases of trafficking victims in their late 20s and women all the way up to their late 60s. Most women recruited have no more than a high school education and know very little or no English when they arrive in the United States.<sup>23</sup>

Financial need, combined with cultural patterns that traffickers can easily take advantage of in an unfamiliar environment are among the most common vulnerabilities shared by IMB trafficking victims<sup>24,25</sup>. The women who get recruited to IMBs begin their journeys to America with limited or no financial resources, usually arriving on tourist visas.

The Visa Waiver Program allows Korean citizens to travel to the United States for business or tourism for up to 90 days without the normally required B-1/B-2 visa.<sup>26</sup> However, for potential trafficking victims from non-visa-waiver countries, including China, the barrier to entry is far higher. To obtain a B-1/B-2 visa, Chinese citizens must prove that the purpose of their trip is for a temporary business, pleasure, or medical visit, provide evidence of funds to cover their expenses while in the country, and show evidence of a residence outside the United States or other binding ties that will ensure their return to China.<sup>27</sup>

Women in already precarious financial situations are often lured into hiring expensive brokers to handle the visa process (often fraudulently) and arrange plane tickets and associated fees. To pay the broker, women take out loans ranging from \$5,000 to \$40,000 depending on the route and travel methods, and the broker used.<sup>28</sup> For traffickers, this visa process is an access point for recruitment. They may provide false supporting documents such as job offers, and offer coaching and guidance to help women make it through their visa interview and immigration process smoothly. However, these "services" help create indebtedness and may also end with victims handing over their immigration documents and passports to their traffickers, giving them additional leverage and control.<sup>29</sup> Whether recruiters are directly involved in the visa and travel process or not, they are well aware of the financial burdens that potential victims carry as a result.



Recruiters also know that recent immigrants are likely to seek advice and support from extended community networks.<sup>30</sup> In a socially-oriented and collectivist culture like China's, social affiliations are often "satisfied within already established groups," which encourages seeking support from existing relationships. That inherent trust and

reliance on the group is complemented by a "social obligation to help others who need help in the social group to which they belong."<sup>31</sup> This cultural tendency is reinforced by the historical experience of Asian immigrants in the United States. The Chinatowns that developed in major cities as a result of anti-Chinese sentiment and policies in the mid-nineteenth century continue to serve as strong and often somewhat insular community centers.<sup>32</sup>

This cultural practice extending into communities within the United States is explained by survivors as the reason they look within their community (often defined as narrowly as fellow immigrants from their shared village in China) for job leads. By tapping into these existing communities, traffickers can easily recruit victims due to the high level of initial trust in recommendations from these sources, based on traditional use of relationships for professional, social and organizational levels. Safe Center Long Island, for example, reported the experience of one survivor who was offered a job in a massage business in Florida by a woman from her village:



↑ Storefront massage parlor, Los Angeles, CA

*"I was persuaded by my villager to work for her in Florida. She was nice and said it is a great opportunity to make money as they have an influx of customers. I know nothing about Florida but I trust her as she is from my village in China. When I paid my own plane ticket and got to her massage parlor, she asked me to deliver sex services to clients. I rejected the request as it*

*was not what I was told on the phone. She slammed the table and changed her attitude 180 degrees."*<sup>33</sup>

While in this case, the survivor resisted initially, deeply ingrained behavioral and social patterns in Chinese culture create intense pressure for immigrants in situations where they may owe others.

For example, one of the key guiding principles for social interactions in Chinese culture is the term *renqing*, which sets the social norms all members of society should follow in order to secure social harmony. This term emphasizes solidarity and empathy, while at the same time attributing a positive value to the obligation of reciprocation or repayment, by placing "heavy stress on the practice of such maxims as 'Do not forget what other people have done for you.'"<sup>34</sup> This maxim can apply to direct help such as a loan that must be paid back in any way possible or it can take the form of subtle coercion from traffickers. If a trafficker is able to convince a victim that he or she has done her an extreme favor by employing her — because she has limited education, does not speak the language, is told she is worthless, could not find work elsewhere, etc. —

then anything the trafficker asks of the victim should be done because she owes the trafficker so much. This kind of coercion and manipulation is similar to how American pimps groom and control young women, but in this case can be even more deeply embedded because of *renqing*.<sup>35</sup>

Peiyi Woo, a former counselor at Restore NYC, which provides services to IMB survivors in New York, explains:

*“There is an implicit expectation that renqing must be returned in kind someday to maintain guanxi [or face/honor]. It is a double-edged sword that is both a collective virtue, yet a belief that can put the women in a vulnerable position. The community and social network is core to all activities of the Chinese people. Traffickers utilize the strength of the Chinese network that has the capability to shame and ostracize, as well as the pressure of not being able to repay their debts, as tactics to coerce women to do work that is different from advertised.”<sup>36</sup>*



↑ Spa in strip mall, Tampa, FL

Another guiding principle of Chinese social interactions is the concept of *mianzi*, which refers to “an individual’s social position or prestige,” defined by their success in “performing one or more specific social roles that were recognized by others.” Some of the ways in which this manifests in Chinese behavior includes respect for authority and a proclivity to seek to be of utility to one’s social

group instead of acting in one’s own self-interest.<sup>37</sup> This is another social virtue that can often serve traffickers who are able to exploit their position of power within IMBs. A common way for law enforcement and service providers to make connections with a potential victim is to ask what her individual needs are. For Americans, this shows that we care and recognize the value of an individual. However, when placed against *mianzi* it can be seen as betraying your role within the group or abandoning the group altogether. This makes it very difficult for a potential victim to want to blame her trafficker or those associated with the network, who are usually perceived to be in positions of authority and power.

## How traffickers recruit through fraudulent advertisements

In part through the exploitation of these cultural social constructs, trafficking networks direct women to specific jobs or newspapers, classified websites that function as community bulletin boards, social media, and traditional community-based newspapers. The ads posted on these channels are tailored by the traffickers to contain language that conveys unrealistic opportunity, but that to someone inexperienced in common labor practices in the United States, does not seem odd.

For example, a victim might be told that she can earn \$7,000 a month at a massage business in Ohio and that the owner will arrange her transportation and living arrangements. This is in many ways ideal for someone looking for economic opportunity in a foreign country. The victims might not realize that accepting this job can lead to finding themselves in an unfamiliar city, with no way to return home, living on-site in the IMB or transported to and from the IMB and a trafficker-controlled residence (usually an apartment), by a driver in the trafficking network.<sup>38</sup> To a more trained eye, or even to those familiar with labor customs in the U.S., suspicious ads are easier to identify, which is another reason why traffickers target foreign women.

### Some common indicators of fraud in Mandarin- and Korean-language recruitment ads include:<sup>39</sup>

**High wages and cash paid daily.** Recruiters often promise 2-3 times what a typical employee in that role would make.

**Easy and reassuring working experience.** One ad targeting Korean women promised “Facing hard/unfair situations while working alone at an unfamiliar place — we know it’s the worst. We will be your oppa (older brother) and family while you are staying in LA.”<sup>40</sup>

**Provision of all the services ‘from A to Z’.** Recruiters often promise to take care of everything — plane tickets, visas, housing and transportation. The most common refrain is for the victims not to worry, that things like a lack of papers (visa, massage license, apartment lease, etc.) will not be a problem.

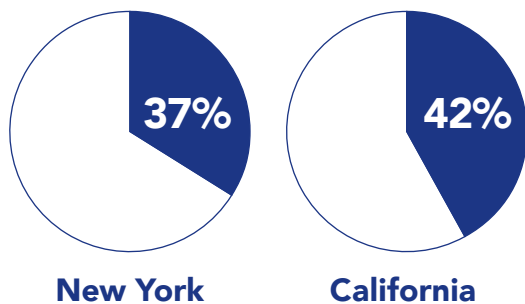
**Guarantee of an easy licensing process to legally work as a therapist.** IMBs often have connections to fraudulent massage schools that operate as “diploma mills.” These are “schools” that will, for a high fee, provide a fraudulent diploma so that a woman can sit for her licensing exam without any formal training. Some schools will also provide a fraudulent diploma and a list of anticipated answers for the licensing exam. Others will simply provide a fraudulent or forged license and tell a woman she is now licensed to perform massages. In New York, women are frequently given temporary cosmetology licenses and told that this is sufficient to start their job as a massage therapist. This can also serve as an indicator during IMB site investigations, as the women might all have licenses from the same school, possibly issued on the same day and under the same individual’s name.

## Details of recruitment in classified ads

We analyzed more than 17,500 Mandarin-language website ads<sup>41</sup> fraudulently recruiting women into jobs within massage establishments in three port cities: Flushing, N.Y.; San Francisco; and Los Angeles.<sup>42</sup>

From this review, we found that 37 percent of the ads in New York, and 42 percent of the ads in California show one or more flags of trafficking (most commonly promises of more than \$4,000 income a month, housing and transportation provided, visas handled, or parameters around an applicant's appearance or age).

### Ads That Show One or More Flags of Trafficking



Across both New York and California, about 15 percent of the ads included a phone number connected to online commercial sex ads.

About 8 percent of the recruitment ads explicitly promised that no sex is required for the job, but almost double that number had ads that could be directly linked to commercial sex websites like Rubmaps.com or Spahunters.com. It is important to note that the connection to commercial sex ads or websites demonstrates that the job ads are inherently fraudulent, meeting the standard of “force, fraud, or coercion” necessary to prove human trafficking.

After jobs actually located in New York and California, the next most frequent type of job posting we found was for transfer to a location in Florida. This is a common pattern of movement within IMB networks that recruit women through major port cities like New York City and Los Angeles and then transport them around the country to smaller cities and towns.

We also analyzed recruitment ads from Korean-language websites. Unfortunately, Korean websites are city-specific, whereas the Mandarin-language websites recruit for the whole country, so the sample size was more limited. We analyzed 325 Korean language ads in Los Angeles and San Francisco, which had the most prolific recruitment websites.

In these ads, similar patterns exist among Korean recruiters and Korean-based websites. On a major community website, Korean Community of San Francisco (sfkorean.com), we found recruitment ads linking to a variety of other cities including Atlanta, Chicago, Las Vegas, Los Angeles, New York City, Seattle, Washington, D.C. and various suburbs in Northern Virginia.

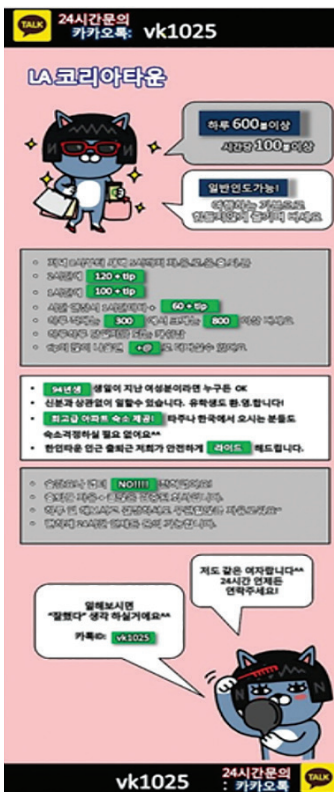
## Details of recruitment through social media

Recruiters also make use of social media platforms like WeChat and KaKaoTalk, the two most popular social media platforms for Chinese and Korean users, respectively. WeChat can be a difficult platform to understand for those more used to using multiple individual apps like Facebook, Venmo, and Google Suite. The apps in WeChat are all connected and powered by a centralized system with a single user log-in. With WeChat, users have a one-stop shop app that can do everything from search for jobs and transportation, order deliveries, do their banking, handle health services, and find media and entertainment.<sup>43</sup> In order to understand WeChat, picture all the apps on your phone and then imagine them combined into one single app — that is WeChat.

This means that with KakaoTalk, traffickers must create ads to attract potential victims.

### Rough Translation of Key Phrases from a Recruitment Website

- "\$600 per day, \$100 per hour"
- From 8 p.m. to 5 a.m., free working hours
  - For 2 hours, \$120+tip
  - For 1 hour, \$100+tip
  - For extra work, \$60+tip per hour
  - For one day, earn minimum \$300 to maximum \$800
- Same day paid "Cash-job"
- If you get more tips, you can earn '+@' than usual
- Any women born after 1994, OK
- Anyone can do it
- Premium apartment is provided
- Even people from other states or Korea don't need to worry about housing
- Commuting from the places near Korea town: we provide safe rides



KaKaoTalk is more similar to Google Suites. It has a similar range of apps as offered by WeChat, but they tend to be multiple apps under one system, rather than one all-encompassing app. KaKaoTalk is also similar to WeChat, but slightly more restricted in terms of privacy and the ability to easily find other app users in your region.

↑ KakaoTalk recruitment ad<sup>44, 45</sup>



## Details of newspaper advertising

Traffickers also place fraudulent ads in print and online newspapers. In our analysis of newspaper ads for massage therapists in New York and California, we found that 50 percent of the ads had phone numbers that were connected to commercial sex websites, including ads that promised no prostitution. This is 34 percentage points higher than the number of ads that were posted through online classified/job board websites. These phone numbers in the print and online newspapers also revealed connections to broader operational networks. In a search of one Chinese print newspaper in New York, 10 percent of the recruitment ads claimed they were recruiting women for jobs in New York, but when the phone numbers were analyzed, the businesses were found to be in Minnesota, Florida, and Washington state.


A similar ad<sup>46</sup> posted online promised that no sex would be required. The ad, which would appear in search results for someone who searched in Mandarin, roughly translates to:

But when the phone number is run through Google with English as the primary language ads and commercial sex websites appear for a business that is in Pennsylvania, but nearly 50 miles from Philadelphia, where the job is advertised to be. One buyer wrote in November 2017:

*"Dropped my mother off [REDACTED] beauty salon then drove over to this place called Wawa to get her some snacks. Took them back for her and had some time to kill and since this place was in the vicinity I went to it. Parlor is clean enough and has a nice environment. Mamasan was nice enough and the girl I got was [REDACTED]. She was a MILF. [FURTHER CONTENT CENSORED DUE TO EXTREMELY GRAPHIC AND DEMEANING COMMENTARY]"*

If a woman did not check both Mandarin and English search results, she would think she was going to Philadelphia to work a safe massage job. Instead, she would find herself in an unknown town, potentially unsure how to return to New York City, expected to provide sex to customers.



The current position: -> Recruitment Job -> Massage please people		点击发布 
2013-09-12 16:09:58		page views: 189 times
Title:	message please people	
content:	Philadelphia regular shop, stable income, convenient transportation, sincere please technology, good temperament masseur, pornography free ask. Tel: [REDACTED]	

## Lin's Story\*

Lin did not have the easiest life growing up in a Central province in China. Her family was poor and Lin dropped out of school at 16 to start working. She met her husband several years later. She moved to his village, luckily staying close to her parents, and continued to work hard to support her new family. After a year or so of marriage her husband became physically and verbally abusive. The abuse was bad enough that Lin tried to go to the police but they told her they did not like to intervene in private matters. Lin continued to endure her husband for years but once her son was born she could not stand it anymore. She knew the police would not intervene so she chose a different route – divorce.

It took Lin some time but she finally divorced her abusive husband. Lin wanted to be able to earn enough money to confidently put her son through school. A friend in her village introduced her to a group that arranged for a tourist visa, an airplane ticket, and travel to the airport. In order to afford all this, Lin borrowed \$9,000 from her cousins.

Once in New York, Lin found an inexpensive room in a group house where a fellow tenant recommended working in massage. He showed her an advertisement in a local newspaper that promised women \$5,000 a month. Lin was so excited when she connected to the business owners on WeChat and they said they needed workers. She had found a job in less than a week and one that could quickly pay back her loans.

When Lin arrived she was told in order to earn that much money she would need to provide whatever the customer wanted. Lin wasn't sure what that meant but was eager to work. When the first customer arrived he acted just like her former husband – he hit her and yelled at her. Lin wasn't sure what he wanted until the customer made it clear he wanted sex. Lin reacted like she had whenever her husband abused her – she stayed quiet and still until the customer was done. At the end of the day Lin was told she could go home.<sup>47</sup> She had not earned any tips, so the owner told her she had not earned any money. Lin felt this was a shame to the family<sup>48</sup> and felt like she should have known what kind of place this would be. However, she needed to make money to pay back her debt and support her son back in China. Feeling ruined already and unsure of where else to go, she continued at this job.

Lin was told to report to work at different shifts – the business was open 24 hours a day and women were always on-site. Lin was able to keep some of the tips she earned to send back to pay off her loan for the month that she was at the business. She was very worried that her family might find out how she was able to send money back. Recently Lin learned from a friend in the business the WeChat ID of a woman at a place called Sanctuary for Families. They have been talking about Lin's rights in America and how they can help her.

*\*This story is a composite based on dozens of reports by survivors, service providers, and law enforcement officials.*

# Why Don't They Just Leave?

## How Traffickers Use Force, Fraud and Coercion to Control Women

A common misperception about human trafficking in all its forms is that it always or even frequently involves kidnapping or physical restraint. That form of extreme control over victims' liberty is rare in most trafficking situations, and illicit massage parlor trafficking is no different. The vast majority of women are trapped in massage parlors by powerful mental and emotional chains built of lies, shame, manipulation and terror.

*"The trafficking survivors from illicit massage businesses (IMBs) that I have worked with are often exploited in a ... subtle way ... The women can have multiple vulnerabilities, such as debt, unstable immigration status, language barriers, lack of knowledge of laws in the United States, low education, shame, and so on. These vulnerabilities compound and form a trap closely surrounding the women working in massage parlors."<sup>49</sup>*

— Beisi Huang, LMSW,  
Supervising Counselor at Restore NYC

But physical conditions do play a significant role in strengthening traffickers' hands. Daily life in an IMB is physically grueling. Women are usually forced to live on-site or in housing provided by the trafficker — usually in the form of a single apartment or house shared by several victims. If a woman lives on-site, she is usually expected to be on-call for buyers whenever an IMB is open — which is anywhere between 15 and 24 hours a day. The physical and mental toll this takes slowly breaks them down.

When victims live off-site, they are typically confined to their shared apartment and the IMB, and are transported between each location by drivers who are connected to their traffickers. Victims are further broken down by frequent moves between IMBs and to different cities and states.<sup>50</sup> This frequent rotation schedule is strategically advantageous for traffickers. Not only does it serve to provide buyers with "fresh" faces, it keeps the women disoriented and prevents them from forming bonds with each other. In one case

in Texas, victims that testified estimated that 50-60 women were rotated through the business over the course of two years.<sup>51</sup>

On top of these abusive conditions, the traffickers layer high levels of psychological manipulation, compounding existing historical and cultural trauma that many victims have, and resulting in a situation that greatly reduces their willingness to self-identify as victims and seek help. One survivor from China shared with her caseworker a sentiment that most service providers consulted for this report said is expressed by survivors:

*"My husband left me and there is no financial support. I have no other choice for I am a single mother without legal status. I have family relatives here but they just look down on me for my situation. I cannot tell anyone that I am doing sex work at a massage parlor. This is a shame to the family."<sup>52</sup>*

The level of shame experienced by IMB survivors is significantly higher than the shame seen in other types of sex trafficking.<sup>53</sup> Many Chinese and Korean survivors of IMB trafficking do not feel comfortable using the word "sex" when describing their experiences, preferring to say things like "the bad massage" or "the service" instead of "the place I was made to sell sex" or "the sex the buyer asked for."<sup>54</sup> Similarly, the term "victim of trafficking" does not often resonate with survivors. They might not be aware of its meaning, or they might simply feel that it does not describe their experience. Many trafficking survivors "tend to define themselves not as 'victims of trafficking' but simply as 'migrant workers who have had some bad luck as a result of a bad decisions or a bad contract.'"<sup>55</sup> This self-blame is common across trafficking types, in particular in victim populations from source countries that have less stringent labor rights protections and more limited economic opportunity than the United States.

This is why allowing investigations and outreach to be guided by victim self-identification is ineffective. For example, in the 2017 documentary, "Save My Seoul," which focuses on commercial brothels in South Korea, a police officer responds to questions around why the police are not helping victims, saying "Look, in this department our job is just to crack down on prostitution. We'd do our job if there were victims.<sup>56</sup> Why would they call the police if they're choosing to do this? You can't call them victims." Relying on the victims themselves to recognize and voice their trafficking situation makes the job of traffickers easier if all they have to do to keep law enforcement away is use shame and fear to prevent the women from seeking help.

Traffickers also utilize historical trauma. Since women trafficked in IMBs are typically between 35 and 55, they either directly experienced the Cultural Revolution (for older women), or their parents were impacted by it and that experience was part of their upbringing. The Cultural Revolution was a period of intense violence and upheaval that took place in China from 1966 until 1976. The stated goal of the Revolution was to preserve Communist ideology in the country by purging remnants of capitalist and traditional elements from Chinese society, and to re-impose Maoist thought

## How victims are controlled



as the dominant ideology. This period was preceded by the Great Leap Forward, during which time 45 million people died of starvation over three years.<sup>57</sup>

In a psychoanalytic study, conducted as a partnership between the Sigmund-Freud-Institut in Frankfurt, Germany, and five Chinese professors from different universities, on how the Cultural Revolution affected people, researchers found that the trauma

did not begin with the Revolution. The generation before experienced deep poverty, family separation, and traumatic childhoods. The generation that experienced the Cultural Revolution experienced deep psychological trauma from fear, abuse and physical violence. All of this has led to intergenerational trauma which "considerably impaired their ability to experience and establish good relationships, to develop well delimited egos with secure self control. The deficits [particularly of the generation that were children during the Cultural Revolution] were caused by the suffering of parents' trauma and by identification."<sup>58</sup> This makes women, particularly those that are older, especially susceptible to threats of violence, manipulation, and fear of government officials.<sup>59</sup>

# Controlling the money: Debt bondage and wage labor violations

As discussed earlier, debt, whether accrued in the country of origin or in the United States, is one of the strongest methods of initial control that traffickers possess. In a 2006 case involving a massive sex trafficking network based in New York and stretching from Rhode Island to Virginia, debt bondage was a key component of control. The women in this case were recruited in Korea with promises that they would be able to work to financially support their family, but once they arrived in the United States, they were informed about their debt and forced into prostitution in order to pay it off.<sup>60</sup> In other cases, women have already accumulated debt of their own that, while it is unaffiliated with their eventual trafficker, creates an urgent demand victims must meet, and thus a vulnerability traffickers are able to abuse.

## Labor Violations in IMBs

IMBs violate labor laws in all 50 states by paying women in tips alone with no guaranteed hourly wage. Additionally, the women do not have a set schedule, but instead are always on call. They are not allowed to set any boundaries, and are forced to do whatever the buyer or manager asks without regard for comfort level. Their housing, and travel to and from the business, are typically also controlled, contributing to a lack of personal boundaries.

Most IMBs quote a very low price for a massage (around \$40), all of which is kept by the business, and buyers understand that they will be expected to give a significant tip for sex acts (\$60-120 depending on the act) to the individual women. If the women refuse

## Crushed by Debt



### Existing Debt

- Arrive with debt-related vulnerabilities
- Debt accrued in home country
- Debt related to travel to the U.S.

### New Debt

- Massage parlor brings debt, no guaranteed wage
- Fees charged by traffickers (e.g. rent, groceries, condoms)
- Emergencies: bail/attorney fees

to provide sexual acts, or if the buyer refuses to tip, the women earn nothing.<sup>61</sup> Knowing that the women are under pressure to earn money, the managers coercively say that the choice to provide sex acts is “up to her,” manipulating her understanding of “choice” and controlling what she might say to law enforcement if questioned. This is a common form of coercion used to control victims across all 25 types of trafficking.

The survivors sometimes keep the tips they are given, but often they pull from those tips to pay off house fees, living expenses, and other accumulated debts. Even under such conditions, paying down a static debt might seem achievable. However, many of the more coercive traffickers compound the debt by charging exorbitant fees for everything from food, to errands, to transportation, and even for the “privilege” of avoiding aggressive and dangerous buyers.

## Controlling through fear, threats and lies about the United States

Managers also charge women for breaking house rules like “don’t leave doors open” and “only eat certain foods” and even make women responsible for any money lost during a robbery, which contributes to an environment of control and climate of fear.

Managers also control women’s access to their money, by offering to open bank accounts to “hold” it for “safe-keeping.” The women may initially perceive this gesture as a caring favor, but it cuts them off from any visibility into, or control of, their finances.

### How Debt Accrues

- Travel or smuggling fees
- House fees
  - Hygiene products like soap, shampoo, or toothbrushes
  - Safety products like condoms
  - Groceries or takeout food
- Rent — for living on-site or in the case of multiple women living in small apartments
- Fees for breaking rules
- Fees for avoiding “bad” buyers
- Attorney and bail costs
- Traffickers may provide interpreters or advocates to represent women during law enforcement operations. Women are charged for such services and are prevented from openly speaking to law enforcement

Women in illicit massage businesses are isolated and provided with distorted information about business laws, human rights, legal rights, and cultural norms in the United States. For example, they are often told that there is only one kind of massage in the United States, implying that commercial sex is “normal” and they should expect no civil or criminal protections. Because most trafficked women are undocumented, they have intense fear around being deported, making immigration threats an extremely effective form of coercion. As an additional layer of control, traffickers often hold victims’ identification and immigration documents in a separate location. Law enforcement and service providers from central California to Florida have reported that upon leaving an IMB, women have expressed an urgent need to return to one of the main ports of entry into the United States (the Flushing neighborhood of New York City’s Queens borough, Los Angeles, and sometimes San Francisco). Their reason is because a “friend” there is still holding their official documents. This is a form of control that makes it difficult for the women to avoid being re-trafficked, as they must contact someone in the trafficking network to obtain their documents.

Traffickers also work to make sure the women look to police not as a source of help, but as indifferent at best, and a threat at worst. They do this by taking advantage of the women's experience with police in their home countries, which includes both indifference and widespread corruption. In China, one in four women has experienced domestic violence, and most do not expect or receive assistance from the police.<sup>62</sup> Although China has strengthened its domestic violence laws, many, including those in law enforcement, allow domestic violence to go unreported because it is seen as a matter of shame and embarrassment to members of local communities. Social order is often left up to neighborhood committees, community leaders, and village elders who choose to "filter" out these types of culturally shameful crimes from official records.<sup>63</sup> This produces a distorted view about crime and victimization in China that impedes Chinese women from easily identifying themselves as victims while at the same time discouraging reliance on law enforcement.<sup>64</sup> This form of informal social control is strongly tied to the foundation of the People's Republic of China in 1949, in which Mao Zedong called his followers to "smash the police and the courts" in an effort to get rid of bureaucratic agencies.<sup>65</sup> Furthermore, corrupt law enforcement officers in China are known to aid the operations of criminal groups and are therefore often viewed as part of their criminal networks.<sup>66</sup> When Chinese women find themselves trapped in another cycle of abuse, via IMB trafficking in the United States, they transfer this perception of police indifference to their new situation, and traffickers know to exploit it.

Many Chinese and South Korean women also bring with them a cultural unfamiliarity for and thus discomfort with hotlines, which are an uncommon process or resource in many populations around the world.<sup>67</sup> Instead of a source of help, many view hotlines as a way for the government to collect information.<sup>68</sup> For the above reasons, they may not think of calling about something as personal and private as sex trafficking, no matter how accessible the hotline number and access to a phone may be.<sup>69</sup>

To underline women's sense of vulnerability in a foreign country, traffickers have a practice of forcibly removing women who refuse commercial sex (e.g., a woman may be kicked out on the street with no possessions at 3 a.m.) serving as a threatening example to the other women witnessing it. Additionally, when the victims are arrested for engaging in prostitution, traffickers often report the women to Immigration and Customs Enforcement in hopes that they will be detained and deported before exposing their exploiters. This manipulation of the systems by the traffickers reinforces for the remaining victims that the traffickers can in fact control their fates.

## Physical control

Physical violence is not as frequently used by IMBs to control women as in other types of trafficking, but violence against IMB victims from customers plays a role in other forms of coercion and control. Buyers may commit acts of violence including sexual assault, rape, punching, slapping, and assault with weapons or fire (e.g. lit cigarettes), and insist on not using a condom.<sup>70</sup>

Women are under constant pressure to please the buyer to increase the likelihood of a tip, and decrease the likelihood the buyer may report displeasure to the manager who may punish the women for poor performance. They may also hear stories of violence suffered at other IMBs, such as the story of a woman stabbed to death by a buyer<sup>71</sup> or the rumors of women burned by cigarettes by sadistic buyers.<sup>72</sup> Many women become convinced if they just do what the customer wants, they will not be hurt and they may have a chance at paying off their debt. They understand that displeasing any customer is a risk to their “sisters” in the IMB, as all may be arrested or deported if the buyer reports it.

Managers underscore this way of thinking by consistently siding with the buyer, asking “why wasn’t he pleased?” Managers monitor the customer reviews on sites like RubMaps, ready to punish any woman receiving bad reviews from unhappy buyers by forcing them to accept dangerous buyers.



## Surveillance control

Traffickers often use Closed Circuit Television (CCTV) cameras to control women's actions inside IMBs, creating the feeling that they are always watched. In some cases, the traffickers threaten to show the videos or photos to the victims' families back in South Korea

or China.<sup>73</sup> Other times managers are watching the cameras from a separate, off-site location, and call the women periodically to make clear they know they are being watched.

### Jiao's Story\*

Jiao arrived in New York City in November 2016. She had recently lost her job in China and hoped she could find work in America. People from her village had come to New York and were able to make \$1,500 in just one month in jobs like washing dishes.<sup>74</sup> In the first week, Jiao joined a WeChat group of people from her village. One of the members, Yu, said she needed someone to work in her massage business in Florida. Yu told Jiao she would first need to go get her license. Jiao was told what bus line would take her to the school in Florida that would train her so she could get her license within a week. Yu told her not to worry and even contacted her family through WeChat to let them know she had found a job and was alright in America.

Once she was in Florida and had received her license, a man arrived and said Yu had sent him to take Jiao to the business. Once at the business, Jiao received additional WeChat messages. Yu said that Jiao owed her for her bus ride, school, and for housing (which was a very small room in the back of the business). To begin paying her debt, Jiao was told that she would have to do whatever the customers wanted in order to earn tips. Jiao was told if she refused, Yu would call the police to have her deported.

Jiao was instructed to put the house fee the customers paid into a safe, along with the tip money she owed against her debt. If Jiao needed any food, toiletries, or medicine, she was to chat Yu and request them. Yu would then add the costs of those items to her debt. Jiao had no idea where in Florida she was or how to get around the community. She depended on Yu for everything.

One time, Jiao put \$20 in her purse rather than the safe. She hoped maybe she could save enough money to find a way back to New York. Immediately, she received a WeChat message. Yu had cameras in every room and saw her try to keep the money. Yu told her if she did that again, she would take the videos she had recorded of Jiao and send them to her family. Jiao was terrified that Yu could see and hear everything she was doing. She knew that if she ever disobeyed, Yu would make sure she could never go home.<sup>75</sup>

When the police came, Jiao was sure that anything she told them would get back to Yu. Luckily, the police were working with service providers that were familiar with Yu's style of control. They took Jiao to a separate location while the police collected evidence. With the help of a trauma-trained Mandarin interpreter, the service providers made sure Jiao felt safe and explained how they could help her. It took several hours, but Jiao trusted that the service providers understood what she had experienced and was relieved that they treated her without judgement. Jiao has returned to New York and is working with the police and service providers who helped her to make sure Yu receives justice.

*\*This story is a composite based on dozens of reports by survivors, service providers, and law enforcement officials.*

## Cultural coercion

A common coercive tactic traffickers use across many types of trafficking is the creation of a sense of family within the group of victims and exploiters. This is effective not only because of the false sense of support it initially conveys, but also because in the traditional Chinese family, all members are expected to contribute all their income to the family treasury, which is then collectively used.<sup>76</sup> If the trafficker successfully creates this familial environment, it then becomes easier to control the victims' money, and then slowly escalate to controlling other aspects of their lives. In this collective view of a pseudo family, the victims' actions carry consequences and benefits for the group beyond themselves and can be a powerful tool for psychological coercion by traffickers. For example, if a victim defies the trafficker, instead of punishing the victim, the trafficker might punish others in the group as a form of punishment often perceived as worse than if the trafficker would have punished the victim directly. This form of control is heightened in IMB trafficking, where the cultural background of the victims deems "family as the most important primary group to an individual," and includes concepts of equality that dictate "profits or losses be distributed equally."<sup>77</sup>

This group dynamic is often accompanied by the appreciation of hierarchical and social status that is culturally embedded for women coming from China and Korea.<sup>78</sup> There is an ingrained deference to elders and to people from a higher social class. Trafficking operatives will reinforce this by using aliases such as "Big" or "Older Sister."<sup>79</sup> This reinforces a family mentality, while allowing operatives to keep victims from knowing their given names in case a victim ever speaks to law enforcement.<sup>80</sup>

Traffickers overwhelmingly rely on these cultural social constructs to achieve their goals. Restore NYC, a service provider in New York, shared this recent case that highlights this experience common for survivors across the country:

*"The boss pretended to be a "big sister" to the [victim], communicating to her that we all have to do what is "necessary" for family and their benefit. This hit the heart of the client, and she felt immediately connected to the boss because the boss "understood" her situation and why she was in this country. The client no longer felt "alone." The boss further won her trust by providing free transportation from where she lived to the workplace. This is just a recent example of the trust building process, that ultimately the boss used to deceive and coerce the client into providing sex services. This parlor was raided by law enforcement, and the client was referred to Restore, where shortly after, we identified her as a survivor."<sup>81</sup>*

This form of control through doing "favors" may include arranging for defense attorneys or doing errands, like getting groceries, for the women. Even though these acts increase a victim's debt disproportionately, the acts are framed as the trafficking network taking care of them and helping them navigate the foreign systems, especially when they are outside familiar neighborhoods. These "favors" become manipulative acts to gain control over the women, facilitate their dependency, increase their debt, and keep the women believing that work in an IMB is their only option in the U.S. As one survivor said, "They led us to believe that we were family. But it was a lie."<sup>82</sup>

# Illicit Massage Business Operations

While massage parlors may appear to be individual businesses, they are often part of larger organized crime networks, which participate in every aspect of the business, from recruitment to day-to-day management.<sup>83</sup> The key facets of these operations are linked businesses that allow for both economies of scale in the massage businesses and money laundering through the connected legal businesses. Generally, the day-to-day operations are managed by operatives within the networks, who rely on the transportation

industry to recruit and transport victims, keep victims disoriented and isolated, provide buyers with new supply, and evade law enforcement. While traffickers have been known to use air travel to transport victims to IMBs, the most frequent modes of transportation include informal buses, taxis, and private drivers. In some cases, transportation is integrated entirely within the network, but traffickers also use public and private transportation systems that are not connected to their businesses.



↑ Spa in Chinatown, Flushing, NY

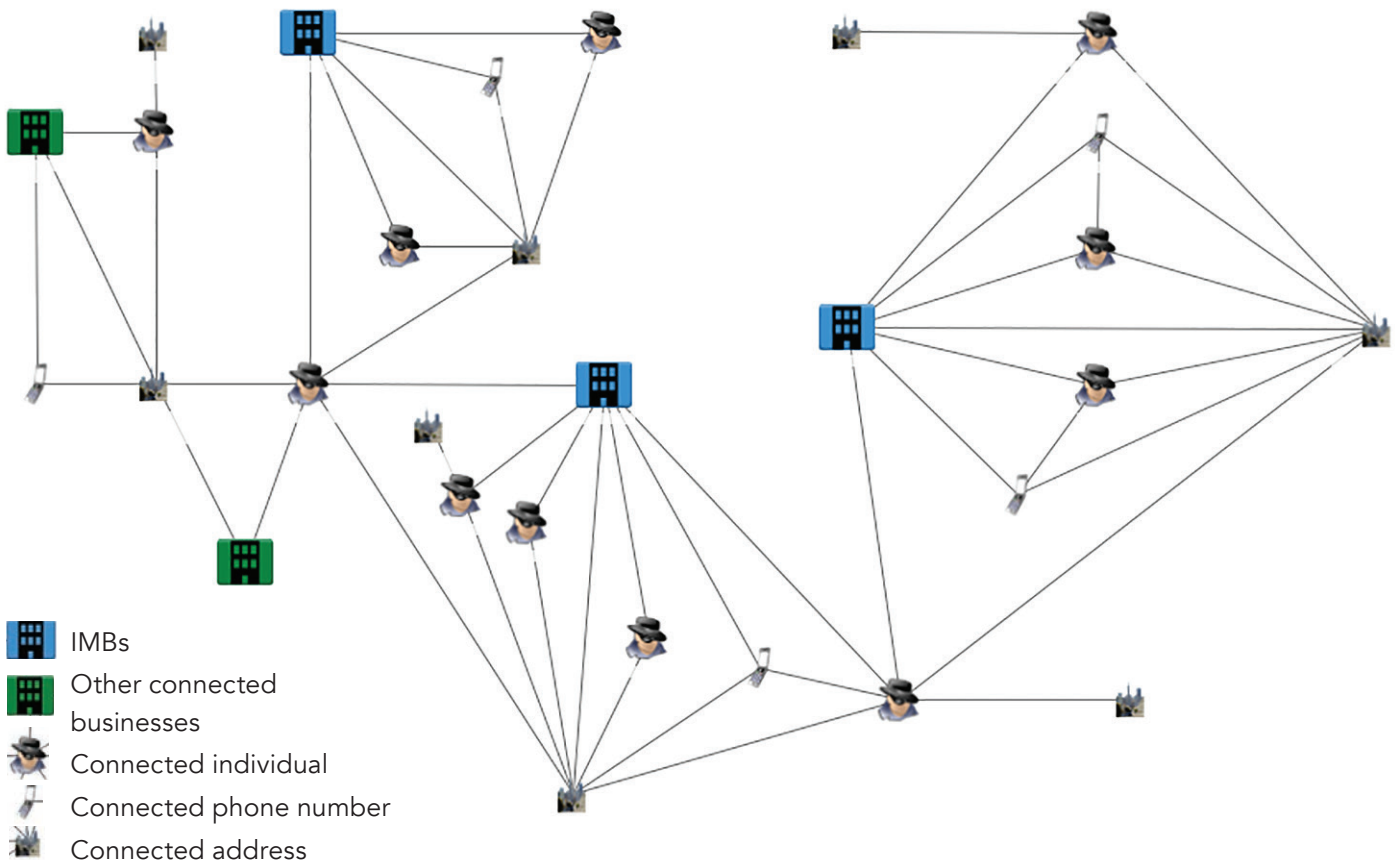
## Networked business model and organized crime

The average illicit massage business connects to at least one other illicit massage business as well as non-massage venues such as nail salons, beauty shops, restaurants, grocery stores, and dry cleaners. Overwhelmingly, these connected businesses are used to launder money earned from the illicit massage business.

They may also be venues where labor exploitation and even labor trafficking occur. These networks often also include shell companies, which are used to obscure the identities of people profiting from the trafficking enterprises.<sup>84</sup>

Networks may be facilitated by groups within the United States or abroad. For example, ethnic Chinese crime groups rely on a broad criminal fraternity underpinned by traditional Chinese networking practices, that can broker contacts in any country where there is a large ethnic Chinese community.<sup>85</sup>

Polaris combined and analyzed data from a buyer review board with several open-source data sources, cross referencing identifiers such as phone numbers and business addresses to identify and map networks across the country.



Out of all the states we analyzed, California has the highest number of networked connections across the country. IMBs in California can be connected to every state in the country, except Vermont. This is likely because two out of the three main ports of entry for women trafficked into IMBs are Los Angeles and San Francisco. Women may be initially trafficked in these cities, or immediately funneled into networks across the country.

New York City is the number one port of entry on the East Coast. Although its networks connect to other states, it appears to be more of a starting point to other

hubs throughout the country. From California and New York, women will often pass through other hub regions before being moved along networks. Some of the most prominent hubs are Los Angeles, San Jose, and San Francisco, California; Tampa and Miami, Florida; Chicago, Illinois; and Houston, and Dallas, Texas. Although a victim may start in one city, the scope of these networks means they will usually be moved around multiple cities and states. Identifying and shutting down the entire network is the best way to ensure traffickers cannot simply continue to earn profits in another area and build back up their network.

## Case Study on Network Discovery

In 2017, a network including at least two businesses that were fronts for commercial sex, was uncovered in Dallas.<sup>86</sup> Jeffrey Wittman, 53, who was working as a finance manager at a car dealership, also owned two IMBs, Sakura Spa and The Palace, and a shell company called JBJ Services LLC.<sup>87</sup> JBJ Services LLC reportedly operated at the same location of Sakura Spa, and used the same phone number.

Jeffrey Wittman's wife and co-conspirator, Chin Young Song, is also listed on business records for JBJ Services LLC. Wittman and Song had married in 2013, and went into business the following month. It was a strategic partnership, since Song had accumulated "knowledge and expertise" from running IMBs in the Philadelphia area in the early 2000s. She had been convicted in 2008 in Philadelphia of federal racketeering charges related to prostitution.

Sakura Spa advertised "all new hot sexy beautiful international ladies waiting for you" on Backpage, saying "Hot and very friendly. You won't be disappointed." Sakura was open 24 hours a day, and the women trafficked there were "required to line up for each customer" so customers could choose one, "regardless of the time of day or night." The policy was that if a customer had at least \$100, the women would have to provide sex upon request. The traffickers leased space for an ATM to operate inside the business to ensure customers had access to ample cash and could abide by their cash-only policy. The Palace operated similarly, and investigators found evidence of women living there, such as "a room full of beds, makeup, mirrors, and personal effects."

# Management structure of illicit massage businesses

## Roles in an IMB



Assembling a complete picture of traffickers in illicit massage businesses is a challenge. Within a single trafficking network, multiple people play different roles in creating and upholding a highly profitable and organized system. Some act on the fringes of a victim’s experience. These can include network owners, who may never actually visit the property, or recruiters who help set up print and online ads. Others will be more directly involved with ensuring victim compliance and day-to-day logistics of running the IMBs. These include the manager (often referred to as “mamasan”), manager-in-training (someone who is still primarily selling sex but who has begun assisting management in controlling victims), and the taxi drivers who help rotate women between IMBs. Landlords, real estate agents, and even attorneys are often involved as well. The majority of network operatives are of Chinese or Korean nationality and reside either in the United States or serve as recruiters in China or South Korea.<sup>88</sup>

Individual networks are frequently managed by family members. This can either mean a husband and wife team running a network together, as in the case of Royal Spa in Huntsville, Alabama,<sup>89</sup> parents and adult children working together as they were in a network of

five IMBs in Western Massachusetts,<sup>90</sup> or siblings, as in the case of a network in Ohio.<sup>91</sup>

While traffickers can be both men and women, the frontline controllers are overwhelmingly women, as are many of the owners. This can make law enforcement raids very challenging, as the potential victims and potential exploiters are both women. Men in the networks are more likely to be drivers, recruiters, or involved in managing operational logistics such as laundering money than to be the traffickers themselves. There are also cases of frequent buyers becoming traffickers. One of the most egregious cases of a buyer becoming a trafficker in recent years came from St. George, Utah.<sup>92</sup> This buyer purchased two massage parlors after visiting them regularly. He had been known to harass and assault the massage therapists as a buyer, which he continued to do after he purchased the businesses, as a means of force and intimidation.<sup>93</sup> Additional cases have been found across the United States, including in Seattle, where a buyer claimed he fell in love with a woman he frequently visited. He and the woman then opened two additional brothels and began to exploit and profit from women.<sup>94</sup>

## Transportation and trafficking in illicit massage businesses

On average, traffickers rotate victims between IMBs every 2-6 weeks.<sup>95</sup> This practice of rotating victims through multiple IMBs is a common tactic traffickers use to maintain a fluid buyer market and exert control over victims. IMB network operations are highly mobile and transport victims within states, regions, and across the country. After entering the country through a main port city like New York, Los Angeles, or San Francisco, women are transported from coast to coast, South to Northeast, and across urban and rural areas alike.<sup>96</sup>

### Min's Story\*

Min came to Southern California from the Fujian province in China. She had dropped out of school in the 9th grade but had worked hard all her life. Her husband had always gambled and now had more debts than they could pay, so she came to visit a friend in the United States and look for work. She found an online ad for women to work as massage therapists near Los Angeles and was promised \$6,000 a month with free housing. She took a bus to the location on the ad and was met by a driver. Min showed the driver the name of the business and the address she had been given. The driver then drove for some time to an apartment where two other women were staying. In the morning, a second driver came to pick everyone up to take them to the massage parlor. On her first day, Min was told that in order to earn the money she had promised her family, she would have to engage in commercial sex.

Min had no idea where she was or how to contact the first driver to get back to the bus station. Min stayed and when she was able, told her family everything was fine. Min was deeply ashamed this had happened and never wanted them to find out. Whenever she came close to asking a customer for help, her manager would threaten to call the police, who she said would deport her and tell her family how shameful she had been. Every few weeks, Min would be moved to a new apartment and new business. All she knew was that she was still somewhere near LA. Eventually, she wound up in a business that police were targeting. When they came to shut it down, they arrested the traffickers, not Min. The police then told Min she was actually in Illinois, nowhere near LA. The police helped connect Min with service providers in Illinois and then California. The service providers helped Min understand her rights and helped her enroll in English classes. Min is in the process of receiving her T visa and is now able to honestly tell her family that everything is fine.<sup>97</sup>

*\*This story is a composite based on dozens of reports by survivors, service providers, and law enforcement officials.*

## Informal buses

Informal buses, often colloquially referred to as “Chinatown buses” (or “Dragon Buses” in the Chinese community) are localized bus lines that both serve the general public and also commonly — not necessarily knowingly — transport victims to large cities along the East and West coasts. The Chinatown bus industry started in 1997, catering mostly to Chinese immigrant restaurant workers living in New York City.<sup>98</sup> Chinatown buses are attractive because they cost less than other bus companies (e.g., Greyhound) and are convenient for Chinese immigrants who live in Chinatown areas. The use of Chinatown buses by trafficking operations has appeared in many cases across Polaris’ dataset, including commonly being reported by service providers and law enforcement officers. In one publicly reported case, victims were transported by bus from New York City’s Chinatown to be trafficked in D.C.’s Chinatown to an IMB in Annandale, Va.<sup>99</sup>

Like the Chinatown buses, many informal bus networks cater to underground employment agencies which, for a fee, match job seekers with openings in more than 40,000 Chinese restaurants in the United States. These agencies provide job-seekers with a slip of paper that includes the bus route, the specific bus, or even the driver’s phone number, but no destination address.<sup>100</sup> The buses then stop at freeway off-ramps to discharge job seekers to their new bosses, who take them to work.

The discount buses are reportedly a prime location for recruiters attempting to recruit Chinese women on their way to low-paying restaurant jobs, into IMBs. These recruiters hand out business cards, fraudulently claiming to be offering relatively high-paying legitimate massage parlor jobs. They know it is a waiting game. Once the women realize how little they can earn in their grueling restaurant jobs, especially after they subtract payments for any debts owed, they will be more likely to show interest in the traffickers’ offer. Women who are already falling behind in their debts are even more vulnerable, as they may be facing threats of violence against themselves and their families.<sup>101</sup>



## Taxis and private drivers

Taxi companies are sometimes involved in the transport of buyers and victims, especially in large cities like Las Vegas. Taxi companies and their drivers can be indirectly or directly part of the trafficking network. Some taxi drivers, although not formally part of the trafficking network, receive commissions from IMB traffickers for recommending and transporting buyers to their IMBs.<sup>102</sup> More complicit and involved taxi drivers may work directly with traffickers and knowingly transport victims to other IMBs, or even directly to buyers. In an IMB network in San Francisco, a trafficker used his own underground taxi company to pick up arriving victims from the airport and shuttle the victims to and from the IMBs.<sup>103</sup> A network of underground taxi services and complicit drivers worked closely with the traffickers in this case, and even assisted in coordinating the victims' daily schedules.<sup>104</sup>

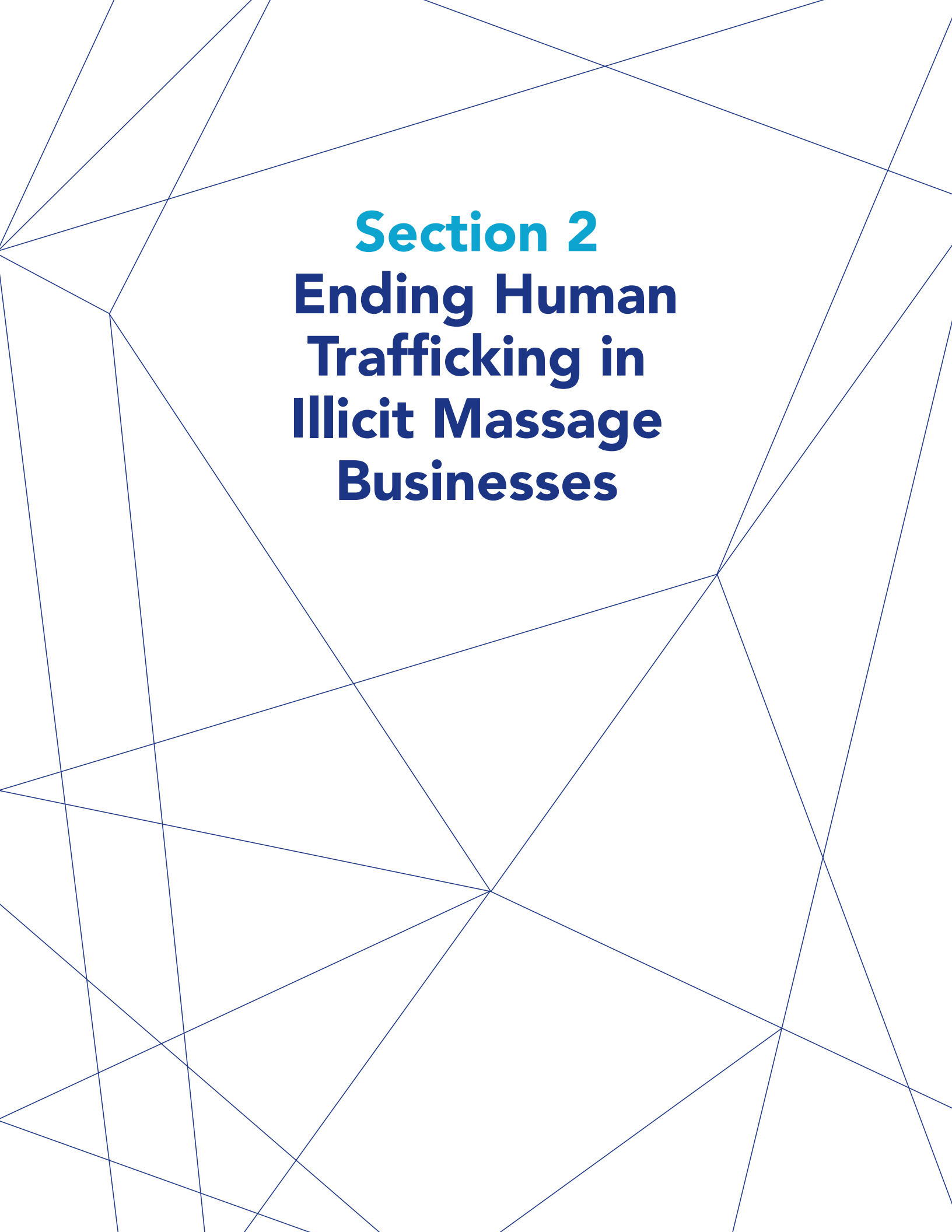
Traffickers are more likely to rely on personal vehicles or private drivers to transport victims to and from IMBs. This allows traffickers to maintain control over victims who must rely on their traffickers for transportation, allows drivers to double as guards to ensure victims do not escape and law enforcement is not contacted, and allows traffickers to maintain their own transportation schedules without having to rely on standard bus routes or make purchases that create a paper trail.<sup>105</sup> These drivers are often privy to the trafficking operation and can even be a trafficker's family member or spouse, as was discovered during the previously discussed Ohio trial, where two sisters ran the trafficking operation, and one of their husbands served as the driver.<sup>106</sup>

## A Constantly Evolving Problem

The problem of human trafficking in illicit massage businesses is complex and constantly changing. There are undoubtedly layers to it that we do not fully recognize or understand, multiplied by the traffickers' ability to quickly adapt to pressure by finding new loopholes to exploit. We at Polaris are constantly striving to keep our work informed by survivors, law-and code-enforcement, and other agencies with first-hand experience with how the traffickers' methods are evolving.

In the second half of this report, we discuss concrete recommendations for taking a unified, collaborative approach to all of the major pressure points for illicit massage business trafficking as it exists now. Human traffickers thrive on loopholes and systemic inadequacies including: insufficient resources to facilitate long-term investigations, law enforcement efforts siloed within jurisdictional boundaries, insufficient staffing to enforce code and liquor laws, and a need for improved education about identifying red flags when resources are sufficient for those operations.

Traffickers are still ahead of us technologically and methodologically, but by identifying and engaging the right stakeholders, we're now approaching a serious tipping point. We strongly advocate approaching the recommendations enclosed in this report with an iterative, agile perspective. **As the traffickers change their methods, so must we.**



**Section 2**  
**Ending Human  
Trafficking in  
Illicit Massage  
Businesses**

# A Complex Problem Requires a Multifaceted Solution

The complexity of human trafficking in all its forms belies the possibility of an easy solution. Certainly law enforcement is always a part of it, but disrupting human trafficking is not simply a matter of beefing up law enforcement's ability to do things the way they have always been done. State, local and federal legislation and regulatory frameworks all play a role, as do concerted efforts to shift cultural norms around both commercial sex buying generally and massage parlors in particular. None of this is easy, but it is also not as unwieldy or amorphous as it may appear at first blush.

The finance industry's efforts to combat trafficking provide an inspiring example of how quickly these transformations can happen. Over the past few years, the finance industry has made a concerted effort to address how traffickers take advantage of banks, remittance services, and credit cards to facilitate illicit business, hide profits, and create the appearance that they are paying their employees.

For example, financial companies have become wise to how traffickers make frequent deposits just under daily fund limits to avoid detection, and how they spread their finances across multiple accounts and institutions, often requiring trafficking victims to open joint accounts to move illicit funds, and create the illusion that they are being paid. Now that financial institutions are connecting the dots, they are better able to identify and eradicate illicit activity in their businesses, and provide invaluable information to law enforcement to support the existence of networks and build strong money-laundering cases.

Money remittance services are following suit. They are closely monitoring frequent, low-currency IMB-related remittances from potential IMBs both domestically and to trafficking source countries like China and Korea.

Lastly, credit card companies are also positioned to make an impact. Unlike most forms of sex trafficking, which are cash-based, IMB traffickers regularly accept credit card payments. Credit card companies can use this knowledge to monitor corporate customer use, flagging both purchases and accepted payments that indicate exploitative practices.

In the following section, Polaris details how commercial, legislative, cultural and law enforcement systems, often despite their best intentions, support sex trafficking in illicit massage businesses. We then proffer achievable solutions based on our understanding of those systems and the necessary cultural shifts.

# 1. Overhauling Business Regulatory Frameworks

IMB trafficking is subject to the same types of criminal laws that any human trafficking case might involve. Because IMB trafficking involves aspects of legitimate business, civil code — the laws regulating specific business operations — also plays a strong role in ending this type of trafficking. In fact, it is when both law enforcement and code enforcement work together that we see some of the strongest cases built against human traffickers. A robust code enforcement effort developed in partnership with experienced, culturally-competent service providers can build trust with survivors, connect them to resources and supports, and educate them about their rights. These enforcement agents can also gather information during regular inspections that law enforcement can later subpoena to strengthen their investigations and take down entire criminal networks. In this section, we will discuss what civil code looks like, how it is enforced, and how it can be a powerful tool for ending IMB trafficking.

Business-related civil code is usually aimed at consumer safety and general public welfare. These laws can be written at the state, county and municipal level, and govern things like occupancy, standards of cleanliness, proper entry and exits, hours of operation, and locks on doors. For example, restaurants are required to adhere to specific protocols for cleanliness, and hotels must meet standards for fire evacuation

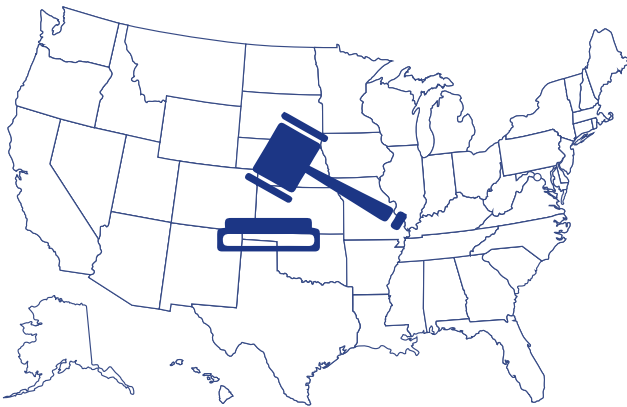
routes. Individual employees are not held responsible for meeting these standards. They are the responsibility of the business owner. Similarly, health and beauty businesses like hair salons and nail salons can be subject to standards regulating cleanliness, operations, and ensuring employees have any required professional licenses. All of this is enforced by code enforcement inspectors from health departments and other relevant agencies, who perform regular inspections and can levy fines or shut down businesses in violation.

Strong civil laws regulating massage would operate in the same way as these other business regulatory frameworks. These laws would hold business owners responsible for complying with reasonable operating standards that protect massage therapists and their customers. At the same time, these laws would make it more difficult and less lucrative to sell sex under the guise of a massage business. Such laws might, for example, require the front door of the business to be unlocked and available for customer entry. This would have little or no negative effect on licensed massage therapists or their customers, but would serve as a deterrent to sex buyers — who prefer more discreet side or rear entrances — from frequenting a massage parlor in which women are trafficked, out of concern they would be seen by law enforcement or by others in their community.

## PROBLEM: State and local regulations are often nonexistent or inappropriate

In order to gain an understanding of what business regulations governing massage businesses look like nationwide, Polaris researchers examined laws related to massage<sup>107</sup> in over 35,000 jurisdictions, including all U.S. states, counties, cities, and inhabited U.S. territories.

What we found was a tremendous amount of variation from state to state, county to county, and city to city.



### The national regulatory framework

The national system for regulating massage parlors starts with federal business and anti-trafficking laws. Because the federal laws are broad, the legislative work to make them more specific and enforceable falls on local jurisdictions including states, counties and cities.

A strong state law would, in theory, be an effective blanket solution setting a baseline from which the counties and cities located in that state could regulate business operations. In practice, state laws are only as good as the commitment and resources available to make sure they are enforced. Often, states have

strong laws but state-level enforcement efforts are not consistent or sufficiently resourced, and typically emphasize larger scale enforcement efforts, not smaller businesses within individual city limits. The reality of business regulatory enforcement is that city and county level enforcement agencies tend to most actively enforce county and city based violations.

County legislators may create additional regulations on top of the state regulations, making them more specific and restrictive, but not more lax. If a state law regulating massage parlors does not exist, counties within that state are still legally entitled to create their own laws.

Cities may also create regulations even in the absence of county or state laws. Cities fall into one of two categories, those that are *incorporated*, meaning they are empowered to create and enforce their own laws; and those that are *unincorporated* meaning they are either required to, or choose to, follow county laws and rely on county-based government bodies for administration instead of making and enforcing their own laws.

Incorporated cities are in the uniquely strong position of being able to pass hyperlocal, culturally relevant laws that incorporate the needs of their constituents when it comes to massage-related businesses. They are also able to enforce those laws with a nuanced understanding of how human traffickers attempt to avoid compliance with business regulations in their locality. However, there are important limitations when it comes to the larger goal of ending trafficking. If an incorporated city with strong, locally relevant regulations is located in a county with lax regulations (and plenty of nearby unincorporated cities where those lax regulations are in effect), traffickers will simply move from the highly regulated incorporated city into a nearby unincorporated city. Therefore, for a legislative solution to be truly effective, it must be strong across state, county and city jurisdictions.

## Regulating massage establishments as “sexually-oriented” businesses

In some incorporated cities, massage businesses are regulated within the “sexually-oriented” or “adult establishment” category, together with businesses like adult bookstores and strip clubs. Why? Massage therapy has historically been subject to harmful, deeply-embedded stereotypes that sexualize this health profession. As a result, massage therapists are regularly harassed,<sup>108</sup> propositioned,<sup>109</sup> and assaulted<sup>110</sup> by customers who assume that any massage has some possibility of sexual access to the massage therapist’s body.

These stereotypes are not condoned by any professional massage associations. The American Massage Therapy Association’s list of 25 reasons to get a massage ranges from “manage low back pain” to “lower blood pressure” and “reduce chemotherapy-related nausea,” with no mention of anything sexually-oriented.<sup>111</sup> When cities and other jurisdictions recognize that their laws are perpetuating harmful stereotypes and move to change them, they are taking a big step toward shifting the national narrative around massage therapy.

By that standard, the current legislative landscape is far from ideal. There are significant gaps across every level of jurisdiction, from no regulations at all, to weak regulations containing loopholes for traffickers to exploit. Some jurisdictions focus regulatory attention solely on massage therapists and other employees (licensing standards, proper attire, etc.), rather than the business itself (structure, operations, management, ownership, etc.). Enforcement of employee-centered laws like this harmfully focus attention on potential victims, often resulting in victims being cited or fined for signs of illicit activity in the business, while their employers — the traffickers — are conveniently able to deflect all blame to the victims, with no consequences to their trafficking operation. Another major issue prevalent across the country is when jurisdictions harmfully list their business regulations for massage under the category of “sexually-oriented” or “adult” businesses, tacitly affirming the notion that the massage profession is intertwined with commercial sex, as opposed to grouping it appropriately with health and beauty establishments.

The ultimate regulatory goal is a set of state, county and city laws that focus attention on regulating businesses (not solely employees), closing loopholes that traffickers exploit, and categorizing massage venues appropriately as health or beauty businesses as opposed to sexually-oriented establishments.

## The regulatory landscape of California

California, the country's most populous state, is home to over 35 percent of the country's IMBs and contains two of the three main port of entry cities in the country through which victims enter the United States and are initially trafficked (Los Angeles and San Francisco, the third city being New York).



While California has a statewide law that mentions the massage industry, the current law does not directly regulate massage businesses within the state, instead delegating regulatory power to local jurisdictions at the county and city level. California did not have any state law mentioning massage therapy until 2009, when it passed the "Massage Therapy Act" or SB 731. This law allowed regulatory power to stay at the county and city level, and created a voluntary credential for massage therapists (California Massage Therapy Council (CAMTC) certification) valid throughout the state. It also limited the ability of cities and counties to selectively discriminate against massage therapy businesses via their land use authority. In other words, it gave massage businesses the legal right to be located in the same buildings and neighborhoods as other health care and personal services.<sup>112</sup> Many massage therapists supported this bill as they believed that it would establish a uniform standard that would demonstrate their professionalism.<sup>113</sup>

However, in 2014 when the Massage Therapy Act was about to sunset, a number of city and county government officials testified that the law had led to an increased IMB problem, and that to deal with it, they needed their land use authority restored so that they could implement measures such as restrictive zoning, spacing requirements (e.g., "1000 feet away from a school") and other regulations that tacitly group massage businesses with other businesses that could potentially cause harm to a community.<sup>114</sup> These well-intentioned changes were meant to support legitimate massage businesses while giving local jurisdictions the power to eliminate IMBs.<sup>115</sup> Due to the size of the state of California, its role as a port of entry for victims, and the overall extent of its IMB problem, the creation of a stronger regulatory framework at the state level in California could have ripple effects throughout the United States.

The result of the 2014 change to the Massage Therapy Act was the enactment of many dramatically different laws at the county and city level. At the county regulatory level, California stands out as a strong performer. Many California counties have embraced their regulatory role by creating laws that address the massage industry in some form.



Unfortunately, some counties with high concentrations of IMBs do not have strong laws regulating massage business operations. Los Angeles County, which has one of the highest concentrations of IMBs in California (as well as nationally) lacks strong regulations. Additionally, over 65 percent of the municipalities in the county are unincorporated and therefore not empowered to create their own laws.<sup>116</sup> This has turned the county into a safe haven for traffickers pushed out of neighboring cities with stronger regulations.

To remedy this, in November 2017, local law enforcement and Los Angeles county supervisors passed a motion to move forward in developing countywide legislation to regulate massage businesses, a draft of which was ordered to be created by May 2018. If the legislation is done well, Los Angeles' leadership could be an example for the rest of the state, where many cities rely on county laws to regulate massage and other businesses.

While some cities in California possess strong laws and awareness around IMBs, there are still significant gaps. Increasing the number of California cities with strong, regularly enforced laws around IMBs even slightly, if done in the right areas, could have significant impact on the ability to put pressure on trafficking networks around the country.

It's important to note that many California cities are unincorporated, which means they are not empowered to pass their own laws and are bound by county laws. As discussed earlier, this presents a legislative vulnerability IMB traffickers readily exploit. If an incorporated city adopts stronger regulations, but the surrounding county has not caught up, traffickers can simply move out of that incorporated city and into an unincorporated city that follows the lax county laws.

## Creating a strong law in Santa Clara County, CA

Santa Clara County, located in Northern California, has the third highest concentration of IMBs among counties in the United States. To address this issue, lawmakers recently worked with Polaris to establish a strong countywide law. The new law includes provisions that target IMBs, such as hours of operation, and a requirement that massage therapists display their California Massage Therapy Council (CAMTC) licenses.

Unfortunately, county laws are only enforceable in unincorporated areas of a county — they do not apply to cities that are empowered to create their own laws. Once Santa Clara County began to use its new law to permanently shutter IMBs in unincorporated areas, traffickers simply picked up and moved to nearby incorporated cities with more permissive laws or lax enforcement. Traffickers reap tremendous benefits from a lack of coordination between state, county and city legislation. The only way to cut them off at the pass is to undertake a coordinated effort to make sure they have nowhere else to go.

## The national regulatory landscape

While the majority of states have laws that mention massage in some way (regarding licensing or other regulations for individual practitioners, or delegating regulatory power to another jurisdiction), few have strong laws that directly regulate business operations. We see a similar landscape at the county and city level.

Having established professional standards for massage therapists is important. However, as mentioned earlier, the most effective legislative tool for addressing trafficking operations is to focus on business owners and operators, not individual practitioners who, in businesses where the trafficking is occurring, may be potential victims. Regulating the business itself is disruptive to trafficking operations, which benefit from a lax regulatory climate that allows them to point the finger at their employees whenever illicit practices come to light.

In states, counties, and cities that do regulate massage business operations, the most pressing need is victim-centered enforcement of existing laws, supported by resources to provide proactive outreach to and support of survivors. In states, counties, and cities that lack strong laws regulating massage business operations, improvements to both legislation and enforcement are needed.

A lack of regulations has a particularly strong impact in the major port cities for IMB trafficking. New York City, one of the top three cities where IMB trafficking victims enter the United States, is not subject to strong laws regulating massage businesses at the city, county or state level, and many surrounding cities and counties also lack robust laws. We see this lack of focus on business operations reflected in press coverage of illicit massage parlor “busts” in the state of New York, which frequently report on women arrested for “unauthorized practice of a profession” in fraudulent massage establishments, but rarely mention the traffickers posing as legitimate business owners or operators.<sup>117</sup>

New York City differs from the two other major port cities, Los Angeles and San Francisco, which have city laws regulating massage businesses — not just employees. San Francisco has seen great success in using city laws to shut down IMBs and levy fines against traffickers. San Francisco’s city laws are supported by a strong county law. Los Angeles also has a strong law at the city level, though it has been hampered by lack of regulations at the county level. As mentioned earlier, IMBs can easily escape regulation by moving outside the city limits, to unincorporated cities within Los Angeles County. In November 2017, Los Angeles County started the process of developing an updated county law.<sup>118</sup> If New York remains the only port city without strong laws or enforcement, it could see a shift in how recruiters and trafficking networks use the city.

## **SOLUTION:**

# **Legislators should create strong, enforceable laws at the state, county and city level**

As long as trafficking networks can continue to shift their operations to avoid uncomfortable civil laws, they will. The solution is to create an inescapable situation where states, counties and cities are all exerting equivalent pressure to make IMB trafficking impossible.

### **Creating strong laws**

States must pass strong baseline laws, and counties and cities must echo and elaborate on those laws to address their individual needs. For example, Florida's state law mandates that no massage establishment may stay open past midnight. Counties and cities in Florida should echo this restriction and actively enforce it. Additionally, if Broward County, or Tampa City decide that the issue in their locality requires further restricting the closing time to 10 p.m., then they should pass additional legislation accordingly.

To determine exactly what legislation is appropriate for a jurisdiction, Polaris encourages legislators and policymakers to partner with us, as well as national organizations or state-level massage chapters. Jurisdictions that already have strong laws should encourage state and local code enforcement agencies to review them and determine if any key provisions should be enforced more consistently to apply pressure to traffickers. Any discussions around increasing enforcement should include a discussion on ensuring services are provided for the women during and after code enforcement actions.

### **A Strong Law**

Characteristics of a strong law will vary by location. Here are a few elements that many strong laws have in common:

- **Regulating hours of operation.** San Francisco city has used, among other things, a provision on hours of operation to successfully close more than 100 IMBs in two years.<sup>119</sup>
- **Prohibiting structures like buzzer-controlled front doors and back-door entrances that obscure buyer behavior.** Santa Clara County's law, which includes provisions around entrances, was used to close down all IMBs in its unincorporated areas within one year.<sup>120</sup>
- **Regulating massage businesses with other commercial licensed businesses.** Within the past 10 years, Delaware has gone from regulating massage establishments as "sexually-oriented businesses" to having a robust, statewide law categorizing massage businesses as health businesses.<sup>121</sup>
- **Working with local massage therapists.** North Carolina passed a new statewide law on massage establishments in July 2017. This law was passed with collaboration by Polaris, North Carolina's American Massage Therapy Association chapter, and members of the Human Trafficking Task Force to ensure strong provisions against traffickers while protecting massage therapists.<sup>122</sup> This kind of collaboration, both in the original passage of the law and in the aftermath to monitor and make changes accordingly, is the baseline for ensuring laws are written to succeed and amended as necessary as traffickers adapt to changing conditions.

## Statewide Law in Delaware

Before 2008, Delaware state law classified all massage establishments as “adult entertainment” businesses. In 2008, the state legislature decided to recognize massage therapy as a non-sexually-oriented profession and believed that these establishments could best be regulated at the local level by members of the State Board of Massage and Bodywork, so it abolished the law completely, leaving massage businesses unregulated by the state.

In 2016, a concerned constituent contacted State Representative Bryon Short (D-Brandywine Hundred) to make him aware of the existence of numerous IMBs in the district he represented.<sup>123</sup> Rep. Short had known for some time that human trafficking was a problem in the United States, but he thought it was a big-city issue. When he dug deeper into what was happening in his own community, he learned from law enforcement that there was an IMB a block from his own home, where the women were forced to live in the basement. Rep. Short then contacted Polaris and we worked with him to better understand the issue.

Meanwhile, the Office of the State Attorney General had seen an increase in the number of massage-related prostitution arrests and an increase in nuisance abatement suits, and had successfully brought a civil organized crime case against an IMB network owner. That office was supportive of taking action at the state level.

Polaris worked together with the Office of the Attorney General, Rep. Short, and the massage therapy community to craft legislation targeting traffickers while minimizing the burden placed on massage therapists. For example, instead of blanket banning buzzer-entrance front doors and locks on massage rooms, the new legislation made an exception for solo massage therapists, allowing them to secure their front doors while with clients. The carefully crafted provision helped keep therapists safe while targeting a common IMB behavior. This law will provide new, and needed, tools to disrupt trafficking in IMBs in Delaware.

## Why massage therapists must be part of the legislative process

Massage therapists must be included early on in the legislative process to ensure their professional needs and personal safety are incorporated into the laws.

According to a recent report by the Federation for State Massage Therapy Boards (FSMTB), “the association of massage therapy with prostitution or ‘happy endings’ subjects therapists to assault, threats, harassment, and more subtle forms of intimidation.”<sup>124,125</sup> This echoes sentiments expressed in Associated Bodywork & Massage Professionals (ABMP)’s January/February 2013 edition of *Massage & Bodywork*. One article in the magazine, “Hiding in Plain Sight,” stated, “If you think you are not affected by sex trafficking, consider this: if for safety reasons you have chosen not to have a private practice, or to work only in settings where a second person is in the office at all times, you have made career-limiting decisions due to the inappropriate cultural stereotype of massage as a sexual service. Sex trafficking is hurting you.”<sup>126</sup> When men perceive massage therapists as potentially open to sexual advances, the massage work environment becomes dangerous.

Men who are refused sexual services can, and do, retaliate with harassment and abuse. This retaliation can include posting an address on commercial sex websites directing other buyers to go and harass the massage therapist.<sup>127</sup> Or it can escalate to sexual<sup>128</sup> or physical<sup>129</sup> assault. In October and November 2017, a flood of women came forward against Hollywood producer Harvey Weinstein for sexual harassment and assault.<sup>130</sup> One of the women who came forward was a highly sought after massage therapist with a celebrity clientele who reported being assaulted during a massage appointment at Weinstein’s hotel room (a common venue for celebrity appointments).<sup>131</sup> While this is just one high-profile example, we regularly see reports of massage therapists being targeted with sexual harassment and assault.

**As long as traffickers continue to fraudulently operate under the guise of massage, it will continue to affect the massage profession.<sup>132</sup>**

For this reason, we regularly see massage therapists engaging with legislators, as they did recently to help develop a strong new law in Santa Maria, Calif.,<sup>133</sup> and testifying at city council meetings, as they did in Chicago (where unfortunately, their input was not incorporated).<sup>134</sup> Legislators must widen their perspective of the problem to consistently recognize massage therapists as important stakeholders in the legislative process.

## Putting the laws into practice: code enforcement

Once laws are passed, they become part of civil codes, detailed rules of the road for businesses that are enforced by health inspectors and other civil agencies.

Code enforcement has the power to be especially effective because it shifts the focus away from potential victims, toward the parties — traffickers and landlords — who profit from and maintain control over the operations. Often, these parties do not view code inspections as a real threat, the way they would regard police entering the business.

Traffickers are legally bound to allow code inspectors consistent and unhindered access into the businesses to check for things like whether the building's entrances and exits are in compliance with municipal, county or state code. If a business is in violation of code, it can be cited and fined. If violations occur with enough frequency, either the property can be closed down by the city, or the business or property owner will give in to the financial pressure from mounting fines and shut it down. And if cities and counties collaborate and share this information, they can prevent the operations from simply relocating.

In the past two years, cities and counties with strong laws have used the power of code enforcement to shut down IMBs, collect fines, and apply direct financial pressure to the traffickers. The cities of San Francisco, Houston, and Brooklyn have collectively

shut down a little more than 100 IMBs in the past 12 months, solely through code enforcement.<sup>135</sup> In 2015 and 2016, the County of Santa Clara was able to use a combination of code enforcement actions and court-mandated fines from the ensuing court cases to permanently close IMBs in their area, some of which had been operating for decades. As of publication of this report, none of them have reopened nor have any new IMBs opened.

Code enforcement has significant leverage when it comes to exerting financial pressure on illicit businesses. The daily fines can range from \$200 in San Francisco<sup>136</sup> to \$1,000 in Santa Clara county.<sup>137</sup> Fines have a dual benefit of gathering money for future anti-trafficking efforts while also sending impactful warnings to landlords to take action against their IMB tenants to avoid financial penalty.

The financial pressure proves unsustainable for owners, closing down IMBs that had been operating for decades. The paper trail created by civil enforcement can also form part of a longer game in ending trafficking. With enough documented violations, particularly if they relate to potential indicators of trafficking, civil enforcement can actually help build cases for criminal enforcement to bring charges against the traffickers.<sup>138</sup>

Code enforcement can also put pressure on landlords who would otherwise prefer to look the other way. It can take the form of direct enforcement action against landlords, or simply alerting landlords that an enforcement action took place against one of their tenants. Success for this pressure point ultimately comes when landlords evict criminal tenants, as was the case in Indianapolis, sending a strong message to other traffickers in the area.<sup>139</sup> Likewise, lawsuits against the landlords send a strong message of accountability to other landlords.

Lastly, code enforcement has a unique benefit when it comes to victim-centered intervention. Code Enforcement and Public Health officials can enter the premises for routine inspections, and provide survivors with access to resources and social service assistance without imposing the threat of criminal or immigration enforcement that victims are often conditioned to fear.

The San Francisco Department of Public Health's (SF DPH) Environmental Health Branch has had success in establishing rapport with potential victims

through regular inspection. This has led to positive outcomes like a recent case in which one woman admitted she was not happy, did not want to be in the IMB anymore, but felt she had nowhere else to go. Public Health officials were able to refer her to a community-based organization serving the Chinese immigrant population to provide her with support and resources. The survivor has since been able to gain access to legal services and job placement.

## San Francisco's Civil Enforcement Success

San Francisco is one of the three main port cities where IMB trafficking victims begin their journey of exploitation and abuse. In 2015, the San Francisco Department of Public Health's (DPH) Environmental Health Branch, which is tasked with inspecting and regulating massage establishments, identified a little more than 400 IMBs within the city. The San Francisco Police Department had conducted major criminal investigations and operations in the previous 10 years, but the operations were not resourced to occur with enough frequency to truly impact the growing IMB problem in San Francisco.<sup>140</sup>

Luckily, the San Francisco city regulations for massage establishments contained some provisions that could allow the Department of Public Health to step in and support by citing and, when necessary, ultimately closing down IMBs. The DPH team quickly got up to speed with different aspects of the city business code and how the department could use it to increase consequences for traffickers while improving outreach to potential victims.

DPH began with long-time, repeat offenders, and coordinated with San Francisco Police to make sure it avoided IMBs that were under active police investigation. Since the DPH began its concerted effort to help target traffickers, more than 175 IMBs (about 40 percent citywide) have permanently closed down. Some IMBs even closed down without direct code or law enforcement action; they simply saw that the city was cracking down and chose to move to a city with fewer rules and more lax enforcement (a win for the city of San Francisco, but not for the wider effort of ending trafficking in the United States — this example illustrates why uniformly strong laws are needed in all jurisdictions).

In some cases, DPH has been able to work with the city attorney to utilize San Francisco's Red Light Abatement law. This law has successfully been used to target a business owner and landlord who have repeatedly re-opened an IMB over multiple years. The owner and landlord were compelled to vacate the space for a year, sell its fixtures and movable property at an auction, and give the proceeds to the city to fund enforcement, and levy penalties against the property owner and the business owner. Two additional businesses are now being brought to trial for similar issues.<sup>141</sup>

The department continues to decrease numbers of IMBs, working closely with law enforcement, the city attorney, the California Massage Therapy Council (CAMTC), and San Francisco Department of Public Health's Newcomers CONNECT Project, a program that works to build trust among women in IMBs, providing them with resources and support. The work by San Francisco DPH and its partners remains one of the most successful, large-scale and sustained efforts by a civil enforcement agency to disrupt IMB trafficking in its jurisdiction.

# 2. Unmasking Shell Companies to Reveal Business Owners

A shell company is a corporation that exists on paper only, with no actual assets.<sup>142</sup> Shell companies are a staple of criminal enterprises which want to disguise who really owns and therefore benefits from a company. With the help of a shell company, the owner of an IMB can list “Massage LLC” on business regulation paperwork as the owner instead of John Q. Smith, the owner’s real name. This makes it incredibly difficult to track down who the actual criminal actors are. Currently, no state requires persons forming corporations to name “beneficial owners” (those, like John Q. Smith, who reap the benefits of ownership of a business, but do not actually own the business itself) at the time of formation.<sup>143</sup>

## **PROBLEM:** **Secrecy abets trafficking**

In the case of IMB ownership, shell companies allow traffickers to skirt regulation. For example, if a city regulates massage businesses, the trafficker will register a similar, unregulated business type such as bodywork, reiki, or a modeling studio. In Houston, many illicit massage businesses were registered as modeling studios until the city re-wrote its local ordinance to close this loophole.<sup>144</sup> In particularly egregious cases of illegal behavior, traffickers register under unrelated industries such as religious organizations or educational institutions, making them eligible for tax breaks. In addition to relying on the anonymity of shell companies, traffickers often use registered agents (third party representatives who manage correspondence and official corporate business on behalf of true owners) to register the corporations, obscuring the actual network operatives.

### **Suspicious shell company flags of illicit behavior can include:**

- **Inconsistent identification documents** (including false information, or fraudulent photographs, or otherwise inaccurate identification information)
- **Lack of information on the nature/ purpose of the business**
- **Suspicious employment history or background** as to what would be expected for the specific business activities
- **Deposits in several accounts in amounts less than standard amounts**
- **Funds transfer activity is unexplained, repetitive, or shows unusual patterns** (multiple wire transfers, mismatch of goods purchased and stated line of business; high levels of automated teller machine activity; frequent exchange of small-dollar denominations for large-dollar denominations; high value transactions not commensurate with known incomes).

The abundant use by traffickers of shell companies and registered agents makes it difficult for law enforcement to identify the true perpetrators. An article in the *Houston Chronicle* exposed a number of illicit massage parlors in Houston and how they serve as a front for sophisticated, multinational human trafficking rings. Assistant County Attorney Celena Vinson has filed 24 civil lawsuits to try to shut down and evict these massage businesses.



The article explains, “Vinson and criminal prosecutors say it’s often difficult to determine true owners of rogue massage businesses she attempts to target through civil action. Many have registered business names that lead only to shell companies with post office boxes for addresses.”<sup>145</sup> This frustration has been expressed by law enforcement and prosecutorial

Other states that foster a lack of transparency in incorporation are Virginia, Washington, Montana, South Dakota, and New York.<sup>148</sup> This aligns with what we have found in our research of IMBs across the U.S., with more than 500 shell companies registered in these five states, making up nearly 20 percent of the total for the entire country.

## San Francisco Spa Obscures Ownership

Shell companies are intended to make it difficult to discover true business ownership. One spa in San Francisco provides a good example of how confusing a purposely obscured business organization can be. The phone number and address for the spa, listed on RubMaps, also belong to a business bearing an individual’s name. That business is classified under the Standard Industrial Classification: Religious Organizations. And it is not the only linked business. The spa’s phone number is also connected to another business in Los Angeles with a name advertising sexual products (classified under Miscellaneous Retail Stores), as well as a residential address in Los Angeles.

While there is no listed point of contact for the shell company, the address and phone number are that of the original advertised illicit massage business. The business name is also an alias of the name of the owner of the illicit massage business listed on RubMaps. Having a shell company registered at the same address as an illicit massage business facilitates the movement of illicitly gained funds, and allows the spa to keep its reported annual income under \$100,000 to meet the definition of a small business for tax purposes. Additionally, any income the shell company earns that exceeds the reported annual income can be passed off as donations, and because it is registered as a “Religious Organization,” it can qualify for different tax breaks that other small businesses do not receive.

stakeholders across the nation as a barrier toward identifying and prosecuting the true perpetrators. The level of sophistication allows traffickers to hide behind anonymity, leaving the survivors in a vulnerable position as the visible face of the organization, often the sole parties to be blamed for any illicit activity.

The states in which the regulatory framework makes it easiest to set up anonymous shell companies are Delaware, Nevada and Wyoming because a business can be registered with “virtually no questions asked.”<sup>146</sup> Delaware is the most well-known of the three. Delaware currently requires more personal information to register for a library card than to register an LLC, and as a result, there are more corporations than actual human residents in Delaware.<sup>147</sup>

Polaris examined IMB networks across the country to determine the extent to which shell companies were used to keep information about the business’ real owners out of the hands of law enforcement or the public.<sup>149</sup> Within Polaris’s dataset of IMBs and IMB-affiliated shell companies, we found that states varied in the proportion of shell companies to IMBs. For example, Delaware has about one IMB-affiliated shell company for every three of its IMBs, while neighboring New Jersey averages one IMB-affiliated shell company for every two of its IMBs, and other states such as Virginia have almost equal numbers of IMB-affiliated shell companies and IMBs. In fact, Virginia is home to more IMB-affiliated shell companies than actual IMBs. In New York, there is nearly one shell company for every six IMBs, or about 11 percent of all researched businesses in the state are shell companies, which speaks to New York’s lack of business record transparency requirements.

## **SOLUTION:** **Require transparency in business registration**

Both state and federal laws should require businesses to register official operators and primary owners (beneficial owner, partner, etc.), all of which should be required to provide a valid phone number and address. Additionally, the official operator listed on all registration records should be made legally liable for the business, unless it can be confirmed that the listed operator is a victim who was compelled to list herself as an operator.

At the federal level, Congress should pass comprehensive legislation like the Corporate Transparency Act, introduced in both the House and the Senate in 2017. Effective legislation would reduce anonymity in the private sector by requiring entities formed or registered in the United States to formally declare their beneficial owners. Additionally, it should bypass state corporate law governing the incorporation process for new business entities and authorize the U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN) to collect beneficial ownership information at the corporation's inception and through periodic disclosures, unless a state chooses to collect this information on its own.

### **Specifically, effective legislation should include:**

- Disclosure standards that require that beneficial owners:
  - (i) be identified by name;
  - (ii) disclose a current residential or business street address; and
  - (iii) provide a unique identifying number from a non-expired U.S. passport or a non-expired U.S. driver's license.
- Requirements that covered entities must also file annual reports of beneficial owners and provide updates to the government within 60 days of any change in the name or other information previously disclosed about a beneficial owner or in the list of people who are beneficial owners
- Imposition of criminal and civil liability for failure to report beneficial ownership information
- Requirements that companies disclose their true ownership information when incorporating and keep ownership information up to date, though it requires states to collect this information and ties the disbursement of law enforcement assistance grants to a state's compliance with the statutory requirements

With comprehensive federal legislation setting the standards for incorporation by which federal laws and tax liability are applied, state and local jurisdictions will be able to more effectively regulate the businesses within their communities. Once it is easier to identify who has a stake in the company, enforcement agents should train their staff on how to spot and report signs of trafficking — particularly when it comes to shell companies and IMBs.

# 3. Supporting Effective, Survivor-Centered Law Enforcement

While human trafficking has existed for centuries, it still represents a relatively new area of criminal law, and law enforcement is very much still trying to perfect its investigative methods.<sup>150</sup> The challenges are immense: competing priorities and chronic underfunding; lack of institutional knowledge; insufficient social services for survivors; and ingrained systems and beliefs that are hard to shake. Even the best intentioned jurisdictions often do not have access to culturally-competent service providers to support their operations. The stakes are equally high.

When done right, law enforcement actions can disrupt entire (often international) criminal networks and create pathways to freedom and healing. When done wrong, law enforcement actions can play into the hands of traffickers, arresting women inside IMBs for prostitution, and in the process, strengthening the traffickers' hands by feeding into the narratives used by traffickers to coerce and control.

## **PROBLEM:** Random, punitive enforcement

Currently, law enforcement initiates investigations of illicit massage businesses mostly as a result of community complaints about "prostitution." In response to the complaints of criminal behavior, police then usually conduct undercover sting operations targeting the criminal act of prostitution.

Unfortunately, traffickers and managers have adapted to this strategy and rely on social media and CCTV to monitor and control the women from off-site locations. So when police arrive, only survivors are present. They are arrested for prostitution. If Homeland Security Investigation (HSI) is part of the sting operation, the victims may also be placed in an immigration hold. Nothing about this approach is designed to help potential trafficking victims. Instead, potential victims are treated like criminals and faced with what they are groomed by their traffickers to fear: police who arrest, and immigration authorities who deport.

To compound the downsides of this approach, these one-off stings usually only target a single location, when there are typically multiple IMBs in each network. Traffickers are highly mobile and prepared for this approach. After a sting, the traffickers typically lay low for a while at the affected location, moving the women and customers to a separate location within their network, ranging from just down the street, to the next town over.

## SOLUTION: Adopt an organized-crime approach, shift to increasing pressure on buyers by doing demand stings

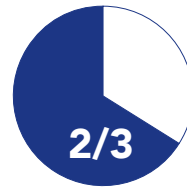
Rather than this “whack-a-mole” approach of undercover stings, jurisdictions must move toward a victim-centered, exploiter-focused approach that targets traffickers and buyers while protecting victims. This means relying less on victim testimony to prove trafficking and more on proactive, evidence-based organized crime investigations, shorter-term demand stings and code enforcement operations. Not only will this shift allow law enforcement to take down entire trafficking networks, but it will inherently limit the prosecutorial reliance on survivors’ trauma as the backbone of their cases. Instead, jurisdictions will be able to start building evidence-based circumstantial cases that lean on buyers as live witnesses. This approach brings additional angles for possible prosecution, like labor trafficking, money laundering, tax evasion, and other financial crimes that allow access to steeper fines and penalties.

It is resource-intensive to build the institutional knowledge and obtain the funding necessary to shift to an organized crime approach. Additionally, these operations are time-consuming and not as quick to implement once community complaints start coming in to police departments and city council offices. Acknowledging those realities, an effective intermediate step would be to cease undercover prostitution stings and move to demand operations targeting buyers for arrest and prosecution. Demand operations can cut into an IMB’s regular profit stream and generate fines that can be put toward anti trafficking and victim funds.

Demand stings also serve as a strong deterrent for future buyers. A 2011 study surveying both sex-buyers and non-sex-buyers in Boston found that spending time in jail would deter nearly 80 percent of potential buyers. Other public exposure techniques such as having their name and picture published online or in the newspaper would be similarly effective deterrents.<sup>151</sup>

According to national survey data from Demand Abolition, nearly two-thirds of men who have bought sex in their lifetimes—but are not active currently—

agree they might buy sex again in the future if the “circumstances were right.” Among men who have never paid for sex before, 1 in 5 agree they might buy sex in the future given the right circumstances. The top three circumstances that men stated as important are: (1) ensuring they would be safe physically, (2) ensuring they would not contract a sexually transmitted infection (STI), and (3) ensuring they would not be arrested.<sup>152</sup>



2/3 of men **who have bought sex** in their lifetimes agree they might buy sex again in the future if the “circumstances were right.”



1 in 5 men **who have never bought sex** in their lifetimes agree they might buy sex again in the future if the “circumstances were right.”

Unfortunately, the “right circumstances” that buyers are looking for are easy to find. Demand Abolition found that regardless of where, when, or how a man buys sex in the U.S., his risk of being arrested is very low, with only 6.4 percent of buyers overall ever being arrested for buying sex. Even among the most active sex buyers, 9 out of 10 have avoided arrest every time.<sup>153</sup>

Demand stings are how the criminal justice system can change this low perception of risk, by letting buyers know that there is a significant chance that they will be caught, arrested, and held accountable for breaking the law. The goal of demand stings is not to arrest every buyer, which would be impossible, or even to focus on the impact to each individual buyer arrested (though accountability and enforcement of laws is important). Instead, the goal is to increase the perception of risk for the behavior among sex-buyers and non-sex buyers alike, shifting societal norms around sex buying. To this end, Demand Abolition encourages agencies to (1) go after a larger number of buyers in a single operation so that people perceive a greater likelihood of getting caught, and (2) spread the word about those operations widely so that as many people within the community know that local police are taking the problem of sex-buying seriously. When both of those elements are in place, the increased perception of risk is maximized.<sup>154</sup>

## **PROBLEM:** **Law enforcement lacks a connection to culturally-competent survivor support**

Law enforcement looking to shut down a trafficking operation, rather than arrest the survivors for prostitution, need strong partners to work with in the service provider community. Without culturally-competent service providers to support the survivors' service needs, police officers will not be able to ensure that victims have a safe place to go after the operations, to get the support they need to ensure they are not re-trafficked. Unfortunately, these service providers are few and far between in many communities, and maintaining ongoing relationships with them if they do exist is rarely a funded priority.

## **SOLUTION:** **Invest in culturally competent victim advocacy teams**

Few police departments have the resources necessary to provide a level of victim advocacy and support that comes close to the scope of the need. Budgets must be expanded to acknowledge that victim services and advocacy is not a luxury, an add-on or an addendum to law enforcement but rather a key piece of the enforcement puzzle. Without support for the victims, they maintain all of the original vulnerabilities that traffickers exploit in the first place, as well as new vulnerabilities like being displaced from their homes.

In major centers of illicit massage business operations, there should be a dedicated liaison between law enforcement and the community of service providers that work with this population. In smaller jurisdictions where it may simply not be possible to support service provision in the necessary languages or with the level of expertise and knowledge needed, law enforcement must have the resources to consult with, learn from, and have access to service providers in other jurisdictions who can and do serve these populations.

## **PROBLEM:** **Lack of resources**

Despite the fact that trafficking remains a multi-billion-dollar industry, at present, the resources required for law enforcement to shift its approach to doing in-depth, organized crime investigations that involve collaboration across jurisdictional boundaries are typically beyond what is available in local police departments. One organized crime investigation in a Midwest partner state took nearly 9 months of investigation, more than \$250,000 in department resources and overtime pay, nearly full time dedicated attention of an entire unit of detectives over the course of several months, and around 100 officers detailed on the day of the operation, as 6 distinct IMBs and multiple other crime scenes were involved.<sup>155</sup> The commitment of this level of financial and human resources is a prioritization that requires the allocation of those resources away from managing other areas of crime. It also, often, does not come with the appropriate, long-term commitment in official state and city budgets to make this style of anti-trafficking policing sustainable beyond the one long-term operation.

## **SOLUTION:** **Pursue dedicated anti- trafficking funding and leverage code enforcement as an intermediate step**

### **Anti-trafficking funding sources for law enforcement**

Law enforcement can find funding specifically for anti-trafficking work in their local jurisdictions in the form of federal grants through the U.S. Department of Justice Bureau of Justice Assistance, and the Edward Byrne Memorial Justice Assistance Grants Program (Byrne JAG). In the longer term, additional line item funding should be allocated to federal and state criminal justice budgets specifically to improve human trafficking investigations and prosecutions.

In the absence of these specific and sufficient pools of money, cities are attempting to create their own funds through creative appropriation of fines and fees charged to buyers and exploiters. For example, in Houston, the city won a suit against the adult entertainment industry which funded an entire anti-trafficking fund.<sup>156</sup> In Chicago, bill PA 98-1013 (formerly SB 3558) allocates fines collected against pimps, traffickers, and people who buy sex, and allocates assets confiscated as a result of forfeiture and impoundment proceedings toward specialized services for survivors of human trafficking and prostitution, empowering more victim-centered and exploiter-focused law enforcement actions.<sup>157</sup> Seattle similarly allocates portions of fines generated from buyer arrests toward future anti-trafficking and survivor support work.<sup>158</sup>

### **Code enforcement as a resource for law enforcement**

As mentioned in the prior section discussing business regulations, code enforcement operations can provide a wealth of resources for criminal investigations. The citation paper trail is another thread of circumstantial evidence that can be used to supplement evidence-based prosecutions, including the provision of additional official witnesses who can testify to the

conditions of the IMB and its business operations. Code enforcement operations simultaneously serve to put additional pressure on criminal operations. As Rockland County, New York District Attorney Thomas Zugibe said recently of traffickers, “Sometimes the criminal laws are not enough to address the problem. The civil remedies hit them right in the pocketbook. They have to go hand in hand.”<sup>159</sup>

## **PROBLEM:** **Fragmentation across jurisdictions and lack of institutional knowledge hampers investigation, enforcement and prosecution**

While traffickers are very comfortable operating across city and state lines, law enforcement often has at best ad hoc processes for collaboration across jurisdictions. These systems, to the extent they exist, generally rely on personal relationships and rarely extend over state lines.

In multi-state cases, the best chances for effective collaboration involve bringing the United States Attorney’s office and the Federal Bureau of Investigation to take the case. However, the charges and circumstances do not always rise to the level justifying state and federal prosecution. And the investigations are not often resourced sufficiently to even fully develop those connections across jurisdictional boundaries to then illustrate the need for a state or federal prosecution.

Even if jurisdictions are able to overcome the collaboration obstacles, they are often constrained by law. Trafficking, broadly, has only been officially deemed a crime in all 50 states since 2013 and many state and county-based prosecutors’ offices have yet to prosecute their first human trafficking cases.

Even in jurisdictions where their statutes explicitly indicate that force, fraud or coercion are all acceptable forms of control to meet the statutory

definition for human trafficking, most prosecutors' offices are unclear on how to prove the fraud and coercion elements without relying solely on the word of the victims. Those jurisdictions that have prosecuted trafficking have usually only prosecuted when a strong element of force is present, and the case law especially around fraud and coercion is underdeveloped in regards to providing solid guidelines for the application of those laws.

Typically, local jurisdictions that have prosecuted human trafficking cases have only seen a handful or fewer of the 25 types of trafficking that exist in the United States, and they do not have the strong knowledge-sharing connections with prosecutors in other jurisdictions that would provide them with a greater awareness of the diversity in how trafficking operates. In many types of trafficking, including IMB trafficking, force is psychological rather than physical, harder to prove, and requires an overreliance on the victim's testimony at trial, which is traumatic and puts the victim in the position to have a case boil down to her word against the trafficker's.<sup>160</sup>

## **SOLUTION:** **Build networks of anti-trafficking law enforcement, code enforcement, and prosecutorial professionals**

Jurisdictions must begin building ad-hoc connections and resources to share knowledge and best practices across the country. This may take the form of prioritizing attending regional and national trainings, to actively building coalitions and tools to share knowledge. This should also include harnessing advances in security and technology to facilitate streamlined collaboration and information sharing between official agencies in jurisdictions across the nation. Ultimately, once these connections and means of sharing resources are created and tested, the goal would be to standardize and formalize them.

The Offices of the Attorney General in Washington and Utah are noteworthy examples of jurisdictions that have shifted their systems to consistently use a collaborative approach to address trafficking in IMBs. Their work at the state level to empower local county and city-based jurisdictions within their states to seek support and collaborate across jurisdictions is shifting systems to make them more effective at sustainably eradicating IMB trafficking. Over the past two years, their work has led to shutting down nearly 50 IMBs, connecting survivors with culturally-appropriate services, and bringing successful charges against traffickers.<sup>161,162</sup> This success has been fueled by their efforts to coordinate statewide responses to counter trafficking networks that span across cities and counties, and to build a strong coalition of multiple levels of law enforcement, code enforcement, and victim advocates and service providers. As more states follow their example, we look forward to seeing similar positive results.

# 4. Closing Loopholes In The Commercial Real Estate Industry

Most illicit massage businesses rent, as opposed to buy, the properties they occupy. This is a strategy that allows them to easily relocate to a new city, or even state, if they come under pressure from law enforcement. This preference for renting puts landlords in the position of being either a key enabler, turning a blind eye to trafficking, or serving as a key ally toward ending it.

## **PROBLEM:** **Landlords have no real incentive not to rent to traffickers**

In an overwhelming majority of states, landlords are shielded from liability for criminal acts perpetrated by their tenants. Even the states that do allow for third-party liability to extend to the landlords require a plaintiff to prove that the landlord had knowledge of the conduct.<sup>163</sup> Often, once criminal activity comes to light, the press reports that the landlord “denied any knowledge of criminal activity,” which is what happened after recent raids in Boardman, Ohio,<sup>164</sup> and Springfield, Missouri.<sup>165</sup> In Springfield, the landlord took it a step further by telling the press that he had not been inside the building since before Asian Massage opened. He dismissed neighboring business owners’ reports of suspicious activity, such as men parking across the street and walking to the massage parlor when there is plenty of parking, saying, “They’re innocent until proven guilty and I’m not going to be the one that discriminates against them. To get biblical on it, judge not lest you be judged.”

Sometimes, landlords claim that they are aware of criminal activity but are unable to evict their tenants. This was the story told by Rick Barcena, the chair of Tampa’s Code Enforcement Board and a member of the Public Nuisance Abatement Board, when it was brought to the public’s attention that he is the landlord of an IMB that has already been the subject of an undercover sting operation. He claims he started the eviction process after he received a police warning, but dropped the effort for unknown reasons. Clearly he was not under much pressure, as the letter warned him that “this activity may subject your business to be brought before the Public Nuisance Abatement Board,” the very board he serves on.<sup>166</sup>



## SOLUTION:

# Landlords can take responsibility to ensure human trafficking is not happening on their rental properties, and cities can leverage nuisance abatement laws to address those who do not.

Regardless of legal standards, ethically, landlords should take measures to ensure they are not renting to human traffickers, and are alerting law enforcement immediately if it appears illegal activity is taking place on the property.<sup>167</sup> **Here's a brief list of questions landlords can use to guide this process:**

**1/ Is the occupant the same person that signed the lease?** Traffickers often use victim names on leases, to transfer blame and obscure roles within the organization.

**2/ How is the rent paid?** If it is paid in all cash each month, that could be a red flag.

**3/ Is the business in compliance with your local laws regulating massage businesses?**

**4/ Does your lease explicitly prohibit illegal activities,** including commercial sex, on the premises, and state that this qualifies as grounds for terminating the lease if discovered?

**5/ Does your lease allow for people to be living on-site?** If not, when you visit the massage parlor, does it look like people are living there? Do you see mattresses and/or a kitchen equipped to prepare meals (as opposed to a break room)?

**6/ Do the customers appear to be almost entirely men,** and are they coming and going frequently?

**7/ Are neighboring business owners or residents reporting anything unusual,** such as lots of people coming and going, or the business being open past normal business hours?

**8/ Is there any evidence of the premises being used for commercial sex?**

**9/ Google the business name and address.**

Is it advertising on known commercial sex websites like Backpage or the massage section of Craigslist? Does it have sexually-oriented reviews on RubMaps?

**10/ Have your tenants made any modifications to the rental property that cause concern or alarm?**

To address landlords who are allowing human trafficking to happen unabated on their rental properties, cities are starting to take aggressive nuisance abatement action. The city of San Francisco recently successfully sued the landlord and business owner of Queen's Health Center, alleging it had been operating as a brothel since at least 2010. The settlement included an injunction preventing the space from being used as a massage parlor or similar business for at least 10 years and prohibiting the owner from opening a massage parlor or another personal service business elsewhere in San Francisco. In addition, the city levied monetary penalties against the owner in the amount of \$195,000, and against the landlord in the amount of \$100,000. The city is now suing a second IMB, Paradise Health Center, with the same general aim.<sup>168</sup>

# 5. Ending Online Practices That Legitimize Illicit Massage Businesses

While community-specific classifieds websites and social media platforms like Wechat and KakaoTalk are the primary media means for recruiting victims, sites aimed at a wider audience are vital for both drumming up customers and hiding the true nature of the businesses.<sup>169</sup> These include mainstream classified sites like Craigslist and Backpage and sites like Groupon and Yelp that are not traditionally connected to the commercial sex industry.

## **PROBLEM:** **IMBs use classified sites like Craigslist and Backpage to advertise to buyers**

Both Craigslist and Backpage illustrate how traffickers quickly adapt to pressure and find ways to continue to market to buyers. In 2010, Craigslist decided to shut down its “adult services ads” section in response to pressure from law enforcement and Congress, who were concerned with child sex trafficking.<sup>170</sup> At the time, Backpage still had an “adult services ads” section and absorbed all of Craigslist’s previous advertisers. By 2011, 90 percent of Backpage revenue was coming from its “escort services” section

alone,<sup>171</sup> a position it enjoyed until 2017, when it too responded to pressure and shut down its “adult services ads” section.<sup>172</sup> However, Backpage remains the preferred site for human traffickers to advertise commercial sex.<sup>173</sup> The ads that had flourished in the “adult services ads” section primarily moved to the “dating, women seeking men” section, with the exception of the IMB-related ads, which moved from “adult services” to the “massage” section on Backpage, and to a lesser extent, to the “therapeutic services” section on Craigslist. In other words, IMBs quickly adapted to align their online presence with the commercial front they use for all other purposes.

## **SOLUTION:** **Craigslist and Backpage should screen for IMBs**

Rather than accepting a potential commercial front trafficking operation at face value, classified ads websites can adopt simple policies to vet advertisers in the massage section. They can do this by performing a good-faith effort to determine whether or not a massage business advertiser is connected to commercial sex websites.

## PROBLEM: IMBs use daily deals websites like Groupon and LivingSocial to create a veneer of legitimacy

Groupon and LivingSocial advertise daily deals to an audience looking to try new services at a discount. For traffickers, these websites serve as a place not to advertise (IMB owners have little interest in attracting buyers who are interested solely in massage), but instead to use a mainstream website to appear legitimate in online search results. On these sites, the IMBs are often described as tranquil, therapeutic spas, despite having explicit advertisements on other sites like backpage.com and Rubmaps.com buyer reviews.

For example: The editors at Groupon recommended the following business: ↓

### From Our Editors

Rockville Massage is a high-end day spa that provides guests with pampering services and accommodations. This establishment provides guests with multiple massage enhancements, such as hot stone, deep tissue, and Swedish massage. For effective and worthy beauty alternatives, head on over to this spa and leave feeling satisfied. Everyone deserves get pampered every once in a while so book your spa service at Rockville Massage and reap the benefits.

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But the same business also appears on Rubads.com, the advertising section of the IMB buyer review board website, RubMaps.<sup>175</sup>

While the content of the ad is not sexually explicit, the logo of the website, with tagline “find your happy ending” should raise an automatic red flag.



← Image source: Rubads.com<sup>176</sup>

To get a sense of the extent of how IMBs are using sites like LivingSocial and Groupon, we analyzed every Groupon and LivingSocial connected to IMBs across Florida and Hawaii.<sup>177</sup> Most of the IMB presence on Groupon and Yelp consisted of “merchant accounts,” or pages listing the name, contact information, and a brief description of an IMB without any active advertisements or coupons. These brief descriptions were vague, non-explicit, and very similar across sites.<sup>178</sup> In Hawaii, 25 percent of IMBs held merchant accounts on Groupon, and in Florida, 28 percent of IMBs held similar accounts. The IMB presence on LivingSocial very closely mirrored that on Groupon, most likely as a result of Groupon’s buyout of LivingSocial in 2016 (25 percent Hawaii, 26 percent Florida).

Our analysis of Yelp in Hawaii and Florida found that in around 10-15 percent of cases, IMBs had claimed their accounts and were actively displaying explicit material in their business descriptions, describing “role play,” “fully nude,” and “fully equipped dungeon)”<sup>179</sup>

or photos (ranging from suggestive selfies of women<sup>180</sup> to graphic photos of women’s bodies).<sup>181</sup> We also noted explicit reviews from buyers, ranging from those hinting at sexual services offered<sup>182</sup> to actually describing the sexual services received.

## **SOLUTION:** **Online review and “deal” sites should screen for IMBs**

Sites like Groupon and Yelp should consider policies banning businesses who advertise on commercial sex websites from setting up profiles.

In a review of Florida massage business accounts on Yelp, 96 percent of IMBs on Yelp were also advertising on overtly sexual websites, and those ads would pop up in Google search results often directly next to Groupon, Living Social, and Yelp search results.<sup>183</sup>

They should also provide greater oversight of reviews and business profiles with descriptions, photos or reviews alluding to “happy endings” or any other exploitative service and create a mechanism for tagging and reporting them to the National Human Trafficking Hotline (NHTH). Additionally, users should be empowered to report potential human trafficking in venues they have found advertised on these sites to the National Human Trafficking Hotline.

# 6. Shifting the Media Narrative to Increase Public Understanding, Decrease Public Tolerance

Media outlets have tremendous power to shape how the general public understands human trafficking in IMBs, and to generate public support for sustainable victim-centered solutions like stronger ordinances to target traffickers, and demand stings to target buyers. Unfortunately, uninformed reporting also has the power to reinforce harmful ideas — that what goes on in illicit massage businesses amount to victimless crimes and that “happy endings” are amusing and harmless.

## **PROBLEM:** **Media coverage related to illicit massage businesses perpetuates incorrect, unfair and dangerous assumptions**

To determine the extent of the problem, Polaris undertook a content analysis of 21 months worth of IMB-related news coverage, and found the following:

- **Media coverage often blames and shames the victims.** Ideally, 100 percent of media coverage would focus on exploiters, while shielding potential victims. However, we found that 39 percent of news coverage focuses on the potential victim as the perpetrator in the story, identifying her by name (39 percent) and sharing her photo (23 percent). We frequently also see other

details, like her age and home address information. Not only does this reinforce incorrect public perception about who should be held accountable, it directly harms victims. Negative media exposure is a source of shame that can reinforce a victim’s distrust in law enforcement, seeing officers as out to arrest and shame her, not as a source of potential help who will protect her from her exploiters.

- **Media coverage often refers to “prostitution,” reinforcing the idea that commercial sex in IMBs is a victimless crime.** A full 67 percent of articles make reference to “prostitution,” while only 48 percent mention “human trafficking.” Only 10 percent of press coverage refers to the women as “victims.” Sometimes in articles where human trafficking is mentioned, prostitution is also mentioned, in the context that the potential victim did not self-identify as a trafficking victim, and was therefore charged with trafficking.
- **Media coverage shields traffickers.** Traffickers are exposed less frequently than potential victims in the news. Only 38 percent of news coverage shares the trafficker’s, manager’s, or other operative’s name, and 10 percent shares their photos (compared to 39 percent and 23 percent for victims). The fact that potential victims bear an even heavier media exposure burden helps traffickers feel relatively safe and shielded from the public eye. They often try to transfer blame to victims, from claiming ignorance to their activities, to requiring employees to sign a contract promising that they will not sell sex.

- **Media coverage ignores buyers.** Sex buyers are not just shielded by media coverage; they are rendered nearly invisible. Only 22 percent of news coverage refers to buyers or demand in any way, and only 2 percent of coverage shares the names of sex buyers, with only 1 percent sharing their photos. Instead, if they are mentioned at all, they are often treated like extras on a movie set: “two customers were present in the establishment at the time police entered.” All of this feeds into a comforting reinforcement that buyers’ reputations will be protected, and that they can continue to buy sex in IMBs as a normal, low-risk activity.
- **Offensive, joking language remains a problem.** While only 5 percent of the coverage we reviewed uses overtly offensive puns or jokes about “happy endings,” it is significant to note the impact of such language in the context of reporting that tends to reinforce a prostitution framework and the idea of a “victimless crime.” Offensive language in news articles mirrors the type of language that we see buyers using among themselves on buyer review boards such as Rubmaps. When this language is reflected in the public sphere, it fuels an increased sense of normalcy for buyers. They may become emboldened to proposition and even assault massage therapists in therapeutic establishments, who often report uncomfortable and dangerous behavior from male clients.<sup>184</sup>
- **Media coverage misses opportunities to educate the public.** More than a quarter of the articles we reviewed (26 percent) list common flags for human trafficking in IMBs without connecting the dots and mentioning “human trafficking.” These common flags include things like: evidence of women living in the massage parlor (beds, clothing, large quantities of food), women appearing to work 7 days a week, and women who state that they do not know who their employer is. If the media can learn to make these connections for readers, this will be an important step toward shifting the public’s perception of accountability.
- **Media frames the problem as a blight on the community.** The majority of the articles (59 percent) position the harm being done by IMBs as primarily suffered by the community, with harm done to trafficking victims in a distant second place (22 percent). Positioning the community as the primary victim is a problem because not only does it distract from the real victims — the women who are trafficked — but it lumps IMBs and the people involved in them together into a group considered dirty and immoral, further harming those victims.

## SOLUTION:

# Media outlets must create policies to protect potential victims, and law enforcement must carefully frame press releases

Media outlets must hold themselves to a higher standard of accountability, and do more critical reporting. At the same time, law enforcement must work to write victim-centered, exploiter-focused press releases that will help ensure good reporting.

As media outlets have done for sexual assault cases, they must establish internal guidelines and policies for how they report on IMB cases, whether trafficking is indicated explicitly in the police press release or not. Our recommendations include the following:

- **Create policies against sharing potential victim identifying information** in IMB cases, regardless of whether police reports state that human trafficking was involved
- **Focus on exploiters:** share information on potential trafficking operatives, share the name and photo of the business involved, pull the business license for details, look into who the landlord or property owner is
- **Draw attention to sex buyers:** interview neighboring business owners or residents about the kind of buyer activity they see around the IMB
- **Use the term “potential human trafficking”** or “commercial sex” instead of “prostitution”

### What Good Reporting Looks Like

In September 2016, an operation took place in Tacoma, Wash. that led to the arrest of three potential trafficking operatives and the closure of the network of seven IMBs they ran. Coverage for this case, in a piece produced by Tacoma CBS affiliate KIRO, “Tacoma prostitution ring bust may be tied to national sex trafficking.” was solidly exploiter-focused and victim-centered.<sup>185</sup>

- The article focuses on the exploiters arrested, sharing their photos, names and ages, and explaining the charges brought against them
- Quotes from law enforcement focus on the criminal network, potential exploitation of the victims, and larger trafficking indicators
- Victim information is carefully protected, with no photos or identifying info shared
- The article educates the public about trafficking by highlighting that the women were charged \$10/day to live in an apartment above the IMB (an indicator of debt bondage and controlled movement)
- The article acknowledges that demand is part of the problem

The successful framing of this coverage is due in large part to law enforcement having conducted an exploiter-focused, victim-centered operation, and then having carefully communicated the information to the media. It is also a reflection of the reporter’s dedication to avoiding sensationalism and offensive language.

Reporters rely heavily on police press releases to gather details for their stories. Taking an upstream approach, and encouraging law enforcement to write victim-centered, exploiter-focused press releases could be the single most impactful action to influence media coverage. Essentially, this means taking the same approach that they might take in a sexual assault case: protecting the victim’s identity, refraining from using language that potentially confers blame on the victim, and instead focusing on the offenders.

Law enforcement can improve press releases in IMB cases by:

- **Instead of using “prostitution,”** use “potential human trafficking” or “commercial sex”
- **Do not release potential victim photos, names, or other identifying information**
- **Share information about the business** (name, address, registered owner) **and information about potential trafficking operatives** (owners, managers)
- **Indicate the role demand played in the operation** — were neighbors reporting a steady stream of male-only customers? Were there buyers in the business during the operation?

In addition, law enforcement can be careful about what language they use when being interviewed by the press. They can reframe the conversation around “potential human trafficking” and keep the focus on traffickers and buyers. They can avoid sound-bites about “cleaning up the neighborhood” or about how close the IMB is to a school or church, invoking shame that may be transferred to the victims.



# 7. Working Together to Ensure Victims Receive Robust, Culturally-Competent Services

Survivors of human trafficking require specialized, culturally-competent support once they have left a trafficking situation. Providing this support is vital to systemic disruption of human trafficking. Without support, survivors of illicit massage parlor trafficking — and all other forms of human trafficking — are in grave danger of being re-trafficked.

**Three things that have emerged as necessary for the field are:**

- 1) the importance of growing the number of culturally-competent service providers in the country,**
- 2) connecting them to each other and to other professionals such as interpreters and attorneys to develop a seamless “safety net,” and**
- 3) working to improve the long-term economic stability of IMB trafficking survivors.**

## **PROBLEM:** **Lack of culturally-competent service providers**

The needs of American-born trafficking survivors differ from those of Chinese- and Korean-born survivors who are the primary victim population in illicit massage businesses.

While American-born survivors are usually concerned most urgently with stable housing or immediately reconnecting with family, Chinese- and Korean-born IMB survivors are usually primarily concerned with locating their immigration paperwork and becoming documented, and making a living wage to send money home.

In addition to those priorities, service providers often also provide English language education, legal services, access to short-term and/or long-term shelter, labor and immigrant rights training, financial education, job skills training, and job placement.

In cities with significant Chinese and Korean communities, such as San Francisco and New York, specialized services have risen to meet the needs. But illicit massage parlors exist in every state, and similar providers do not.

Even in the best-case scenarios, service providers across the country report being underfunded and under-resourced. While Polaris, in partnership with multiple service referral partners, attempts to fill these gaps through the National Human Trafficking Hotline, systems need to continue to adapt across the United States for more sustainable methods of meeting survivor needs.

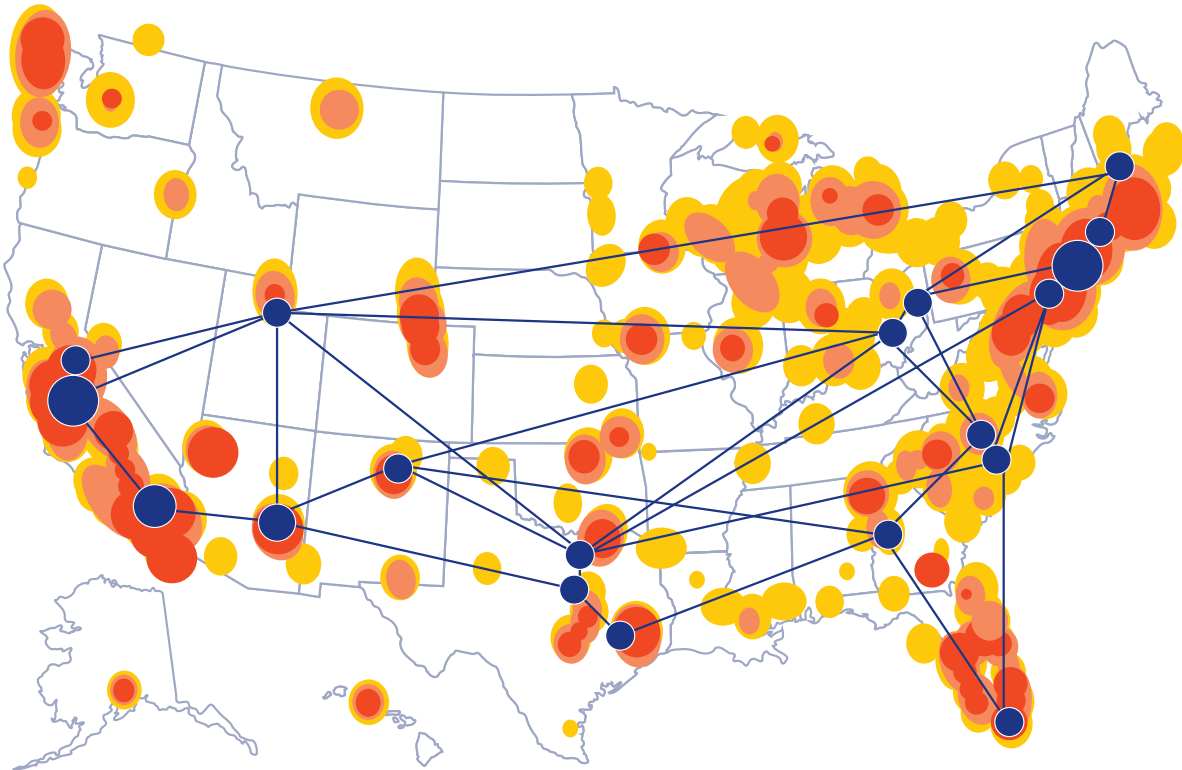
## **SOLUTION:** **Nationwide safety net**

Recognizing that this is a wish list more than a solution, it is worth defining and designing what a truly effective survivor safety net would look like and how it would operate.

### **Current Nationwide Safety Net for Survivors of IMB Trafficking** ↓

### **Service providers would be connected around the country**

Many survivors, having been moved by trafficking networks to towns across the country, prefer to return to major cities that have large populations of Korean and Chinese nationals, a comfortable community for them to reintegrate into. To accommodate this need, Polaris's Disruption Strategies team has been working to connect local service providers across the country and create networks that allow, for example, a service provider in New Mexico to feel comfortable in sending a survivor to an experienced and culturally-competent counterpart in San Francisco.



In many communities, those counterparts will not specialize in serving IMB survivors. There simply would not be enough of them to merit building this kind of expertise. Recognizing this reality, Polaris is working to both expand the knowledge of non-specialized networks and build coalitions of multiple organizations to form one, cohesive response team that collectively is able to provide a complete suite of services for survivors. This may mean drawing on translation, legal and case management expertise from three different organizations so that all potential survivor needs can be addressed when they need it the most.<sup>186</sup>

**Key pieces of this coalition safety net include:**

• **Culturally humble, trauma-informed interpreters:**

An interpreter holds a pivotal role in building trust and feelings of safety with survivors, ensuring parties involved understand everything from slang terms to

how psychological trauma manifests in survivors. If interpreters do not have this knowledge, they can, instead of building trust, inadvertently reinforce a trafficker’s narrative of isolation and shame. If done right, interpreters can be the person to literally give survivors their voice throughout the justice and service provision processes.

• **Attorneys:** While there are not many law firms that specialize in working with trafficking survivors, there are pro bono attorney networks around the country that can help with immigration, criminal and civil relief. In order to cover the existing gaps in legal services for survivors of human trafficking in every state, these networks not only need to effectively coordinate with each other, they also need to connect with service providers that can make case referrals.

## Building the National Safety Net

Over the course of 2016 and 2017, Polaris has been working to coordinate a National Safety Net for IMB trafficking survivors to ensure seamless access to services as survivors move from city to city.

The National Safety Net consists of a growing number of service providers who demonstrate cultural competency, use trauma-informed interpreters, and have at least a year of experience providing a full range of services to IMB trafficking survivors. This list of service providers is supplemented by organizations that provide portions of the services needed by survivors (for example, an organization that provides trauma-informed interpreters but not full case management for survivors).

Our work to connect service providers to other cities, particularly major port cities like New York City, San Francisco, and Los Angeles, means that survivors are able to receive appropriate services when they leave their trafficking situation, and continue receiving services if they choose to return to a city where they are more comfortable.<sup>187</sup>

**Here are some examples of the successes the Survivor Safety Net has had over the period of 2016-17:**

After Asian American Community Services, Inc. (AACS, Inc.) in Ohio worked with survivors for several weeks, each survivor expressed the desire to go to a different city. Some wanted to go to Los Angeles, some to San Francisco, and some to New York. Through the Survivor Safety Net, the service provider was able to connect to providers in each city. Each survivor was able to continue case management and support in her new city, while her new case manager stayed in touch with AACS, Inc. to continue working with the legal team on T visa applications. Three of the survivors have received their visas and have successfully completed GED and English classes.

Continuing on the next page →

## Building the National Safety Net Continued

In another case, a service provider in an the East Coast state was called by law enforcement to help with potential survivors at an IMB. The provider contacted Restore NYC, a service provider in New York, to ask for assistance doing a culturally appropriate forensic interview. Restore NYC shared resources and best practices for serving IMB trafficking survivors, and the service provider in the East Coast state began coordinating services to meet her immediate needs. When the survivor asked to return to New York, she was immediately connected with Restore NYC to transition service provision. Upon her arrival, a representative from Restore NYC met her at the bus station and accompanied her to safe housing. Thanks to the Safety Net, the survivor is now receiving case management, counseling, and job training services in a city where she feels comfortable.

In Utah, code enforcement officials called a service provider to assist when they encountered a woman who was absolutely terrified of the routine inspection taking place at the business. Based on previous discussions with more experienced service providers, they were able to give culturally appropriate assessments and provide an interpreter familiar with this type of trafficking. After several days of building trust through the interpreter, the survivor revealed she had family in New York City but she was not sure if she could return there. The service provider reached out to Garden of Hope, a partner in New York, to help her travel back there to reunite with her family. After working with her Garden of Hope case manager, the woman further revealed that she was primarily fearful of her boss' continuous harassment and her confusion about the purpose and outcomes of the business inspection. She was assisted with safety planning, legal assistance, and counseling, especially about the fact that a business inspection did not mean she now had an arrest record. The services she received from RIC-AAU and Garden of Hope relieved her fears and have helped her to safely settle back in New York.

• **Job training:** While some service providers provide financial education and empowerment training, as well as job readiness training, there is a lack of programs that prepare clients to build careers outside of working in specific niche job markets like artisan craft production, cleaning services, and the food industry. As Anders Lisborg states in *Human Trafficking in Asia*, "Skills training programs are too often seen as a goal instead of a step that should lead to decent jobs and a real new livelihood opportunity."<sup>188</sup> What is needed are economic empowerment programs that prepare IMB survivors for real job opportunities with competitive salaries that provide full benefits so that the training is worthwhile. "Workers have told members of the San

Francisco-based Newcomers CONNECT Project that they want to work at legal establishments and not have trouble with the Environmental Health Inspectors and getting citations. Of the 15 [women who had been in IMBs] who went through the Workers CONNECT Workshop, one is now working at a legal massage business, one went back to a bartending job. One moved out of the area and is enrolled in a nail salon/ cosmetology school. Working without fear of managers or inspectors brings more stability to their lives. It's important to have a publically respectable job and income that provides independence, which reduces risk of vulnerable situations and exploitation."<sup>189</sup>

# Conclusion

Ultimately, ending trafficking in IMBs begins with understanding that this is all of our problem and that we are all part of the solution. There are concrete steps we can all take to push for change.

Actions that the general public should **not** take include anything that would potentially harm trafficking victims, such as attempting to go in and investigate an IMB themselves, or setting up a protest outside an IMB. The goal is to move not towards quick-fix solutions, but toward lasting systemic change.

- **Shut down “happy endings” jokes.** If a friend makes one, take the opportunity to share what you know about human trafficking in IMBs. If you see one in a movie or on TV, write a letter or use social media to call it out.
- **Call out the press when they expose potential victims.** When you see an article reporting on a “prostitution arrest” at an IMB, and it shares the photos, names, ages, or any other identifying information of potential victims, write a letter to the editor asking the newspaper to recognize that human trafficking is common in IMBs and that the news outlet should adopt a policy that protects potential victim identities.

## Sample letter to the editor

Here’s a letter that our team recently had published in the Chicago Tribune.<sup>190</sup>

### Don’t expose potential trafficking victims

In your Aug. 11 article, “Oak Park massage parlors shut down after prostitution investigation; 4 face charges,” you published the photos, names, ages, and home address information of the women who were arrested. Unfortunately, it’s very possible that they are victims of human trafficking who need support and protection — not increased exposure and shaming.

Massage parlors are often illicit businesses that profit from the sale of trafficked women’s bodies. The women in them may be tightly controlled by debt bondage, fear, and shame. Their immigration documents may be confiscated, they may be forced to live inside the business, and they may be threatened with harm to their families if they speak up. It takes careful work by law enforcement and trauma-informed service providers to make sure that the full story comes to light.

While law enforcement investigates, the press can help by keeping the potential victims’ identities confidential. Instead of focusing on potential victims, why not report on known exploiters: the owners of the massage parlors, and the buyers who frequent them. You could easily publish photos of the businesses, instead of the women arrested. Maybe do a little investigation into who owns the parlors, how they advertise, and who frequents them. It’s time to put media attention where it belongs — on exploiters, not potential victims.

- **Call your city council member or state legislator.** Your government works for you! Let your council member or representative know that you want your city or state to pursue a victim-centered, exploiter-focused approach to eliminating human trafficking in IMBs. Concerned citizens across the country, from Tampa, Fla.<sup>191</sup> to Santa Maria, Calif.<sup>192</sup> have been drawing attention to the issue and pushing their city councils to update laws. In Delaware, it took only one concerned constituent to be the spark that changed the law for the entire state.<sup>193</sup> A few committed people that want best practices and bring stakeholders to the table have been the primary factor that has led to success in more than 25 jurisdictions to date. Ask your representatives to contact Polaris for guidance on what proven strategies city councils and state legislatures across the country have been adopting. Show up at meetings, and keep the pressure on. Call your state representatives and demand funding and resources allocated to investigating IMB trafficking and supporting foreign-born victims trafficked in your state.
- **If your community has strong laws, make sure they are being enforced.** If you know your community has strong laws and is committed to an exploiter-focused, victim-centered approach, you can use your voice to help support enforcement and advocate for resources. Report suspected IMB trafficking when you see it to law enforcement, and call 311 to request that code enforcement inspect a business and provide support to any victims inside. You can also use your voice to call your state representatives and demand funding and resources allocated to investigating IMB trafficking and supporting foreign born victims trafficked in your state.

- **Support services for survivors.** Donate to your local service providers individually, or encourage your workplace or social groups to consider a donation, to ensure that service providers have the resources they need to help survivors of IMB trafficking.

At bottom, it is up to each and every one of us to examine our cultural assumptions; complacency; our own individual choices to purchase sex; to condone purchasing sex; to ignore people who do not look like us or talk like us; and to make assumptions and to turn away from what we do not want to see.

We can ignore modern slavery in our midst or we can call it out, and call it unacceptable, and call for help. Human trafficking in illicit massage businesses is complicated, and disrupting it will require more than making a few arrests. But solutions are available, if we are willing to look.

# Methodology

This report seeks to describe the multifaceted experience of survivors, traffickers, buyers and others tangentially affected by illicit massage business trafficking. To this end, we have included extensive qualitative and quantitative research as described below. While we cite additional sources throughout the report, the sentiments are also corroborated by our internal data and methodology. All data was gathered lawfully, including following terms and services listed on sites used.

## Demographic Data and Research

### **Polaris Direct Services & National Human Trafficking Hotline**

Polaris operated a direct client services program from 2003 to 2016, providing case management and interpretation for 51 (primarily Korean) survivors of IMB trafficking. This work helped Polaris formulate an initial strategy and provided a baseline for additional research and data collection.

### **Focus Groups**

The Disruption Strategies team participated in four focus groups from 2016 to 2017, hosted by RestoreNYC, each of which included four to six IMB survivors originally from China. These groups were led by social workers who had built a strong rapport and bonds of trust with the survivors. Groups focused on giving feedback on different tools being produced for potential victim outreach and service provider resources. By using this non-emotionally charged topic, Polaris was able to better understand common forms of force, fraud and coercion used in port cities as compared to the rest of the country. This included learning about how women were moved to different states and different networks, and what survivors identified as the most critical language to use and topics to discuss when they first come out of an IMB. This information helped to balance out the deeper narratives generated from the primarily Korean survivors served by Polaris' Client Services program.

### **Service Providers**

Polaris has hosted focus groups and developed working relationships with service providers across the United States to develop a robust national knowledge of IMB network operations and survivor experiences. This collaborative of service providers has provided

quantitative and qualitative data about survivors and their exploiters after providing services to a collective total of 1,393 survivors over the past 18 months spanning 2016 and 2017.

### Law Enforcement

Law enforcement officials have provided quantitative and qualitative data on 484 survivors and more than 375 businesses for this report. This dataset is used to present a more complete picture of all aspects of the IMB experience including business operations and trafficking methods, and is never intended to reveal law enforcement procedures, tactics or sensitive information.

### Public Records

Demographic information was supplemented by public documents including 32 federal and state level criminal cases and 153 national and local media articles. Together these public documents identified more than 200 traffickers or trafficking network operatives. These records provide a deeper insight into trafficker countries of origin, their network connections, and how they used force, fraud and coercion to control their victims, supplementing knowledge gathered from the anti-trafficking field.

### Media Articles

Polaris analyzed 21 months worth of IMB-related news coverage (583 articles collected from September 2015 to June 2017) to understand how cases were being reported, including whether victim-identifying information was shared (names, ages, photos, etc.). These articles also provided specific details about trafficking operations across the country, and notable trends across different regions of the United States.

## Network Data and Research

### Massage Business National and State Networks<sup>194</sup>

To understand the scope of national and state networks, Polaris began with a base dataset from commercial sex “buyer board” Rubmaps.com, filtered to remove legitimate establishments that were reviewed by buyers complaining of the lack of sexual services, as well as those businesses that had no reviews at all.

That dataset was expanded using Thomson Reuters CLEAR and open-source information including business records and registrations, news articles, tax filings, financial information, massage regulation board and authority requirements, commercial sex websites, Yelp, Groupon, and geospatial data. We were then able to visualize connections between businesses and key operatives, mapping networks of IMBs, businesses, shell companies, commercial and residential property, and people across the country. In total, analysts identified and compiled more than 60,000 pieces of data to analyze IMB networks across the country.

### Recruitment Advertisements

Polaris used Google Translate to identify and roughly translate 17,791 ads that were active in July 2017 from California and New York, the two main ports of entry with some of the highest volume of IMB trafficking in the United States. While imperfect, these translations allowed us to identify trends and possible connections to IMB networks (based on listed phone numbers), to commercial sex websites, or to review and daily deals websites like Yelp, Living Social, or Groupon. For print, Polaris worked with a Mandarin-speaking translator to analyze 50 recruitment ads in the World Journal (a national Mandarin newspaper) and copies of Washington Chinese News (a Mandarin-language newspaper circulated locally to Polaris) that were published between August and November 2017. The translator also helped provide



interpretations for odd phrases or slang words found through Google Translate. A Korean-speaking Polaris Fellow researched a selection of online ads in 2016 and provided examples with translation to demonstrate fraud occurring within Korean ads.

## 50 State Legal Surveys

### Massage Establishment Ordinances

There are more than 35,000 jurisdictions (cities, counties and states) throughout the United States with the ability to inspect and regulate massage establishments. The cities that do not have the ability to independently inspect and regulate establishments are unincorporated, meaning they are administered by a larger division (e.g. a township, county). Polaris researchers have systematically examined the laws on the books across every jurisdiction in the United States to determine the status of their local massage establishment laws. This analysis included determining whether or not a jurisdiction had an existing regulation, as well as analyzing all existing regulations for their utility. One measurement for utility, for example, is whether massage establishments are viewed as venues of physical health or were categorized as adult-oriented businesses, and whether they contain provisions that would enable a jurisdiction to bring civil penalties against trafficking venues. Researchers analyzed the laws in all U.S. states, counties, cities, and inhabited U.S. territories.

### Shell Companies and Transparency

IMB networks sometimes include non-massage oriented commercial organizations. Often, these companies are shell corporations used to further the network's criminal enterprise. During the network mapping process, analysts reviewed the companies affiliated with IMB networks during the network mapping process to identify probable shell companies. Analysts then analyzed those shell companies on national and state levels to identify trends and

develop insight into how these shell corporations function within IMB networks.

Although there are national laws that govern shell company registration and transparency, analysts also examined laws governing shell companies in key states. Laws were analyzed based on their provisions and how they were implemented, and were then compared against observed patterns of shell companies within known IMB networks.

## Polaris Disruption Strategies

All Polaris Disruption Team research is initiated from and constantly informed by conversations with experts in the field (survivors, service providers, criminal justice professionals, legislators, financial professionals, and others). This iterative style of work allows us to identify best practices, lessons learned, and areas for further inquiry, and adapt our work based on the cutting edge information from the field.

The fact that illicit massage businesses operate in fully visible commercial storefronts sets them apart from most other types of sex trafficking, which take place outside the public eye. Registering as a business can serve as both a strength and a weakness for traffickers. Registering as a business allows them to advertise publicly on Backpage and Craigslist, use the cover of websites like Groupon and Yelp to appear legitimate, and easily launder money. The official business also provides its customers with a similarly convenient veneer of legitimacy. However, it also requires traffickers to provide information on publicly available business records. Despite traffickers' best efforts to obscure ownership by hiding behind shell companies and taking advantage of states and cities with weak business regulations, information from business records can still shed significant light on how IMBs are networked.

## Endnotes

- 1 While there have been reports of men trafficked in IMBs, often also in the case of serving male clientele, these cases are in the minority, and information on them is currently anecdotal, based on a handful of press pieces and service provider case studies.
- 2 Dank, Meredith, Bilal Khan, P. Mitchell Downey, Cybele Kotonias, Debbie Mayer, Colleen Owens, Laura Pacifici, and Lilly Yu. 2014. Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major U.S. Cities. *Urban Institute*.
- 3 A very conservative financial estimate was derived from a national average of 2 women per IMB. Again, using conservative reports, an average of 12 men will visit an IMB in a given day. Commercial sex review boards report that a standard visit nets the business \$60 per customer. All told, an IMB can easily make \$250,000 per year (rounding down to account for slower days). See *Methodology*, p. 79 of this report.
- 4 Bouche, V., & Crotty, S. (2017, September 27). Estimating Demand for Illicit Massage Businesses in Houston, TX. *Journal of Human Trafficking*. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/23322705.2017.1374080?journalCode=uhmt20>
- 5 *The Typology of Modern Slavery*. (2017, March 29). Polaris. Retrieved from <http://polarisproject.org/typology>
- 6 Client Findings from the Human Trafficking Intervention Courts (2015, October 21). *Restore NYC*. Retrieved from [https://issuu.com/restorenyc/docs/clientfindingsreport\\_2014](https://issuu.com/restorenyc/docs/clientfindingsreport_2014)
- 7 The examples listed for force, fraud and coercion are meant to be illustrative, not an exhaustive list.
- 8 We use the term “work” throughout the report, with the understanding that we are referencing labor trafficking, not lawful, consensual employment.
- 9 Hoppa, K. (2017, December 08). Investigators raid Waco massage parlors, arrest woman in prostitution ring. Retrieved from [http://www.wacotrib.com/news/police/investigators-raid-waco-massage-parlors-arrest-woman-in-prostitution-ring/article\\_082622cd-dec1-5846-b44e-fb02ec6d0c0d.html](http://www.wacotrib.com/news/police/investigators-raid-waco-massage-parlors-arrest-woman-in-prostitution-ring/article_082622cd-dec1-5846-b44e-fb02ec6d0c0d.html)
- 10 See *Shifting the Media Narrative to Increase Public Understanding, Decrease Public Tolerance*, p. 69 of this report.
- 11 Chicago massage. (n.d.). Retrieved from <http://chicago.backpage.com/Therapeutic-Massage>
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To get help, report a tip,  
or request information or  
training, call the "National  
Human Trafficking Hotline at  
1-888-373-7888 or send a text  
to Polaris by Texting HELP to  
BEFREE (233733).

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# SEX TRAFFICKING FACT SHEET



Sex trafficking is a modern-day form of slavery in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is under the age of 18 years. Enactment of the Trafficking Victims Protection Act of 2000 (TVPA) made sex trafficking a serious violation of Federal law. The TVPA also recognizes labor trafficking, which is discussed in a separate fact sheet.

As defined by the TVPA, the term ‘commercial sex act’ means any sex act on account of which anything of value is given to or received by any person.

The TVPA recognizes that traffickers use psychological and well as physical coercion and bondage, and it defines coercion to include: threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

## **Victims of Sex Trafficking and What They Face**

Victims of sex trafficking can be women or men, girls or boys, but the majority are women and girls. There are a number of common patterns for luring victims into situations of sex trafficking, including:

- A promise of a good job in another country
- A false marriage proposal turned into a bondage situation
- Being sold into the sex trade by parents, husbands, boyfriends
- Being kidnapped by traffickers

Sex traffickers frequently subject their victims to debt-bondage, an illegal practice in which the traffickers tell their victims that they owe money (often relating to the victims’ living expenses and transport into the country) and that they must pledge their personal services to repay the debt.

Sex traffickers use a variety of methods to “condition” their victims including starvation, confinement, beatings, physical abuse, rape, gang rape, threats of violence to the victims and the victims’ families, forced drug use and the threat of shaming their victims by revealing their activities to their family and their families’ friends.

Victims face numerous health risks. Physical risks include drug and alcohol addiction; physical injuries (broken bones, concussions, burns, vaginal/anal tearings); traumatic brain injury (TBI) resulting in memory loss, dizziness, headaches, numbness; sexually transmitted diseases (e.g., HIV/AIDS, gonorrhea, syphilis, UTIs, pubic lice); sterility, miscarriages, menstrual problems; other diseases (e.g., TB, hepatitis, malaria, pneumonia); and forced or coerced abortions.

Psychological harms include mind/body separation/disassociated ego states, shame, grief, fear, distrust, hatred of men, self-hatred, suicide, and suicidal thoughts. Victims are at risk for Posttraumatic Stress Disorder (PTSD) – acute anxiety, depression, insomnia, physical hyper-alertness, self-loathing that is long-lasting and resistant to change (complex-PTSD).

Victims may also suffer from traumatic bonding – a form of coercive control in which the perpetrator instills in the victim fear as well as gratitude for being allowed to live.

**National Human Trafficking Resource Center 1.888.3737.888**



### **Types of Sex Trafficking**

Victims of trafficking are forced into various forms of commercial sexual exploitation including prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution and sex tourism.

Victims trafficked into prostitution and pornography are usually involved in the most exploitive forms of commercial sex operations. Sex trafficking operations can be found in highly-visible venues such as street prostitution, as well as more underground systems such as closed-brothels that operate out of residential homes. Sex trafficking also takes place in a variety of public and private locations such as massage parlors, spas, strip clubs and other fronts for prostitution. Victims may start off dancing or stripping in clubs and then be coerced into situations of prostitution and pornography.

### **Assistance for Victims of Sex Trafficking**

When victims of trafficking are identified, the U.S. government can help them adjust their immigration status, and obtain support and assistance in rebuilding their lives in the United States through various programs. By certifying victims of trafficking, the U.S. Department of Health and Human Services (HHS) enables trafficking victims who are non-U.S. citizens to receive Federally funded benefits and services to the same extent as a refugee. Victims of trafficking who are U.S. citizens do not need to be certified to receive benefits. As U.S. citizens, they may already be eligible for many benefits.

Through HHS, victims can access benefits and services including food, health care and employment assistance. Certified victims of trafficking can obtain access to services that provide English language instruction and skills training for job placement. Since many victims are reluctant to come forward for fear of being deported, one of HHS' most important roles is to connect victims with non-profit organizations prepared to assist them and address their specific needs. These organizations can provide counseling, case management and benefit coordination.

If you think you have come in contact with a victim of human trafficking, call the **National Human Trafficking Resource Center at 1.888.3737.888**. This hotline will help you determine if you have encountered victims of human trafficking, will identify local resources available in your community to help victims, and will help you coordinate with local social service organizations to help protect and serve victims so they can begin the process of restoring their lives. For more information on human trafficking visit **[www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking)**.

**National Human Trafficking Resource Center 1.888.3737.888**

# DOMESTIC HUMAN TRAFFICKING SERIES: ADDRESSING DEMAND: WHY AND HOW POLICYMAKERS SHOULD UTILIZE LAW AND LAW ENFORCEMENT TO TARGET CUSTOMERS OF COMMERCIAL SEXUAL EXPLOITATION

2010 / 2011

## Reporter

23 Regent U.L. Rev. 297 \*

**Length:** 6532 words

**Author:** Laura J. Lederer\*

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## Text

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[\*297]

Introduction+

+ Cited throughout this Article are newspaper sources that help illustrate the widespread reach of human trafficking throughout the United States and abroad.

Human trafficking affects virtually every country, including the United States. <sup>1</sup> Since the passage of the Trafficking Victims Protection Act of 2000 <sup>2</sup> in the United States as well as the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, <sup>3</sup> many have worked to address this problem of modern-day slavery, from statesmen and stateswomen to world relief organizations and grassroots organizations. Even so, these crimes continue. Some

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<sup>1</sup> See U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 338-45 (10th ed. 2010). See generally id. at 55-359.

<sup>2</sup> Pub. L. No. 106-386, 114 Stat. 1466 (codified as amended in scattered sections of 22 U.S.C. (2000)).

<sup>3</sup> Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, opened for signature Dec. 12, 2000, 2237 U.N.T.S. 319.

estimate there are as many as twenty-seven million people trapped in some form of slavery worldwide.<sup>4</sup> Many of the slaves are women and children-bought, sold, and traded day after day for sexual exploitation.<sup>5</sup> In human trafficking, as in drug trafficking, there is a triangle of activity consisting of supply, demand, [\*298] and distribution.<sup>6</sup> This triangle of activity exists whether the trade is in forced labor or in commercial sexual exploitation-sex trafficking. This Article focuses on trafficking for purposes of commercial sexual exploitation.<sup>7</sup> The following diagram illustrates the triangle of activity in these cases: CHART

[SEE TABLE IN ORIGINAL]

Since the passage of the Trafficking Victims Protection Act, with its emphasis on victim rescue, rehabilitation, and restoration,<sup>8</sup> activity has centered on the "supply" side. Many organizations have designed comprehensive sets of services for trafficking victims, including short-term aid, such as food, clothing, shelter, medical attention, and legal services for those rescued.<sup>9</sup> In addition, "distribution" has also been a focal point, including the investigation, arrest, prosecution, and [\*299] successful conviction of traffickers.<sup>10</sup> Very little attention and few, if any, programs attend to the demand side of this triangle of activity.

This Article addresses some strategies for demand reduction. It suggests a four-point program for addressing demand and discusses ways that different jurisdictions can apply this program. The four points are as follows: (1) drafting laws that penalize patronizing and target customers and consumers of commercial sex; (2) creating first-offender programs, colloquially known as "John's Schools," to educate first offenders about the deleterious effects of commercial sexual exploitation; (3) creating sting and reverse-sting operations to assist law enforcement in identifying, arresting, and prosecuting buyers; and (4) developing social marketing campaigns that not only target exploiters, but also impress upon the general public the message of "no tolerance" for their actions. To put an end to commercial sexual exploitation of women and children in all of its various forms, society must recognize the larger need for continuing values-based and human rights approaches that acknowledge and affirm the dignity, integrity, and sacredness of a human life.

#### I. Penalizing Patrons of Commercial Sex

The first step that jurisdictions may take is to draft and pass laws that target demand, and then they must enforce these laws. In 1999, Sweden became the first country to introduce a law that specifically penalized the customers.

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<sup>4</sup> E.g., KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 8 (rev. ed. 2004).

<sup>5</sup> U.S. DEP'T OF STATE, *supra* note 1, at 9, 12, 34.

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<sup>7</sup> Using the term "commercial sexual exploitation of women and children" is a deliberate decision by the author, as it broadly encompasses domestic and international trafficking of persons for purposes of forced prostitution and other sexual services and additionally alludes to the economic component of the crime and the victim status of the women and children who are forced to participate.

<sup>8</sup> Pub. L. No. 106-386, § § 102, 105-07, 114 Stat. 1466.

<sup>9</sup> E.g., NYC OFFICE OF THE CRIMINAL JUSTICE, *HUMAN TRAFFICKING SERVS.: RES. DIRECTORY* (2011), available at <http://www.nyc.gov/html/endht/downloads/pdf/humantraffickingservicesresourcedirectory.pdf>; Services Available for Trafficking Victims, KY RESCUE & RESTORE VICTIMS OF HUMAN TRAFFICKING, <http://www.rescueandrestoreky.org/serving-victims/services-available/> (last visited Apr. 21, 2011).

<sup>10</sup> See, e.g., U.S. DEP'T OF STATE, *supra* note 1, at 45; Michael W. Savage, *State Legislatures Move To Combat Human Trafficking*, WASH. POST, July 19, 2010, at A3 (noting, however, that the increased attention on traffickers has not yet led to increased convictions).

<sup>11</sup> While selling sex is not a crime, buying it has become punishable by up to six months in prison since the passage of the law. <sup>12</sup> This ban on the purchase of sexual services was the first of its kind worldwide. The rationale behind the law, now a decade old, is that prostitution is a form of male violence against women and that it is therefore a form of discriminatory behavior. <sup>13</sup> Accordingly, the purpose of [\*300] this law was to take the onus off the women and children (the supply) and to transfer it to the men purchasing sex. <sup>14</sup>

A report by the government of Sweden evaluating the first ten years of the new approach found positive results. Street prostitution has been cut in half (and there is no evidence that the reduction in street prostitution has led to an increase in prostitution elsewhere, whether indoors or on the Internet). <sup>15</sup> Women have found increased services enabling them to exit prostitution, and fewer men state that they purchase sexual services. <sup>16</sup> Finally, the ban has had a chilling effect on traffickers who find Sweden an unattractive market in which to sell women and children for sex. <sup>17</sup> The law should also reduce pimping, pandering, brothels, and other activities that are already illegal, because if there is no demand, those who are involved in prostitution and related activities for profit will no longer be able to sustain their activities.

In the wake of Sweden's success, Norway recently adopted a similar law. <sup>18</sup> Commenting on the law's purpose, Norwegian Justice Minister Knut Storberget stated, "People are not merchandise, and criminalising the purchase of sexual services will make it less attractive for human traffickers to look to Norway." <sup>19</sup>

Many states in the U.S. have gender-neutral "soliciting" laws that can be utilized to arrest the men soliciting sex. <sup>20</sup> This approach is not as effective as the above-stated approaches, however, because even though these laws are gender-neutral on the books, they are rarely applied in a gender-neutral fashion. <sup>21</sup> Instead, the women or children forced into or trapped in prostitution are arrested for soliciting, while the customers are passed over. <sup>22</sup> Although this is a problem of poor and discriminatory [\*301] law enforcement rather than bad law, the problem remains. To

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<sup>11</sup> 6 ch. 11 § LAG OM F?RBUD MOT K?P AV SEXUELLA TJ?NSTER (Svensk f?rfattningssamling SFS 1998:408) (Swed.) ("A person who . . . obtains a casual sexual relation in return for payment [] shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months."). A penalty is also imposed for attempt. *Id.*

<sup>12</sup> See Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services*, 10 *VIOLENCE AGAINST WOMEN* 1187, 1192 (2004).

<sup>13</sup> See *id.* at 1189 ("In Sweden, prostitution is officially acknowledged as a form of male sexual violence against women and children. One of the cornerstones of Swedish policies against prostitution and trafficking in human beings is the focus on the root cause, the recognition that without men's demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able to flourish and expand.").

<sup>14</sup> *Id.* at 1191-92.

<sup>15</sup> *Statens Offentliga Utredningar* SOU 2010:49 *Forbud mot kop av sexuell tjanst En utvardering 1999-2008*, 34-36 [government report series] (Swed.).

<sup>16</sup> See *id.* at 33, 38.

<sup>17</sup> *Id.* at 37.

<sup>18</sup> *ALMINDELIG BORGERLIG STRAFFELOV STRAFFELOVEN [CIVIL PENAL CODE]* 2008:202a (Nor.) ("Any person who engages in or aids and abets another person to engage in sexual activity or commit a sexual act on making or agreeing payment . . . shall be liable to fines or to imprisonment for a term not exceeding six months or to both.").

<sup>19</sup> John Acher, *Norway Proposes Jail, Fines for Buying Sex*, *REUTERS*, Apr. 18, 2008, available at <http://www.reuters.com/article/idUSL18758677> (internal quotation marks omitted).

<sup>20</sup> E.g. *CAL. PENAL CODE* §§ 266, 266h (West 2008); *FLA. STAT. ANN.* § 796.07(2)(f) (West 2007); *720 ILL. COMP. STAT. ANN.* 5/11-14.1(a) (West 2002).

combat this inequitable application of the law, a few states, such as New York, have introduced higher penalties for customers,<sup>23</sup> but, unfortunately, there are some states that have higher penalties for the victims of prostitution.<sup>24</sup>

In various states, the legislatures have been working on creative strategies to combat commercial sexual exploitation, recognizing that many of those in prostitution are victims of human trafficking. These states have approached the problem from various angles.

In the state of Washington, for instance, a bill was signed into law in April 2010 that increased penalties for those who promote commercial sexual abuse of a minor and those who commit sexual abuse of a minor.<sup>25</sup> The effect of the legislation is to intensify the severity of the punishment for sexual contact with a minor, thereby addressing concerns of minors trafficked into prostitution in the state.<sup>26</sup> The crime of promoting commercial sexual abuse of a minor is now a Class A felony, in the same class as first-degree rape and first-degree assault, and the crime of buying a minor for sex is now a Class B felony, in the same class as arson.<sup>27</sup> Further, it is not a defense that the defendant did not know the **[\*302]** age of the victim.<sup>28</sup> Beside the heightened criminal sentences for these crimes, there are higher fines and punishments. If a car is used in the commission of the crime or the person arrested is the owner of the vehicle, the vehicle must be impounded, and the fine is \$ 2,500 to get the car back-a \$ 2,000 increase from the previous impounding fee.<sup>29</sup> As this is a new law, time is needed to determine whether its increased penalties and fines substantially deter "johns" from purchasing sex.

Some businesses, such as massage parlors and escort services, are fronts for prostitution, commercial sexual exploitation, and sex trafficking.<sup>30</sup> Therefore, another way to attack demand is to regulate these businesses by requiring them to obtain a license and to report their activity. This helps distinguish the legitimate businesses from those providing a facade for illegal activity. Colorado is one state that has taken this route. It requires licensing of escort agencies in the interest of the health, welfare, and safety of the people of the state.<sup>31</sup> The Colorado Escort Service Code, which has been in place since 1980,<sup>32</sup> requires a license for escort agencies to function and

<sup>21</sup> Dana Lynn Radatz, Systematic Approach to Prostitution Laws: A Literature Review and Further Suggestions 1-2 (May 10, 2009) (unpublished M.A. dissertation, Eastern Michigan University), available at <http://commons.emich.edu/cgi/viewcontent.cgi?article=1230&context=theses>. Radatz identifies subjective beliefs of police officers as one of the explanations for the discrepancy between legislation and enforcement. *Id.*

<sup>22</sup> *Id.* at 20.

<sup>23</sup> N.Y. PENAL LAW § 230.04 (McKinney 2008) ("A person is guilty of patronizing a prostitute in the third degree when he or she patronizes a prostitute. Patronizing a prostitute in the third degree is a class A misdemeanor."). Enhanced penalties are provided for patronizing a child less than fourteen years old. *Id.* § 230.05 ("A person is guilty of patronizing a prostitute in the second degree when, being over eighteen years of age, he patronizes a prostitute and the person patronized is less than fourteen years of age. Patronizing a prostitute in the second degree is a class E felony.").

<sup>24</sup> For example, in Louisiana, regardless of the number of times a person is charged with patronizing a prostitute, the penalty shall not exceed \$ 500 or imprisonment for six months. By contrast, a person who commits the offense of prostitution shall be fined in graduated amounts based on the number of offenses, with prison sentences increasing per offense as well. Compare LA. REV. STAT. ANN. § 14:82(B) (2004) (discussing the penalty and enhancements for prostitution), with § 14:83 (discussing the penalty for soliciting for prostitutes). See also KAN. STAT. ANN. § § 21-3512(b), -3515(2) (West 2009) (classifying prostitution as a Class B misdemeanor but patronizing a prostitute as only a Class C misdemeanor); UTAH CODE ANN. § § 76-10-1302(2), -1303(2) (LexisNexis 2011) (penalizing subsequent prostitution offenses with a heightened penalty but not penalizing subsequent patronization offenses with heightened penalties). For further state comparisons on penalties and other regulations regarding prostitution, see US Federal and State Prostitution Laws and Related Punishments, PROCON.ORG (Mar. 15, 2010, 1:33:55 PM), <http://prostitution.procon.org/view.resource.php?resourceID=000119>.

<sup>25</sup> Sex Crimes Involving Minors, S. 6476, 61st Leg., 2010 Reg. Sess. (Wash. 2010).

<sup>26</sup> While no particular section of the legislation explicitly mentions "sex trafficking," in the report for the bill, testimony regarding the bill references the importance of this enactment as a deterrent for "domestic minor trafficking." S. COMM. ON HUMAN SERVS. & CORR., AN ACT RELATING TO SEX CRIMES INVOLVING MINORS, S. 6476, 61ST LEG., at 3 (Wash. 2010).



mandates that any violation of the licensing requirement is a misdemeanor punishable by a maximum of \$ 5,000 or imprisonment for not more than one year, or by both. <sup>33</sup>

Once an application for an escort service is received by the city, a notice to the neighborhood and a public hearing are required. <sup>34</sup> At the public hearing, neighbors and neighboring businesses may testify regarding the needs and desires of the neighborhood, as well as the effects that the escort service could have on the health, welfare, or morals of the neighborhood. <sup>35</sup> The escort service licensing law also mandates that escort agencies require their patrons to sign contracts that explain that prostitution is illegal and that no act of prostitution shall be performed in relation to the services for which they contracted. <sup>36</sup>

Another way that states are pursuing regulation of demand for commercial sex is the approach taken by the state of Missouri. Missouri's recent law, passed in 2010, requires sexually oriented businesses to be **[\*303]** more than one thousand feet from pre-existing schools, day-care centers, places of worship, public parks, libraries, and residences or other sexually oriented businesses. <sup>37</sup> The term "sexually oriented business" encompasses adult bookstores or video stores, adult cabarets, adult motion picture theaters, semi-nude model studios, and sexual encounter centers. <sup>38</sup> This law also restricts the activity that is permitted in sexually oriented businesses. <sup>39</sup> The Missouri legislature explained that the purpose of the regulation was to minimize the impact of adverse secondary effects of such businesses, including drug use, blight on surrounding property, sexual assault and exploitation, and prostitution. <sup>40</sup> The legislature openly hopes to prevent the "negative secondary effects" associated with sexually oriented businesses from occurring. <sup>41</sup>

Similarly, Nebraska attempted to curb demand by two laws introduced in 2009. <sup>42</sup> Unfortunately, the bills did not gain the necessary support and have been indefinitely postponed. <sup>43</sup> Legislative Bill 444 would have created an escort agency and escort licensing requirement, similar to Colorado's Escort Service Code, <sup>44</sup> and Legislative Bill

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<sup>27</sup> 2010 Wash. Sess. Laws 2301, 2309-11; see also WASH. REV. CODE § § 9.68A.100(2), .101(2) (2011).

<sup>28</sup> WASH. REV. CODE § 9.68A.110(3) (2011).

<sup>29</sup> Id. § 9A.88.140 (2), (4)(a).

<sup>30</sup> See U.S. DEP'T OF STATE, *supra* note 1, at 77, 127; Joanne Kimberlin, Women for Hire, THE VIRGINIAN-PILOT, May 18, 2008, at 1 (reporting on the prevalence of prostitution operations under the guise of escort services); Kirk Semple, Human-Trafficking Suspect is Arrested While Gambling, N.Y. TIMES, Jan. 11, 2011, at A23 (discussing the arrest of a woman suspected of running a prostitution scheme under the masquerades of massage parlors, health spas, etc.).

<sup>31</sup> COLO. REV. STAT. ANN. § 12-25.5-102 (West 2010).

<sup>32</sup> Id. § 12-25.5-101.

<sup>33</sup> Id. § 12-25.5-113(1).

<sup>34</sup> DENVER, COLO., CODE § 7-320 (2010).

<sup>35</sup> Id.

<sup>36</sup> COLO. REV. STAT. ANN. § 12-25.5-112(2) (West 2010).

<sup>37</sup> MO. REV. STAT. § 573.531(1) (2010).

<sup>38</sup> Id. § 573.528(15).

<sup>39</sup> Id. § 573.531 (prohibiting full nudity, contact between semi-nude entertainers and patrons, selling or consuming alcohol on the premises, and patrons under the age of eighteen, as well as further requiring closure between the hours of midnight and 6:00 a.m.).

443 would have regulated sexually oriented businesses, similar to the Missouri Sexually Oriented Business Act.<sup>45</sup> The fact that these bills did not pass highlights the need for constituents and policy-makers to continue urging lawmakers to acknowledge the reality that many trafficking victims are bought, sold, and traded through state-allowed businesses, such as escort services, massage parlors, and karaoke bars.

The companion legitimate industry that often serves as a front for illegal prostitution, commercial sexual exploitation, and sex trafficking is the massage business. In 2004, lawmakers in San Francisco responded to community organizations that documented a serious problem of massage parlors serving as brothels. They introduced a regulation, effective as of July 2004, that required massage practitioners to obtain a permit to practice and required massage establishments to obtain [\*304] permits to operate a massage parlor.<sup>46</sup> The city's hope was to curtail the use of massage parlors as fronts for prostitution.<sup>47</sup> Some of the operational requirements for a massage establishment include the prohibition of mattresses and beds in massage rooms, the prohibition of locks on any door to a room where a massage is being conducted, a clothing requirement for the massage practitioners, and a prohibition of alcohol on the premises.<sup>48</sup>

Another related example of local community legal action against commercial sexual exploitation occurred in the Los Angeles metropolitan area in 1992. The "concern that businesses that cater to private karaoke parties were actually . . . fronts for prostitution and video sex prompted Monterey Park officials to temporarily ban the businesses, called KTV."<sup>49</sup> A "twist" on the popular karaoke bars, KTV had multiplied across the western San Gabriel Valley.<sup>50</sup> KTV used buildings divided into small rooms to allow for private karaoke parties.<sup>51</sup> Law enforcement officials conducting surveillance on other crimes found that the businesses were a haven for prostitution, pornography, and gang activity.<sup>52</sup> The Monterey Park City Council voted to impose a forty-five-day moratorium on KTV while the city assumed measures to prevent illegal activities.<sup>53</sup> The ban was later extended for a year.<sup>54</sup>

<sup>40</sup> Id. § 573.525(1)-(2)(1).

<sup>41</sup> Id. § 573.525(2)(3).

<sup>42</sup> Leg. B. 443, 444, 101st Leg., 1st Sess. (Neb. 2009).

<sup>43</sup> LEGIS. JOURNAL, 101st Leg., 2d Sess., at 423, 1467 (Neb. 2010).

<sup>44</sup> Neb. Leg. B. 444.

<sup>45</sup> Neb. Leg. B. 443.

<sup>46</sup> S.F., CAL., HEALTH CODE art. 29, § § 1901(a), 1908(a) (2010).

<sup>47</sup> See id. § 1929 (discussing the interaction between the Department of Public Health and law enforcement necessary to deter common issues with massage parlors, such as trafficking); cf. Robert Selna, An Ambiguous Attitude Toward Massage Parlors, S.F. CHRONICLE, Jan. 5, 2009, at A1 (discussing San Francisco's struggle to deter massage parlors from fronting for prostitution through licensing legislation and sting operations).

<sup>48</sup> S.F. DEP'T OF PUB. HEALTH, MASSAGE PROGRAM RULES & REGULATIONS FOR MASSAGE PRACTITIONER PERMIT AND ESTABLISHMENT PERMIT TO OPERATE § XI (2009). Additionally, the municipality has since repealed the permit requirement that these establishments close at midnight in favor of a more stringent closing hour of 10:00 p.m. HEALTH art. 29, § 1918(b).

<sup>49</sup> Private Karaoke Parties Temporarily Banned, L.A. TIMES, Mar. 11, 1992, at B2.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

Laws regulating various aspects of karaoke bars are now being considered in China, Thailand, Vietnam, the Philippines, and a number of other countries. <sup>55</sup> As one commentator said, "We call them karaoke [**\*305**] bars, or KTV's, but they're not karaoke and they're not bars. . . . These places are brothels masquerading as respectable establishments." <sup>56</sup>

These new laws are some examples of attempts to address commercial sexual exploitation, prostitution, and sex trafficking, recognizing that many in prostitution are minors or trafficking victims. The goal of the various legislation and regulations is to make it more difficult to find sex for purchase, reducing the amount of sex for sale on the streets and in businesses and making it more difficult for men to purchase sex. As such, each approach can be considered helpful in reducing, and ultimately eradicating, demand.

## II. First-Offender Programs

Communities are additionally experimenting with rehabilitation programs-colloquially called "John's Schools"-for men who have been arrested for soliciting for prostitution. These schools were the brainchild of the late Norma Hotaling, who, after founding her own advocacy and victim services organization called Standing Against Global Exploitation (SAGE), united with the San Francisco District Attorney's Office to co-found the first-of-its-kind class for "johns," titled the First Offender Prostitution Program ("FOPP"), in 1995. <sup>57</sup> This program has been replicated in roughly forty other U.S. cities. <sup>58</sup> These schools operate much like the weekend driver's training schools for reckless drivers who are first-time offenders. They offer first-time offenders who have been arrested for soliciting an adult for prostitution an opportunity to go to school to learn the deleterious effects of their behavior. <sup>59</sup> The programs [**\*306**] also offer to drop the solicitation charges if the offenders attend the class. <sup>60</sup> In "John's Schools," they hear from victims of trafficking, learn about the nature, scope, and harm of trafficking, and are forced to examine their own motivations for buying sex. <sup>61</sup>

<sup>54</sup> Moratorium on KTV Businesses Extended, L.A. TIMES, Apr. 29, 1992, at B2.

<sup>55</sup> See Zhang Yan, Vice Crackdown Moves to Bars, CHINA DAILY, July 16, 2010, at M1 (discussing law enforcement's efforts to "crack down" on KTVs and bath houses "to create a safe, civilized and healthy cultural environment"); Ban Lifted on New Discos, Karaoke Joints, VIET. NEWS AGENCY, Nov. 12, 2009, available at <http://en.baomoi.com/Home/society/en.vietnamplus.vn/Ban-lifted-on-new-discos-karaoke-joints/20578.epi> (discussing the limitations placed on discos and karaoke bars); Cebu Lawmaker Asks DOH To Step Up Info Campaign vs HIV, PHIL. NEWS AGENCY, Feb. 1, 2010, available at <http://balita.ph/2010/02/01/cebu-lawmaker-asks-doh-to-step-up-info-campaign-vs-hiv/> (considering regulation of KTVs and bars as necessary to decrease the spread of HIV in the Philippines); Laying Down the Law, THE NATION, July 29, 2009, available at 2009 WLNR 14666931 (discussing Thailand's prohibition on drinking in karaoke bars).

<sup>56</sup> Karaoke Bars or KTV's, ENJOY CEBU! (Feb. 4, 2009, 12:18 AM), <http://cebunightlifegalore.blogspot.com/2009/02/karaoke-bars-or-ktvs.html>.

<sup>57</sup> Norma Hotaling & Leslie Levitas-Martin, Increased Demand Resulting in the Flourishing Recruitment and Trafficking of Women and Girls: Related Child Sexual Abuse and Violence Against Women, 13 HASTINGS WOMEN'S L.J. 117, 120-21 (2002).

<sup>58</sup> Michael Shively et al., Final Report on the Evaluation of the First Offender Prostitution Program: Report Summary 97, 99-100 (Mar. 7, 2008) (unpublished report), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf>; see also Miyoko Ohtake, A School for Johns, NEWSWEEK, July 24, 2008, <http://www.newsweek.com/2008/07/23/a-school-for-johns.html>.

<sup>59</sup> See Meredith Flowe, The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand, 35 N.C. J. INT'L L. & COM. REG. 671, 717 (2010). It is critical to reiterate that the FOPP programs are available only to first-time offenders who solicited an adult-not an offender who solicited a child. See Eligibility Criteria for the San Francisco Pre-Trial Diversion Project, Inc., S.F. PRETRIAL DIVERSION PROJECT, INC., <http://www.sfpretrial.com/eligibilitycriteria.html> (last visited Mar. 22, 2011).

<sup>60</sup> See Flowe, *supra* note 59, at 716-17 (explaining some of the techniques used to reform "johns").

The original FOPP in San Francisco is an eight-hour class for a fee of \$ 1,000.<sup>62</sup> The program's administrative fees fund intervention services for women and girls.<sup>63</sup> The class is taught by sex-trafficking experts, health educators, and neighborhood activists.<sup>64</sup> A 2008 Department of Justice Study found that following the implementation of FOPPs, both San Francisco and San Diego experienced drops in recidivism rates, with San Diego's recidivism rate dropping to less than half of what it was prior to implementation.<sup>65</sup>

There are presently many variants of the FOPP initial model. Some jurisdictions are choosing not to have as substantial a program fee for the offender as the FOPP in San Francisco,<sup>66</sup> some have shorter or longer time commitments,<sup>67</sup> and many emphasize different educational components.<sup>68</sup> The original FOPP is now fifteen years old, but most of the programs only started operating in the last several years.<sup>69</sup> The time is therefore ripe to undertake a comprehensive, comparative analysis of the effectiveness of various schools, highlighting the best practices and components of a successful "John's School." In addition, it is important to examine the program's amenability to replication and the overall effectiveness of the model in different regions of the country and around the world. Presently, it is encouraging that city governments and concerned citizens are beginning to understand that one of the most important tactics in fighting commercial sexual exploitation and sex [\*307] trafficking is an active attempt to deter those who purchase women and children by educating the buyers of sex about the effects of their crime.

### III. Sting Operations and Reverse-Sting Operations

A critical component of any effective demand reduction effort is identification of the customer/consumer/exploiter. Law enforcement plays a key role in curbing demand. According to the Community Oriented Policing Services of the U.S. Department of Justice, police departments get substantial and highly publicized results from conducting prostitution sting operations and reverse-sting operations.<sup>70</sup>

In sting operations, police officers pose as prostitutes to identify and arrest customers. In reverse-sting operations, police officers pose as customers seeking to find sex for hire. Posed as clientele, once the officers are inside supposed massage parlors or other front operations, they make arrests after determining illegal activity is taking

<sup>61</sup> Id. at 716.

<sup>62</sup> Id. at 716-17.

<sup>63</sup> First Offender Prostitution Program (FOPP), STANDING AGAINST GLOBAL EXPLOITATION (SAGE), <http://www.sagesf.org/html/aboutservicesfopp.htm> (last visited Mar. 22, 2011); see also Hotaling & Levitas-Martin, supra note 57, at 121 (further elaborating on the uses of the funds).

<sup>64</sup> Shively et al., supra note 58, at 18-19; see also Justin Berton, Repentant Johns Taught Realities of the Sex Trade, S.F. CHRON., Apr. 14, 2008, at A1.

<sup>65</sup> Shively et al., supra note 58, at v-vi .

<sup>66</sup> For example, the "John's School" in Brooklyn, New York, only charges a \$ 250 fee for participation, while the program in Norfolk County, Virginia, charges \$ 1500. Id. at 106.

<sup>67</sup> For example, the "John's School" in Denver, Colorado, requires offenders to attend two four-hour sessions in addition to twenty to forty hours of community service, while the program in Orange County, New York, consists of a single five-hour session. Id.

<sup>68</sup> Id. at vii (addressing the variations in "John's Schools" across the U.S.).

<sup>69</sup> See Hotaling & Levitas-Martin, supra note 57, at 120; Shively et al., supra note 58, at 104-05 (noting the years that "John's Schools" across the United States started).

<sup>70</sup> See GRAEME R. NEWMAN, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEPT' OF JUSTICE, Sting Operations, at 5-6 (Response Guides Ser. No. 6, 2007), available at <http://www.cops.usdoj.gov/files/ric/Publications/e10079110.pdf> ("When sting operations are concluded, they usually result in many arrests of high-profile people, accompanied by local and national publicity.").

place.<sup>71</sup> Some researchers have concluded that such operations have had no overall effect on clients, but new studies, such as a study by Devon Brewer, highlight evidence that the threat of arrest alone serves to deter men from soliciting sex.<sup>72</sup>

The Internet has added a modern twist to the traditional sting operation. In online sting operations, police detectives pose as potential buyers or sellers of sex on Internet-based sites to gather evidence for cases. Law enforcement has especially targeted online personal advertisements, such as those seen on Craigslist and other similar sites.<sup>73</sup> Because the Internet is increasingly being utilized by traffickers, [\*308] police have successfully uncovered many cases of illegal activity, such as child sex trafficking, in these new sting operations.<sup>74</sup>

#### IV. Social Marketing Campaigns

This fourth method is the development of incisive, targeted social marketing campaigns-aimed primarily at young men and boys, but also at young women and girls-about why it is harmful to purchase sex. The key is to reach young people in their formative years, before they become part of the sex industry.<sup>75</sup> Experts studying First Offender Programs have reported men saying, "Why didn't I hear any of this twenty years ago?"<sup>76</sup> Such campaigns can take as their starting point tailored programmatic materials from First Offender Programs. Their focus should be on everything from public health problems, like the spread of HIV/AIDS and other STDs (as well as other serious communicable diseases such as TB, hepatitis, and Epstein Barr syndrome), to the grim facts about who runs the sex industry and how customers are helping traffickers, street gangs, organized crime, and other criminal syndicates to flourish-while hurting those who have been trafficked.

Although this may seem like an overwhelming task, successful social marketing campaigns purposed to change hearts, minds, and [\*309] behaviors on other social issues are instructive. Consider, for example, the campaigns to curb domestic violence or, on another health-related topic, to stop cigarette smoking. Enormous positive behavioral changes have been documented in these areas after non-profit, health, and governmental agencies

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<sup>71</sup> See, e.g., Julie Pearl, Note, The Highest Paying Customers: America's Cities and the Costs of Prostitution Control, 38 HASTINGS L.J. 769, 775 (1987) (discussing the process of an undercover sting operation).

<sup>72</sup> Compare NEWMAN, *supra* note 70, at 20 (noting that some studies have shown sting operations to be ineffective as deterrence), with Devon D. Brewer et al., A Large Specific Deterrent Effect of Arrest for Patronizing a Prostitute, 1 PLOS ONE 1, 6 (2006), available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0000060> (noting that the arrests of prostitution customers "decreased their patronizing behavior substantially").

<sup>73</sup> Robert Rigg, The Not-So-Risky Business of High-End Escorts and the Internet in the 21st Century, 17 RICH J.L. & TECH. P 38 (2010) (quoting *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 962 (N.D. Ill. 2009)), <http://jolt.richmond.edu/v17i1/article3.pdf>; see also Bruce Lambert, As Prostitutes Turn to Craigslist, Law Enforcement Takes Notice, N.Y. TIMES, Sept. 5, 2007, at A1.

<sup>74</sup> For example, the first human trafficking conviction in Canada involved two teenage girls who were advertised in online advertisements. See Benjamin Perrin, Bill C-268: Minimum Sentences for Child Trafficking Needed, ALTA L. REV. ONLINE SUPPLEMENT (Mar. 12, 2009, 6:40 PM), <http://ualbertalaw.typepad.com/alrsupplement/2009/03/bill-c-268-minimum-sentences-for-child-trafficking-needed.html>; Bob Mitchell, Teens' Pimp Got Rich; Man Who Sold Girls, 14 and 15, for Sex is One of First To Be Convicted of Human Trafficking Since 2005 Law, TORONTO STAR, May 14, 2008, at A06. One victim, who was eighteen years old when she finally escaped from over two years of sexual slavery, had been sold along with a fourteen-year-old girl. *Id.* This is not an isolated instance either; numerous cases of online sex trafficking, child sex trafficking, and commercial sexual exploitation of children have been documented in the U.S. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-915, HUMAN TRAFFICKING: A STRATEGIC FRAMEWORK COULD HELP ENHANCE THE INTERAGENCY COLLABORATION NEEDED TO EFFECTIVELY COMBAT TRAFFICKING CRIMES 51-52 (2007) (noting the increasing number of child convictions).

The fact that Craigslist removed its erotic services sections from its listings in the United States and Canada last year does not mean that there is no need for continuing surveillance and sting operations online. See, e.g., JR Raphael, Craigslist's 'Erotic Services' Shutdown Could Backfire, PC WORLD (May 13, 2009, 3:39 PM), <http://www.pcworld.com/article/164860/craigslistseroticservicesshutdowncouldbackfire.html>. As online industry experts have

designed and executed a series of campaigns, primarily targeted at youth, to reduce smoking.<sup>77</sup> Efforts to reduce cigarette smoking have included the following: 1) providing effective smoking-cessation interventions and guidelines tailored to youths and young adults in school, work, and community settings; 2) conducting counter-marketing campaigns designed to help young people reject messages promoting cigarette use; 3) reducing access by minors to tobacco products; 4) increasing access to school programs for preventing tobacco use; and 5) monitoring smoking trends among youths and young adults.<sup>78</sup> Substitute "commercial sexual exploitation" for "smoking," and we have a starting point for a social marketing campaign to counter demand for commercial sex.<sup>79</sup>

One U.S. city that has taken the lead on a social marketing campaign against commercial child sexual exploitation is Atlanta. Concerned parties in Atlanta became aware of the magnitude of the commercial exploitation of children in their city and became determined to raise awareness in the region. In November of 2006, the city unveiled a public service announcement campaign entitled "Dear John."<sup>80</sup> The [\*310] campaign consisted of a few poignant public service announcements and posters.<sup>81</sup> One such announcement featured the mayor, Shirley Franklin, who spoke as if she were writing a letter to a "john," demanding that he not exploit the children of Atlanta.<sup>82</sup> Other videos were more shocking, including a spot featuring a normal-looking middle-aged white male stating how much he enjoyed the young girls of Atlanta and how easy they were to come by.<sup>83</sup> The "Dear John" campaign was backed by a large coalition of law enforcement, non-profits, and public servants.<sup>84</sup> Unfortunately programs such as these are finding it challenging to continue to be in operation due to a lack of funding.<sup>85</sup>

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noted, these advertisements will now be dispersed in other online venues. Id. In addition, other similar listing and advertising services also carry such advertisements. It is therefore crucial to continue monitoring these activities.

<sup>75</sup> See Flowe, *supra* note 59, at 717-18.

<sup>76</sup> Laura J. Lederer, Addressing Demand: Examining New Practices-The Five S's, GLOBAL CENTURION, <http://www.globalcenturion.org/?pageid=83> (last visited Mar. 4, 2011) (quoting Interview with Norma Hotaling, founder of SAGE, by Laura Lederer (Jan., 2007)).

<sup>77</sup> See DEP'T OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUNG PEOPLE: A REPORT OF THE SURGEON GENERAL (1994), reprinted in U.S. DEP'T OF EDUC., YOUTH & TOBACCO: PREVENTING TOBACCO USE AMONG YOUNG PEOPLE 145-51 (1994); City's High Schools Have Fewer Smokers, NEWSDAY, Jan. 3, 2008, at A15 (remarking on the reduction in teen smoking as a result of New York City's multi-faceted approach); Domestic Violence Falls if Crime Taken Seriously, PALM BEACH POST, July 10, 2005, at 2E (noting the dramatic decrease in reports of domestic violence due to the law enforcement efforts).

<sup>78</sup> DEP'T OF HEALTH & HUMAN SERVS., *supra* note 77, at 5, 6, 8, 9, 132, 133-34, 139-40, 145, 146 (1994).

<sup>79</sup> A thorough study of the prolonged campaign to reduce cigarette smoking in young people is a useful starting point. The U.S. Department of Health and Human Services, in conjunction with the Center for Disease Control and Prevention and other health agencies, funded a series of studies over many decades on effective efforts to reduce smoking. See *id.* at 5; see also *id.* at 132. The report observed that tobacco use usually begins during adolescence or young adulthood, and it agreed that preventing smoking initiation among youths and young adults is critical to reducing tobacco use in the United States. *Id.* at 5-6, 8. It noted that young people constitute a profitable market for the tobacco industry and that adolescents are the target of intensive tobacco industry marketing efforts, including sponsorship of age-specific promotions and other marketing strategies that appeal to persons in these age groups. See *id.* at 9, 145. Similar campaigns must be developed to counter demand. *Id.* at 5, 8, 132-33, 145.

<sup>80</sup> Dear John Campaign, CITY OF ATLANTA (Nov. 6, 2006), <http://www.atlantaga.gov/mayor/dearjohn111006.aspx>; see also Kimberly Kotrla, Domestic Minor Sex Trafficking in the United States: Report, 55 SOC. WORK 181 (2010), available at 2010 WLNR 8848636 (further discussing the campaign).

<sup>81</sup> See, e.g., CITY OF ATLANTA, *supra* note 80.

<sup>82</sup> *Id.* (featuring a copy of the letter that the mayor read during the public service announcement).

<sup>83</sup> See Fighting Child Prostitution (PBS television broadcast May 30, 2008), available at <http://www.pbs.org/now/shows/422/transcript.html>.

<sup>84</sup> CITY OF ATLANTA, *supra* note 80.

## Conclusion

At the heart of the problem of sex trafficking is an increasing commodification in our modern society that extends even to human beings—a belief that anything, even a life, can be bought anytime, anywhere, any place, for any purpose. This license masquerades as liberty and allows the worst kinds of exploitation to flourish. In addition to legal and educational solutions, we must continue to work as a global community to develop religious and values-based visions that promote the dignity, integrity, sacredness, and worth of all human beings. We are in the foothills of consciousness in addressing demand for sex. Considered attention to the demand corner of the triangle of activity of supply, demand, and distribution will help us achieve our goal of eradicating human trafficking—a modern-day form of slavery.

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<sup>85</sup> Compare Letitia Campbell, *Selling Our Children: Atlanta Does Battle Against the Sex Trafficking of Kids*, SOJOURNERS MAG., Aug. 1, 2010, at 22 (speaking on the continued success of Atlanta's stance against commercial sexual exploitation), with Scott Bauer, *Budget Battles Keep States from Tackling Reforms*, ASSOCIATED PRESS, July 4, 2009, available at 2008 WLNR 15990391 (noting the halt of certain state reform programs due to budget constraints, such as Rhode Island's inability to resolve a legal loophole in its prostitution laws), and S.A. Reid, *Campaign Under Way To End Child Prostitution*, ATLANTA J.-CONST., Aug. 24, 2008, at 10D (noting some looming funding uncertainty for Atlanta's campaign against child prostitution).

# ARTICLE: ONLINE PROSTITUTION AND TRAFFICKING

2013 / 2014

## Reporter

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## Highlight

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You are not safer because you work indoors. Craigslist is just the "internet streets," where the same predators and hustlers are meeting you with the same intentions except they look like straight people who go to medical school and have Blackberrys.

I consider myself in the same risk and danger zones as a street worker. I am an upper working class anonymous client worker. <sup>1</sup>

## Text

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[\*1039]

### I. Introduction

The use of Internet technologies to traffic women and children to prostitution will be described in this article. We will summarize the history of online trafficking and the remarkably effective use of the Internet for advertising prostitution locally, regionally, and internationally beginning with the development of social networking sites, discussion forums, message boards and online chats. Examples of sex buyers', pimps', and traffickers' use of the Internet and online classified advertising sites will be provided.

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<sup>1</sup> Marikopassion, An Outlaw's Insurance Policy, Bound, not Gagged (Mar. 7, 2010), <http://deepthroated.wordpress.com/2010/03/07/an-outlaws-insurance-policy/>.



We will also summarize the empirical evidence for the psychological and physical harms of trafficking for prostitution and will discuss the risks of compartmentalizing arms of the sex trafficking industry that are in fact elements of multinational, constantly expanding, businesses. False distinctions have been [\*1040] erected between online and offline prostitution, child and adult prostitution, indoor and outdoor prostitution, pornography and prostitution, legal and illegal prostitution, and prostitution and trafficking.

We will discuss what is known about the involvement of organized crime in online trafficking, and summarize several successful cases brought against online traffickers. We describe public campaigns and educational boycotts against online traffickers and the development of online alternatives to the sex trafficking industry. There has been a range of legal responses to the crimes of prostitution and trafficking. Prosecutorial challenges in this newly developing field include the anonymity of the Internet, blurred jurisdictional boundaries, reluctance to prosecute prostitution cases where there is no evidence of physical coercion, and a very slowly increasing number of cases brought using existing legislation, in part because of the need for special training of criminal justice personnel. Nonetheless, there are tools available that provide both criminal and civil remedies.

Compartmentalization of the various arms of the sex industry, regardless of their location or legal status, has confused and sometimes derailed policymakers, the public, and law enforcement and has resulted in a failure to understand prostitution and trafficking as crimes against vulnerable women and children. Prostitution is the sale of a sex act.<sup>2</sup> Payment for sexual use is usually made in cash but can also be made in housing, food, drugs, clothes, gas, or other basic needs.<sup>3</sup> For young women with few alternatives, Internet prostitution is a portal into the sex trafficking industry.<sup>4</sup> Prostitution is glamorized and mainstreamed for women who believe the recruitment messaging, "prostitution is fun!" "sexy!" and "you make tons of money!"<sup>5</sup> Online classified websites [\*1041] Backpage, myredbook, escortpost, theeroticreview and others have sections advertising prostitution - thus functioning as online brothels. Craigslist was described as "training wheels" for selling sex.<sup>6</sup> In third world or recessionary economies, prostitution is a last-ditch survival option for poor young women or for women who are marginalized because of racism.<sup>7</sup> Korean women, for example, are recruited by traffickers for prostitution in the United States via Internet advertising.<sup>8</sup> An advertisement aimed at financially vulnerable women on the cafeduum.net website read: "We know that in Korea these days, unemployment, the recession and the Special Law on Prostitution make it hard to earn even half of what you made before."<sup>9</sup> Enticing the women into prostitution, the traffickers then specify how much money can be made in a bar or massage parlor, declaring: "Advances possible. We take care of visas and bad credit."<sup>10</sup>

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<sup>2</sup> Slight variations on that definition occur by state. For example, Nevada defines prostitution as follows: "'Prostitution' means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value." Nev. Rev. Stat. Ann. § 201.295(5) (Lexis-Nexis 2014).

<sup>3</sup> See, e.g., Stephanie Mencimer, *Brave New Welfare*, Mother Jones, Jan.-Feb. 2009, at 40, 45, available at <http://www.motherjones.com/politics/2009/01/brave-new-welfare>; Nathan Hardin, *Woman Charged with Prostituting for Gas*, Salisbury Post, (Jan. 15, 2012, 12:20 AM), <http://www.salisburypost.com/Crime/072111-WEBcouplechargedwithprostitution-qcd>.

<sup>4</sup> See Bill McAllister, *From Streetwalking to the Information Superhighway: The New Method in Prostitution, Police Prostitution & Pol.* (July 30, 2011, 2:17 PM), <http://goo.gl/KoussU>.

<sup>5</sup> See, e.g., Phoebe Kay, *On the Wrong Side of a Craigslist Ad*, Salon (Sept. 8, 2010, 9:01 PM), [http://www.salon.com/life/sex\\_work/?story=/mwt/feature/2010/09/08/i\\_was\\_craigslist\\_escort](http://www.salon.com/life/sex_work/?story=/mwt/feature/2010/09/08/i_was_craigslist_escort).

<sup>6</sup> Nick Lucchesi, *Cops Pimp Slap Craigslist on "Erotic Services" Listings*, RFT Blogs, (Nov. 7, 2008, 3:18 PM), [http://blogs.riverfronttimes.com/stlog/2008/11/cops\\_pimp\\_slap\\_craigslist\\_on\\_erotic\\_services\\_listings\\_prostitution\\_rings\\_internet\\_prostitutes.php](http://blogs.riverfronttimes.com/stlog/2008/11/cops_pimp_slap_craigslist_on_erotic_services_listings_prostitution_rings_internet_prostitutes.php).

<sup>7</sup> Timothy C. Lim, *The Dynamics of Trafficking, Smuggling and Prostitution: An Analysis of Korean Women in the U.S. Commercial Sex Industry 1* (2008), available at [http://instructional1.calstatela.edu/tclim/articles/Final\\_report\\_Lim2.pdf](http://instructional1.calstatela.edu/tclim/articles/Final_report_Lim2.pdf).

<sup>8</sup> *Id.* at 21.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Most contemporary legal definitions of trafficking do not require physical movement, but rather coercion, force, fraud, or abuse of power to trap a victim in an exploitive situation. In some international legal definitions, consent is irrelevant.<sup>11</sup> For the purposes of this article, we will use a definition of trafficking like that used in the Trafficking Victims Protection Act: "The recruitment, [enticement,] harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act."<sup>12</sup>

Prostitution often meets the legal definition of human trafficking in that pimping or third-party control of a prostituted person cannot be distinguished from the identical crimes perpetrated in trafficking.<sup>13</sup> According to estimates from eighteen sources [\*1042] including research studies, government reports, and nongovernmental agencies, on average 84% of women in prostitution are under third-party control or pimped or trafficked.<sup>14</sup>

Fifty years ago pimps coerced women to solicit on the street [\*1043] where they were advertised to the relatively limited marketplace of sex buyers who evaluated the women's physical appearances and made selections on the street corner. Prostitution is now a business that is advertised on the Internet, expanding the reach of pimps to a wider market of potential sex buyers. Women can be sold for 15 minutes or for a week for johns' sexual use, selected and purchased online like a rental car. As the following evidence shows, the vast majority of prostitution today takes place online. Police in Syracuse, New York estimated that 90% of that city's prostitution trade had gone online between 2009 and 2011.<sup>15</sup> Eighty-eight percent of sex buyers in a 2011 research study had bought women and children for sexual use indoors via Internet-advertised escort agencies, strip clubs, gentlemen's clubs, brothels, and massage parlors.<sup>16</sup> In the early 2000s, about half of all searches on the Internet search engine AltaVista were related to the business of sexual exploitation.<sup>17</sup>

The Internet and computer technology have been developed and exploited by sex businesses to offer prostitution to men across the globe.<sup>18</sup> Internet websites provide contact information, specifics on sexual acts that will be performed, pornography of the woman to be sold for sex, coded prices, and reviews by sex buyers.<sup>19</sup> Technology,

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<sup>11</sup> See, e.g., Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Annex 2, art. 3(b), Nov. 15, 2000, 2237 U.N.T.S. 319 ("The consent of a victim of trafficking in persons ... shall be irrelevant ...").

<sup>12</sup> 22 U.S.C. § 7102(9) (2012).

<sup>13</sup> Noting the impossibility of separating prostitution from trafficking in the real world, a 2006 report by Sigma Huda, United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children noted that prostitution as it is practiced "usually does satisfy the elements of trafficking." U.N. Econ. & Soc. Council, Comm. on Human Rights, Integration of the Human Rights of Women and a Gender Perspective: Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, P42, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006).

<sup>14</sup> To calculate the number 84% as an estimate of those who were under third-party control, pimped, or trafficked we used either whole number estimates or whole numbers based on the midpoint of a given estimated range. In the United States, 80-90% of those in prostitution had pimps. See Jacqueline B. Helfgott, *Criminal Behavior: Theories, Typologies, and Criminal Justice* 301 (2008); Jean Faugier and Mary Sargeant, *Boyfriends, 'Pimps' and Clients*, in *Rethinking Prostitution: Purchasing Sex in the 1990s* 119-34 (Graham Scambler & Annette Scambler eds., 1997). In New York City, a pimp estimated that "70% of women working in New York City as prostitutes are being compelled to do so by pimps who use beatings and drugs, and most importantly the threat of jail, to keep their girls in line." *Prostitution - Legalize or Decriminalize?*, Davis2013.com (July 30, 2012), <http://davis2013.com/prostitution-legalize-or-decriminalize/>. In Italy, the European Union estimated that 80 % of those in prostitution were trafficked. Scelles Foundation, *Sexual Exploitation: Prostitution and Organized Crime* 173 (2012), [http://www.fondationscelles.org/pdf/rapport\\_mondial\\_sexual\\_exploitation\\_prostitution\\_Fondation\\_Scelles.pdf](http://www.fondationscelles.org/pdf/rapport_mondial_sexual_exploitation_prostitution_Fondation_Scelles.pdf). In Poland, 90% of prostitution along the roads was assumed to be controlled by organized criminal groups. *Id.* at 233. In Amsterdam 50 to 90% of women in prostitution in the red-light district were considered likely victims of Turkish, Hungarian, Romanian, and Bulgarian human trafficking networks, including those working in legal clubs and brothels, according to the Dutch national police Korps Landelijke Politiediensten (KLPD). *Id.* at 211. In Spain, more than 90% of women in prostitution were victims of human trafficking. *Id.* at 268. In Bulgaria, RiskMonitor Foundation estimated that more than 95% of those in prostitution have pimps linked to organized crime. *Id.* at 64. In Germany SOLWODI estimated that 80% of women in prostitution are placed "under strong pressure and have no alternatives. This pressure may come from a partner or even their family, who send them abroad to work and send money back." Eur. Consult. Ass., *Prostitution, Trafficking and Modern Slavery in Europe*, Doc. No. 13446, at 12

smartphones and other digital devices make it possible to conduct business, advertise, and increase earnings from women who have for the most part been trafficked or coerced by a combination of joblessness, poverty, racism, and sexism into sex businesses.<sup>20</sup> [\*1044] Bitcoin,<sup>21</sup> an unregulated online currency that unlike credit cards provides the anonymity of cash, is being used to pay for web access to sites containing extremely violent or illegal images of real women and children, including online auctions of them.<sup>22</sup> Adapted by traffickers, pimps, and pornographers, the global reach of the Internet has facilitated sex buyers' access to prostituted women and children, thereby increasing sex trafficking.<sup>23</sup> The Internet has facilitated prostitution's shift from the street to indoor locations: to massage parlors, residential brothels, hotels,<sup>24</sup> call girl or escort prostitution (more accurately described as cell phone prostitution), and strip club or gentlemen's club prostitution.<sup>25</sup> Although there is a myth that indoor prostitution is safer than street prostitution, little evidence for this exists. Instead, the evidence of physical and emotional harm caused by prostitution holds constant wherever it happens.<sup>26</sup>

The development of the Internet requires new prosecutorial strategies for arresting pimps, traffickers, and sex buyers - a challenge that requires law enforcement officials and prosecutors to keep up with traffickers' familiarity with, and skills in, web technologies. Online prostitution provides greater anonymity for johns and pimps and it blurs jurisdictional boundaries since Internet content can be accessed and published anywhere. Social networking media such as Facebook, classified advertising websites such as Backpage, message boards, and dating sites all provide platforms for prostitution marketing with relative anonymity and [\*1045] impunity. Sex buyers and traffickers benefit from the relative lack of accountability of Internet service providers for their websites' content, despite token gestures described below. At the same time, online prostitution results in an online record that can be used as evidence in prosecutions.

## II. Marketing Prostitution: Organized Criminals' Use of Web Technology for the Purpose of Trafficking Women

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(2014). In Germany, policy analyst Barbara Yondorf estimated that 80-95% of women in prostitution have pimps. Kathleen Barry, *Female Sexual Slavery* 130 (1979). In San Francisco, 80% of women in prostitution interviewed by Marilyn Neckes and Theresa Lynch had pimps. *Id.* at 119. In Oregon, 84% of women who had escaped prostitution had previously been controlled by pimps. Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 Mich. J. Gender & L. 91, 101 (1993). In Ireland, Ruhama estimated that 80% of women in prostitution were under third-party control. E-mail from Sarah Benson, CEO of Ruhama, to Melissa Farley (April 10, 2014) (on file with the Albany Law Review). In the United States, a study of women prostituted in hotels estimated that more than 80% were controlled by pimps. Robert Prus & Stylianoss Irini, *Hookers, Rounders, and Desk Clerks* 11 (1980). Kathleen Barry noted that 80 to 95 % of all prostitution is pimp-controlled. Kathleen Barry, *The Prostitution of Sexuality* 198 (1995). Ninety-five to 99% of women in German prostitution were under the control of others. Manfred Paulus, *Out of Control: On Liberties and Criminal Developments in the Redlight Districts of the Federal Republic of Germany*, *Prostitution Resources* (May 6, 2014), <http://ressourcesprostitution.wordpress.com/2014/05/06/m-paulus-out-of-control-on-liberties-and-criminal-developments-in-the-redlight-districts-of-the-federal-republic-of-germany/>. Eighty-six percent of Nepali women delivered to brothels in India did not know they were going to be prostituted when they left home. Louise Brown, *Sex Slaves: The Trafficking of Women in Asia* 66 (2000). Cambodian Women's Crisis Centre found that 86% of women rescued from Phnom Penh brothels by police had been tricked or sold into prostitution. *Id.* at 89.

<sup>15</sup> Douglas Dowty, *Syracuse Police Charge 36 in Prostitution Sting Originating on Internet*, *Syracuse.com* (Dec. 7, 2012, 12:18 PM), [http://www.syracuse.com/news/index.ssf/2011/04/syracuse\\_police\\_charge\\_36\\_in\\_p.html](http://www.syracuse.com/news/index.ssf/2011/04/syracuse_police_charge_36_in_p.html).

<sup>16</sup> See Melissa Farley et al., *Comparing Sex Buyers with Men Who Don't Buy Sex* 15 (2011), <http://www.prostitutionresearch.com/pdfs/Farleyetal2011Comparin gSexBuyers.pdf>.

<sup>17</sup> See Lewis Perdue, *EroticaBiz: How Sex Shaped the Internet* 57 (2002).

<sup>18</sup> See Kristie R. Blevins & Thomas J. Holt, *Examining the Virtual Subculture of Johns*, 38 J. Contemp. Ethnography 619, 620 (2009).

<sup>19</sup> See Tammy Castle & Jennifer Lee, *Ordering Sex in Cyberspace: A Content Analysis of Escort Websites*, 11 Int'l J. Cultural Stud. 107, 118 (2008); Thomas J. Holt & Kristie R. Blevins, *Examining Sex Work from the Client's Perspective: Assessing Johns Using On-Line Data*, 28 Deviant Behav. 333, 342, 345-47 (2007); see also Matthew V. Pruitt, *Online Boys: Male-For-Male Internet Escorts*, 38 Soc. Focus 189, 193 (2005) (describing how sex is sold online by prostituted men). Of course sex buyers don't call themselves sex buyers. They refer to themselves as "johns," "hobbyists," "mongers" (abbreviated from "whoremonger"), "punters," "clients," or "customers."

Advertising women for johns' sexual use is essential to pimps and traffickers.

The truth is that a lot of deep marketing-thought goes into the sex industry, whether the entity being sold is an independent escort's companionship or couples' porn... . Mainstream ad agencies deal with versions of this problem all the time as they market brands and lifestyles, but sex workers tangle with it in a different way, because the thing on the market block is them.<sup>27</sup>

Internet access has proved to be far more about men's access to the bodies of women and girls, than about women's and girls' access to resources, education, employment, empowerment... . The vulgarisation of privilege that Engels foresaw has taken strange new directions; every man wealthy enough to own a computer and pay an ISP can enjoy an infinite virtual harem in the seclusion of his home.<sup>28</sup>

"Advertisement is the most important part of the business," said a member of the Mafia crime family, referring to Internet advertising in a case involving organized criminals' use of the Internet to traffic women.<sup>29</sup> Escort agencies, brothels, and strip clubs are advertised on websites and chat rooms, enabling pimps and traffickers to sell women for sex. Furthermore, the Mafia understood that pimps need a flexible business model and that advertising online attracts [\*1046] sex buyers who may be seeking one type of sex business but who can be enticed via the web into buying prostitution in some other form. For example, a sex buyer may first look at free pornography downloads, then be offered hardcore pornography for sale, and then he might see a pop-up advertisement for prostitution in his zip code. Web-based advertising happens daily in all areas of business enterprise on the World Wide Web. While traffickers use the same online sales model as other businesses, they also use Internet technologies usually not accessed by other businesses such as online forums, Skype, and gaming technology such as "Xbox Live, Sony Online Entertainment, or [real-time games such as] World of Warcraft."<sup>30</sup> Gaming technologies are used to facilitate trafficking since they permit midgame user-to-user communication.<sup>31</sup>

<sup>20</sup> See Danah Boyd et al., *Human Trafficking and Technology: A Framework for Understanding the Role of Technology in the Commercial Sexual Exploration of Children in the U.S.*, 1 (2011), <http://research.microsoft.com/en-us/collaboration/focus/education/htframework-2011.pdf>.

<sup>21</sup> See generally Bitcoin, <https://bitcoin.org/en/> (last visited June 14, 2014) (explaining the Bitcoin payment system).

<sup>22</sup> See Boyd et al., *supra* note 20, at 6.

<sup>23</sup> See Brief of Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiff at 4-5, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) (No. 09 CV 1385). A study conducted by the Sex Trafficking Intervention Research Office of Arizona State University's School of Social Work estimated that an average of 5% of men in fifteen cities used online prostitution ads, ranging from 0.6% in San Francisco to 21.4% in Houston. Dominique Roe-Sepowitz et al., *Ariz. State Univ. Sch. of Soc. Work, Invisible Offenders: A Study Estimating Online Sex Customers* 8-9 (2013).

<sup>24</sup> In April 2011, a Travelodge motel was seized as part of an indictment against a prostitution ring in California. Press Release, Fed. Bureau of Investigation, *Members and Associates of Oceanside Crip Street Gangs and One Hotel Charged with Racketeering Conspiracy Relating to Prostitution of Minors and Adults and Other Crimes and Criminal Forfeiture* (Apr. 18, 2011), available at <http://www.fbi.gov/sandiego/press-releases/2011/sd041811.htm>.

<sup>25</sup> See Melissa Farley, *Prostitution Harms Women Even if Indoors*, 11 *Violence Against Women* 950, 952 (2005).

<sup>26</sup> See *id.* at 955-62; Melissa Farley, "Bad for the Body, Bad for the Heart": *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 *Violence Against Women* 1087, 1099-1117 (2004).

<sup>27</sup> Audacia Ray, *Naked on the Internet: Hookups, Downloads, and Cashing in on Internet Sexploration* 178 (2007).

<sup>28</sup> D. A. Clarke, *Prostitution for Everyone: Feminism, Globalization, and the "Sex" Industry*, in *Not for Sale: Feminists Resisting Prostitution and Pornography* 149, 176 (Rebecca Whisnant & Christine Stark eds., 2004).

<sup>29</sup> See Press Release, Fed. Bureau of Investigation, *Manhattan U.S. Attorney Charges 14 Gambino Crime Family Associates with Racketeering, Murder, Sex Trafficking, and Other Crimes* (Apr. 20, 2010), available at <http://www.fbi.gov/newyork/press->

Organized crime is an essential element in the sex trafficking industry. <sup>32</sup> Profits from the business of selling sex "contribute to the expansion of organized crime in the United States and worldwide." <sup>33</sup> "Trafficking in persons is often [facilitated] by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law." <sup>34</sup> Russian and Balkan organized criminals' trafficking of women on the Internet was noted in 2000 when gangs placed ads in an Internet magazine *Streetwalking the World* which was aimed at sex buyer markets in Europe, the United States, and Australia. <sup>35</sup> "The fact that they can put these human beings out for viewing not only shows how they regard the women, but also underlines how strong the market is," said a UK police officer. <sup>36</sup>

The trade is fuelled by the insatiable appetite of punters for "new" girls and by the need for pimps to cater for more extreme sexual demands, such as torture, as well as unprotected sex. The trade in imported women is slowly spreading across the UK, centering on cities where there is a major off-street sex industry, such as Glasgow. According to [\*1047] sources in the trade, one flat in the city connected to a sauna offers eastern European women for clients with "exotic" tastes.

In Edinburgh, three Lithuanian women were deported after police discovered they had been put to work in the city's sex trade by a Russian gang. Two worked in a sauna and the other in a lap-dancing bar, but information that they were working against their will soon went round the city's small but highly competitive industry and police were called in. <sup>37</sup>

Organized crime operates in similar ways regardless of the criminals' national or ethnic origins. Criminal gangs in Taipei used hundreds of websites to advertise the sale of young women to sex buyers and used online chat rooms to lure teenagers into prostitution with bribes of money and free drugs. <sup>38</sup> Four United States criminal cases from 2011 illustrate organized criminals' commitment to the use of online technologies for trafficking. Nine men from the Gambino organized crime family in New York were convicted and sentenced for sex trafficking, murder, racketeering, extortion, and wire fraud. <sup>39</sup> The men trafficked young women for sexual use by advertising their prostitution on Craigslist. <sup>40</sup> The trafficked women were offered to gamblers in the Mafia's high-stakes poker

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releases/2010/nyfo042010.htm. The indictment included the crimes of murder, assault, witness tampering, extortion, narcotics, mail fraud, loan sharking, and gambling in addition to sex trafficking. Sealed Indictment at 1-49, *United States v. Marino*, S1 09 Cr. 1243 (LAK) (S.D.N.Y. June 20, 2010).

<sup>30</sup> Boyd et al., *supra* note 21, at 7.

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., Gillian Caldwell et al., *Capitalizing on Transition Economies: The Role of the Russian Mafiya in Trafficking Women for Forced Prostitution*, in *Illegal Immigration and Commercial Sex: The New Slave Trade* 42, 42-43 (Phil Williams ed., 1999); cf. 22 U.S.C. § 7101(b)(8) (2012) ("Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises.").

<sup>33</sup> 22 U.S.C. § 7101(b)(8).

<sup>34</sup> *Id.*

<sup>35</sup> Stuart Millar, *Sex Gangs Sell Prostitutes over the Internet*, *Observer* (July 15, 2000), <http://www.guardian.co.uk/technology/2000/jul/16/internetnews.t heobserver1>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See Joseph Yeh, *Groups Highlight Risks of Online Sex Trade*, *China Post* (Aug. 3, 2011, 11:50 PM), <http://www.chinapost.com.tw/taiwan/national/national-news/2011/08/03/312070/Groups-highlight.htm>.

<sup>39</sup> Press Release, U.S. Attorney, S. Dist. of N.Y., *Nine Gambino Crime Family Members Sentenced in Manhattan Federal Court for Racketeering, Murder Conspiracy, Extortion, Sex Trafficking, and Other Crimes* (May 12, 2011), available at <http://www.justice.gov/usao/nys/pressreleases/May11/marinodanie letalsentencingspr.pdf>.

<sup>40</sup> *Id.*

businesses. <sup>41</sup> A second case from Atlanta included indictments for kidnapping, sex trafficking, and transporting women across state lines for prostitution. <sup>42</sup> The male and female defendants recruited young women into prostitution on Internet sites Craigslist and Backpage, then terrorized them (for example binding them with duct tape and imprisoning them in a closet; forcibly addicting them to cocaine, and handcuffing them to beds) and sold them in various cities to sex buyers. <sup>43</sup> A multistate sex trafficking gang's use of the Internet triggered a third 2011 **[\*1048]** organized crime case. <sup>44</sup> The Internet was the prostitution ring's primary marketing tool with online ads for prostitution in Tennessee, North Carolina, New Mexico, and Ohio. <sup>45</sup> One of the traffickers took photos of the women and posted them to Backpage, USAsexguide, Preferred 411, Date Check and other websites offering "adult services" or "escort" services that included pornography of the prostituting women. <sup>46</sup> In a fourth case, police discovered an online prostitution ring, Escorts.com, in Pennsylvania. <sup>47</sup> Evidence used against the companies was based on fees and payments from website users including money orders, checks and credit cards, and numerous accounts at various financial institutions, funds, and financial services. <sup>48</sup> In 2011, the companies who controlled the prostitution ring pled guilty to money laundering and agreed to pay \$ 6.4 million for developing and operating Escorts.com, which was subsequently shut down. <sup>49</sup> The organized crime groups kept numerous accounts at various financial institutions, funds, and financial services. <sup>50</sup> After the link to the online prostitution ring was uncovered, the FBI, State Police, IRS and city police raided the corporate offices and found eighty boxes of evidence. <sup>51</sup>

Alternatives to classified advertising sites such as Craigslist and Backpage have begun to appear. Geebo.com is a website aimed at providing safe and socially responsible classified advertising. <sup>52</sup> **[\*1049]** During the period of time that consciousness about online trafficking was increasing, from January 2009 to June 2010, Geebo's revenue increased 300%. <sup>53</sup> Despite this innovative trend, sex industry businessmen continue to use online technologies for the purpose of paid sexual exploitation and abuse.

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<sup>41</sup> Id.

<sup>42</sup> Press Release, U.S. Attorney, N. Dist. of Ga., Pair Charged in Sex Trafficking Ring (May 18, 2011), available at <http://www.justice.gov/usao/gan/press/2011/05-18-11.html>.

<sup>43</sup> Id.

<sup>44</sup> Press Release, U.S. Attorney, W. Dist. of N.C., California Man Sentenced to 18 Months in Prison for Prostitution-Related Charges (July 25, 2012), available at <http://www.justice.gov/usao/ncw/pressreleases/Charlotte-2012-07-25-rodgers.html>.

<sup>45</sup> FBI's Charlotte Division Arrests Multi-State "Online" Prostitution Ring, CrimeinCharlotte.com (May 18, 2011), <http://www.crimeincharlotte.com/fbis-charlotte-division-arrests-multi-state-online-prostitution-ring/#.UvISmCiJV0x>.

<sup>46</sup> Cleve R. Wootson Jr., Man Accused of Running Online Prostitution Ring, Wopular (May, 17, 2011), <http://www.wopular.com/man-accused-running-online-prostitution-ring-0>.

<sup>47</sup> Wendy Ruderman & Barbara Laker, Porn King's Empire Pays Feds \$ 6.4M Penalty, Philly.com (Nov. 2, 2011), <http://www.philly.com/philly/news/133042343.html?cmpid=1558579>.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id. According to The Vienna Forum to Fight Human Trafficking, E-business including electronic banking, benefits organized criminals: it provides "virtual identities" on the internet, disguises financial activities and allows the exchange of money and services with anonymity. The Internet permits rapid global movement of money. Some internet payment options allow the payer the same anonymity as with cash, but with the ability to conduct global transfers of funds. See U.N. Global Initiative to Fight Human Trafficking, The Vienna Forum to Fight Human Trafficking 13-15 February 2008, at 5 (Austria Ctr. Vienna Background Paper, 2008), [http://www.unodc.org/documents/human-trafficking/2008/BP017TechnologyandHumanTrafficking.pdf.\[eb\]](http://www.unodc.org/documents/human-trafficking/2008/BP017TechnologyandHumanTrafficking.pdf.[eb])

<sup>52</sup> Our Commitment to Social Responsibility, Geebo, [http://geebo.com/pages/view/id/5-social\\_responsibility/](http://geebo.com/pages/view/id/5-social_responsibility/) (last visited June 8, 2014).

### III. The Harms of Prostitution and Trafficking

For most of the world's prostituted women, prostitution is the experience of being hunted, dominated, harassed, assaulted, and battered. Prostitution is a gendered survival strategy that requires the person in it to assume unreasonable risks.<sup>54</sup> Most people would not be willing to assume these risks. Prostitution formalizes women's subordination by sex, race, and class and thus poverty, racism, and sexism are inextricably connected in prostitution.<sup>55</sup> Women are prostituted because they are vulnerable as a result of poverty, a lack of educational options, lack of employment opportunities, and as a result of previous physical and emotional harm. They are purchased on the basis of race as well as sex stereotypes.

Childhood abuse is such a common precursor to prostitution that it is nearly universal among those in prostitution. Survivors link physical, sexual, and emotional abuse as children to later prostitution.<sup>56</sup> Seventy percent of the adult women in prostitution in one study stated that childhood sexual assault was responsible for their entry into prostitution.<sup>57</sup> Family abuse and neglect not only caused direct physical and emotional harm, but also created a cycle of victimization that affected their futures.<sup>58</sup> Familial sexual [\*1050] abuse functions as a training ground for prostitution.<sup>59</sup> One young woman said, "I started turning tricks to show my father what he made me."<sup>60</sup> Dworkin described sexual abuse of children as "boot camp" for prostitution.<sup>61</sup> These histories make girls and young women particularly susceptible to the manipulations of traffickers who often lure their victims by initially providing a supportive family-like environment, housing and food, protection from others who have exploited them and special gifts like clothing and jewelry. Adolescence is the most frequently reported age of entry into any type of prostitution. Boyer and colleagues interviewed sixty women prostituting in escort, street, strip club, phone sex, and massage parlors (brothels) in Seattle, Washington.<sup>62</sup> All of them began prostituting between the ages of twelve and fourteen.<sup>63</sup>

Childhood abuse has been shown to increase the likelihood of online sexual victimization.<sup>64</sup> Adolescents who have been victims of childhood physical or sexual abuse and/or neglect are at risk because they are more likely to

<sup>53</sup> E-mail from Greg Collier, Chief Executive Officer, Geebo, to Melissa Farley (Aug. 13, 2011) (on file with author).

Geebo was started with the commitment to provide safe and socially responsible classified advertising. As a result, the website never had an "adult services" or "erotica" section, and has both automated and manual screening of all ads before they are posted. In addition, Geebo does not allow users to change ads once they are posted to the site in order to prevent criminals from circumventing their screening process. Geebo.com has become a model for online classifieds who want to avoid trafficking and sexual exploitation.

Telephone Interview with Greg Collier, Chief Executive Officer, Geebo (Aug. 13, 2011).

<sup>54</sup> Andrea Dworkin, Prostitution and Male Supremacy, in *Life and death* 139, 139, 141 (1997).

<sup>55</sup> *Id.* at 141.

<sup>56</sup> Mimi H. Silbert & Ayala M. Pines, Sexual Child Abuse as an Antecedent to Prostitution, 5 *Child Abuse & Neglect* 407, 410 (1981).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Dworkin, *supra* note 54, at 143

<sup>60</sup> Mimi H. Silbert & Ayala M. Pines, Entrance into Prostitution, 13 *Youth & Society* 471, 488 (1982).

<sup>61</sup> Dworkin, *supra* note 54, at 143.

<sup>62</sup> Debra Boyer, et al., *Survival Sex in King County: Helping Women Out* (1993).

<sup>63</sup> *Id.*

<sup>64</sup> Jennie G. Noll, et al., Childhood Abuse, Avatar Choices, and Other Risk Factors Associated with Internet-Initiated Victimization of Adolescent Girls, 123 *Pediatrics* 1078, 1078 (2009), available at <http://pediatrics.aappublications.org/content/123/6/e1078.full.pdf+html>.

visit chat rooms,<sup>65</sup> be solicited sexually online and offline,<sup>66</sup> and receive aggressive sexual solicitations<sup>67</sup> than their nonabused peers. Moreover, childhood abuse victims are likely to experience physical and sexual revictimization and exploitation.<sup>68</sup>

A number of authors have described and summarized the sexual and physical violence that is the norm for women in prostitution.<sup>69</sup> [\*1051] Silbert and Pines reported that 70% of women suffered rape in prostitution with 65% having been physically assaulted by customers and 66% assaulted by pimps.<sup>70</sup> The Council for [\*1052] Prostitution Alternatives in Portland reported that prostituted women were raped an average of once a week.<sup>71</sup> In the Netherlands, 60% of prostituted women suffered physical assaults; 70% experienced verbal threats of physical assault; 40% experienced sexual violence; and 40% had been forced into prostitution and/or sexual abuse by acquaintances.<sup>72</sup> Most young women in prostitution were abused or beaten by pimps as well as johns.<sup>73</sup> Eighty-five percent of prostituting women in Minnesota had been raped in prostitution.<sup>74</sup> Of 854 people in prostitution in nine countries (Canada, Colombia, Germany, Mexico, South Africa, Thailand, Turkey, United States, and Zambia), 71% had experienced physical assaults in prostitution and 62% had been raped in prostitution.<sup>75</sup> Eighty-nine percent of those people stated that they wished to leave prostitution but did not have other options.<sup>76</sup> In another study 94% of those in street prostitution had experienced sexual assault and 75% had been raped by one or more johns.<sup>77</sup>

Prostitution can be lethal.<sup>78</sup> A Canadian commission found that the death rate of women in prostitution was forty times higher than that of the general population.<sup>79</sup> A study of Vancouver prostitution reported a 36% incidence of attempted murder.<sup>80</sup> An occupational survey noted that 99% of women in prostitution were victims of violence, with more frequent injuries "than workers in [those] occupations considered ... most dangerous, like mining, forestry and fire fighting."<sup>81</sup>

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<sup>65</sup> Timothy J. Beebe et al., Heightened Vulnerability and Increased Risk-Taking Among Adolescent Chat Room Users: Results from a Statewide School Survey, 35 *J. Adolescent Health* 116, 119 (2004).

<sup>66</sup> Kimberly J. Mitchell et al., Youth Internet Users at Risk for the Most Serious Online Sexual Solicitations, 32 *Am. J. Preventive Med.* 532, 535 (2007).

<sup>67</sup> Melissa Wells & Kimberly J. Mitchell, How Do High-Risk Youth Use the Internet? Characteristics and Implications for Prevention, 13 *Child Maltreatment* 227, 231-32 (2008).

<sup>68</sup> David Finkelhor et al., Re-Victimization Patterns in a National Longitudinal Sample of Children and Youth, 31 *Child Abuse & Neglect* 479, 492 (2007); Terri L. Messman-Moore & Patricia J. Long, The Role of Childhood Sexual Abuse Sequelae in the Sexual Revictimization of Women: An Empirical Review and Theoretical Reformulation, 23 *Clinical Psychol. Rev.* 537, 538 (2003).

<sup>69</sup> For some authors providing authoritative data on the violence of prostitution see Kathleen Barry, *Female Sexual Slavery* 40 (1979); Kathleen Barry, *The Prostitution of Sexuality* 36 (1995); Boyer et al., *supra* note 62; Andrea Dworkin, *Life and Death* 141 (1997) [hereinafter Dworkin, *Life and Death*]; Andrea Dworkin, *Pornography: Men Possessing Women* 203-04 (1981) [hereinafter Dworkin, *Pornography*]; Andrea Dworkin, *Scapegoat: The Jews, Israel, and Women's Liberation* 330-31 (2000) [hereinafter Dworkin, *Scapegoat*]; Cecilie Hoigard & Liv Finstad, *Backstreets: Prostitution, Money and Love* 115 (1996); Sheila Jeffreys, *The Idea of Prostitution* 254-55, 259 (1997); Catharine A. MacKinnon & Andrea Dworkin, *In Harm's Way: The Pornography Civil Rights Hearings* 333-34 (1997); Mimi H. Silbert et al., *Sexual Assault of Prostitutes: Phase One* 119 (1980); Ine Vanwesenbeeck, *Prostitutes Well-Being and Risk* 108 (1994); D. Kelly Weisberg, *Children of the Night: A Study of Adolescent Prostitution* 108-10 (1985); Margaret A. Baldwin, "A Million Dollars and an Apology": Prostitution and Public Benefits Claims, 10 *Hastings Women's L.J.* 189, 192-93 (1999); Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 *Mich. J. Gender & L.* 65, 71-72 (1993); Devon D. Brewer et al., *Extent, Trends, and Perpetrators of Prostitution-Related Homicide in the United States*, 51 *J. Forensic Sci.* 1101, 1107 (2006) (estimating that 2.7% of female homicide victims in the United States were prostituted women - the highest rate of victimization for any group of women previously studied); Phyllis Chesler, *A Woman's Right to Self-Defense: The Case of Aileen Carol Wuornos*, 66 *St. John's L. Rev.* 933, 948-53 (1993);



**[\*1053]** Two factors are associated with greater violence in prostitution. The greater the poverty, the greater the violence, and the longer one is in prostitution, the more likely one is to experience violence.<sup>82</sup>

Posttraumatic stress disorder (PTSD) commonly occurs among prostituted women and is indicative of their extreme emotional distress. PTSD is characterized by anxiety, anhedonia, depression, insomnia, irritability, flashbacks, emotional numbing, and hypervigilance.<sup>83</sup> In nine countries researchers found that 68% of those in prostitution met criteria for a diagnosis of PTSD,<sup>84</sup> a prevalence that was comparable to battered women seeking shelter,<sup>85</sup> rape survivors seeking treatment,<sup>86</sup> and survivors of state-sponsored torture.<sup>87</sup> Across widely varying cultures on five continents, the traumatic consequences of prostitution were similar.<sup>88</sup> Vanwesenbeeck found anxiety and hypervigilance among 90% of a sample of women in legal Dutch prostitution (brothels, windows, and clubs).<sup>89</sup> Two studies of prostituted Korean women reflect the women's intense psychological distress with PTSD prevalence rates of 78% and 80%.<sup>90</sup> Web-based pornography of women trafficked in prostitution increases their vulnerability and **[\*1054]** increases their emotional distress and traumatic stress.<sup>91</sup>

The assault on women's sexuality in prostitution is overwhelming, yet invisible to most people. Survivors describe prostitution as a process whereby they are turned into objects into which men masturbate causing great psychological harm to the woman acting as receptacle.<sup>92</sup> Dissociation is a response to overwhelming and uncontrollable traumatic events in which the mind detaches from one's current emotional or physical state.<sup>93</sup> Dissociation occurs during extreme stress among prisoners of war who are tortured, among children who are being sexually assaulted, and among women being battered, raped, or prostituted.<sup>94</sup> Dissociative disorders, depression and other mood disorders are common among prostituted women in street, escort, and strip club prostitution.<sup>95</sup> Dissociation in prostitution results from both childhood sexual violence and sexual violence in adult prostitution. The dissociation necessary to survive rape in prostitution is much like the dissociation that enables a victim to endure familial sexual assault.<sup>96</sup> Vanwesenbeeck noted that a "'dissociative proficiency' contributed to the professional attitudes among women in prostitution in the Netherlands."<sup>97</sup> A Thai woman said, "You make yourself empty inside."<sup>98</sup>

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Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in *Prostitution, Trafficking, and Traumatic Stress* 60 (Melissa Farley ed., 2003) [hereinafter, Farley et al., *Nine Countries*]; Melissa Farley et al., *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, 8 *Feminism & Psychol.* 405, 406 (1998); Melissa Farley et al., *Prostitution in Vancouver: Violence and the Colonization of First Nations Women*, 42 *Transcultural Psychiatry* 242, 243 (2005); Evelina Giobbe, *An Analysis of Individual, Institutional, and Cultural Pimping*, 1 *Mich. J. Gend. & L.* 33, 49-50 (1993); Evelina Giobbe, *Prostitution: Buying the Right to Rape*, in *Rape and Sexual Assault III: A Research Handbook* 147-48 (Ann Wolbert Burgess ed., 1991); Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 *Mich. J. Gend. & L.* 91, 92-94 (1994); Quarraisha Abdool Karim et al., *Reducing the Risk of HIV Infection among South African Sex Workers: Socioeconomic and Gender Barriers*, 85 *Am. J. Pub. Health* 1521, 1523 (1995); Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 *Cardozo Women's L.J.* 133, 138 (1993); Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 *Mich. J. Gend. & L.* 13, 13 (1993); Jody Miller & Martin D. Schwartz, *Rape Myths and Violence Against Street Prostitutes*, 16 *Deviant Behav.* 1, 7-8 (1995); John J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 *Am. J. Epidemiology* 778, 782-84 (2004) (concluding, based on a study of prostituted women in Colorado Springs, Colo., that no population of women studied previously has had a crude mortality rate, standardized mortality ratio, or percentage of deaths due to murder even approximating those observed in the study cohort); Janice G. Raymond, *Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere*, 21 *Women's Stud. Int'l F.* 1, 1 (1998); Silbert & Pines, *Entrance into Prostitution*, supra note 60, at 490; Mimi H. Silbert & Ayala M. Pines, *Victimization of Street Prostitutes*, 7 *Victimology* 122, 127-28, 130 (1982); Debra Boyer, *Seattle Human Servs. Dep't, Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle* 27, 37 (2008), [http://www.seattle.gov/humanservices/domesticviolence/report\\_youthinprostitution.pdf](http://www.seattle.gov/humanservices/domesticviolence/report_youthinprostitution.pdf); Donna M. Hughes, *Pimps and Predators on the Internet: Globalizing the Sexual Exploitation of Women and Children*, U. of R.I. (1999), <http://www.uri.edu/artsci/wms/hughes/pprep.htm>.

<sup>70</sup> See Silbert & Pines, *Victimization of Street Prostitutes*, supra note 69, at 127-28; see generally Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 *Child Abuse & Neglect* 407, 409 (1981) (identifying high levels of childhood sexual abuse among women in street prostitution).

<sup>71</sup> See Hunter, supra note 69, at 92-93.

<sup>72</sup> See Vanwesenbeeck, supra note 69, at 91.

#### IV. Compartmentalization and False Distinctions

While theory about prostitution as a "choice" abounds,<sup>99</sup> it is **[\*1055]** impossible to distinguish prostitution from trafficking in most cases.<sup>100</sup> Thus conceptual walls between prostitution and trafficking limit enforcement and prosecutorial options that are available. Noting the impossibility of separating prostitution from trafficking in the real world, a 2006 report by Sigma Huda, United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children noted that prostitution as it is practiced "usually does satisfy the elements of trafficking"<sup>101</sup> and therefore, legalization of prostitution is "to be discouraged."<sup>102</sup> The Special Rapporteur observed that "the issue of demand is of crucial importance in addressing trafficking,"<sup>103</sup> noting that, "by engaging in the act of commercial sex, the prostitute-user is ... directly inflicting an additional and substantial harm upon the trafficking victim, tantamount to rape, above and beyond the harmful means used by others to achieve her entry or maintenance in prostitution."<sup>104</sup> Pimp-controlled prostitution is indistinguishable from trafficking. Seeking to be qualified as an expert witness, a New York pimp argued that beatings of prostituted women are simply "part of the pimp-prostitute relationship."<sup>105</sup>

Compartmentalization of what is actually a global trafficking industry is both a factual and a strategic error that functions as a barrier to the prosecution of pimps, traffickers, and sex buyers. There are no boundaries in the sex trafficking industry that distinguish physically coerced from psychologically coerced victims. Confusion reigns regarding techniques of mental control used by pimps and traffickers whereby victims appear to collude happily in **[\*1056]** their own victimization.<sup>106</sup> There is also a failure by many - the public, law enforcement, NGOs, health care personnel - to recognize the coercive force of a history of abuse, neglect, racism, sexism, and poverty in channeling women into prostitution. False distinctions create legal and conceptual confusion about the nature of the sex trafficking industry. The following conceptual distinctions are based on myths rather than empirical data: trafficking versus prostitution, adult versus child prostitution, domestic versus international prostitution, legal versus illegal prostitution, indoor versus outdoor prostitution, street versus escort prostitution, and voluntary versus involuntary prostitution.<sup>107</sup> The United States Department of Health and Human Services acknowledged that

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<sup>73</sup> See Barry, *The Prostitution of Sexuality*, supra note 69, at 36; Hoigard & Finstad, supra note 69, at 115; Jeffreys, supra note 69, at 254-55, 259; MacKinnon & Dworkin, supra note 69, at 333-34.

<sup>74</sup> Ruth Parriott, *Health Experiences of Twin Cities Women Used in Prostitution (1994)* (unpublished manuscript) (commissioned by Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER)).

<sup>75</sup> See Farley, supra note 26, at 1095.

<sup>76</sup> *Id.*

<sup>77</sup> See Miller & Schwartz, supra note 69, at 7-8.

<sup>78</sup> See Potterat et al., supra note 69, at 782; see also Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 *Law & Ineq.* 609, 618-19 (1984) (recounting a number of horrendous murders of women in prostitution).

<sup>79</sup> Special Comm. on Pornography and Prostitution, *Pornography and Prostitution in Canada* 350 (1985).

<sup>80</sup> Leonard Cler-Cunningham & Christine Christenson, *Studying Violence to Stop It: Canadian Research on Violence Against Women in Vancouver's Street Level Sex Trade*, 4 *Res. for Sex Work* 25, 26 (2001).

<sup>81</sup> Erin Gibbs Van Brunschot et al., *Images of Prostitution: The Prostitute and Print Media*, 10 *Women & Crim. Just.* 47, 61-62 (1999).

<sup>82</sup> See Vanwesenbeeck, supra note 69, at 95. A helpful paradigm for understanding the harm of prostitution is that of domestic violence. Prostitution is domestic violence. Giobbe compared pimps and batterers and found similarities in the ways they used extreme physical violence to control women, the ways they forced women into social isolation, used minimization and denial, threats, intimidation, verbal and sexual abuse, and had an attitude of ownership. Giobbe, *Prostitution: Buying the Right to Rape*, supra note 69, at 151. The techniques of physical violence used by pimps are often the same as those used by torturers. Harvey Schwartz et al., *Pimp Subjugation of Women by Mind Control*, in *Prostitution and Trafficking in Nevada: Making the Connections* 51-52 (Melissa Farley ed., 2007).

trafficking victims are located not only in street and brothel prostitution but also in pornography, strip clubs, massage parlors, spas, live video-cam sex shows, mail-order bride or servile marriage services, military prostitution, and sex tourism or prostitution tourism.<sup>108</sup>

Compartmentalization of the sex industry into illegal versus quasi-legal prostitution benefits pimps and traffickers in that it frequently avoids accountability for criminal acts. The goal of pimps' lawyers appears to be to legally blur any distinction between prostitution and not-prostitution. For example, an attorney for seekingarrangement.com argued that prostitution is simply the sale of sex with no emotional relationship.<sup>109</sup> The lawyer failed to note that in today's prostitution market GFE (girlfriend experience), which his client's website advertised, is precisely that: purchased sex with the veneer of a "girlfriend experience."<sup>110</sup> His strategy was to carve out an area of the sex industry that would be difficult to [\*1057] prosecute as prostitution. The seekingarrangement website's goal is to create what the site's pimps describe as mutually beneficial relationships between two people, usually a man willing to pay for sex with a woman.<sup>111</sup> The same strategy is used in online advertisements for escort prostitution. Payment is alleged to be for companionship.<sup>112</sup> If sex occurs, it is alleged to be outside the scope of the financial agreement. Similarly, in strip clubs, pimps allege that the \$ 500 payment for private time in a back room is for the bottle of champagne not for the woman's performance of a sex act on a john.

Some assume that men in strip clubs watch women dance on a stage and chat with them afterward. Today, strip clubs are where prostitution happens.<sup>113</sup> As a Gambino organized crime family member said, "If I'm gonna build a fucking hooker business, I'm gonna hang out in strip clubs."<sup>114</sup> Today "sex shows" and "strip shows" are forms of online pornography (private strip prostitution) as well as a means of trafficking women.<sup>115</sup> Strip clubs are advertised online.<sup>116</sup> A lap dance, available in all strip clubs, is a form of prostitution in which a man is masturbated by a woman's body to ejaculation even though it may not be named as prostitution by men who purchase those sex acts or by the club's attorneys. A recent case against a pimp demonstrates the lack of difference between prostitution in strip clubs and prostitution elsewhere. Corey Davis was "charged in a fifteen-count Superseding Indictment with charges including sex trafficking, forced labor, kidnapping, and violations of the

<sup>83</sup> Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders § 309.81 (5th ed. 2013)

<sup>84</sup> See Farley et al., *Nine Countries*, supra note 69, at 44.

<sup>85</sup> See Beth M. Houskamp & David W. Foy, *The Assessment of Posttraumatic Stress Disorder in Battered Women*, 6 *J. Interpersonal Violence* 367, 371 (1991) (citing 45%); Anita Kemp et al., *Post-Traumatic Stress Disorder (PTSD) in Battered Women: A Shelter Sample*, 4 *J. Traumatic Stress* 137, 143 (1991) (citing 84%).

<sup>86</sup> See I.T. Bownes et al., *Assault Characteristics and Posttraumatic Stress Disorder in Rape Victims*, 83 *Acta Psychiatrica Scandinavica* 27, 28 (1991) (citing 70%).

<sup>87</sup> See Rosalind Ramsay et al., *Psychiatric Morbidity in Survivors of Organised State Violence Including Torture: A Retrospective Series*, 162 *Brit. J. Psychiatry* 55, 56 (1993) (citing 51%).

<sup>88</sup> See Farley et al., *Nine Countries*, supra note 69, at 55-56.

<sup>89</sup> Vanwesenbeeck found that 90% of women who were prostituted primarily in clubs, brothels, and windows reported "extreme nervousness." Vanwesenbeeck, supra note 69, at 82.

<sup>90</sup> Melissa Farley & Sungjean Seo, *Prostitution and Trafficking in Asia*, 8 *Harv. Asia Pac. Rev.* 9, 10 (2006).

<sup>91</sup> Melissa Farley, "Renting an Organ for 10 Minutes:" What Tricks Tell Us About Prostitution, Pornography, and Trafficking, in *Pornography: Driving the Demand for International Sex Trafficking* 148 (David E. Guinn & Julie DiCaro eds., 2007).

<sup>92</sup> Hoigard & Finstad, supra note 69, at 95-96.

<sup>93</sup> Judith Lewis Herman, *Trauma and Recovery* 1-2 (1992).

<sup>94</sup> *Id.* at 2-3; Harvey L. Schwartz, *Dialogues with Forgotten Voices: Relational Perspectives on Child Abuse Trauma and Treatment of Dissociative Disorders* 5-6 (2000).

<sup>95</sup> Melissa Farley, *Prostitution and the Invisibility of Harm*, in *Women with Visible and Invisible Disabilities: Multiple Intersections, Multiple Issues, Multiple Therapies* 265 (Martha E. Banks & Ellyn Kaschak eds., 2003); Colin A. Ross et al., *Dissociation and*

Mann Act," to which he later "pled guilty to a single count of sex trafficking." <sup>117</sup> The Grand Jury Superseding Indictment detailed how he pimped minor girls and adult women between a Queens, NY home (where he kept them locked up) and Connecticut strip clubs. <sup>118</sup> Davis used physical [\*1058] violence and psychological coercion to force his victims to engage in prostitution at the strip clubs and collected their earnings. <sup>119</sup> A 2011 police undercover operation in North Carolina investigated prostitution on backpage.com, <sup>120</sup> which published a job advertisement that was a virtual shout-out to Eastern European and United States pimps. <sup>121</sup> The South 13 Gentlemen's Club posted "Currently hiring entertainers... . Must ... have ... a willing and motivated work ethic... . Seeking select Eastern European ladies and Southern Cuties that may be willing to relocate ... ." <sup>122</sup>

Like other multinational businesses, the sex trafficking industry has many interconnections. Local businesses are connected with national and international distributors of women and children in prostitution. One arm of the sex trafficking business fosters and expands another and can eventually morph into a new enterprise. Online pornography encourages viewers to take the additional step of searching for women in prostitution after seeing their photos. For example, a sex buyer who was arrested for attempting to buy a woman in prostitution said, "'I'm watching a little porn at home, so I get a little horny and decide I want a blow job' ... . 'I head to the Tenderloin [district] ... and bang! The bitch is a cop.'" <sup>123</sup> Prostitution is advertised online, where it is indistinguishable from pornography. Pornography is one specific means of trafficking women for the purpose of selling women into prostitution. <sup>124</sup> On pornography/prostitution websites, women are for rent and sale. One of the world's largest pornography sites with 10 million users worldwide, located in China and the United States, was busted in 2011. <sup>125</sup> The site used a typical online sex trafficking business model: in addition to selling pornography, the site also advertised [\*1059] prostitution. <sup>126</sup> Visual pornography is a record of prostitution or trafficking. Pornography is a document of what men's domination of women in prostitution looks like in all its sexist, racist, and classist specificity. Pornography is a documentary of specific women's abuses in prostitution, and its consumers obtain pornography as a filmed document of a woman's sexual humiliation. <sup>127</sup> A Danish website advertised "real life amateur slaves," encouraging men to "submit a slave to the picture farm." <sup>128</sup> Sex buyers use pornography to solicit children for prostitution. <sup>129</sup> Both prostitution survivors and the men who buy them understand that

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Abuse Among Multiple-Personality Patients, Prostitutes, and Exotic Dancers, 41 *Hosp. & Community Psychiatry* 382, 328-330 (1990).

<sup>96</sup> Eleanor M. Miller, *Street Woman* 114-15 (1986); Giobbe, *Prostitution: Buying the Right to Rape*, supra note 69, at 151-58.

<sup>97</sup> Vanwesenbeeck, supra note 69, at 107.

<sup>98</sup> Ryan Bishop & Lillian S. Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* 47 (1998).

<sup>99</sup> Shannon Bell, *Reading, Writing, and Rewriting the Prostitute Body* 1-4 (1994); see, e.g., Celine Parrenas Shimizu, *Master-Slave Sex Acts: Mandingo and the Race/Sex Paradox*, 21 *Wide Angle* 42, 43 (1999) (noting the "paradox of pleasure and violence in racial subjection," Shimizu explores the rapes of slaves by their masters and recommends that we not prematurely dismiss "a telling of slavery from the point of view of slave sexual contentment"); Celine Parrenas Shimizu, *Sex for Sale: Queens of Anal, Double, Triple, and the Gang Bang: Producing Asian/American Feminism in Pornography*, 18 *Yale J.L. & Feminism* 235, 235-36 (2006) (discussing some Asian American women's pornography that expresses racialized and sexual degradation); Audrey Extavasia & Tessa Dora Addison, *Fucking (with Theory) for Money: Toward an Interrogation of Escort Prostitution*, 2 *Postmodern Culture* (1992), available at <http://www3.iath.virginia.edu/pmc/text-only/issue.592/add-ext.592>.

<sup>100</sup> Catherine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 *Harv. C.R.-C.L. L. Rev.* 271, 299-300 (2011); see supra note 13.

<sup>101</sup> *Id.* at 300; see *Comm'n on Human Rights, Rep. on its 62nd Sess.*, Feb. 20, 2006, U.N. Doc. E/CN.4/2006/62, at 9 (2006) (by Sigma Huda).

<sup>102</sup> *Comm'n on Human Rights*, supra note 101, at 17.

<sup>103</sup> *Id.* at 7.

<sup>104</sup> *Id.* at 12. The Special Rapporteur noted that "the terms 'sex work', 'sex worker' and 'client' wrongly suggest that prostitution, as currently practised, does not typically fall within the category of trafficking." *Id.* at 10.

pornography is prostitution with a camera. <sup>130</sup> "Yes, the woman in pornography is a prostitute," said a sex buyer, "They're prostituting before the cameras." <sup>131</sup> A number of courts have understood that making pornography is an act of prostitution. <sup>132</sup> Pimps make more money from sex buyers when they advertise women in prostitution as "adult film stars" who are available as "escorts." <sup>133</sup> Exploiting women's poverty, pornographers use prostituted women from Eastern Europe, where "they cost less and do more," said one German producer. <sup>134</sup>

Pornographers are indistinguishable from other pimps. <sup>135</sup> Both exploit women's and girls' economic and psychological vulnerabilities or coerce them to get into and stay in the sex industry. Pornographers and pimps both take pictures to advertise their "products," suggest specific abuses for johns to perpetrate against women and minimize the resulting harms. Eliminating the imagined boundary between pornography and prostitution, a pornographer advertised that he was "in the business of degrading [\*1060] whores for your viewing pleasure." <sup>136</sup>

Web-based, video, and print pornography are inseparable from the rest of the sex industry, with crossovers from prostitution to pornography to sex trafficking. Nevada pimps declared their interest in "cross-fertilizing" legal brothels with other arms of the sex trafficking industry - strip clubs, escort prostitution, websites, and pornography. <sup>137</sup> A strip club website telegraphed the intimate connection between stripping and pornography by advertising, "Breeding pornstars one showgirl at a time!!!" <sup>138</sup> New York Elites, an escort prostitution agency, was busted for numerous offenses including promoting prostitution by flying pornography stars to many locations in the United States for "dates." <sup>139</sup>

Police in Las Vegas located a multi-use sex industry operation that included online prostitution, illustrating the interconnectedness of different arms of the sex trafficking industry. <sup>140</sup> Looking like a small office complex from the street, the business functioned simultaneously as Internet pornography production, cyber-peepshow or webcam prostitution, and a location out of which women in escort prostitution were pimped to Las Vegas hotels and to an illegal brothel. <sup>141</sup>

<sup>105</sup> Pimp Denied "Expert" Status at Trial, myfoxny.com (Nov. 22, 2011, 6:06 AM), <http://www.myfoxny.com/story/17442950/pimp-denied-expert-status-at-trial>.

<sup>106</sup> Schwartz et al., *supra* note 82, at 51-59 (describing brainwashing and other techniques used by pimps and torturers to control and manipulate their victims).

<sup>107</sup> See MacKinnon, *supra* note 100, at 272, Melissa Farley, Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly, 18 Yale J.L. & Feminism 109, 111 (2006) [hereinafter Farley, What We Must Not Know], Melissa Farley, Theory Versus Reality: Commentary on Four Articles About Trafficking for Prostitution, 32 Women's Stud. Int'l Forum, 311, 311 (2009), and Schwartz et al., *supra* note 106, at 52-59, for further discussions of conceptual confusions regarding trafficking.

<sup>108</sup> Sex Trafficking Fact Sheet, U.S. Dep't of Health & Hum. Servs., [http://www.acf.hhs.gov/sites/default/files/orr/fact\\_sheet\\_sex\\_trafficking.pdf](http://www.acf.hhs.gov/sites/default/files/orr/fact_sheet_sex_trafficking.pdf) (last visited June 9, 2014).

<sup>109</sup> Is It Prostitution? Website Helps Female Students Pay Off Debts By Dating 'Sugar Daddies', MailOnline (Aug 1, 2011, 7:00 AM), <http://www.dailymail.co.uk/news/article-2021003/Is-prostitution-Sugar-daddy-dating-site-accused-targeting-debt-laden-college-students.html>.

<sup>110</sup> See *id.*

<sup>111</sup> What's an Arrangement?, SeekingArrangement, <https://www.seekingarrangement.com/arrangement.php> (last visited June 9, 2014).

<sup>112</sup> *Id.*

<sup>113</sup> See Dana DiFilippo & Phillip Lucas, Dirty Dancing: Strippers Bring Prostitution, Violence, Cops Say (Mar. 28, 2012), Philly.com, [http://www.philly.com/philly/news/20120328\\_Dirty\\_Dancing\\_\\_Strippers\\_bring\\_prostitution\\_\\_violence\\_\\_cops\\_say.html](http://www.philly.com/philly/news/20120328_Dirty_Dancing__Strippers_bring_prostitution__violence__cops_say.html).

Live video technology enables johns to obtain prostitution online that is indistinguishable from filmed sexual assaults of children and trafficking. Writing in 2004, Peter Landesman described the evolving sameness of Internet pornography, prostitution, trafficking, and slavery:

Immigration and Customs Enforcement agents at the Cyber Crimes Center in Fairfax, Va., are ... tracking a clear spike in the demand for harder-core pornography on the Internet... Cybernetworks like KaZaA and Morpheus through which you can download and trade images and videos - have become the Mexican border of virtual sexual exploitation... [A website selling sex slaves showed] [\*1061] thumbnail images of young women of every ethnicity in obvious distress, bound, gagged, contorted. The agents in the room pointed out probable injuries from torture. Cyberauctions for some of the women were in progress; one had exceeded \$ 300,000. "With new Internet technology," [ICE Special Agent Perry] Woo said, "pornography is becoming more pervasive. With Web cams we're seeing more live molestation of children." <sup>142</sup>

## V. Origins of Online Prostitution

Beginning with websites <sup>143</sup> and email, online technologies have enabled pimps to sell women in prostitution by using new forms of sexual exploitation. Bulletin boards were used to download pornography in the 1970s before the advent of the Internet. The use of credit card payments was pioneered by bulletin board pornographers. <sup>144</sup> Since 1990 pagers and cell phones have been used as the principal technology for escort or call girl prostitution. <sup>145</sup> A pimp who advertised men and women for sale for sex explained that the online sex trafficking industry was constantly evolving and regrouping, "before Craigslist, there was Yahoo Groups; before Yahoo there was AOL." <sup>146</sup> Next came live video chat, web cam prostitution, and message boards.

With the development of Netscape's Web browser in 1994, transmission of Web pages with text, images, sounds, and video made it possible to traffic women on the World Wide Web. "The first web-based prostitution business, A Personal Touch Services, from Seattle, WA, U.S.A., appeared in late September, 1994" and was described as the year's "most significant Internet marketing innovation." <sup>147</sup> The Internet Business Journal's endorsement of the

<sup>114</sup> See Sealed Indictment, *United States v. Marino*, No. 1:09-cr-01243-LAK (S.D.N.Y. Apr. 19, 2010).

<sup>115</sup> DiFilippo & Lucas, *supra* note 113.

<sup>116</sup> For example, Sapphire's in Las Vegas offers free transportation if payment is made in advance online. See Sapphire, <http://www.sapphireLasvegas.com> (last visited June 9, 2014).

<sup>117</sup> See *United States v. Davis*, No. 3:07-cr-11 (JCH), 2008 U.S. Dist. LEXIS 99802, at 1-2 (D. Conn. Nov. 26, 2008).

<sup>118</sup> *United States v. Davis*, Case No. 3:07cr11, Grand Jury B-06-1, at 1-23 (D. CT), available at <http://www.scribd.com/doc/48989066/Core-Davis-Indictment> (last visited June 14, 2014) [hereinafter *Davis Indictment*]. The strip clubs were named Pleasant Moments and Bishop's Corner Cafe. *Id.* at 5, 7.

<sup>119</sup> See *id.* at 4.

<sup>120</sup> Undercover Operation at Gentleman's Clubs Yields 9 Arrests, WMBF News (Oct. 15, 2012), <http://www.wmbfnews.com/story/15132069/undercover-operation-at-gentlemans-clubs-yields-9-arrests>.

<sup>121</sup> South 13 Gentlemans Club of Greenville NC - 34, Backpage.com (Apr. 28, 2011), <http://myrtlebeach.backpage.com/Strippers/south-13-gentlemans-club-of-greenville-nc-34/3997007>.

<sup>122</sup> *Id.*

<sup>123</sup> Victor Malarek, *The Johns: Sex for Sale and the Men Who Buy It* 253 (2009).

<sup>124</sup> Catharine A. MacKinnon, *Pornography as Trafficking*, 26 *Mich. J. Int'l L.* 993, 993 (2005).

<sup>125</sup> Wang Qingchu, *Biggest Chinese Porn Site Busted by Police in China and US*, *ShanghaiDaily.com* (Aug. 25, 2011), <http://www.shanghaidaily.com/national/Biggest-Chinese-porn-site-busted-by-police-in-China-and-US/shdaily.shtml>.

<sup>126</sup> *Id.*

<sup>127</sup> Clarke, *supra* note 28, at 151-54.

**[\*1062]** sex industry's marketing approach "was an early indication of the mutually beneficial relationship between" web technology businesses and sex trafficking industries. <sup>148</sup>

Sex industry entrepreneurs developed the ability to "pagejack" web urls by 1999. <sup>149</sup> In this process, when a web user enters a web address, a criminal has rewritten the html code (usually by one character) and inserted it into, for example, a skateboard video website. When the user attempts to go to the website a hardcore pornography site pops up instead. Often, it is impossible to backtrack and the browser must be shut down to exit the pornography site. While incurring the wrath of some, this method generates enough new customers that sex industry web developers continue to use it. <sup>150</sup>

Today, cell phones permit web browsing of prostitution websites and applications bring the sex buyer in more contact with the pimp and the woman being sold. A 2011 iPhone application advertised "SugarSugar.com is for generous men looking to spoil, and dynamic women looking for financial support with bills, or who just need some excitement in life! ... SugarSugar.com ... provides a staff of sugar dating experts to help you find the perfect mutually beneficial arrangement." <sup>151</sup>

## VI. Sex Buyers', Traffickers', and Pimps' Use of the Internet

### A. Social Networking Sites

Social networking websites allow users to create a personal profile that they share with friends, other users, or the public at large. Social networking site users stay in touch with existing friends but also bring online acquaintances into the real world for in-person meetings, <sup>152</sup> thereby providing an opportunity for traffickers to use the Internet for recruitment to prostitution. **[\*1063]** Pimps brag about using these sites to traffic women and children. "It's Y2K pimpin," wrote a pimp in an online chat log seized by police. <sup>153</sup> A pimp sentenced in 2010 for trafficking children into prostitution had initially contacted and then recruited them on MySpace. <sup>154</sup> A U.K. pimp used MySpace to recruit women for an escort prostitution agency and created new profiles if the more blatant advertisements for

<sup>128</sup> Maggie Easter, Sex Trafficking and the Internet, *Urbanette Magazine*, <http://www.urbanette.com/sex-trafficking-and-the-internet/> (last visited June 14, 2014).

<sup>129</sup> See, e.g., Tom Haydon, Old Bridge Man Charged with Showing Porn to 14-Year-Old Boy, Offering to Pay for Sex, *NJ.com* (Feb. 10, 2011, 5:01 PM), [http://www.nj.com/news/index.ssf/2011/02/old\\_bridge\\_man\\_charged\\_with\\_sh.html](http://www.nj.com/news/index.ssf/2011/02/old_bridge_man_charged_with_sh.html).

<sup>130</sup> Farley, *What We Must Not Know*, *supra* note 106, at 127.

<sup>131</sup> *Id.* at 127-28 (quoting Farley, *supra* note 91, at 147).

<sup>132</sup> Catharine A. MacKinnon, *Sex Equality* 1524 (2001).

<sup>133</sup> Thomas Zambito, 2 Plead Guilty in 13M Prosty Ring, *N.Y. Daily News* (Jan. 7, 2006, 12:00 AM), <http://www.nydailynews.com/archives/news/2-plead-guilty-13m-prosty-ring-article-1.627326>.

<sup>134</sup> Giving the Customer What He Wants, *Economist* (Feb. 12, 1998), <http://www.economist.com/node/113208> (reporting that pornographers and pimps pay women much less for excruciating and/or humiliating sex acts when economies are in dire straits).

<sup>135</sup> See, e.g., Akiyuki Nozaka, *The Pornographers* (Michael Gallagher trans., Alfred A. Knopf, Inc., 1968) (telling the story of threats against a pornographer by thieves, the government, and his family).

<sup>136</sup> Robert Jensen, The Paradox of Pornography, *OpEdNews* (Feb. 1, 2006, 7:55 AM), [http://www.opednews.com/articles/opedne\\_robert\\_j\\_060201\\_the\\_paradox\\_of\\_porno.htm](http://www.opednews.com/articles/opedne_robert_j_060201_the_paradox_of_porno.htm) (internal quotation marks omitted).

<sup>137</sup> Kathryn Hausbeck & Barbara G. Brents, Inside Nevada's Brothel Industry, in *Sex for Sale: Prostitution, Pornography, and the Sex Industry* 217, 237 (Ronald Weitzer ed., 2000).

<sup>138</sup> Stripclubnetwork.com, <http://tour.stripclubnetwork.com/> (last visited Feb. 22, 2014).

<sup>139</sup> Mark Jacobson, The \$ 2,000 an-Hour Woman, *N.Y. Mag.*, <http://nymag.com/nymetro/nightlife/sex/features/12193/> (last visited June 14, 2014).

<sup>140</sup> Conversation with Two Las Vegas Police Department Vice Detectives, (June 29, 2005) (on file with the author).

prostitution were deleted. <sup>155</sup> Pimps easily recruit via Facebook as well. For example, a woman was arrested in Jakarta on suspicion of running a prostitution business involving seven junior high school girls, who had been recruited and then sold on Facebook. <sup>156</sup> Such comments serve as a document of illegal use of the Internet, enabling discovery of evidence for prosecution.

About half of all Internet users are estimated to be using social media sites. <sup>157</sup> MySpace and Facebook, the two largest social networking Internet sites promote casual, anonymous social interactions. Facebook was developed in 2004 for college students but soon expanded to include high school students and the general public. <sup>158</sup> In December 2010 MySpace had 50 million U.S. visitors and Facebook had 153.9 million U.S. visitors. <sup>159</sup> Globally, Facebook had 500 million users by mid-2010 - if it were a country, Facebook "would be the third most populous nation in the world after China and India." <sup>160</sup> Facebook easily accommodated advertisements for prostitution. In a 2011 survey, 83% of prostituted women in New York City had a Facebook page <sup>161</sup> despite the Facebook advertising and safety policies prohibiting "ads for adult friend finders or **[\*1064]** dating sites with a sexual emphasis." <sup>162</sup> When teen users of Facebook began to exit for Twitter, Facebook loosened restrictions to protect minors from advertiser - and pimp - manipulation, granting thirteen to seventeen year olds the ability to post not just to friends but to everyone, becoming "fresh meat for marketers" in the words of one analyst. <sup>163</sup> In 2013, Twitter did not respond to complaints about increased prostitution advertising. <sup>164</sup>

The number of users of MySpace dramatically increased after minors were permitted to join the site as members. <sup>165</sup> Public concerns then grew about the site's facilitation of adult/minor sexual interactions, leading to legal complaints about potential abuse. <sup>166</sup> There have been both successes and setbacks in challenging trafficking of women and children via social networking sites. A victim from Texas sued MySpace after she was raped by a man she had met on the social networking site. <sup>167</sup> A group of child victims who had been contacted by and engaged with predators online sued MySpace for not protecting underage members. <sup>168</sup> Both cases were dismissed based on the Communications Decency Act (CDA) which protects Internet service providers from some forms of liability for third party actions. <sup>169</sup> The CDA does not provide **[\*1065]** immunity from prosecution in all cases, for example

<sup>141</sup> Id.

<sup>142</sup> Peter Landesman, The Girls Next Door, N.Y. Times (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html>.

<sup>143</sup> xxx" domains went on sale in 2011, however, there were already numerous platforms where pimps could sell women in prostitution. See Website Names Ending in .xxx Go on Sale, cbcnews (Dec. 6, 2011, 12:55 PM), <http://www.cbc.ca/news/canada/ottawa/story/2011/12/06/technology-xxx-domain-names.html?cmp=rss>.

<sup>144</sup> Perdue, supra note 17, at 117-20.

<sup>145</sup> James F. Quinn & Craig J. Forsyth, Describing Sexual Behavior in the Era of the Internet: A Typology for Empirical Research, 26 Deviant Behav. 191, 197 (2005).

<sup>146</sup> Jessie Pounds, Craigslist Is Hotbed of Online Prostitution: Crackdown in Progress; Sellers, Clients Trying to Stay a Step Ahead, knoxnews.com (Oct. 5, 2008, 12:00 AM), <http://www.knoxnews.com/news/2008/oct/05/craigslist-is-hotbed-of-online-prostitution/> (internal quotation marks omitted).

<sup>147</sup> Donna M. Hughes, The Internet and Sex Industries: Partners in Global Sexual Exploitation, Tech & Soc'y Mag. (2000), available at <http://www.uri.edu/artsci/wms/hughes/siii.htm>.

<sup>148</sup> Donna M. Hughes, Prostitution Online, in Prostitution, Trafficking, and Traumatic Stress, supra note 69, at 115, 117.

<sup>149</sup> Perdue, supra note 17, at 97.

<sup>150</sup> See id. at 99.

<sup>151</sup> SugarSugar, <http://www.sugarsugar.com>; see also Stephen J. Vaughan-Nichols, Hire a Hooker? There's an App for That, ZDNet (May 11, 2011, 11:00 AM) <http://www.zdnet.com/blog/networking/hire-a-hooker-theres-an-app-for-that/1040>.



where the website operator fails to act after being warned that illegal content is present<sup>170</sup> or in cases where website operators contributed to the creation or development of injurious or tortious content.<sup>171</sup> Pressure from states' Attorneys General led to the removal by MySpace of 90,000 sex offenders from its site in 2009.<sup>172</sup> MySpace pursued various approaches in 2008 meant to protect children, including enhanced parent controls, faster response time to complaints about inappropriate content, and increased privacy settings for users under age sixteen.<sup>173</sup>

In 2009 Cooke County Sheriff Dart sued Craigslist alleging liability for the costs of law enforcement, providing substantial evidence that the site was being used to facilitate prostitution of child and adult victims and that it was a public nuisance.<sup>174</sup> An Illinois court dismissed the case.<sup>175</sup> Questions regarding website operators' invocations of CDA immunity nonetheless remain. At what point does tolerance of criminally illegal activity, content or misuse of a website constitute "encouraging" that illegal conduct, as in the Jones<sup>176</sup> and Roommates<sup>177</sup> cases; and at what point do [\*1066] website operators become liable for violating state criminal laws that are not preempted by the CDA? While the prostitution and public nuisance laws in Dart may not have been sufficient in Illinois, other states' laws may be broader and more effective. The equitable defenses against the CDA also remain untested but are applicable in cases of women trafficked for prostitution. The doctrine of "unclean hands" for the bad faith conduct of certain website operators would challenge CDA immunity from liability. CDA immunity should not benefit those who participate in or knowingly tolerate criminal attacks against persons trafficked for prostitution.<sup>178</sup> When do online advertisers become virtual traffickers?

In other attempts to block Internet crimes against teens, the Japanese government experimented with blocking social networking sites for users under eighteen, but the results of this policy are unclear.<sup>179</sup> Public pressure has been aimed at online classifieds, urging them to shut down their variously named prostitution advertising.<sup>180</sup>

## B. Message Boards

<sup>152</sup> Danah M. Boyd & Nicole B. Ellison, Social Network Sites: Definition, History, and Scholarship, 13 J. Computer-Mediated Comm. 210, 221 (2008); M. Alexis Kennedy & Melanie A. Taylor, Online Harassment and Victimization of College Students, 7 Just. Pol'y J., Spring 2010, at 1, 9.

<sup>153</sup> Kevin Poulsen, Pimps Go Online to Lure Kids into Prostitution, Wired (Feb. 25, 2009, 8:30 PM), <http://www.wired.com/threatlevel/2009/02/pimping/> (internal quotation marks omitted).

<sup>154</sup> Press Release, FBI, L.A. Div., Man Pleads Guilty and Is Sentenced to 17 1/2 Years in Fed. Prison for Sex Trafficking of Minors (June 10, 2010), available at <http://www.fbi.gov/losangeles/press-releases/2010/la061010.htm>.

<sup>155</sup> Helen Croydon, Undercover with the Escorts Trying to Recruit Through MySpace, Mirror (Mar. 25, 2009), <http://www.mirror.co.uk/news/technology-science/technology/undercover-with-the-escorts-trying-to-recruit-through-384307>.

<sup>156</sup> Woman Arrested for Running Prostitution Ring Through Facebook, Jakarta Post (Jan. 19, 2011, 4:43 PM), <http://www.thejakartapost.com/news/2011/01/19/man-arrested-running-prostitution-ring-through-facebook.html>.

<sup>157</sup> The Rise of Social Networking, ITU News, July-Aug. 2010, available at <http://www.itu.int/net/itunews/issues/2010/06/35.aspx>.

<sup>158</sup> Boyd & Ellison, *supra* note 152, at 218.

<sup>159</sup> comScore, A Recap of the Year in Digital Media 11-12 (2011).

<sup>160</sup> The Rise of Social Networking, *supra* note 157.

<sup>161</sup> Sudhir Venkatesh, How Tech Tools Transformed New York's Sex Trade, Wired (Jan. 31, 2011, 12:00 PM), [http://www.wired.com/2011/01/ff\\_sextrade/all/1](http://www.wired.com/2011/01/ff_sextrade/all/1).

<sup>162</sup> Facebook Advertising Guidelines, Facebook, [http://www.facebook.com/ad\\_guidelines.php](http://www.facebook.com/ad_guidelines.php) (last updated June 4, 2014).

<sup>163</sup> See Helen A.S. Popkin, Facebook Offers Public Posting for Teens ... and Fresh Meat for Marketers, NBCNews (Oct. 17, 2013, 6:48 PM), <http://www.nbcnews.com/technology/facebook-offers-public-posting-teens-fresh-meat-marketers-8C11414020>.

<sup>164</sup> See Facebook and Twitter Battle to Rid Themselves of Ads for Prostitutes, Bus. Insider (Jan. 13, 2013, 8:39 AM), <http://www.businessinsider.com/facebook-and-twitter-battle-to-rid-themselves-of-ads-for-prostitutes-2013-1>.

There is seamless communication between pimps and sex buyers, ensuring delivery of women to the men who want to buy them. Increasing numbers of online sex buyer communities support predatory behaviors and exchange information regarding where and how women can be bought.<sup>181</sup> The Internet facilitates communication between sellers (pimps and traffickers) and sex buyers (johns), enabling pimps and traffickers to respond rapidly to [\*1067] men's demand for purchased sex. By enabling men to evade arrest for soliciting prostitution since they can remain hidden, indoors, and anonymous, the Internet is sex buyer-friendly.<sup>182</sup> Its anonymity has created a private environment in which it is possible to engage in prostitution with a lower risk of arrest, fewer legal penalties, and less public exposure.

With private messaging, warnings about police undercover agents and stings can be broadcast to brother johns.<sup>183</sup> Atlanta sex buyers for example discussed their awareness of law enforcement's infiltration of online conversations in their forum:

GreekFan: We have always known LE looks at this Board and others. But as indicated, talk is not illegal. Only trusted mongers and PM [private messaging] gets the job done. Watch your back people, always. There is no substitute for that.

Blazer: for all you newbies, elly<sup>184</sup> monitors and POSTS to this board so watch yo' six. They usually ask dumbass questions that make it obvious that they are elly in the first place, like, can you tell me where to go to monger in Cobb, I mean names and numbers please, or \*\*\*\* like that. The danger is ever present, however, and we must stay aware.<sup>185</sup>

Sex trafficking industry businesses such as Room Service provide background checks that help sex buyers avoid arrest for prostitution.<sup>186</sup> A customer can pay a fee to have a background check run.<sup>187</sup> Then when the sex buyer contacts a prostituting woman, he can provide access to his background check that is now anonymous. This arrangement allows women in prostitution to screen out undercover police officers while enabling sex buyers to avoid blackmail that might be possible if a woman had his personal information.<sup>188</sup>

<sup>165</sup> See Tamyra A. Pierce, Talking to Strangers on MySpace: Teens' Use of Internet Social Networking Sites, Calstatela.edu (Nov. 7, 2006), <http://web.calstatela.edu/faculty/sfisco/myspace.htm>.

<sup>166</sup> See generally Joseph Menn & Jessica Guynn, Facebook Agrees to Shield Minors, L.A. Times, Oct. 17, 2007, at C3 (describing an investigation conducted by New York Attorney General Cuomo to capture Facebook's response to online harassment and abuse of children); Pierce, supra note 165 (suggesting that social networking sites facilitate adult/minor sexualized interactions because they foster anonymity).

<sup>167</sup> Eric Bangeman, MySpace Sued in Wake of Sexual Assault, Ars Technica (June 20, 2006, 4:58 PM), <http://arstechnica.com/uncategorized/2006/06/7096-2/>.

<sup>168</sup> Bobbie Johnson, Child Sex Victims Sue MySpace, Guardian (Jan 19, 2007), <http://www.guardian.co.uk/technology/2007/jan/20/news.usnews>.

<sup>169</sup> Communications Decency Act of 1996, 47 U.S.C. § 230(c)(1) (2012). The CDA has sometimes functioned as an obstacle to effective prosecution of website operators such as Craigslist, Backpage, and MySpace. First signed into law in 1996, the purpose of the CDA was to incentivize the development of blocking and filtering technologies. 47 U.S.C. § 230(b)(4). Section 230(c)(1) of the CDA asserts that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230 (c)(1). The CDA has sometimes been interpreted by the courts to provide broad immunity to website operators from defamation arising from third party content. See, e.g., Dart v. Craigslist, Inc., 665 F. Supp. 2d 961, 965-66 (N.D. Ill. 2009). Defining protected speech, as distinct from hate speech or speech advocating criminal activity, is a discussion with critical implications for the safety of women, generally. Websites and social media promoting prostitution are not the only source of likely harms to women. The stalking and predation that occur on sites like Reddit and CreepShots fetishize women's inability to consent. Marinda Valenti, CreepShots: Are You Being Creeped On?, Ms. Mag. Blog (June 12, 2013), <http://msmagazine.com/blog/2013/06/12/creepshots-are-you-being-creeped-on/>. Surreptitious photos of women are taken by using what the site advertises as "stealth, cunning and deviousness to capture the beauty of your unsuspecting, chosen target." Id. For another discussion of the tensions between men's speech and women's safety, see Jenna Wortham, When the Web's Chaos Takes an Ugly Turn, N.Y. Times, Oct. 21, 2012, at BU3.

Two cases illustrate sex buyers' use of the Internet to locate women and evade arrest. Southwest Companions, a members-only website and chatboard, had 1400 members including many professors and a former University of New Mexico president who [\*1068] served as leader of the site's "Hunt Club."<sup>189</sup> His job, in effect online pimping, was to recruit women in prostitution to travel to the Albuquerque/Santa Fe area.<sup>190</sup> According to reports, the website featured the ability to share information with other johns about police stings, to provide "physical descriptions and cell phone numbers of undercover police to help members avoid arrest."<sup>191</sup> The Southwest Companions website provided training videos on what to do if arrested for prostitution and posted sex buyers' evaluations of women's prostitution performances, including prices and rankings of the women.<sup>192</sup> Several of the arrested men were charged with promoting prostitution, conspiracy, and tampering with evidence.<sup>193</sup> Charges against the men running the Southwest Companions online prostitution ring were dismissed by a judge who ruled that the website was not physically a brothel,<sup>194</sup> illustrating the challenge of applying laws that were written before the Internet was invented. "'Sometimes states' laws are too specific and were written years ago, long before the Internet,' said Scott Cunningham, a Baylor University economics professor who has written about technology and prostitution. 'That's why we are seeing some successful challenges to laws when websites are involved.'"<sup>195</sup>

The Minnesota Nice Guys, a self-named sex buyer group, was organized by a pimp who was a former assistant county attorney.<sup>196</sup> The pimp received high ratings on Theeroticreview (TER), a sex buyers' message board, for providing attractive and compliant women to sex buyers, often trafficking undocumented [\*1069] immigrants.<sup>197</sup> The attorney/pimp was charged with 6 felony counts of promoting prostitution.<sup>198</sup> Although the pimp admitted weakness of character, the judge seemed to empathize with his "medical fragility" and sentenced him only to probation.<sup>199</sup>

Global communications forums on the Internet provide an anonymous social support network for predatory men to share their experiences, legitimize their behaviors, and mentor inexperienced sex buyers. The Internet plays a crucial role in validating the norms, cultures, and beliefs of the sex buyers' subculture. A language that normalizes sexual predation is developed in online chat rooms and bulletin boards. Because of the stigma of the words johns or tricks, online sex buyers refer to themselves as mongers, trolls, or hobbyists.<sup>200</sup>

<sup>170</sup> See 47 U.S.C. § 230 (2012); Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008); Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

<sup>171</sup> Fair Hous. Council v. Roommates.com, LLC, 521 F.3d 1157, 1174 (9th Cir. 2008) (holding that CDA immunity does not protect website operators who "directly participate[] in developing" illegal content); Jones v. Dirty World Entm't Recordings, LLC, 766 F. Supp. 2d 828, 836 (E.D. Ky. 2011) ("The immunity afforded by the CDA is not absolute and may be forfeited if the site owner invites the posting of illegal materials or makes actionable postings itself.").

<sup>172</sup> Marlon A. Walker, MySpace Removes 90,000 Sex Offenders, NBCNews.com (Feb. 3, 2009, 10:02 PM), [http://www.nbcnews.com/id/28999365/ns/technology\\_and\\_science-security/t/myspace-removes-sex-offenders/#.U5yOJXb-lcs](http://www.nbcnews.com/id/28999365/ns/technology_and_science-security/t/myspace-removes-sex-offenders/#.U5yOJXb-lcs).

<sup>173</sup> See Emma Henry, MySpace Agrees Child Protection Measures, Telegraph (Jan. 15, 2008, 10:45 AM), <http://www.telegraph.co.uk/news/uknews/1575635/MySpace-agrees-child-protection-measures.html>.

<sup>174</sup> Dart, 665 F. Supp. 2d at 961, 962-63.

<sup>175</sup> Id. at 970.

<sup>176</sup> See generally Jones, 766 F. Supp. 2d at 830-31 (describing the defamatory posts made on the defendant's website).

<sup>177</sup> See generally Fair Hous. Council v. Roommates.com, LLC, 521 F.3d 1157, 1161-62 (9th Cir. 2008) (describing the creation of subscriber profiles on a website allegedly used to match compatible roommates).

<sup>178</sup> Michael Dolce, Esq. who practices law in West Palm Beach, Florida provided this discussion of possible challenges to CDA immunity.

<sup>179</sup> Nick Farrell, Japanese Teens Barred from Social Networking, ITEXaminer.com (Feb 2, 2009, 6:22 AM), <http://www.itexaminer.com/japanese-teens-barred-from-social-networking.aspx>.

<sup>180</sup> Press Release, Robert E. Cooper, Jr., Tennessee Attorney Gen., Attorneys General Urge Backpage.com to Do More to Combat Sex Trafficking Through its Classified Ads (Aug. 31, 2011), available at

While allegedly serving as community discussion forums, message boards aimed at sex buyers ("hobbyists") and women in prostitution ("providers") are in fact sites where reviews of women in prostitution occur and where prostitution is facilitated.<sup>201</sup> Buyers post judgmental, often nasty reviews of women that pressure the women to act as if they enjoy the rape-like sex of prostitution.<sup>202</sup> Consequences from negative message board reviews are rapid and usually result in decreased earnings.<sup>203</sup> The message board rating system in effect coerces women to perform sex acts that they would prefer not to so that they can obtain good ratings and thereby maintain an income amount that is frequently set by pimps.<sup>204</sup> The [\*1070] women who perform acts of prostitution in such a way that they convince sex buyers they truly enjoy the sex of prostitution, or who permit the buyer to rationalize his behavior, are praised as providing a "Girlfriend Experience."<sup>205</sup> Research findings suggest that a surprisingly high number of sex buyers actually believe that women enjoy the sex of prostitution.<sup>206</sup> In a study of 110 Scottish sex buyers, 49% believed that women in prostitution were sexually satisfied with sex with johns more than half of the time.<sup>207</sup>

Discussion forums such as theeroticreview (TER) and bigdoggie groom men to buy sex.<sup>208</sup> These misogynist sites help sex buyers locate women and teach them how to relentlessly bargain down prices when they buy sex.<sup>209</sup> Reflecting a mistrust of women in prostitution, the men who control TER describe its message board system as

the section where the guys get to review providers who advertise on the web. You can now know exactly what to expect before you make the call and spend your hard earned money. The bonus is that the opinions expressed are real and not sent in by the adult entertainers themselves. It's about time!<sup>210</sup>

In August 2008 there were more than 500,000 reviews of 94,000 women in prostitution on TER.<sup>211</sup> Among other topics, TER offers discussion forums on how to buy sex from pornography actresses, legal concerns, and a special forum for sex buyers over age sixty.<sup>212</sup>

[\*1071] The message boards facilitate the racist and sexist objectification of women in prostitution. Women are referred to as SWs [sex workers] and are almost always defined by ethnicity.<sup>213</sup> For example, "a week & 1/2 ago I

<http://www.tn.gov/attorneygeneral/press/2011/pr11-26.pdf>; *Craigslist Shuts Down Adult Services Section*, Fox News (Sept. 4, 2010), <http://www.foxnews.com/scitech/2010/09/04/craigslist-shuts-adult-services-section/>.

<sup>181</sup> Sven-Axel Mannson, *Men's Practices in Prostitution and Their Implications for Social Work*, ProCon.org, <http://prostitution.procon.org/sourcefiles/mens-practices-in-prostitution-and-their-implications-for-social-work.pdf> (last visited June 14, 2014).

<sup>182</sup> Angie Jackson, *Prostitution: Internet Classifieds Create Element of Secrecy, Challenge for Grand Rapids Police*, MLive (Nov. 17, 2013, 11:28 AM), <http://www.mlive.com/news/grand-rapids/index.ssf/2013/11/internet.html>.

<sup>183</sup> Blevins & Holt, *supra* note 18, at 627.

<sup>184</sup> In this excerpt, "elly" refers to law enforcement.

<sup>185</sup> Blevins & Holt, *supra* note 18, at 627 (alterations in original).

<sup>186</sup> See *RoomService2000*, <http://www.roomservice2000.com/> (last visited June 14, 2014).

<sup>187</sup> See *id.*

<sup>188</sup> See *id.*

<sup>189</sup> Jeri Clausing, F. Chris Garcia, Former University of New Mexico President, Arrested in Connection with Prostitution Website, *Huffington Post* (June 23, 2011, 10:32 PM), [http://www.huffingtonpost.com/2011/06/23/f-chris-garcia-former-uni\\_n\\_883238.html](http://www.huffingtonpost.com/2011/06/23/f-chris-garcia-former-uni_n_883238.html); Russell Contreras, F. Chris Garcia, Former University of New Mexico President, Cleared of Criminal Charges Concerning "Southwest Companions," *Huffington Post* (June 20, 2012, 7:41 PM), [http://www.huffingtonpost.com/2012/06/20/f-chris-garcia-prostitution-ring\\_n\\_1613009.html](http://www.huffingtonpost.com/2012/06/20/f-chris-garcia-prostitution-ring_n_1613009.html).

<sup>190</sup> Michel Santo, *Professors Arrested for Running Escort Service for "Esteemed" Men*, *Examiner.com* (June 24, 2011), <http://www.examiner.com/article/professors-arrested-for-running-escort-service-for-esteemed-men>.

<sup>191</sup> Jeri Clausing, *Police: Profs Ran Site for "Esteemed" Men to Get Sex*, *naplesnews.com* (June 24, 2011, 9:21 PM), <http://www.naplesnews.com/news/2011/jun/24/albuquerque-william-roseman-police/>.

was driving by 111th & saw 5 SW's. 3 BSW's & 1 WSW & 1 LSW." <sup>214</sup> Men use the term "mileage" to refer to women whose appearances reflect the damage inflicted on them by men who use them for sex. <sup>215</sup> "High mileage" means that women are older or unattractive. <sup>216</sup> A woman spoke about sex buyers who obsessively evaluate the sexual performance of every woman used in prostitution in special anticipation of writing about her for other men: "He's the type of john I religiously steer away from, and that's largely due to his immersion in review board "culture." <sup>217</sup> What is it about "message board culture" that women in prostitution dislike?

TER reviews are primarily based on [sexual] performance ... and appearance ... . You, as a provider, are dehumanized. TER hobbyists, feeding on these reviews, see you as less than human. They are looking for 5-star blowjobs and model looks, rather than a human being with a personality. Instead of respecting your limits and preferences, they expect you to give them what it says you provided someone else in your last review. <sup>218</sup>

Described by another pimp as "the most influential man in the prostitution business in America," <sup>219</sup> CEO of TER Dave Elms and other sex buyers have been accused of using the threat of poor ratings to extort sex acts, perform unsafe sex, or decrease prices. <sup>220</sup> Elms, who founded TER in 1999 with the goal of empowering sex buyers, has been accused of bribery and rape. <sup>221</sup> TER was acquired in 2004 by Treehouse Park, a company that currently operates out **[\*1072]** of the Netherlands - reflecting the global nature of the sex trafficking industry. <sup>222</sup>

Sex buyers' posts promote the prostitution of the women as they lobby for their favorites. <sup>223</sup> Yet there has been resistance to the selling of women on message boards. <sup>224</sup> A British member of Parliament asked California's Governor in 2009 to shut down the US-owned punternet website that permits men to rate British women in prostitution. <sup>225</sup> While message boards are used to thwart law enforcement efforts with posts about where police stings are occurring and suggestions about how to avoid law enforcement actions, <sup>226</sup> at the same time, message boards can be used to monitor and prosecute criminal activity. The information on these sites can provide intelligence for police officers investigating prostitution and trafficking. <sup>227</sup> Message boards and online classifieds have provided **[\*1073]** an opportunity for sting operations. <sup>228</sup> Online john community sites such as TER can deter

<sup>192</sup> Id.

<sup>193</sup> Id.

<sup>194</sup> Russell Contreras, F. Chris Garcia and David Flory Cleared in Online Prostitution Case, Experts Say Laws Out of Date, Huffington Post (Aug. 19, 2012, 3:13 PM), [http://www.huffingtonpost.com/2012/08/20/f-chris-garcia-david-flory-online-prostitution-\\_n\\_1810147.html](http://www.huffingtonpost.com/2012/08/20/f-chris-garcia-david-flory-online-prostitution-_n_1810147.html).

<sup>195</sup> Id.

<sup>196</sup> David Chanen, Cops Bust "Nice Guys" Sex Ring, Star Trib. (Minneapolis), June 7, 2009, at 1A.

<sup>197</sup> Id.

<sup>198</sup> David Chanen, Charges Filed in "Nice Guys" Sex Ring, Star Trib. (Minneapolis), July 30, 2010, at 1A.

<sup>199</sup> Debra Cassens Weiss, Ex-County Attorney Gets Probation for Role in "Nice Guy" Prostitution Ring, A.B.A. J. (Jan. 21, 2011, 10:23 AM), [http://www.abajournal.com/news/article/ex-county\\_attorney\\_gets\\_probation\\_for\\_role\\_in\\_nice\\_guy\\_prostitution\\_ring](http://www.abajournal.com/news/article/ex-county_attorney_gets_probation_for_role_in_nice_guy_prostitution_ring). The lead pimp, John Paul St. Marie, who pled guilty to three felonies and was granted probation appears to be a white man. See Emily Gurnon, Former Assistant Hennepin County Attorney and "Nice-Guy" Prostitution Broker Re-Arrested, Pioneer Press (May 7, 2012, 11:01 PM), [http://www.twincities.com/ci\\_20566169/former-assistant-hennepin-county-attorney-arrested-prostitution-charge](http://www.twincities.com/ci_20566169/former-assistant-hennepin-county-attorney-arrested-prostitution-charge). One wonders if a young black pimp who pled guilty to three felonies would be granted probation due to his medical problems as was Mr. St. Marie.

<sup>200</sup> See Blevins & Holt, *supra* note 18, at 626.

<sup>201</sup> See *id.* at 627, 630.

<sup>202</sup> See generally Melissa Farley et al., Attitudes and Social Characteristics of Men Who Buy Sex in Scotland, 3 Psychol. Trauma: Theory, Res., Prac., & Pol'y 369, 375 (2011) (explaining that some men who use women in prostitution want to control and dominate women, attitudes that are visible in reviews posted on many of the sites).

prostitution and trafficking when police monitoring of the site is publicized with posted messages such as "Police are present." This would likely create fear among sex buyers and pimps who would flee the site. Public exposure has been documented as a deterrent to prostitution.<sup>229</sup> The Chicago Police Department website posts photos, names, addresses, and other information about those arrested for soliciting prostitution.<sup>230</sup> A similar website in Ohio which posted the photographs of men charged with soliciting prostitution was viewed more than 100,000 times in its first year.<sup>231</sup>

### C. Online Classified Advertising for Prostitution

Originally presenting itself as a community-oriented garage sale, Craigslist is an Internet site where people can post at no cost what they want to buy and sell.<sup>232</sup> Because posting a personal ad was free and because posts can be anonymous, the website developed into a primary site for prostitution advertising. With no questions asked, Craigslist set aside a significant portion of its website for sex buyers' and sex sellers' advertising.<sup>233</sup> This provided "an extraordinary opportunity for coordinating domestic and transnational sex trafficking."<sup>234</sup> The process of trafficking via online classifieds is stunningly simple: a cell phone and an ad on Craigslist (or other online prostitution sites) enables a pimp to set [\*1074] up a woman for sexual exploitation in exchange for cash.

After 2000, Craigslist and other online classifieds became virtual prostitution zones. In March 2005, Craigslist averaged 25,000 new ads in the United States every 10 days for "casual sex" and "erotic services" that were prostitution.<sup>235</sup> A 2007 study of 12,444 Las Vegas online classified advertisements found that 90% advertised escort prostitution.<sup>236</sup> Ethnicity was specified 92% of the time,<sup>237</sup> reflecting the importance to johns of choosing the race/ethnicity of the women to be used for sex. Photos were included in 96% of the posts.<sup>238</sup> A phone number was included in the ad 83% of the time.<sup>239</sup> Prostitution advertising on Craigslist included code words that imply domestic trafficking ("here for a short stay," "looking for an inexperienced girl"), or international trafficking (both Mexican and U.S. phone numbers given).<sup>240</sup> Other classified advertising websites promoting prostitution include Backpage, Eros, CityVibe, MyRedbook, and AdultSearch.<sup>241</sup> Spikes in online demand for [\*1075] purchased sex

<sup>203</sup> 1 Encyclopedia of Prostitution and Sex Work 228 (Melissa Hope Ditmore ed., 2006).

<sup>204</sup> Telephone Interview with Lauren Hersh, New York Director of Equality Now (Dec. 10, 2013). Sex buyers posting ratings of women on punternet.com in UK and myredbook comment, "Couldn't take a light spanking and complained about me pulling her hair. Told me I was rough. All I wanted to do was spread her legs in the missionary position and pound away. Kept pushing me back. I've had better and wouldn't return." Noting physical injuries as if he were grading meat, another noted, "Minor defects include: 5.0 cm. X 1 cm. horizontal cafe au lait patch above the right buttock, two stellate scars left deltoid (smallpox vaccinations), and a small nevus left medial breast." A third john observed, "Hurt face, but nice little body." All examples from PunterNet, <http://www.punternet.com/> (last visited June 14, 2014); MyRedBook, <http://www.myredbook.com/> (last visited June 14, 2014).

<sup>205</sup> See Blevins & Holt, *supra* note 18, at 635.

<sup>206</sup> See Farley, *supra* note 202, at 376.

<sup>207</sup> *Id.* at 371, 376.

<sup>208</sup> See The Erotic Review, <http://www.theeroticreview.com/main.asp> (last visited June 14, 2014).

<sup>209</sup> One john's need to subordinate women was reflected in his proud purchase of an airfare for \$ 1,000 to fly to Mexico or the Dominican Republic from the United States so that he could buy \$ 15 sex acts "at bargain rates" from desperately poor women.

<sup>210</sup> Reviews, The Erotic Review, <http://classic.theeroticreview.com/reviews/index.asp> (last visited June 14, 2014).

<sup>211</sup> Scott Cunningham & Todd D. Kendall, Prostitution 2.0: The Changing Face of Sex Work, 69 J. Urb. Econ. 273, 278 (2011).

<sup>212</sup> See TER General Boards, The Erotic Review, [http://www.theeroticreview.com/discussion\\_boards/vi ewmsg.asp?MessageID=358534&boardID=12&page](http://www.theeroticreview.com/discussion_boards/vi ewmsg.asp?MessageID=358534&boardID=12&page) (last visited June 14, 2014).

generally occur near or on military bases and at political conventions, electronics conventions, and sporting events.<sup>242</sup> During the 2008 United States political conventions online advertisements for prostitution peaked in the host cities.<sup>243</sup>

While Craigslist claimed to be a non-commercial site with a non-corporate culture of public service, in fact, the business was extremely lucrative for its owners.<sup>244</sup> In 2003, the site's earnings were estimated at \$ 7 million.<sup>245</sup> By 2010, Craigslist's earnings were estimated at \$ 122 million with approximately one-third of its revenue coming from prostitution advertising.<sup>246</sup> Backpage.com and five similar websites were estimated in February 2011 to generate annual revenue of \$ 37.3 million from the sale of ads for prostitution.<sup>247</sup> Village Voice Media, publisher of Backpage.com and 13 alternative weeklies in the United States, generated an estimated \$ 17.5 million in ads for escorts and adult services in 2010.<sup>248</sup> While smaller than Craigslist, Backpage has become the primary Internet prostitution advertiser since the closure of much of Craigslist's prostitution advertising.<sup>249</sup> A Seattle police officer estimated in 2011 that 80% of the young women his department investigated for prostitution were advertised on Backpage.<sup>250</sup> In 2013, 82% of the nearly \$ 45 million generated annually by online classifieds for prostitution (usually escort and bodyrub ads) was obtained by Backpage, the leading publisher of such ads.<sup>251</sup> Backpage averaged \$ 4.5 million a month in online classifieds, up **[\*1076]** 78% from the previous year, and 200% from two years previously.<sup>252</sup> Several other websites tracked by AIM Group (Eros.com, CityVibe.com, MyRedbook.com and AdultSearch.com) "generated \$ 5.3 million in May [2013], ... up 67% from \$ 3.2 million the same month in 2012."<sup>253</sup>

ErosGuide is a sex trafficking industry website offering a range of products using multiple web technologies.<sup>254</sup> Women place advertisements for prostitution describing themselves as escorts, pimps place advertisements selling women for sex, pornography can be downloaded or videos purchased, sex and fetish toys are sold, strip clubs and massage parlors can be located by zip code, and webcam pimps offer "live girls on home webcams with amateurs and housewives."<sup>255</sup> ErosGuide provides a range of webcam pornography and chat options for johns who can

<sup>213</sup> Scott Cunningham & Todd Kendall, Men in Transit and Prostitution: Using Political Conventions as a Natural Experiment, 11 B.E. J. Econ. Analysis & Pol'y 1 (2011), available at [http://business.baylor.edu/scott\\_cunningham/cunningham-and-kendall-2011.pdf](http://business.baylor.edu/scott_cunningham/cunningham-and-kendall-2011.pdf).

<sup>214</sup> Id.

<sup>215</sup> Id.

<sup>216</sup> Id.

<sup>217</sup> James Gartler, Chester Brown "Pays for It", Comic Book Resources (Aug. 8, 2011, 9:58 AM), <http://www.comicbookresources.com/?page=article&id=33769> (last updated Aug. 15, 2011, 11:12 AM).

<sup>218</sup> TER Hobbyist = Bad Customer, TER Sucks Blog (Nov. 15, 2006), <http://tersucks.blogspot.com>.

<sup>219</sup> Matt Richtel, Sex Trade Monitors a Key Figure's Woes, N.Y. Times, June 17, 2008, at A12.

<sup>220</sup> See Melissa Gira Grant, Online Critics Accuse TheEroticReview.com CEO Dave Elms of Rape, Gawker (May 12, 2008, 3:00 PM), <http://gawker.com/389612/online-critics-accuse-theeroticreviewcom-ceo-dave-elms-of-rape?tag=valleywag>.

<sup>221</sup> Id.

<sup>222</sup> The Erotic Review and David Elms Part Ways, EIN Presswire (Mar. 3, 2009) <http://www.einpresswire.com/article/56530882/the-erotic-review-and-david-elms-part-ways>. Elms has an extensive criminal history which is described here because he's not unique among online pimps. In 2006 Elms raped a woman at gunpoint. Richtel, supra note 219. He was arrested in 2008 on weapons and narcotics violations. Id. The police investigation of Elms evidenced that he had extorted sex from women reviewed on TER website in exchange for removing damaging reviews about them. Id. In 2009, Elms missed a court date, with charges pending for "conspiracy to commit aggravated assault, [and] various [felony] drugs and weapons charges." Ray Stern, "TheEroticReview.com" Founder, David Elms, on the Lam, Phoenix New Times (Mar. 18, 2009, 12:01 PM), [http://blogs.phoenixnewtimes.com/valleyfever/2009/03/theeroticreviewcom\\_founder\\_dav\\_1.php](http://blogs.phoenixnewtimes.com/valleyfever/2009/03/theeroticreviewcom_founder_dav_1.php). The charges for conspiracy to commit aggravated assault stemmed from February 15, 2009 when Elms met with undercover officers to contract for murdering two people. Rhett Pardon, TheEroticReview Founder Ordered to Pay \$ 20,000, XBIZ Newswire (July 19,

choose breast and buttocks size, hair color, skin color, and other sexualized physical features of women they use for sex. These can be seen clearly in their website options.<sup>256</sup> ErosGuide, Backpage and other sites with prostitution advertising usually offer forums where there is general social commentary by posters about romance, sex, and dating. The forums serve to legitimize both the website and the sex industry much as an article by Margaret Atwood or Ray Bradbury in Playboy legitimized the magazine pornography of the 1960-70's era. Other sex trafficking industry sites such as Bootytag present themselves as adult community culture, and include pornography and prostitution but also sell products such as crotchless panties and sex toys.<sup>257</sup> Similar online sales are found at adultsearch, CityVibe, eros.com, netchixx.com, titsandass.com, eros.com, and rentboy.com.

**[\*1077]** Arrests for online prostitution-related crimes and trafficking have increased in the past decade.<sup>258</sup> Violent crimes have been associated with Backpage just as they were with Craigslist. Using Backpage to locate young women in prostitution, a Seattle sex buyer impersonated a police officer and was subsequently charged with multiple counts of rape, kidnapping, extortion and criminal impersonation.<sup>259</sup>

Craigslist's and other online traffickers' assertions that their advertising was for sex between consenting adults was countered by a 2010 study in which researchers placed ads on Craigslist and Backpage that were typical of prostitution advertising.<sup>260</sup> Two hundred eighteen men telephoned in response to the ads.<sup>261</sup> When the men inquired about details regarding the sale of sex, researchers who posed as escort agency pimps gave each of the men three escalating warnings that the girl they were about to buy was probably younger than eighteen.<sup>262</sup> Researchers found that 47% of sex buyers in the Atlanta area were willing to proceed to buy sex even after being given three warnings that the girl they were about to buy was probably a minor.<sup>263</sup>

In response to community and government criticism of prostitution posts that facilitated sex trafficking, Craigslist made token changes such as announcing that minors should not use its erotic services section, providing links to antitrafficking websites, and charging ten dollars for posts.<sup>264</sup> Craigslist's requirement that **[\*1078]** posts be verified with a phone number was relatively meaningless given pimps' ability to purchase disposable cell phones.

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2011, 4:30 PM), <http://newswire.xbiz.com/view.php?id=136443>. One person he wanted to have killed was the owner of a competing escort review website SexWork.com. Id. Elms fled the country after posting \$ 150,000 bond. Id. According to border patrol agents who arrested him when he tried to re-enter the United States, "Elms told them that after skipping bail, he fled to Toronto, then Dubai, Armenia, Iran and Mexico." Matt Richtel, Founder of Prostitution Site is Arrested at Border, N.Y. Times, June 4, 2009, available at <http://bits.blogs.nytimes.com/2009/06/04/prostitution-site-founder-david-elms-arrested-at-border>; see also Ray Stern, "TheEroticReview.com" Founder David Elms Arrested in California; Was On Run from Maricopa Charges, Phoenix New Times (Jun. 4, 2009, 2:11 PM), [http://blogs.phoenixnewtimes.com/valleyfever/2009/06/theeroticreviewcom\\_founder\\_dav\\_2.php](http://blogs.phoenixnewtimes.com/valleyfever/2009/06/theeroticreviewcom_founder_dav_2.php).

<sup>223</sup> See BestGFE, <http://www.bestgfe.com> (last visited June 14, 2014) (promoting users' reviews of women in prostitution).

<sup>224</sup> See Stefano Ambrogi, Britain Asks Schwarzenegger to Close Prostitute Web Site, Reuters (Sept. 30, 2009, 4:25 PM) <http://www.reuters.com/article/2009/09/30/us-britain-prostitutes-idUSTRE58T69420090930?feedType=RSS&feedName=technologyNews>.

<sup>225</sup> Id. Minister for women and equality Harriet Harman called the website a "sinister development" that promoted men's demand for prostitution thereby fuelling trafficking. Id. MP Harman said: "surely it can't be too difficult for 'The Terminator' to terminate Punternet and that's what I am demanding that he does." Id. (first internal quotation marks omitted).

<sup>226</sup> See BestGFE, *supra* note 223 (discussing ways to evade law enforcement).

<sup>227</sup> See Ken Franzblau, Sex Trafficking: Looking at Demand, in Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims 291, 295 (Jill Laurie Goodman & Dorchen A. Leidholt eds., 2011) (discussing the prostitution-related internet posts of an individual using the name SlamasterJay and law enforcement use of those posts). "SlamasterJay, later identified as Jeffrey Whyte, was subsequently arrested and charged with promoting prostitution in New York County." Id. at 300 n.23 (citing Jamie Schram, NYPD Daily Blotter, N.Y. Post (Dec. 10, 2009, 5:00 AM), <http://nypost.com/2009/12/10/nypd-daily-blotter-2705/>).

<sup>228</sup> See, e.g., Gary Taylor, Child-Sex Sting: Men Tote Candy, Condoms, Orlando Sentinel, Aug. 17, 2010, at B1 (describing sting operation using Craigslist conducted by Florida sheriff's department).

<sup>229</sup> See Farley et al., *supra* note 16, at 5, 33, 37.



<sup>265</sup> The requirement that implying an exchange of sex for money was not permitted was also easily circumvented by pimps' code words well known to sex buyers (according to chat board jargon) such as "roses" or "hugs" for "dollars" and the phony disclaimer that all payment was for escort companionship and not for sex acts which were "voluntary" and "consenting." <sup>266</sup> Craigslist agreed to report suspected abuse or trafficking to the National Center for Missing and Exploited Children (NCMEC), a quasi-law enforcement agency, thereby manipulating public perception and avoiding direct contact with appropriate law enforcement, such as local police departments or federal agencies. <sup>267</sup>

Like Craigslist, Backpage has been unwilling to screen advertisers, a process that would entail reviewing posts for sex solicitation or hate speech. If a screener were not employed, filters could block certain keywords, jargon or images from the ad posting process. <sup>268</sup> Backpage has offered children for sale through thinly veiled prostitution advertising, with at least one lawsuit against Village Voice Media/Backpage for posting pornography of a child available for prostitution. <sup>269</sup> Pornography of either adults or children used in this way functions as human trafficking.

#### D. Live and Streaming Video

As in any enterprise, novelty and spinoffs are typical of sex **[\*1079]** trafficking businesses. Videoconferencing technology (live video and audio connections between users) was immediately adapted for prostitution by pimps and traffickers. By 1995, the web technology of live video chat, such as Skype, AIM, and MSN Messenger, permitted johns to obtain prostitution online. <sup>270</sup> In addition to viewing photos or films of prostitution, johns could comment by voice or keyboard or they could direct the woman to perform specific sex acts in real time. <sup>271</sup>

Using live video chat a U.S. pimp offered johns the choice to pay for and view women being tortured in Phnom Penh, Cambodia at rapecamp.com. <sup>272</sup> Extreme violence and humiliation of impoverished women has continued with LiveJasmin advertising "sexy Eastern European girls" on one website, and iFriends, one of the largest

<sup>230</sup> See Gretchen Ruethling, Chicago Police Put Arrest Photos of Prostitution Suspects Online, N.Y. Times, June 23, 2005, at A16.

<sup>231</sup> U.S. Government Efforts to Fight Demand Fueling Human Trafficking, U.S. Dep't State (Jan. 7, 2008), <http://2001-2009.state.gov/g/tip/rls/fs/08/100208.htm>; see also Shaming, Demandforum.net, <http://www.demandforum.net/shaming/> (last visited June 14, 2014).

<sup>232</sup> About, Craigslist, <http://www.craigslist.org/about/> (last visited June 14, 2014).

<sup>233</sup> See Brief for Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiffs at 8, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) (No. 09 CV 1385), 2009 WL 2446750.

<sup>234</sup> *Id.*

<sup>235</sup> See Farley, What We Must Not Know, *supra* note 107.

<sup>236</sup> M. Alexis Kennedy & Melanie A. Taylor, Prostitution on Craigslist 7-8 (2010) (unpublished manuscript) (on file with author). A random number generator was used to select 180 one-hour time frames from the "Women for Men" section of Craigslist. *Id.* at 7. Data from each post during that hour was collected. *Id.* A total of 12,444 advertisements were coded by research assistants in a university forensic psychology lab. *Id.*

<sup>237</sup> *Id.* at 9.

<sup>238</sup> See *id.*

<sup>239</sup> See *id.* at 10.

<sup>240</sup> Three ads from Craigslist (on file with author) that suggest trafficking include:

1) SF bay area craigslist > north bay > services offered > adult services

Sweet Asian Apple -w4m (mill valley)

Date: 2010-06-29, 9:00AM PDT

prostituting/dating websites in the world on another, separately advertising Eastern European women and "some Asian babes." <sup>273</sup>

Livestreamed pornography of the women's prostitution is used by pimps, traffickers, and sex buyers to control and humiliate women. <sup>274</sup> The existence of a video or photograph that is on the web for the world to see is profoundly disturbing to most women. <sup>275</sup> It removes their ability to control the image, removes their dignity and removes their ability to put prostitution out of their lives when they escape it. <sup>276</sup>

**[\*1080]** Pornographers produce films or streaming video for sex trafficking industry websites. In this practice, a webcam company advertises via a network of affiliates who post ads on their websites. The affiliates earn a fee whenever someone signs up to purchase webcam pornography. <sup>277</sup> San Francisco's torture pornography site Kink.com offered sex buyers in 2011 the opportunity to chat with, interact with, and control Kink.com's slaves and bondage porn stars in live streamed interactive bondage pornography cam shows. <sup>278</sup> In addition to Kink.com's live cam shows, the site features live streaming video, live bondage chats, live bondage sex parties, and other live streamed BDSM reality shows. <sup>279</sup>

#### E. Dating and Sugar Daddy Websites

Webcam video and escort prostitution sites have merged with some adult dating sites. Since 2000 prostitution advertising has increased on dating websites with many dating websites now largely consisting of locations where johns seek women who they presume are prostituting. Adultfriendfinder, for example, features gonzo pornography <sup>280</sup> of women seeking dates for prostitution in **[\*1081]** dozens of countries and every state in the United States. The site is available in German, Spanish, Japanese, French, Portuguese, Italian, Dutch, and Swedish. Some dating websites ask users to bid for a first date with a woman. <sup>281</sup> "Creat[ing] a financial market for first dates," women who are beautiful are asked to join the site and get paid for dates. <sup>282</sup> Casual dating sites such as onlinebootycall

Reply to: Sweet Asian Apple Here for short stay.

Please Call: (415) 000-0000

2) sacramento craigslist > gigs > adult gigs

Looking for an inexperienced girl (Sacramento)

Date: 2010-06-21, 12:56PM PDT Reply to:

Looking for a fun and friendly non pro girl for an adult gig in return for some \$ \$ \$ compensation. Would love to hear from any of you that may have an interest. Please send me a message, some pics, phone and lets have some fun. Please Be Serious No phone means you're not serious. You must be at least 18 years old !!!

3) puerto vallarta craigslist > personals > erotic services

12 hours for only \$ 250 - THE GIRLFRIEND EXPERIENCE!

w4m - 18 (13 Girls to choose from!)

Date: 2010-06-29, 1:38PM PDT

Take as much time as you want - up to 12 hours with the girl of your choice! There are 13 of us. All of us will give you an unforgettable girlfriend experience! For only 3100 pesos [\$ 250] we'll come stay with you for 12 hours! This includes our undivided attention, cuddling and 2 complete services! For more information, see our web site at [www.escort.com](http://www.escort.com). Email us or call us now! From Mexico Cell 322-000-0000 From US 011-521-322-000-0000

<sup>241</sup> See Mark Whittaker, Backpage Continues to Gain from Prostitution Advertising, AIM Group (Feb. 25, 2011), <http://aimgroup.com/blog/2011/02/25/backpage-continues-to-gain-from-prostitution-advertising/>. The AIM Group also summarizes prostitution advertising on three additional sites - NaughtyReviews.com, Eccie.com, and A1List.net. Id.

<sup>242</sup> See Farley, What We Must Not Know, supra note 107, at 121.

<sup>243</sup> Craigslist prostitution postings increased 41% during the Minneapolis convention and 74% in the during the Denver convention. Cunningham & Kendall, supra note 213, at 9.

are dominated by prostitution advertising. The seekingarrangement.com website's goal is to create what the site's pimps describe as mutually beneficial relationships between two people. "Such a relationship is usually between an older and wealthy individual who gives a young person expensive gifts or financial assistance in return for friendship, or intimacy." <sup>283</sup> The prostitution culture often seen in dating websites has expanded to include children. A fourteen-year-old boy in Tokyo met a thirteen-year-old girl through an online dating service and paid her for sex in a public bathroom. <sup>284</sup>

## VII. Prosecutorial Strategies

The global nature of prostitution and trafficking has led to the creation of federal anti-trafficking laws that include the Mann Act and the Trafficking Victims Protection Act (TVPA). <sup>285</sup> Given the range of felonies committed by pimps and traffickers, other laws are applicable for prosecuting them such as Racketeer Influenced and Corrupt Organizations Act (RICO). <sup>286</sup> Whereas in the past, those prostituting have been primary targets of arrest, <sup>287</sup> states are now starting to enforce prostitution laws against sex buyers. <sup>288</sup>

**[\*1082]** The TVPA was signed into law in 2000 with reauthorizations that expanded it passed in 2003, 2005 and 2008. <sup>289</sup> In addition to defining the crimes and penalties for trafficking, the TVPA established civil remedies, provides services for victims, and created T-visas and U-visas for foreign victims of trafficking to obtain immigration relief. <sup>290</sup> The T-visa is available to victims of trafficking in the U.S. who are willing to assist in the prosecution of traffickers and who can show that they would suffer extreme hardship if removed from the U.S. <sup>291</sup> The U-visa is available to victims of criminal activity in the U.S. who have "suffered substantial physical or mental abuse," who have information about the criminal activity, and who are helpful to law enforcement in prosecuting the crime. <sup>292</sup>

The TVPA defines a perpetrator of sex trafficking as a person who "knowingly ... recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or benefits, financially ... knowing ... that means of force, ... fraud, [or] coercion ... will be used to cause the person to engage in a commercial sex act." <sup>293</sup> No

<sup>244</sup> Peter M. Zollman, *Craigslist Revenue, Profits Soar*, AIM Group (Apr. 30, 2010) <http://aimgroup.com/2010/04/30/craigslist-revenue-profits-soar/>.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*; *Online Prostitution Ads Generated at Least \$ 37.3 Million in Last Year*, AIM Group (Oct. 25, 2012), <http://aimgroup.com/2012/10/25/online-prostitution-ads-generated-at-least-37-3-million-in-last-year/>.

<sup>247</sup> Whittaker, *supra* note 241.

<sup>248</sup> *Women's Funding Network Continues to Pressure Outlets Facilitating Demand for Domestic Child Sex Trafficking*, Women's Funding Network (Sept. 30, 2010, 6:00 AM), <http://www.womensfundingnetwork.org/about/news/press-releases/womens-funding-network-continues-to-pressure-outlets-facilitating-demand-f>.

<sup>249</sup> Whittaker, *supra* note 241.

<sup>250</sup> Sara Jean Green, *The Weekly, Its Parent Company Face Backlash Over Online Sex Ads That Exploit Teens*, Seattle Times (July 23, 2011, 9:50 PM), [http://seattletimes.com/html/localnews/2015710216\\_prostitution24m.html](http://seattletimes.com/html/localnews/2015710216_prostitution24m.html).

<sup>251</sup> *Online Prostitution-Ad Revenue Crosses Craigslist Benchmark*, AIM Group (July 10, 2013), <http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslist-benchmark/>.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* For documentation of the trajectory of backpage.com since Craigslist shuttered its prostitution advertising, see Kat Stoeffel, *Village Voice Media Getting Down and Dirty with Escort Ads*, N.Y. Observer (Apr. 26, 2011, 11:42 PM), <http://observer.com/2011/04/village-voice-media-getting-down-and-dirty-with-escort-ads/>; Emma Bazilian, *Backpage.com a Hit, Filling Craigslist Sex Ad Void*, Adweek.com (Apr. 27, 2011, 8:25 AM), <http://www.adweek.com/news/advertising-branding/backpagecom-hit-filling-craigslist-sex-ad-void-131043>; and *Escort-Ad Revenue Migration Continues*, AIM Group (July 13, 2011), <http://aimgroup.com/blog/2011/07/13/escort-ad-revenue-migration-continues-2/#more-12002>.

<sup>254</sup> ErosGuide, <http://www.eros-guide.com> (last visited June 14, 2014).

transportation is required in order to meet the legal requirement of trafficking under the TVPA. Prostitution of minors under TVPRA 2005 is presumed to be exploitive and any person who causes another person under the age of 18 to engage in a commercial sex act is guilty of sex trafficking.<sup>294</sup> Adult trafficking victims must prove force, fraud, or coercion.<sup>295</sup> The Department of Justice prosecuted 162 defendants for sex trafficking under the TVPA in 2012,<sup>296</sup> with 366 T-visas issued to victims and 103 issued **[\*1083]** to foreign national children.<sup>297</sup> These numbers remain limited because of the burdensome requirements for the visas. Created primarily to prosecute traffickers rather than to assist victims, the TVPA is onerous for trafficking victims. It is often too dangerous for victims to testify since traffickers and organized crime groups threaten not only their lives but the lives of family members, sometimes holding them hostage.<sup>298</sup> Other forms of immigration relief are less burdensome to victims, such as U-visas or self-petitioning under VAWA remedies for domestic violence.<sup>299</sup>

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 amended the TVPA to make civil remedies available for victims.<sup>300</sup> Thus victims can sue traffickers as well as individuals or corporations who are complicit with traffickers. No foreknowledge is required - only that the third party "should have known."<sup>301</sup> The civil remedy under the TVPRA holds traffickers and those who are complicit liable for damages arising out of her prostitution even after the criminal case has terminated.<sup>302</sup> The TVPRA remedy has some advantages: it would implicate individuals and corporations in a pattern of detrimental practices that would serve as a deterrent based on the financial and reputational risks involved.<sup>303</sup> Civil remedies also hold third parties accountable and create opportunities for survivors of trafficking to obtain necessary services.<sup>304</sup> In a case in progress a survivor of trafficking used the civil remedy section of the TVPRA to sue a sex buyer for facilitation **[\*1084]** of trafficking when he bought her for sexual use.<sup>305</sup> In this case, the sex buyer and the pimp pled guilty to criminal charges of trafficking and sexual exploitation. The United States Attorney for the Western District of Missouri has used the language from the TVPA to prosecute buyers of sex under that statute.<sup>306</sup> This case marked the first time that sex buyers were convicted under the TVPA in a sex trafficking case in which the victim was an adult.<sup>307</sup>

There have been a number of successful prosecutions of pimps and traffickers who used online prostitution classifieds to advertise and sell women and children for sexual use.<sup>308</sup> Many federal antitrafficking cases against

<sup>255</sup> See *id.* While Craigslist was originally a free site that evolved into a site requiring pay for prostitution advertising, eroguide charged for listings on the site.

<sup>256</sup> Eros Cams: The Ultimate Guide to Webcams, BR.Naked.com, [http://br.naked.com/ads/naked/pop/eroscams.php?cmp=popunde\\_r2&id=&ad\\_id=](http://br.naked.com/ads/naked/pop/eroscams.php?cmp=popunde_r2&id=&ad_id=) (last visited June 14, 2014). Options for models to chat with or view include "live girls, 18+, small tits, big tits, White, Latin, Asian, Ebony, Big Black Women, Foot Show, Big Ass, Moms I'd Like to Fuck, and Squirters." *Id.*

<sup>257</sup> BootyTag, <http://www.sextofun.com/?a=bootytag> (last visited June 14, 2014).

<sup>258</sup> Green, *supra* note 250.

<sup>259</sup> Levi Pulkkinen, Charge: Fake Cop Raped Child Prostitutes Hired Off Backpage, Seattle Post-Intelligencer (Aug. 10, 2011, 12:36 PM), <http://www.seattlepi.com/local/article/Charge-Fake-cop-raped-child-prostitutes-hired-1802787.php>.

<sup>260</sup> Schapiro Group, Men Who Buy Sex with Adolescent Girls: A Scientific Research Study 12 (2010), available at <http://prostitutionresearch.com/2014/04/29/men-who-buy-sex-with-adolescent-girls-a-scientific-research-study/>.

<sup>261</sup> *Id.* at 6.

<sup>262</sup> *Id.* at 11 (The three warnings issued by the "escort agency operator" who was actually the researcher are as follows: "1. We're talking about the really young girl, right? 2. She doesn't look like she's 18. 3. I don't believe this girl is actually 18, and I have no reason to believe she is.").

<sup>263</sup> *Id.* at 12. In response, Craigslist attempted to suppress this independently conducted research on use of minors in prostitution in the Atlanta area by sending a cease and desist letter both to the funder of the research study (Women's Funding Network, San Francisco) and to the Governor of Georgia. See Press Release, Chris Grumm, Women's Funding Network, Women's Funding Network Releases Georgia Demand Study to Craigslist (June 17, 2010), available at <http://www.womensfundingnetwork.org/about/news/press-releases/women%E2%80%99s-funding-network-releases-georgia-demand-study-to-craigslist>.

Craigslist have been based on its advertising of children for sale in prostitution.<sup>309</sup> Pimps have been charged with violating child pornography laws as a result of posting online advertisements of children for use in prostitution.<sup>310</sup>

**[\*1085]** States' rights to protect children from being pimped online have been opposed by the Electronic Frontier Foundation using First Amendment arguments.<sup>311</sup> Attorney General Rob McKenna and prosecutors were restrained from enforcing a Washington state law that would require online classified advertisers such as Backpage to verify the ages of people advertised in "adult services."<sup>312</sup> Similar measures have been introduced in New York, New Jersey, and Tennessee.<sup>313</sup> Attorneys from Backpage cited the Communications Decency Act protecting them as website operators from liability over the speech of "unaffiliated parties." AG McKenna stated, "Backpage is many things, but an ally in the fight against trafficking it's not. It's a cash machine churning out tens of millions a year for its owners by charging \$ 1 and up for prostitution advertisements."<sup>314</sup> The National Association of Attorneys General has begun to lobby Congress to narrow section 230 of the CDA so that it will protect against civil but not criminal liability.<sup>315</sup>

Social networking sites and online classified advertising sites maintain data servers in more than one state.<sup>316</sup> The interstate commerce element of the TVPA allows prosecution of online traffickers as illustrated in the Eleventh Circuit decision in *United States v. Myers*.<sup>317</sup> The defendants placed pornography of their victims on Craigslist and Backpage and were charged with trafficking two girls for sex.<sup>318</sup> The court concluded that the interstate commerce element of the statute was satisfied by the movement of funds through accounts and servers in various states.<sup>319</sup>

The Mann Act criminalizes the act of transporting or enticing a **[\*1086]** person - adult or child - to travel for the purpose of engaging in prostitution.<sup>320</sup> Only the intent of the perpetrator is relevant; whether or not the victim consented is irrelevant.<sup>321</sup> Unlike the TVPRA, there is no need to prove force, fraud or coercion under the Mann Act.<sup>322</sup> Providing transportation<sup>323</sup> with the intent of prostituting the victim is sufficient for conviction under the Mann Act.<sup>324</sup> The Act's focus on the perpetrator's behavior can spare the victim from testifying - a major

<sup>264</sup> David Sarno, *Craigslist to Remove Erotic Services Section, Monitor Adult Services Posts*, L.A. Times (May 13, 2009, 8:40 AM), <http://latimesblogs.latimes.com/technology/2009/05/craigslist-attorneys-general-erotic-services-prostitution.html>; Peter M. Zollman, *Craigslist Revenue: 100 Million Smackers, 10 Classified Intelligence Rep.*, June 10, 2009, at 2, 5.

<sup>265</sup> Tracy Coenen, *No More Free Advertising for Prostitutes on Craigslist*, DailyFinance (Nov. 7, 2008, 8:00 AM), <http://www.dailyfinance.com/2008/11/07/no-more-free-advertising-for-prostitutes-on-craigslist/>.

<sup>266</sup> Thomas J. Holt, Kristie R. Belvins & Joseph B. Kuhns, *Examining the Displacement Practices of Johns with On-Line Data*, 36 J. Crim. Just. 522, 522, 523, 527 (2008).

<sup>267</sup> Adam Thierer, *State AGs + NCMEC = The Net's New Regulators?*, Tech. Liberation Front (Nov. 24, 2008), <http://techliberation.com/2008/11/24/state-ags-ncmec-the-nets-new-regulators/>; Steve Turnham & Amber Lyon, *Online Sex Ads Complicate Crackdowns on Teen Trafficking*, CNN.com (Sept. 15, 2010, 9:52 AM), [http://articles.cnn.com/2010-09-14/justice/us.craigslist.sex.ads\\_1\\_craigslist-ads-law-enforcement?\\_s=PM:CRIME](http://articles.cnn.com/2010-09-14/justice/us.craigslist.sex.ads_1_craigslist-ads-law-enforcement?_s=PM:CRIME); Domestic Minor Sex Trafficking: Hearing on H.R. 5575 Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H.R. Comm. on the Judiciary, 111th Cong. 3-4 (2010) (testimony of Elizabeth L. McDougall, counsel to Craigslist, Inc.) (discussing Craigslist's reporting agreement with NCMEC which permits Craigslist to avoid reporting to local or federal police).

<sup>268</sup> E-mails from Greg Collier, CEO, Geebo, (Mar. 26, 2012, 7:47 AM, Mar. 29, 2012, 7:26 AM) (explaining screening and filtering of online classified ads) (on file with author).

<sup>269</sup> *M.A. ex rel P.K. v. Vill. Voice Media Holdings*, 809 F. Supp. 2d 1041, 1043-44 (E.D. Mo. 2011).

<sup>270</sup> Hughes, *supra* note 148, at 118.

<sup>271</sup> *Id.* at 118-19; Malarek, *supra* note 123, at 202. In order to assure themselves that they are really in direct contact, johns ask for the woman to make special signals or show today's newspaper to indicate that the prostitution is live. Hughes, *supra* note 148, at 119. Multiple viewers can be linked at one time or johns can pay extra for a private performance of prostitution. *Id.* On a web cam site the john pays to chat with live women who perform prostitution on live streaming video, performing what the johns pay them to do. Melissa Farley, *Pornography, Prostitution, and Trafficking in Nevada*, in *Prostitution and Trafficking in Nevada*:

advantage over the TVPRA. When a TVPRA prosecution appears difficult, the penalty, not inconsequential, of a ten-year prison sentence calls for wider use of the Mann Act.<sup>325</sup>

Online prostitution has blurred jurisdictional boundaries. When an online sex buyer in New Jersey solicits prostitution from a seller (pimp or trafficker) normally located in New York, the Mann Act can be applied. Transportation may be proved through travel receipts, toll records or other documentary evidence that do not require a victim's testimony. Electronic conversations arranging the meeting can be used as evidence that the sex buyer negotiated a commercial sex act with the trafficker. Some courts have ruled that warrantless cell phone searches are permissible when police are searching for evidence of a specific crime such as selling drugs or soliciting prostitution.<sup>326</sup> Emails, text messages, and other **[\*1087]** electronic communications are likely to be a rich source of evidence for Mann Act prosecutions and possibly other crimes.<sup>327</sup>

The "persuades, induces, entices" language in the Mann Act means that it can be applied to sex buyers as well pimps.<sup>328</sup> A sex buyer in New Jersey for example, who contacts a person in prostitution that he discovered on Backpage under listings in New York, could be held liable if he urges her to come to New Jersey to perform an act of prostitution. If it can be proved that he knew the woman was in New York, he will have violated the Mann Act.

Pimps have been prosecuted under RICO. In 2011, U.S. Attorneys charged thirty-eight California gang members under RICO for trafficking women and children via social networking sites.<sup>329</sup> Gang members recruited vulnerable girls and women through MySpace, Facebook, and Twitter and then held them in captivity.<sup>330</sup> The women and children were then "sold, traded, or 'gifted' [by gang members] to other 'pimps.'" <sup>331</sup> Gang members from Texas and from United Arab Emirates continue this practice of MySpace recruitment, captivity, and sales of humans.<sup>332</sup> RICO **[\*1088]** punishes any persons who have received any income derived either directly or indirectly from any racketeering activity as well as persons employed by or associated with any enterprise that conducts its affairs through a pattern of racketeering activity.<sup>333</sup> According to Lieutenant Derek Marsh, Co-Director of the Orange County, California Human Trafficking Task Force, charging sex buyers with conspiracy to commit the crime of

Making the Connections, *supra* note 82, at 153, 156. When johns are bored with online pornography, they can create their own pornography with webcam prostitution. See Malarek, *supra* note 123, at 201-02.

<sup>272</sup> Hughes, *supra* note 148, at 119.

<sup>273</sup> Malarek, *supra* note 123, at 203.

<sup>274</sup> Melissa Farley, Pornography, Prostitution, and Trafficking in Nevada, in *Prostitution and Trafficking in Nevada: Making the Connections*, *supra* note 82, at 157 n.470 (explaining how one pimp/pornographer would withhold payment to prostituting women who refused to be filmed).

<sup>275</sup> *Id.* ("[Women in prostitution] resist being filmed because that would be a record of their prostitution, and often a part of their lives that they prefer to leave behind them, rather than have on view indefinitely into the future.").

<sup>276</sup> Telephone Interview, *supra* note 204; see also Farley, *supra* note 91, at 146 (discussing how women in prostitution whose johns or pimps made pornography of them in prostitution had significantly more severe symptoms of PTSD than did women who did not have pornography made of their prostitution).

<sup>277</sup> Melissa Farley, Pornography, Prostitution, and Trafficking in Nevada, in *Prostitution and Trafficking in Nevada: Making the Connections*, *supra* note 82, at 156, 157, 261-62. The connections between web cam pornography, prostitution and casual sex/dating websites such as adultfriendfinder ("the largest sex and swingers personals site in the world") can be seen in the history of webcams.com. The parent company of webcams.com is Streamray (<http://www.streamray.com>). In January 2006 Streamray announced the broadcast of 400 pornographic videos simultaneously with the goal of becoming the world's largest webcam company. AvOnline.com, [http://www.avnonline.com/index.php?Primary\\_Navigation=Editorial&Action=View\\_Article&Content\\_ID=255014](http://www.avnonline.com/index.php?Primary_Navigation=Editorial&Action=View_Article&Content_ID=255014). Streamray subsequently merged with Various, the parent company of Adultfriendfinder.com, owned by Andrew Conru. Adultfriendfinder features gonzo pornography. In August 2005, Adultfriendfinder claimed that 17 million people visit the site, and that the company employs 200 people. See AvOnline.com, [http://www.avnonline.com/index.php?Primary\\_Navigation=Editorial&Action=View\\_Article&Content\\_ID=235604](http://www.avnonline.com/index.php?Primary_Navigation=Editorial&Action=View_Article&Content_ID=235604). Other sites owned by Various are AdultFriendFinder.com, FriendFinder.com, Alt.com, OutPersonals.com, Passion.com, GradFinder.com, NiceCards.com, QuizHappy.com, BreakThru.com, Dine.com, BigChurch.com, ShareRent.com, FriendPages.com,

human trafficking would subject them to liability for the same penalties as traffickers and pimps.<sup>334</sup> Marsh argued that because "the crime of conspiracy is already familiar to investigators, prosecutors, and judges, and its application has a long history of success," the consistent use of conspiracy charges would have "a real chance ... of making these demanders of inhumane services cease their demands."<sup>335</sup> Racketeering activity includes any acts that are indictable under numerous code sections, including the Trafficking Victims Protection Act and the Mann Act.<sup>336</sup> Once evidence of a conspiracy - for example a conspiracy to buy prostituted women - is shown, the sex buyer's "connection to the conspiracy, need only be slight, and the government is only required to prove that the defendant was a party to the general conspiratorial agreement."<sup>337</sup> RICO could thus be used against sex buyers who did not admit to conspiring to trafficking but who shared a common purpose and were involved in some aspect of trafficking. Many of the more than thirty "state RICO statutes have significantly broader civil and criminal applications than the federal [RICO] statute," providing for civil liability, criminal liability, and forfeiture.<sup>338</sup> Some states' statutes have longer periods of limitations than the federal statute and "many state RICO statutes have fewer essential elements than the federal statute."<sup>339</sup> Prosecutors should use these laws more aggressively against sex traffickers.

The Travel Act can be used to prosecute sex traffickers when **[\*1089]** interstate or foreign travel is involved.<sup>340</sup> This law provides that whoever travels in interstate and foreign commerce with intent to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity," is in violation of federal law.<sup>341</sup> The statutory definitions of unlawful activity include "prostitution offenses in violation of the laws of the State in which they are committed or of the laws of the United States."<sup>342</sup>

Some states have laws that criminalize online traffickers or pimps of children, if not traffickers or pimps of adults. In 2011, Florida enacted an internet child solicitation statute that criminalizes the use of the internet to solicit or seduce a minor for sex, including prostitution, and criminalizes traveling to meet a child for sex.<sup>343</sup> A section of the Florida law imposes criminal penalties on the Internet owner/operator for knowing use of the service for the prohibited purposes.<sup>344</sup> A 2011 Massachusetts anti-trafficking law establishes the crime of enticing a child into prostitution by

FilipinoFriendFinder.com AsiaFriendFinder.com, GUANXI.com, IndianFriendFinder.com, SeniorFriendFinder.com JewishFriendFinder.com, Amigos.com, GermanFriendFinder.com, FrenchFriendFinder.com, KoreanFriendFinder.com.

<sup>278</sup> Warning: viewing the kink.com site is disturbing. Kink.com, <http://goo.gl/bVFEbL> (last visited June 15, 2014).

<sup>279</sup> See id.; see also Melissa Farley, Kink.com in San Francisco: Women and Gay Men's Abu Ghraib, Prostitution Res. & Educ. (Oct. 22, 2007), [http://prostitutionresearch.com/pre\\_blog/2007/10/22/kinkcom\\_in\\_san\\_francisco\\_women/](http://prostitutionresearch.com/pre_blog/2007/10/22/kinkcom_in_san_francisco_women/) (deconstructing torture pornography and comments in response).

<sup>280</sup> Gonzo pornography is extremely violent pornography where women are violently raped, obviously injured, painfully tied up, often terrified and/or crying. See Martin Amis, A Rough Trade, Guardian (Mar. 16, 2001), <http://www.theguardian.com/books/2001/mar/17/society.martinamis1>.

<sup>281</sup> Conor Friedersdorf, Worse Than Prostitution?, Atlantic (Apr. 25, 2011, 10:30 AM), <http://www.theatlantic.com/national/archive/2011/04/worse-than-prostitution/237795/>.

<sup>282</sup> Id. Continuing to promote the interests of sex buyers, Brandon Wade developed Carrot Dating, a 2013 mobile app where men "can use bribery to get first dates." CarrotDating.com, <http://www.carrotdating.com/> (last visited June 15, 2014).

<sup>283</sup> Mark Berman, College Girls and Sugar Daddies: Is SeekingArrangement.com Just Prostitution?, Opposing Views (Aug. 1, 2011), <http://www.opposingviews.com/i/society/crime/college-girls-and-sugar-daddies-seekingarrangementcom-just-prostitution>.

<sup>284</sup> Boy, 14, Buys Sex with Girl, 13, Destroyer J. (Sep. 8, 2009), <http://destroyerjournal.com/2009/09/08/boy-14-buys-sex-from-girl-13/>.

<sup>285</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466-469 (codified as amended at 22 U.S.C. § 7101 (2012)); White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§2421-2424 (2012)).

<sup>286</sup> Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961-1968 (2012).

<sup>287</sup> Boyer et al., supra note 62.

electronic communication.<sup>345</sup> Statutory rape laws should also be used against sex buyers when the victim is a minor. For instance New York Penal Law section 130.30 penalizes rape in the second degree.<sup>346</sup> The statute provides that a person over the age of eighteen commits rape in the second degree when he or she engages in sexual intercourse with a person less than 15 years of age.<sup>347</sup> There is no requirement in this law that force, fraud or coercion must have been used.<sup>348</sup> Like the TVPA, engaging in a commercial sex act with an individual less than 18 years of age requires no proof other than the commission of the act. States' statutory rape laws should not be ignored.<sup>349</sup>

A Florida civil law provides victims of prostitution and trafficking with the right to sue pimps for damages they inflict and could be used to prosecute online trafficking cases.<sup>350</sup> The Florida law **[\*1090]** permits women who are coerced into prostitution via exploitation of their social and legal vulnerability to sue, defining coercion as restriction of communication with others, exploitation of a person's developmental disability, cognitive limitation, affective disorder, or addiction, exploitation of previous victimization by sexual abuse, exploitation during the production of pornography, and exploitation of the human needs for food, shelter, safety, or affection.<sup>351</sup>

### VIII. Concluding Thoughts

"For a Web site like Backpage to make \$ 22 million off our backs," said a trafficking survivor, "it's like going back to slave times."<sup>352</sup>

The transition of trafficking and prostitution to the Internet has created unique challenges for law enforcement. "'Technology creates new ways for people to interact with each other,' said Eric Goldman, a law professor at Santa Clara University in California. 'You have to figure out if old law maps to new interactions.'"<sup>353</sup> Today the prostitution transaction includes not only victim, buyer and trafficker/pimp but the most invisible partner: the online advertiser.<sup>354</sup> When prostitution happened on the street in someone's neighborhood, it was clear whose

<sup>288</sup> E.g., Kyle Nagel, Cops Focusing More on "Johns" in Prostitution Busts, Dayton Daily News (Aug. 21, 2012, 8:00 PM), <http://www.daytondailynews.com/news/news/cops-focusing-more-on-johns-in-prostitution-busts/nRGxG/>.

<sup>289</sup> Victims of Trafficking and Violence Protection Act of 2000, 114 Stat. at 1464-548; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. (2008) (enacted).

<sup>290</sup> Melynda H. Barnhart, Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation, 16 Wm. & Mary J. Women & L. 83, 97-101 (2009).

<sup>291</sup> Victims of Human Trafficking: T Nonimmigrant Status, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last updated Oct. 3, 2011).

<sup>292</sup> Victims of Criminal Activity: U Nonimmigrant Status, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status#U%20Nonimmigrant%20Eligibility> (last updated Jan. 9, 2014).

<sup>293</sup> 18 U.S.C. § 1591(a) (2012).

<sup>294</sup> *Id.*

<sup>295</sup> Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. § 237(a)(2)(B) (2008).

<sup>296</sup> U.S. Dep't of State, Trafficking in Persons Report 382 (2013), <http://www.state.gov/documents/organization/210742.pdf>.

<sup>297</sup> *Id.* at 384.



jurisdiction that was. Enforcement of a range of laws against johns and pimps was sometimes fueled by citizens' concern about prostitution as a neighborhood nuisance rather than concern about prostitution's exploitation and violence. Communities wanted prostitution out of sight and out of their neighborhoods. Because online sex businesses are less visible to the public, victims of sexual exploitation in prostitution are isolated and can be in greater danger from sex [\*1091] buyers. A survivor of prostitution opined that street prostitution was actually safer than online prostitution since friends watched out for her on the street. "They don't know what they are doing," she said about women who are sold via online websites, "they're alone." <sup>355</sup>

The United States has shown ambivalence regarding enforcement of laws on prostitution and trafficking. This is highlighted in public comments of U.S. Attorney Michael J. Garcia about a sex buyer's purchase and interstate transport of a prostituted woman that was facilitated via an online escort advertisement, Emperor's Club VIP. Mr. Garcia indicated that the Department of Justice (DOJ) does not typically prosecute sex buyers who buy women from pimps except in cases of prostitution of children.

"In light of the policy of the Department of Justice with respect to prostitution offenses and the longstanding practice of this Office, as well as Mr. Spitzer's acceptance of responsibility for his conduct, we have concluded that the public interest would not be further advanced by filing criminal charges in this matter." <sup>356</sup>

This federal indifference to the prostitution and often co-occurring trafficking of adult women has had an additional adverse impact on the enforcement of state laws against prostitution. Because of a lack of resources and also because of the need for special training, it has been difficult to monitor online prostitution and trafficking. <sup>357</sup> Nonetheless, police in many states including Washington, Tennessee, New York, and Virginia conducted sting operations by posting fake prostitution advertisements online resulting in numerous arrests of men seeking to buy sex. <sup>358</sup>

<sup>298</sup> U.S. Dep't of Justice, Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal year 2008 3, 40 (2009).

<sup>299</sup> Telephone Interview with Margaret Baldwin, Executive Director of Refuge House, Tallahassee, Fla. (Feb. 2012).

<sup>300</sup> The Act provided that not only could victims of trafficking sue the immediate perpetrator, but anyone who "knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter." H.R. 7311, § 221(2)(A)(ii).

<sup>301</sup> Sallie Pullman, Exploring Civil Remedies for Child Trafficking Victims: Class Action Litigation and Our Capacity to Reduce Demand, NDAA.org, 2 (2011), [http://www.ndaa.org/ncpca\\_update\\_newsletter.html](http://www.ndaa.org/ncpca_update_newsletter.html). In other laws with similar language the notion of benefit includes financial benefit as well as business opportunities, gaining access to file-sharing websites that contain illicit images of children, and being provided pornography. *Id.*

<sup>302</sup> *Id.* at 3. The civil suit will be stayed until the criminal case has been terminated. *Id.* at 4.

<sup>303</sup> *Id.* at 3.

<sup>304</sup> Max Waltman, Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential, 34 *Women's Stud. Int'l F.* 449, 463 (2011), available at <http://goo.gl/XdOyfr>.

<sup>305</sup> Julia Dahl, Suing Lawrence Taylor "Next Frontier" in Fighting Sex Trafficking, Says Expert, CBSNews.com (Dec. 1, 2011, 2:34 PM), [http://www.cbsnews.com/8301-504083\\_162-57334731-504083/suing-lawrence-taylor-next-frontier-in-fighting-sex-trafficking-says-expert/](http://www.cbsnews.com/8301-504083_162-57334731-504083/suing-lawrence-taylor-next-frontier-in-fighting-sex-trafficking-says-expert/).

**[\*1092]** In this article we have summarized information about online prostitution and trafficking. Describing the history of technological advances that permitted pimps, traffickers and sex buyers to expand the sex industry online, we discussed the use of websites, online classified advertising, message boards, dating and sugar daddy sites, live streaming video, and the involvement of organized crime in online trafficking. We have also noted that these technologies leave digital traces that can be used by law enforcement, and that online technologies raise new issues for those involved in challenging trafficking such as adult pornography, child pornography, and interstate commerce.<sup>359</sup> We have discussed some challenges to prosecutors: the inseparability of different arms of the sex industry despite the insistence of some that they are discrete entities. Other prosecutorial challenges include complex jurisdictional boundaries, lack of resources and funding. We also described creative and successful prosecutions.

Challenging Internet giants Google and Facebook and accusing them of protecting massive profits via free speech arguments, a Huffington Post blogger wrote,

This is a human rights fight. It's not about sex. This isn't about left or right, liberal versus conservative but about freedom. This isn't about actual free speech either. It is about trillion-dollar interests too lazy to move this issue to priority one. Everyone needs to get involved to change the internet giants minds. That includes the LGTB community, liberal and feminist activists, evangelicals, and everyone else. We need to unite - for once - to make it clear that fighting to stop slavery, child rape and sex trafficking is not about fighting human sexuality. It is the opposite. We are freeing people to make their own choices.<sup>360</sup>

New community alliances have been formed in response to the human rights violations of trafficking. After police complained of a lack of funding and resources to combat prostitution, Big Sisters, based in Iceland,<sup>361</sup> gave the Reykjavik Metropolitan Police "56 **[\*1093]** names, 117 telephone numbers and 29 emails of men who expressed interest in" buying sex acts from women in prostitution "through the websites einkamal.is, mypurplerabbit.com, raudatorgid.is and classified ads offering "massages" in [the] daily newspaper Frettabladid."<sup>362</sup> The activist group noted that although sex buyers attempt to hide their identities, their computer skills are sometimes limited.<sup>363</sup> San

<sup>306</sup> Press Release, U.S. Attorney's Office for the W.D. of Mo., Lebanon Man Sentenced to 20 Years for Coercing a Minor to Become a Sex Slave; Two Customers also Sentenced for Sex Trafficking (Sept. 11, 2013), available at <http://www.justice.gov/usao/mow/news2013/bagley.sen.html>.

<sup>307</sup> Id.

<sup>308</sup> Press Release, U.S. Attorney's Office for the W.D. of N.C., California Man Sentenced to 18 Months in Prison for Prostitution-Related Charges (July 25, 2012), available at <http://www.justice.gov/usao/ncw/pressreleases/Charlotte-2012-07-25-rodgers.html>; see also Chicago Man Found Guilty of Sex Trafficking of Minors, Examiner.com (Nov. 21, 2011), <http://www.examiner.com/residential-in-chicago/chicago-man-found-guilty-of-sex-trafficking-of-minors> (arranging locations through Craigslist and other websites); Craigslist Named as America's Biggest Pimp, TheAge.com (Mar. 6, 2009, 11:01 AM), <http://www.theage.com.au/news/web/craigslist-named-as-americas-biggest-pimp/2009/03/06/1235842625281.html> (noting that a 2008 FBI investigation found that "more than 2800 child prostitution ads had been posted on Craigslist"); Prison, Indictment in NYC Sex Trafficking Cases, Wall St. J. (Nov. 23, 2011, 7:03 AM), <http://online.wsj.com/article/APf611332ac6944e65a760327f4d5c4d4b.html> (reporting on a man indicted on sex trafficking charges for forcing a woman to prostitute in Queens and coercing her to advertise on Craigslist); Levi Pulkkinen, Charge: Pimp Promised Disabled Seattle Teen Thanksgiving Dinner if She "Made Some Money," seattlepi.com (Dec. 1, 2011, 11:25 PM), <http://www.seattlepi.com/local/article/Charge-Pimp-promised-disabled-Seattle-teen-2338672.php> (reporting that a 37-year-old man sold an eighteen-year-old for sex on backpage.com); Liz Robbins, 4 in Brooklyn Charged with Sex Trafficking, N.Y. Times (Nov. 21, 2011, 4:34 PM), [http://cityroom.blogs.nytimes.com/2011/11/21/4-in-brooklyn-charged-with-sex-trafficking/?\\_php=true&\\_type=blogs&\\_r=0](http://cityroom.blogs.nytimes.com/2011/11/21/4-in-brooklyn-charged-with-sex-trafficking/?_php=true&_type=blogs&_r=0) (reporting that a man forced a thirteen-year-old into prostitution and advertised her prostitution by posting photos of her on the internet).

<sup>309</sup> Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3559, 3563 (2008); H.R. 7311, § 235.

<sup>310</sup> Pimp Daniels was convicted on child pornography charges, Mann Act, and sex trafficking charges. United States v. Daniels, 653 F.3d 399, 404 (6th Cir. 2011). He unsuccessfully claimed that he didn't know the girl he was advertising for sale for sexual

Antonio police have mentioned similar concerns about a lack of funding for prosecution of online trafficking cases. <sup>364</sup> Applications that detect suspected money laundering by trafficking networks have been developed by JP Morgan Chase. For example, sex trafficking was discovered by "investigation of several credit card transactions at a nail salon during nonbusiness hours." <sup>365</sup> It is worth noting that police in 2013 closed down Hong Kong's largest prostitution website, charging the owners who they described as members of criminal syndicates with money-laundering and living off the avails of a prostitute. <sup>366</sup>

Citizen assistance and cooperation with law enforcement could be a major step forward in providing evidence of online trafficking. This might occur via crowdsourcing, the online broadcast of a problem, such as trafficking, to a large and undefined group of people who then apply their talents to solving the problem. Via crowdsourcing, new collaborations between the public, NGOs, law enforcement, and researchers can produce new information such as mapping the location of trafficked individuals or those at high risk for trafficking. <sup>367</sup>

**[\*1094]** Despite the obstacles to combating online prostitution and trafficking, law enforcement and prosecutors have tools to successfully charge and convict pimps, traffickers and most importantly sex buyers. It is incumbent upon policy makers and law enforcement to enforce existing laws and where needed, to develop new laws and policies that will abolish online (and offline) trafficking and prostitution. While many have been recruited, sold and trafficked into prostitution on social networking sites, the sites can also be turned against traffickers. A thirty-year-old New Jersey woman used Facebook to contact a family member who then rescued her and others from a trafficker who held them captive. <sup>368</sup> The creative and proactive use of online technologies against sex buyers, pimps, and traffickers is cause for hope.

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use on Craigslist was a minor. *Id.* at 410-11. It should be noted that jurisdictions that continue to arrest and treat minors in prostitution as criminals are at odds with the federal law.

<sup>311</sup> Sheri Qualters, EFF Challenges as Overbroad Washington State Law Targeting Child Trafficking Ads, *Nat'l L. J.*, June 18, 2012 (accessed using LexisAdvance).

<sup>312</sup> *Id.*; see James R. Marsh, EFF Joins the Child Exploitation Bandwagon, *ChildLaw Blog* (June 19, 2012), [http://www.childlaw.us/eff\\_joins\\_the\\_child\\_exploitati/](http://www.childlaw.us/eff_joins_the_child_exploitati/) (stating that in its opposition to a Washington state law preventing child sex trafficking the EFF is supporting freedom of speech on the internet).

<sup>313</sup> Qualters, *supra* note 311.

<sup>314</sup> Robert McKenna, Backpage: An "Ally" in the Fight Against Trafficking?, *WA St. Off. Attorney Gen.* (May 31, 2012, 3:56 PM), <http://www.atg.wa.gov/ingeneralpost.aspx?id=29800#UvVhyYWPvW0>.

<sup>315</sup> Letter from the Nat'l Ass'n of Attorneys Gen. to Senator Rockefeller, Senator Thune, Representative Upton & Representative Waxman (July 23, 2013), available at <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1465&context=historical>.

<sup>316</sup> See *United States v. Myers*, 430 F. App'x 812, 815 (11th Cir. 2011).

<sup>317</sup> *Id.* at 815-16.

<sup>318</sup> *Id.* at 816.

<sup>319</sup> *Id.* at 817; Mark Latonero, Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds 20-21 (2011), [http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf).

<sup>320</sup> The Mann Act provides that the knowing transport of "any individual in interstate or foreign commerce ... with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both." 18 U.S.C. § 2421 (2012).

<sup>321</sup> *See id.*

<sup>322</sup> *See id.*

<sup>323</sup> Transportation is not a requirement of TVPRA. *See supra* text accompanying notes 300-07.

<sup>324</sup> 18 U.S.C. § 2421.

<sup>325</sup> After pleading guilty to pimping women between NY and CT for prostitution, Corey Davis launched an appeal to overturn his guilty plea following his 293 month sentence under the Mann Act. *United States v. Davis*, No. 3:07-cr-11 (JCH), 2008 U.S. Dist. LEXIS 99802, at 1, 6 (D. Conn. Nov. 26, 2008).

<sup>326</sup> In *United States v. Flores-Lopez*, 670 F.3d 803 (7th Cir. 2012) a judge ruled that the search of a cell phone was legal because the officer conducted a limited search and only looked for phone numbers associated with the alleged drug deal. *Id.* at 810. The judge argued it was similar to flipping through a diary to search for basic information such as addresses and phone numbers. *Id.* at 807. Understanding that data from cell phones of men arrested for buying sex are a potential source of information about organized criminals and traffickers, the California Supreme Court in January 2011 ruled in *People v. Diaz* that it is legal in California for detained arrestees' cell phones to be searched by police without requiring a warrant, a decision the Supreme Court refused to overturn in October 2011. *People v. Diaz*, 244 P.3d 501, 502 (Cal. 2011). Several other appellate courts have ruled similarly to California in this regard. *See* Timothy B. Lee, Obama Administration Asks Supreme Court to Allow Warrantless Cellphone Searches, *Wash. Post* (Aug. 19, 2013, 2:24 PM), <http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/19/obama-administration-asks-supreme-court-to-allow-warrantless-cellphone-searches/>.

<sup>327</sup> For examples of such evidence, see the indictment of Corey Davis who transported victims from Queens, NY to strip clubs in CT. *See* Grand Jury Indictment at 12, 5 B-06-1, *United States v. Davis*, 2008 U.S. Dist. LEXIS 99802 (D. Conn. 2008), available at <http://www.scribd.com/doc/48989066/Corey-Davis-Indictment> (providing evidence that victims were transported across state lines and were given a cell phone to communicate with pimp Davis and potential sex buyers). The Mann Act has been used successfully in other states. *See, e.g.,* Press Release, U.S. Attorney's Office D. Minn., Federal Jury Convicts Woodbury Man of Sex Trafficking a Minor (Aug. 18, 2011), available at <http://www.justice.gov/usao/mn/press/aug030.pdf>; Press Release, U.S. Attorney's Office S.D. Fla., Two Martin County Women Plead Guilty to Interstate Prostitution Charges (Aug. 3, 2011), available at <http://www.justice.gov/usao/fls/PressReleases/2011/110803-02.html>; *see United States v. Daniels*, 653 F.3d 333, 410 (6th Cir. 2011) (stating that the crime is committed any time a person of any age is transported for the purpose of prostitution). A former New York Sheriff was charged under the Mann Act for hiring a limousine to transport several prostituted women to another state for a freemasons' convention. Dan Herbeck, Ex-Deputy Charged in Jesters Case, *BuffaloNews.com* (June 9, 2010, 12:00 AM), <http://www.buffalonews.com/article/20100609/CITYANDREGION/306099974>.

<sup>328</sup> *See United States v. Farner*, 251 F.3d 510, 511 (5th Cir. 2001); *see also* Carrie Johnson, Spitzer Won't Face Charges for Scandal, *Wash. Post*, Nov. 7, 2008, at A2 (reporting that "Justice Department guidelines disfavor indictments against clients of prostitution rings," such as Eliot Spitzer, even when it appears that the client violated the Mann Act).

<sup>329</sup> Press Release, *supra* note 24.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> Facebook' Human Trade Ring Busted by Dubai, Emirates 24 7 (Feb. 4, 2012), <http://www.emirates247.com/crime/local/facebook-human-trade-ring-busted-in-dubai-2012-02-04-1.441088>; Tecca, Police Warn About Gangs Recruiting Prostitutes Via Facebook, *Yahoo Tech. News Blog* (Sept. 26, 2012, 2:04 PM), <http://news.yahoo.com/blogs/technology-blog/police-warn-gangs-recruiting-prostitutes-via-facebook-180449666.html>.

<sup>333</sup> 18 U.S.C. § 1962 (2012).

<sup>334</sup> Human Trafficking: Recent Trends: Hearing Before the Subcomm. on Border, Maritime and Global Counterterrorism of the H. Comm. on Homeland Security, 111th Cong. 13 (2009) (statement of Lieutenant Derek Marsh, Co-Director, Orange County, California Human Trafficking Task Force).

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335 *Id.*

336 18 U.S.C. § 1961 (2012); see 18 U.S.C. §§1582-1592; 18 U.S.C. §§2421-2424.

337 Kendal Nicole Smith, *Human Trafficking and RICO: A New Prosecutorial Hammer in the War on Modern Day Slavery*, 18 *Geo. Mason L. Rev.* 759, 781 (2011) (internal quotation marks omitted); see *United States v. Dietz*, 577 F.3d 672, 677 (6th Cir. 2009).

338 ABA Section of Antitrust Law, *RICO State By State: A Guide to Litigation Under the State Racketeering Statutes* 1 (2d ed. 2011).

339 *Id.* at 2.

340 18 U.S.C. § 1952 (2012).

341 *Id.* at § 1952 (a)(3).

342 *Id.* at § 1952 (b)(1).

343 Fla. Stat. Ann. § 847.0135 (West 2014).

344 *Id.* It would be preferable if the word "knowing" was removed from the law.

345 *An Act Relative to the Commercial Exploitation of People*, ch. 178, sec. 22, 2011 Mass. Legis. Serv. 839, 846 (West).

346 N.Y. Penal Law § 130.30 (McKinney 2014).

347 *Id.* § 130.30(1); Asaph Glosser et al., *Statutory Rape: A Guide to State Laws and Reporting Requirements* 86 (2004), <http://aspe.hhs.gov/hsp/08/sr/statelaws/report.pdf>.

348 N.Y. Penal Law § 130.30; Glosser et al., *supra* note 347, at 86.

349 For an analysis of each state's statutory rape laws, see Glosser et al., *supra* note 347.

350 Fla. Stat. Ann. § 796.09 (West 2014); see Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 *Mich. J. Gender & L.* 65, 70-71 (1993).

351 Fla. Stat. Ann. § 796.09(3)(k)-(o); see also *Captive Daughters and Int'l Human Rights Law Inst. of DePaul Univ. Coll. of Law, Demand Dynamics: The Forces of Demand in Global Sex Trafficking* 88-89, 111 (Morrison Torrey & Sara Dubin eds., 2004), available at [http://www.law.depaul.edu/centers\\_institutes/ihri/downloads/demand\\_dynamics.pdf](http://www.law.depaul.edu/centers_institutes/ihri/downloads/demand_dynamics.pdf) (discussing claims brought and won under section 796.09). In 2006, the Florida Council Against Sexual Violence, in collaboration with Florida Legal Services, the Jacksonville Women's Center, and Refuge House, sought federal funding to support civil legal claims that may be brought by prostituted women under section 796.09 of the Florida Code. E-mail from Margaret Baldwin (Mar. 17, 2006, 1:48 PST) (on file with author).

352 Nicholas D. Kristof, *Where Pimps Peddle Their Goods*, *N.Y. Times Sunday Rev.*, Mar. 18, 2012, at 1.

353 Somini Sengupta, *Case of 8,000 Menacing Posts Tests Limits of Twitter Speech*, *N.Y. Times*, Aug. 27, 2011, at A1.

354 Andrea Powell, *Sex Trafficking in America: The Role of Online Advertisers*, *Fair Observer* (Sept. 26, 2013), <http://www.fairobserver.com/article/sex-trafficking-america-role-online-advertisers>.

355 Jennifer Quinn & Robert Cribb, *Inside the World of Human Trafficking*, *Toronto Star*, Oct. 5, 2013, at IN1, available at [http://www.thestar.com/news/gta/2013/10/05/inside\\_the\\_world\\_of\\_human\\_sex\\_trafficking.html](http://www.thestar.com/news/gta/2013/10/05/inside_the_world_of_human_sex_trafficking.html).

356 Melissa Farley & Norma Ramos, *Opinion: Why Spitzer Should be Prosecuted*, *Newsweek* (Mar. 13, 2010, 6:47 PM), <http://www.newsweek.com/id/168395> (quoting Michael J. Garcia).

357 Personal observation by the second author, during his tenure as Director of Human Trafficking Prevention and Training with New York State Division of Criminal Justice Services.

358 Associated Press, *Cops Bust 66 People in Craigslist Prostitution Ring*, *NY Daily News* (Jan. 12, 2008, 1:48 PM), <http://www.nydailynews.com/news/crime/cops-bust-66-people-craigslist-prostitution-ring-article-1.345129>; Hector Castro, *Ad on Craigslist Really a Sex Sting: Nearly 100 Men Arrested in Police Prostitution Ploy*, *Seattle Post-Intelligencer* (Nov. 15, 2006, 10:00 PM), <http://www.seattlepi.com/local/article/Ad-on-Craigslist-really-a-sex-sting-1219955.php>; Freeman Klopott, *Va. Man Nabbed in Craigslist Sex Sting; Drawn in by Fake Ad*, *Washington Examiner* (Nov. 30, 2009, 3:00 AM), <http://washingtonexaminer.com/va-man-nabbed-in-craigslist-sex-sting-drawn-in-by-fake-ad/article/19931>; Amy Hunter, *Attorney*

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<sup>359</sup> Boyd et al., *supra* note 20, at 3.

<sup>360</sup> Frank Schaeffer, Uncool! - Google and Facebook's Human Trafficking Complicity, Huffington Post (June 6, 2013, 8:57 AM), [http://www.huffingtonpost.com/frank-schaeffer/google-and-facebooks-comp\\_b\\_3389538.html](http://www.huffingtonpost.com/frank-schaeffer/google-and-facebooks-comp_b_3389538.html).

<sup>361</sup> Buying sex is illegal in Iceland, although selling it is not. This law is similar to that of Sweden. General Penal Code [Gen. Penal C.] No. 19/1940, ch. XXII, art. 206 (Ice.); see also A New Law Makes Purchase of Sex Illegal in Iceland, Jafnrettisstofa (Apr. 21, 2009), <http://www.jafnretti.is/jafnretti/?D10cID=ReadNews&ID=523>.

<sup>362</sup> Big Sister Watches Buyers of Prostitution in Iceland, Iceland Rev. Online (Oct. 19, 2011), [http://www.icelandreview.com/icelandreview/daily\\_news/Big\\_Sister\\_Watches\\_Buyers\\_of\\_Prostitution\\_in\\_Iceland\\_0\\_383393.news.asp](http://www.icelandreview.com/icelandreview/daily_news/Big_Sister_Watches_Buyers_of_Prostitution_in_Iceland_0_383393.news.asp).

<sup>363</sup> *Id.*

<sup>364</sup> Phil Anaya, Constables Busy Busting Men Suspected of Soliciting Sex on Craigslist, KENS5.com (Oct. 27, 2011, 9:05 PM), <http://www.kens5.com/news/Constables-office-busts-men-soliciting-sex-for-drugs-using-Craigslist-132732983.html>.

<sup>365</sup> Judge Herbert B. Dixon, Jr., Human Trafficking and the Internet (and Other Technologies, too), ABA, [http://www.americanbar.org/publications/judges\\_journal/2013/winter/human\\_trafficking\\_and\\_internet\\_and\\_other\\_technologies\\_too.html](http://www.americanbar.org/publications/judges_journal/2013/winter/human_trafficking_and_internet_and_other_technologies_too.html) (last visited June 15, 2014).

<sup>366</sup> HK Closes Largest Prostitution Website, Bangkok Post (Dec 6, 2013, 3:49 AM), <http://www.bangkokpost.com/news/asia/383475/hong-kong-largest-prostitution-website-paralysed><http://au.news.yahoo.com/world/a/20182940/hong-kongs-largest-prostitution-website-paralysed/>.

<sup>367</sup> Survivors Connect has used an open-source platform, Ushahidi, to crowdsource information about cases of violence against women, potential trafficking, and resources. Aashika Damodar, founder of Survivors Connect noted, "No one individual or organization can know everything there is to know about the conditions or locations of trafficking, however, with increased awareness, all individuals may have some piece of knowledge that can be critical to solving the larger puzzle." Telephone Interview with Aashika Damodar, Founder of Survivors Connect (Nov. 15, 2011) (on file with the author). Damodar suggested that individuals can contribute to ending trafficking via the use of simple online technologies such as a text message or email about suspicious web activity. *Id.*; see also Jeff Howe, The Rise of Crowdsourcing, *Wired Mag.*, June 2006, at 176, 176-78 (identifying several fields in which crowdsourcing has been used effectively); Dan Woods, The Myth of Crowdsourcing, *Forbes.com* (Sept. 29, 2009, 6:00 AM), <http://www.forbes.com/2009/09/28/crowdsourcing-enterprise-innovation-technology-cio-network-jargonspy.html> (describing misconceptions about how crowdsourcing works to solve problems by sending issues to uniquely qualified individuals rather than by sheer number of participants).

<sup>368</sup> Bob Holt, Facebook to the Rescue for NJ Woman Coerced into Prostitution, *NewJerseyNewsroom.com* (Dec. 31, 2011, 12:10 PM), <http://www.newjerseynewsroom.com/state/facebook-to-the-rescue-for-nj-woman-coerced-into-prostitution>.

# ARTICLE: HUMAN TRAFFICKING IN FINLAND

2014

## Reporter

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## Highlight

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*It ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at our social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name--modern slavery.*

-- President Barack Obama

## Text

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### [\*229] Introduction

Human trafficking is one of the largest criminal industries in the world. Human trafficking, also referred to as modern-day slavery, ruthlessly intervenes with a person's freedom and human dignity. It is a widespread phenomenon all over the world and no country is completely immune to it. Countries can act as places of source, transit or destination. The perpetrators take control of the victims and take away their freedom for the purpose of exploitation, prostitution and other sexual abuse, forced labor or trade in bodily organs. Victims have no control over their work, living conditions or movement, and cannot choose whether they work or not. <sup>1</sup>

This article focuses on trafficking in human beings in Finland using policy-oriented jurisprudence as guidance. To be able to understand the phenomenon of human trafficking in Finland, we will first [\*230] define human trafficking as an international crime and then discuss the trade in human beings in Finland. Conflicting claims and perspectives of both claimants will be considered. After discussing past trends in decision concerning human trafficking, the article will focus on predicting future decisions. It will end by appraising past and future decisions,

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<sup>1</sup> UNODC, *UNODC Global Report on Trafficking in Persons 1* (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

discuss alternatives, and present recommendations on how to prevent human trafficking and improve the situation of victims in the country.

### *I. Delimitation of the Problem*

#### *A. Human Trafficking: An International Crime*

Human trafficking is always an aggravated crime and a violation of human rights. The victims of modern-day slavery are deprived of their liberty, freedom of choice and right to personal integrity. They may be transported to another country and forced to work for little or no compensation, facing abuse and inhuman treatment. The United Nations Trafficking in Persons Protocol defines human trafficking as having three key elements: act, means and purpose.

Trafficking in Persons means the recruitment, transportation, transfer, harbouring or receipt of persons [act], by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation [means]. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs [purpose].<sup>2</sup>

**[\*231]** The international community commonly denounces this modern day slavery and has made many efforts to stop it.<sup>3</sup> Many international and regional conventions address the prohibition and prevention of human trafficking. The most challenging issue, however, is recognizing possible victims of human trafficking and getting them the help they need.

According to the International Labour Organization, there are approximately 20.9 million victims of forced labor globally, including victims of human trafficking for labor and sexual exploitation.<sup>4</sup> The majority of the victims are women and girls; UNODC statistics show that women and girls together constitute approximately 75% of victims of human trafficking.<sup>5</sup> The ILO report goes even further stating that approximately 98% of victims of sexual exploitation in the private economy are female.<sup>6</sup> Even more disturbing is the fact that 27% of all human trafficking victims are children.<sup>7</sup> This is more than the whole population of Finland. These numbers are only estimates; human trafficking is a very well-hidden crime and it is impossible to know the real number of victims. UNODC statistics, however, give a good estimate of the severity of this form of crime.

It is commonly believed that human trafficking involves actual movement of people from one state to another. However, this is not necessarily the case because persons may be victims of human trafficking without ever leaving

<sup>2</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art. 3a (Nov. 15, 2000), available at <http://www.osce.org/odihr/19223>; see also <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (emphasis added).

<sup>3</sup> UNODC, *World Drug Report 2014: Human Trafficking* (2014), <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuSidePalermo> Protocol.

<sup>4</sup> INT'L LABOUR OFFICE: SPECIAL ACTION PROGRAMME TO COMBAT FORCED LABOUR, *ILO Global Estimate of Forced Labour: Results and Methodology* 13 (2012), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf).

<sup>5</sup> UNODC, *Global Report on Trafficking in Persons 2012: Key Findings* 7 (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

<sup>6</sup> *ILO Global Estimate of Forced Labour*, *supra* note 4.

<sup>7</sup> *Global Report on Trafficking in Persons*, *supra* note 5.



the country, or even their homes. According to the UNDOC report, 27% of all trafficking cases consist [\*232] of domestic trafficking; in certain cases persons were never transported to another country nor even out of their current residences.<sup>8</sup> In addition, approximately 24% of victims were trafficked interregionally, meaning they may have been moved to a different region within a country, but not across borders.<sup>9</sup> Perpetrators may be part of organized crime as well as the victims' close family members, friends or acquaintances of the victims.<sup>10</sup>

### *B. Human Trafficking in Finland*

Finland is a small constitutional republic in Northern Europe with a population of approximately 5.43 million people;<sup>11</sup> it is a democracy with a directly elected president and parliament.<sup>12</sup> The country is part of the European Union and has ratified most United Nations treaties addressing human trafficking and related human rights protocols, as well as related protocols of the Council of Europe.<sup>13</sup>

All in all, Finland is considered to be a safe country, having few problems with corruption or serious human rights violations.<sup>14</sup> [\*233] According to Transparency International, Finland is one of the world's least corrupt countries.<sup>15</sup> During the past years it has steadily scored high points in corruption surveys, indicating it to be a highly corruption-free country.<sup>16</sup> In 2012, Finland shared first place in the Corruption Perceptions index with Denmark and New Zealand.<sup>17</sup> The corruption statistics, however, do not tell the whole story of the level of this hidden crime in the country.

Corruption and human trafficking in Finland are both hidden, unreported crimes. Many people do not know that these kinds of crimes happen. During the past few years, more corruption cases involving high level officials have emerged. Quite recently, in November 2013, a Finnish Police Chief of the Narcotics Unit of Helsinki Police was suspended from his duties and arrested on "serious criminal charges."<sup>18</sup> The Helsinki Police have yet to give any further information on these charges. Allegedly, the charges involve crimes such as taking bribes, misuse of power and breach of official duty.<sup>19</sup> All of these crimes are said to be aggravated. The actions of the Police Chief are

<sup>8</sup> *Global Report on Trafficking in Persons*, *supra* note 5.

<sup>9</sup> *ILO Global Estimate of Forced Labour*, *supra* note 4.

<sup>10</sup> I EXIST! (website of the Finnish National Assistance System for victims of human trafficking), [www.humantrafficking.fi](http://www.humantrafficking.fi) (last visited July 22, 2014).

<sup>11</sup> STATISTICS FINLAND, *Population Structure 2012* [http://tilastokeskus.fi/til/vaerak/2012/vaerak\\_2012\\_2013-03-22\\_tie\\_001\\_en.html?ad=notify](http://tilastokeskus.fi/til/vaerak/2012/vaerak_2012_2013-03-22_tie_001_en.html?ad=notify) (last visited Oct. 19, 2013).

<sup>12</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *Country Reports on Human Rights Practices for 2012: Finland*, <http://www.state.gov/p/eur/ci/fi/index.htm>. See also SUOMI.FI, *State Administration and General Government*, [http://www.suomi.fi/suomifi/english/state\\_and\\_municipalities/state\\_administration\\_and\\_central\\_government/index.html](http://www.suomi.fi/suomifi/english/state_and_municipalities/state_administration_and_central_government/index.html) (last updated May 28, 2014).

<sup>13</sup> See MINISTRY OF FOREIGN AFFAIRS OF FINLAND (listing Human Rights Conventions Finland has ratified by October 13, 2013), <http://formin.finland.fi/Public/default.aspx?nodeid=31353&contentlan=1&culture=fi-FI>.

<sup>14</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *Country Reports on Human Rights Practices for 2013: Finland*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>; Olga Khazan, *Map: The Most- and Least-Corrupt Countries in the World*, WASHINGTON POST, May 12, 2012, available at <http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/05/map-the-most-and-least-corrupt-countries-in-the-world/>.

<sup>15</sup> TRANSPARENCY INT'L: THE GLOBAL COALITION AGAINST CORRUPTION, *Corruption Perceptions Index* (The corruption index by Transparency International (measuring perceived levels of public sector corruption in 177 countries and territories yearly, years 2005-13), <http://www.transparency.org/research/cpi/> (last visited July 22, 2014).

<sup>16</sup> *Id.* at 15.

also alleged to have links in organized crime, more specifically him having close relations to a well-known Finnish [\*234] crime organization, United Brotherhood.<sup>20</sup> He is also accused of engaging in prostitution by helping a prostitute in running her activities and selecting clients.<sup>21</sup> While these crimes are only alleged, the situation shows how corruption is a growing issue in Finland that increases the difficulty of dealing with other serious crimes such as human trafficking.

Finland is mainly a country of transit and destination for victims of sex trafficking and forced labor.<sup>22</sup> In limited cases it may also be a source. Finnish teenagers, especially ones involved in prostitution, [\*235] are at a higher risk of falling victims to human trafficking.<sup>23</sup> So far, no cases of trading in bodily organs for financial benefits have been detected.<sup>24</sup> Trafficking women and girls to Finland for sex work is the most common form of human trafficking in the country, but cases of labor related trafficking have also surfaced. Most forced labor cases are believed to be connected to ethnic businesses, and in many cases involve some form of sexual exploitation.<sup>25</sup> This article focuses on Finland as a country of destination and source, without discussing further the transit aspects of human trafficking in the country.

### 1. Sex Trafficking

Victims of sex trafficking usually come from neighboring countries, such as Russia, Estonia, Latvia and Lithuania, as well as Eastern European countries, including countries in Asia and Africa.<sup>26</sup> Sex trafficking happens in many different forms, ranging from prostitution and ethnic massage parlors to arranged marriages and mail order brides.<sup>27</sup> Women coming to Finland due to an arranged marriage through human trafficking are usually exploited at home. They may be forced into domestic slavery, including sexual exploitation, and may also be forced by their spouses to sell sexual services to others.<sup>28</sup> Sex trafficking is also connected to ethnic massage parlors, [\*236] where workers are forced to sell sexual services.<sup>29</sup>

<sup>17</sup> TRANSPARENCY INT'L, *supra* note 15 (Corruption Perceptions index 2012).

<sup>18</sup> POLIISI: POLICE OF FINLAND, *Chief of Helsinki Police Narcotics Unit Jari Aarnio Suspended from Duty* (Nov. 15, 2013), <http://www.poliisi.fi/poliisi/helsin-ki/home.nsf/PFBD/A2768FD6915E45FFC2257C2400567D94?opendocument>.

<sup>19</sup> *Chief of Helsinki Narcotics Police Arrested*, YLE NEWS, Nov. 15, 2013, [http://yle.fi/uutiset/helsingin\\_huumepoliisin\\_paallikko\\_vangittiin/6937087](http://yle.fi/uutiset/helsingin_huumepoliisin_paallikko_vangittiin/6937087) (YLEis-radio, abbreviated as YLE, is the Finnish National public broadcasting company, owned by the Finnish state. It is very similar to, e.g., the British BBC).

<sup>20</sup> HELSINGIN SANOMAT, *Police Equipment Purchases Connected to Criminal Groups September 12, 2013*, <http://www.hs.fi/kotimaa/Poliisin+laitehankinnoilla+on+yhteys+rikollisryhm%C3%A4%C3%A4n/a1384579864841?ref=hs-art-new-1&siivu=1>. See also ILTALEHTI, *Jari Aarnio and United Brotherhood* (Nov. 18, 2013), [http://m.iltalehti.fi/uutiset/2013111817735900\\_uu.shtml](http://m.iltalehti.fi/uutiset/2013111817735900_uu.shtml).

United Brotherhood is a criminal organization operating in Finland. It was formed in 2010, when three other criminal gangs, Natural Born Killers, Rogues Gallery and M.O.R.E, united together as a brotherhood to make themselves more powerful. Members of the gangs have been accused of crimes, such as narcotics offences, economic offences and murder. See TURUN SANOMAT, *The New Gang of the Underworld Born in Finland* (Nov. 22, 2010) (general information on United Brotherhood), <http://www.ts.fi/uutiset/kotimaa/175945/Suomeen+synty+i+uusi+alamaailman+jengi++jasenilla+raju+tausta>.

<sup>21</sup> More information can be found on YLE News and several articles in major Finnish newspaper HELSINGIN SANOMAT, available at <http://www.hs.fi>, especially articles *Chief of Helsinki Narcotics Police Suspected of Malfeasances*, [http://www.hs.fi/kotimaa/Helsingin+huumepoliisin+p%C3%A4%C3%A4llikk%C3%B6%C3%A4+ep%C3%A4ill%C3%A4%C3%A4n+virkarikoksista/a137834850\\_7536;Crime+suspect+Chief+of+Helsinki+Narcotics+Police+Arrested](http://www.hs.fi/kotimaa/Helsingin+huumepoliisin+p%C3%A4%C3%A4llikk%C3%B6%C3%A4+ep%C3%A4ill%C3%A4%C3%A4n+virkarikoksista/a137834850_7536;Crime+suspect+Chief+of+Helsinki+Narcotics+Police+Arrested), <http://www.hs.fi/kotimaa/Rikoksista+ep%C3%A4ilty+Helsingin+huumepoliisin+p%C3%A4%C3%A4llikk%C3%B6+on+pid%C3%A4tety/a1384226707528?siivu=2>; *Police Equipment Purchases Connected to Criminal Groups*, <http://www.hs.fi/kotimaa/Poliisin+laitehankinnoilla+on+yhteys+rikollisryhm%C3%A4%C3%A4n/a1384579864841?ref=hs-art-new-1&siivu=1>; TALOUSSANOMAT: FINNISH FIN. TIMES, available at <http://www.taloussanomat.fi/politiikka/2013/11/17/hs->

In Finland, the vast majority of sexual workers originate from Eastern European countries. While some cases include facilitation of illegal entry to the country, this is not always so. Many neighboring countries, such as Estonia, Latvia and Lithuania are part of the European Union (EU),<sup>30</sup> which allows the citizens of its member states to move and reside freely in any other EU country.<sup>31</sup> Therefore, it is possible that victims of human trafficking have entered the destination country legally and could even legally work there. In addition to other ways of coercion, discussed later, the perpetrators control their victims by taking away their travel documents and other papers of identification.<sup>32</sup> Even if the victims are not illegal immigrants and technically could move to and reside in another EU country without any legal issues, having no documentation makes their presence in the country almost nonexistent. Seeking assistance, even applying for general services like public healthcare, becomes much more difficult when persons lack proper identification documents. This makes them dependent on the perpetrators.

## 2. Forced Labor

Victims of forced labor come to Finland from various countries, including China, India, Thailand, Ukraine and Vietnam, as well as neighboring countries, such as Estonia, Latvia and Lithuania.<sup>33</sup> They may be recruited through different agencies and subcontractors as well as through family members. The farther the victims come from, the more common it is for them to use recruitment agencies. On the other hand, victims recruited by family members [\*237] are in a particularly vulnerable situation, being extremely dependent on the perpetrators.<sup>34</sup>

The most common occupations for victims of forced labor are in the construction industry, restaurants, cleaners, massage parlors, and as domestic servants. The victims work long hours with little to no compensation in lousy working conditions. They may face violence or threats of violence; their freedom of movement may be restricted; perpetrators may take away their traveling documents such as passports; and the victims have practically no free time. Even the little free time the victims may have is often restricted; the victims may be prohibited to interact with other people. Having very little interaction with the outside world, the victims remain ignorant of their rights, and perpetrators may easily continue their exploitation.<sup>35</sup> According to TIP reports, most cases of forced labor in the

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poliisin-laitehankinta-yhteydessa-rikollisjarjestoon/201315985/12; ILTASANOMAT, available at <http://www.iltasanomat.fi>, especially, *The Roots of the Mess Reach to the Police* (Nov. 18, 2013), <http://www.iltasanomat.fi/kotimaa/art-1288622342136.html>; FINLAND TIMES, *Drug Unit Police Chief Arrested on Bribery Charge* (Nov. 13, 2013, 12:03 AM), <http://www.finlandtimes.fi/national/2013/11/13/3145/Drug-unit-police-chief-arrested-on-bribery-charge>.

<sup>22</sup> U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REP. 2013, at 169-70, available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REP. 2010, at 148-49, available at <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm>. See also Anniina Jokinen, Natalia Ollus, & Minna Viuhko, *Whatever it Takes: Labor Trafficking and Exploitation of Foreign Employees in Finland*, at 87, EUROPEAN INST. FOR CRIME PREVENTION & CONTROL, AFFILIATED WITH THE U.N. (HEUNI), Rep. Series 67 (2011), available at [http://www.heuni.fi/en/index/publications/heunireports/reportseries67.ehdoillamillahyvansatyoperainenihmiskauppajaulkomaalais\\_tentyontekijoidenhyvaksikayttosuomessa.html](http://www.heuni.fi/en/index/publications/heunireports/reportseries67.ehdoillamillahyvansatyoperainenihmiskauppajaulkomaalais_tentyontekijoidenhyvaksikayttosuomessa.html).

<sup>28</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 87.

<sup>29</sup> TRAFFICKING IN PERSONS REP. 2013, *supra* note 22.

<sup>30</sup> See EUROPEAN UNION, *List of Countries*, [http://europa.eu/about-eu/countries/index\\_en.htm](http://europa.eu/about-eu/countries/index_en.htm) (last visited 7/22/14).

country are connected to ethnic businesses, such as restaurants and massage parlors.<sup>36</sup> The work in massage parlors usually involves sexual exploitation, and the line between sex trafficking and forced labor in many cases is very fine.

Debt bondage is a common feature in forced labor. Victims pay large sums of money to the employers in exchange for the jobs, and usually hope for a better life in Finland. This means that the victims may have significant debts even before arriving in Finland. In addition to overpaying for traveling expenses, the victims might have to pay outrageous extra costs for accommodation or other fees. These fabricated debts lead to the employer completely taking control of the person.<sup>37</sup>

So far the definition of forced labor under Finnish legislation is not clear. Human trafficking and extortionate work discrimination statutes have similar features.<sup>38</sup> Abusing foreign employees is **[\*238]** strongly related to human trafficking. While many cases of abuse surface annually, most cases remain unknown. Perpetrators are both Finnish nationals and foreigners.<sup>39</sup>

Legislative amendments regarding both sex trafficking and forced labor came into force in 2004. Until 2012, however, no instances of human trafficking based on forced labor had been detected. The first human trafficking conviction based on forced labor occurred in 2012. This shows how common trafficking human beings for sexual exploitation is compared to labor trafficking. It is interesting, that the majority of victims receiving help through the national support system in Finland have forced labor backgrounds.<sup>40</sup> Some cases of forced labor include some forms of sexual exploitation and are investigated as sex trafficking or pandering cases. Therefore, in order to narrow down this very broad topic, this paper focuses more on sex trafficking.

### 3. Issues

Finland has ratified most international conventions and agreements regarding human trafficking. Laws have been changed and different kinds of support systems established for human trafficking victims.<sup>41</sup> On paper, the legal system and support mechanisms are effective and everything seems to be fine. So why is this not working in practice?

<sup>31</sup> Council Directive 2004/38, 2004 (EC) (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States).

<sup>32</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 74-88.

<sup>33</sup> TRAFFICKING IN PERSONS REP. 2013, *supra* note 22, at 169-70.

<sup>34</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 74-88.

<sup>35</sup> *Id.*

<sup>36</sup> Trafficking in Persons Report (2013), *supra* note 27.

<sup>37</sup> NAT'L BUREAU OF INVESTIGATION OF FINLAND, *Actions Against Human Trafficking in Finland*, available at <http://www.poliisi.fi/poliisi/krp/home.nsf/pages/E0FE673C479190B6C2257589004F8AA2?opendocument>.

<sup>38</sup> See *infra* Chapter III, Past Trends in Decision, A. The Domestic Legal System, 1. Legislation.

<sup>39</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 74-88.

<sup>40</sup> NAT'L SUPPORT SYSTEM FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS, *Statistics Report* (2012), at 4, available at [http://www.migri.fi/download/39357\\_ihmiskaupan\\_uhrien\\_auttamisjarjestelma\\_tilastokatsaus\\_2012.pdf](http://www.migri.fi/download/39357_ihmiskaupan_uhrien_auttamisjarjestelma_tilastokatsaus_2012.pdf).

<sup>41</sup> See *infra* Chapter. III.

The biggest problem with human trafficking in Finland is the difficulty of identifying possible victims. Only a few human trafficking cases are reported yearly, while most victims remain unidentified and fall out of the support system. Recognizing possible victims is essential and has to be more effective. Currently, authorities and ground level workers do not have enough knowledge and resources to identify possible victims. Especially in sex-related trafficking, the [\*239] victims are difficult to detect and a negative attitude towards prostitutes increases the chances of possible victims falling out of the support system.<sup>42</sup> Negative attitudes make it especially difficult to detect victims who have left their country knowing they will be engaging in prostitution in their country of destination.<sup>43</sup> The victim's initial consent is irrelevant if any elements of human trafficking such as force, fraud or coercion are present.

There are many reasons why possible victims of human trafficking are so difficult to detect. In addition to general societal attitudes, the perpetrators as well as the victims make enormous efforts to avoid authorities, and human trafficking stays as an unreported crime. The victims may not want to involve authorities for fear of the perpetrators as well as authorities. The victims may be in a country they know nothing about. They do not know the language or their rights and may fear being punished or deported for possible criminal acts they have themselves committed in the country.<sup>44</sup> The perpetrators may have given the victims false information about the country, leading them to mistrust the authorities.

In addition to fear, the victims may not have the knowledge, language skills or resources to seek help. It may well be that they do not even realize they in fact are victims of human trafficking. If living conditions in their country of origin are poor, their situation in Finland may not differ much from the original situation. In some cases living conditions in Finland could even be slightly better than those in the country of origin. Therefore, it may be difficult for a victim to understand that the conditions in which he or she is living are not normal.<sup>45</sup>

When the victims are not recognized, they fall out of the support system. Their abuse may continue, which may lead to the victims not receiving the physical and mental help they need and to their [\*240] perpetrators not facing punishment for their crimes.<sup>46</sup> Even though Finland has a public health care system, legal aid and other assistance technically available to all, the difference between having those services and guidance on how to receive help offered to you and having to seek assistance alone with no support is enormous, especially for foreign victims, who may not know how the Finnish system works and to what kind of services they are entitled. Victims may be afraid to seek help, and they might not have any documentation, which makes seeking all kinds of public services more difficult.<sup>47</sup>

Another issue in considering human trafficking in Finland is the overlap in the legislation between pandering and human trafficking. Under international perspective, the difference between human trafficking and pandering is the consent of the victim. If a person is pressured, threatened, or anyhow subjected to prostitution, the criteria of human trafficking are fulfilled. However, the two statutes have inconsistencies. In Finnish legislation, pandering can involve pressuring, threatening and even violence.<sup>48</sup> Prostitutes may have been financially blackmailed due to made up debts, their movement may have been controlled, and their chances of leaving the business have in reality been

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<sup>42</sup> Pia Puu-Oksanen, Amnesty Int'l Finland Div., MAASEUDUN TULEVAISUUS (Nov. 28, 2011).

<sup>43</sup> *Id.*

<sup>44</sup> I EXIST!, *supra* note 10.

<sup>45</sup> Lotta Knuutila & Anne-Maarit Pullinen, *The Professional Capabilities of Social Workers to Identify and Guide Victims of Human Trafficking* 25-27 (Laurea 2010).

<sup>46</sup> Puu-Oksanen, *supra* note 42.

<sup>47</sup> Knuutila & Pullinen, *supra* note 45.

<sup>48</sup> The Criminal Code of Finland, 39/1889, ch. 20, § 9, *available at* [www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf](http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf) (unofficial English translation, MINISTRY OF JUSTICE).

nonexistent. Cases have been reported where victims and their families have been threatened and even assaulted, yet the perpetrators have been convicted of aggravated pandering.<sup>49</sup> Forced labor related human trafficking faces the same legislative issues. Many cases having human trafficking features are instead prosecuted and convicted as work discrimination or extortionate work discrimination, and the penalties are significantly lower.<sup>50</sup>

The definition of human trafficking under Finnish law is thus [\*241] problematic. The overlap results in possible human trafficking situations investigated and convicted under a non-trafficking statute such as pandering. The penalties under these statutes are lower and the victims do not get access to the necessary victim protection and aid. The human trafficking statute is not used as broadly as suggested and needed.<sup>51</sup> The overlap also causes inconsistencies in different authorities' handling the same case. The police, prosecution and the court may have different views on what truly is considered human trafficking. Investigating and prosecuting a crime under the more serious clause becomes a problem when the court does not see the human trafficking connection, and the conviction will not take into account the seriousness of the crime. More problematic, however, is the situation where a possible case of trafficking in human beings is investigated and prosecuted under a non-trafficking statute, because the court can "pass a sentence only for the act for which a punishment has been requested or for which the court may pass a sentence on its own initiative." However, even though the court "is not bound by the heading or the reference to the applicable provisions in the charge,"<sup>52</sup> the court is unlikely to use the human trafficking statute if the case is brought under a non-trafficking statute.

The difference between handling a case as pandering compared to human trafficking is tremendous for the victim. In human trafficking cases, victims are heard and treated as the injured parties. They qualify for the assistance programs, get medical help, support and legal aid, and guidance from the government. Victims may also get temporary visas and are allowed to stay in the country for a period of six months while recovering and deciding whether they want to go back to their own country or apply for a Finnish residence permit, to which victims of human trafficking are entitled. If they wish to return home, safe return is arranged. In pandering cases, victims are treated merely as witnesses; they do not get the assistance they need and the victims illegally in the country are most likely deported. After [\*242] deportation, their situation remains unknown.<sup>53</sup>

Ground level work by the authorities and organizations can have an important role in detecting and recognizing possible victims of human trafficking. So far this has proven to be problematic. Authorities working on a practical level may not have enough knowledge and tools to recognize persons who might be victims of some form of exploitation. Furthermore, even if they detect exploitation, the ground level personnel investigating the situation may not have enough knowledge about trafficking in human beings to sort out a possible victim from persons subjected to other crimes.<sup>54</sup>

General societal attitude and awareness has an important role in recognizing possible human trafficking cases. Even though studies show that human trafficking is an increasing problem everywhere and cases of trafficking in human beings have been noted all over the country, the common attitude of denial remains strong. Especially in smaller cities, it is very common to think that problems like human trafficking happen "in the big world," not there.

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<sup>49</sup> The Finnish National Rapporteur on Trafficking in Human Beings: Report 2012, available at [http://www.ofm.fi/download/38665\\_lhmiskaupparaportti\\_FI\\_2012\\_pdf.pdf](http://www.ofm.fi/download/38665_lhmiskaupparaportti_FI_2012_pdf.pdf).

<sup>50</sup> The Criminal Code of Finland, *supra* note 48, at ch. 47, §§ 3, 3a. See also *infra* Chapter III.A.1, Domestic Legislation.

<sup>51</sup> Puu-Oksanen, *supra* note 42. See also Trafficking in Persons Report 2013, *supra* note 22, at 169-70.

<sup>52</sup> Criminal Procedure Act 689/1997, § 11, P 3, available at [www.finlex.fi/en/laki/kaannokset/1997/en19970689.pdf](http://www.finlex.fi/en/laki/kaannokset/1997/en19970689.pdf) (unofficial English translation, MINISTRY OF JUSTICE).

<sup>53</sup> Puu-Oksanen, *supra* note 42.

<sup>54</sup> Knuutila & Pullinen, *supra* note 45.

Some may not even see certain forms of human trafficking as a crime at all. Mail-order brides and massage parlors are good examples of such mistaken beliefs. When contemplating sex trafficking, more traditional forms of prostitution are easily linked with human trafficking. It is not unusual that an older man from a town somewhere in Finland travels to Asia or Eastern Europe, finds a much younger girl, pays a certain amount of money to the girl's family to marry her and brings her back to Finland. Many people do not see anything wrong with that. In reality, the girl's family practically sells her to the man. Her consent to the marriage was probably never asked for, and she has no say in anything. She is transported to a foreign country where she does not know the language and has no support system. Her husband has complete control over her.

These types of marriages are not automatically considered a human trafficking issue or even illegal. Drawing a line between what constitutes human trafficking and what falls under the category of some other crime -- or no crime at all -- is extremely difficult, even [\*243] more so in the case of marriage. No law regulates how one should find a spouse. If no exploitation or coercion is involved, both parties are adults free to consent to the marriage, and they have the possibility of leaving if they so wish, the human trafficking features are not met. Finding a spouse through so-called mail-order bride sites or through other similar forums is perfectly legal. However, there is a very good chance the young wife may face domestic abuse and sexual exploitation and has no freedom to leave. Yet, she may not even see herself as a victim, but doing what she has to do to help her family. In addition, all of this happens very quietly. No one speaks about it, no one writes about it, and everything happens behind closed doors in private homes. Family privacy is extremely protected; proving a marriage took place only for human trafficking purposes is extremely difficult. For the purpose of this paper, finding legitimate sources to investigate the human trafficking effects of mail-order brides or buying a wife abroad turned out to be nearly impossible.<sup>55</sup> Nevertheless, the topic is very common in Finnish online discussion boards.<sup>56</sup>

As mentioned, not all mail-order bride or similar marriage cases fit the characteristics of human trafficking. The problem, however, is the extremely tolerant attitude toward mail-order brides. The Internet is full of dating sites for men searching for an easy way to find a wife abroad.<sup>57</sup> The popularity of such sites makes it equally easy for perpetrators to find their victims. The public rarely sees the human trafficking connection, even if the case clearly involves its elements.

A similar situation unfortunately happens with ethnic massage parlors. Massagers are forced to sell sexual services to willing [\*244] customers and face abuse. The general attitude toward buying services from massage parlors is disturbingly positive; massage parlors are everywhere and buying such services is seen almost as "normal."<sup>58</sup> Finnish online discussion boards are full of open discussion about ethnic massage parlors and the "additional services" they offer. On these discussion sites men openly, but anonymously, ask for information and share their experiences on where to get the best "service" in their city, how much it costs and what is the "quality" of the girls: what they look like, how old they are, and how well they perform. A nickname "Selkä jumissa" starts a conversation on a popular Finnish online discussion board suomi24.fi.<sup>59</sup>

What kind of thai-massage parlors are there in ...? Where do you get the best massage, how about the best other services? How about the quality of the massagers, age, looks? What do you recommend?

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<sup>55</sup> *Human trafficking: Mail-order Bride Abuses: Hearing before the Subcomm. On East Asian and Pacific Affairs*, (July 13, 2004) (testimony of Donna M. Hughes, Ph.D.), available at [http://www.uri.edu/artsci/wms/hughes/testimony\\_senate\\_july04.pdf](http://www.uri.edu/artsci/wms/hughes/testimony_senate_july04.pdf) (information about mail order brides as a form of human trafficking in general). See also Kirfsi Junttila, *Casualties of the Human Trade*, MAAILMA (Oct. 19, 2006), [http://maailma.net/artikkelit/ihmiskaupan\\_uhrit](http://maailma.net/artikkelit/ihmiskaupan_uhrit).

<sup>56</sup> Conversations about traveling abroad to buy a wife can be found on various Finnish online discussion boards, such as [www.suomi24.fi](http://www.suomi24.fi), [www.vauva.fi](http://www.vauva.fi).

<sup>57</sup> General search on google, using term "mail order bride" shows tens of different dating sites offering said services.

<sup>58</sup> General search on Google on words "thai hieronta" (Thai massage) shows review of several discussions on popular online discussion boards, such as [www.suomi24.fi](http://www.suomi24.fi) and [www.kaksplus.fi](http://www.kaksplus.fi).

<sup>59</sup> Discussion about Thai massage on a popular Finnish online discussion board, available at <http://keskustelu.suomi24.fi/node/11011549>.

--Selkä jumissa 10/27/2012 11:06 am (translated by the author).

He gets plenty of answers, including one from nickname "Kaiken Kokenut":

All places offer massage at first and at the end you can give a little "internal massage", if you want. Take one hour massage. First they massage and in the end ask, if you want it more intimate. If you do, just drop your pants. After that begins the sucking practice. Doesn't even cost much if you know how to bargain. Recommended!

--Kaiken Kokenut 10/27/2012 11:35 pm (translated by the author).

**[\*245]** These kinds of discussions are very common on popular discussion boards. Many do not see these services as a form of prostitution, not to mention as human trafficking. <sup>60</sup>

## *II. Conflicting Claims*

### *A. Perpetrators and Third Parties*

The motive for traffickers is usually financial benefit. Human trafficking is one of the largest, as well as the wealthiest, criminal industries in the world. Victims are willing to pay large amounts of money in hopes for a better life. Industries want cheap labor and are willing to pay for that, and trafficking human beings for sex labor is extremely beneficial financially. Organized crime is not necessarily involved in all cases, but the perpetrator may also be a private actor, even a family member. It is increasingly common that the perpetrator is someone close to the victim, such as family member, a friend or an acquaintance. <sup>61</sup> Regardless of the perpetrators' status, the main motive is usually still financial benefit, power and well-being.

The perpetrators may be part of organized crime when financial benefit is usually the main motive. Trafficking in human beings is extremely profitable for the traffickers; a lot of money is moved annually in the human trafficking business. Victims coming from poorer countries are especially easy targets for traffickers, which also means easy money.

Individual persons may be after the financial benefit as well as their own well-being. When a person is selling the victim for sexual exploitation or using them as free labor in a business, money and obtaining free services is usually the motive. Parents selling their children, who then end up being exploited, may also be after the money, but for different reasons. They seek financial benefit to be **[\*246]** able to support themselves, their other children or to improve their general well-being. When victims are used for domestic services and the perpetrator is the only exploiter, the financial benefit received is not that significant. Personal well-being of the perpetrator may be more important than financial benefit. For example, the mail-order bride phenomenon is usually not about directly making money, but the victim is used for personal purposes, such as domestic servitude and sexual exploitation.

Third parties are the ones who are not directly perpetrators, but they are still usually benefitting in some form from exploiting the victims. The buyers of sexual services are looking for pleasure and well-being for themselves; they want to have fun and fulfill their sexual needs. They could also be seeking affection, someone to be close to for a while.

Businesses, whether small private entrepreneurs or multinational companies, are after wealth. They want cheap labor to minimize their costs and maximize the profits of running the business, maybe to avoid paying taxes and other fees set by the government. Using cheap foreign labor is easy, and the employees are willing to work long days without claiming holidays or compensation for working overtime. Even if businesses may not directly be involved in trafficking persons, many of them are closing their eyes to the phenomenon. Cheap labor is financially

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<sup>60</sup> General search on Google on words "thai hieronta" (Thai massage) shows review of several discussion on popular online discussion boards, such as [www.suomi24.fi](http://www.suomi24.fi) and [www.kaksplus.fi](http://www.kaksplus.fi).

<sup>61</sup> I EXIST!, *supra* note 10.



beneficial for the companies, so they do not ask too many questions about where the labor is coming from, just silently let the trafficking continue.

### *B. The Victims*

The main claim of the victims is to not be abused. They leave their homes and travel to another country in hopes of a better life, not to be sexually exploited or forced to work with little or no compensation. Victims desire freedom and a better quality of life. Some victims may want to go back to their own country; some wish to stay and try to build a life. Whatever the case, they wish to have better working conditions, adequate compensation for their work and reasonable working hours.

**[\*247]** Recovering victims may continue facing problems even after their exploitation has ended. If the perpetrators do not face any penalty for their actions, victims may have the continuing fear of becoming victimized again. They may have to face other kinds of legal battles, too. In some cases, the victims may have children with the perpetrators and, if the perpetrators are not prosecuted, the victims may even have to go through legal battles for the custody of their children.

### *III. Past Trends in Decision and Conditioning Factors*

#### *A. The Domestic System*

##### *1. Legislation*

Trafficking in human beings is criminalized under Finnish laws. Human trafficking legislation came into force in 2004. Before modifying the human trafficking statute into the Finnish Criminal Code, crimes now considered as human trafficking were prosecuted, inter alia, as work discrimination or prostitution.<sup>62</sup> The law acknowledges three forms of trafficking in persons: sexual abuse and prostitution, forced labor or other types of forcing someone into demeaning circumstances, and trade in bodily organs for financial gain. The Finnish Criminal Code defines trafficking in human beings as follows:

A person who (1) by abusing the dependent status or vulnerable state of another person, (2) by deceiving another person or by abusing a mistake made by that person, (3) by paying remuneration to a person who has control over another person, or (4) by accepting such remuneration takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1(1) **[\*248]** or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial benefit shall be sentenced for trafficking in human beings.<sup>63</sup>

The key element in defining human trafficking is taking control of a person using deception, by abusing the person's dependent status, insecure state or by deluding the person into the country by giving false information about the nature of work the person will be performing. If the victim is under the age of 18, the case shall be prosecuted as human trafficking, even if none of the methods mentioned above have been used. The penalty for human trafficking is no less than four months and no more than six years of imprisonment.<sup>64</sup> If the perpetrators use violence or threats, cause the victim severe injury, illness or life threatening conditions or other similar suffering, if the victims are minors with limited capability to defend themselves, or if organized crime is involved, the statute used is aggravated human trafficking. Also, enslaving a person, keeping them in servitude or transporting or trading in slaves is aggravated human trafficking. The penalty for aggravated human trafficking is at least two and up to ten

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<sup>62</sup> I EXIST!, *supra* note 10.

<sup>63</sup> The Criminal Code of Finland, *supra* note 48, at ch. 25 (650/2004), § 3.

<sup>64</sup> *Id.*

years of imprisonment. <sup>65</sup> Knowing about trafficking in human beings and failing to report such offence is also punishable. <sup>66</sup>

Some victims of human trafficking have entered the country without proper documentation or travel permits. Finnish legislation does not see human trafficking victims as having committed border offences, even if they have entered the country illegally through trafficking in human beings. <sup>67</sup>

Finnish legislation on pandering and human trafficking statutes overlap. Pandering generally includes crimes of so-called pimping of prostitutes, who are in the business by consent. Under the **[\*249]** Finnish Criminal Code, however, pandering also includes acts done by seducing or coercing someone into prostitution:

A person who, in order to seek financial benefit for himself or herself or for another person. . . (5) tempts or pressures another person to engage in such an act, shall be sentenced for pandering to a fine or imprisonment for at most three years. (650/2004) (2). An attempt is punishable. <sup>68</sup>

If the person is under 18 years old or the crime is committed systematically, aiming for significant financial profit or causing serious harm or suffering to the person, the offence is aggravated pandering. The penalty for aggravated pandering is four months to six years of imprisonment. <sup>69</sup>

Another overlap in legislation considers forced labor-related human trafficking and other employment offences. The Finnish Criminal Code prohibits work discrimination based on "race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference, inheritance, disability or state of health, or. . . because of religion, political opinion, political or industrial activity or a comparable circumstance" in both selecting an employee and during a work contract. <sup>70</sup> No one is to be put in an inferior position without "an important and justifiable reason." The penalty for work discrimination is a fine or up to six months of imprisonment. <sup>71</sup>

While forced labor-related human trafficking cases obviously include work discrimination, the significant overlap is found between the human trafficking statute and the statute on extortionate work discrimination.

If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's **[\*250]** economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years. <sup>72</sup>

Key elements in many forced labor cases are using economic distress, such as debt bonding, as well as taking advantage of victims' dependent positions or lack of understanding to gain control over them. Overlap between extortionate work discrimination <sup>73</sup> and forced labor is clear, and drawing the line between these two statutes is

<sup>65</sup> *Id.* at §§ 3, 3a.

<sup>66</sup> *Id.* at ch. 15, § 10:1.

<sup>67</sup> *Id.* at ch. 17, Section 7:2

<sup>68</sup> *Id.* at 20, Section 9.

<sup>69</sup> *Id.* at Section 9a.

<sup>70</sup> *Id.* at ch. 47, § 3 (885/2009).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at ch. 47, § 3a (302/2004).

<sup>73</sup> *Id.*

extremely difficult. From the victim's point of view, the difference between the uses of these two statutes, however, is as significant as the difference mentioned in sex trafficking cases.

Citizens of the European Union are automatically allowed to legally reside in Finland,<sup>74</sup> meaning victims of human trafficking coming from within the European Union do not face the problem of deportation; however, victims coming from countries outside the European Union may have entered the country illegally and lack proper documentation, such as residence and work permits. Finnish legislation protects victims of human trafficking from deportation, and it guarantees certain forms of support and protection.<sup>75</sup> The victims may be issued a temporary residence permit, if the residence in Finland "is justified on account of the pre-trial investigation or court proceedings considering trafficking in human beings," the victim is prepared to co-operate with the authorities, and the victim no longer **[\*251]** has ties to the perpetrators.<sup>76</sup>

In some cases, when a victim of human trafficking is considered to be in a particularly vulnerable position, a victim may be issued a residence permit on a continuous basis. In these cases none of the requirements set out above have to be met. A residence permit on a continuous basis means that also the family members of the victim staying abroad may be issued a residence permit in Finland on the basis of family ties. A temporary permit of residence does not allow this option.<sup>77</sup>

Before issuing a residence permit, District Police or border control authorities give the victim a reflecting period of thirty days to six months, during which the victim must decide whether or not to cooperate with the authorities in catching the perpetrators of human trafficking.<sup>78</sup> During this reflection period, victims receive help and support and may decide whether they wish to stay in Finland and co-operate with the authorities or return to their own country. Support may include providing accommodation, health care, therapy, legal aid and interpreter services. If the victim wishes to return home, safe return is arranged.<sup>79</sup>

The Act on Promoting Integration includes statutes providing for refund of costs accruing to municipalities from providing services and support for victims of human trafficking,<sup>80</sup> as well as providing a representative to each minor who is a victim of human trafficking and in the country without a guardian.<sup>81</sup> The Act on Reception of Persons Seeking International Assistance contains guidelines for supporting victims of human trafficking.<sup>82</sup> This

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<sup>74</sup> Council Directive, *supra* note 31.

<sup>75</sup> Finnish Aliens Act (Act No. 301/2004), §§ 52a-52c (619/2006). Amendments are based on EU Council Directive 2004/81, 2004 (EC) (on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities). See also Act on Promoting Integration, 1386/2010, Section 6, paragraph 53; Section 7, paragraph 56; Act on Reception of persons seeking for international assistance, 746/2011, Chapter 4.

<sup>76</sup> *Id.* at § 52a (619/2006).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at §§ 52b, c (619/2006).

<sup>79</sup> NAT'L BUREAU OF INVESTIGATION, *Actions Against Human Trafficking in Finland*, available at <http://www.poliisi.fi/poliisi/krp/home.nsf/pages/E0FE673C479190B6C2257589004F8AA2>.

<sup>80</sup> Act on Promotion of Immigrant Integration (Act No. 1386/2010), § 6, P 53, available at <http://finlex.fi/en/laki/kaannokset/2010/en20101386>.

<sup>81</sup> *Id.* at § 7, P 56.

<sup>82</sup> Act on Reception of Persons Seeking for International Assistance, (Act. No. 746/2011), ch. 4.

includes the kind of [\*252] assistance with which victims may be provided, who is the competent authority to decide on the assistance, and how this assistance system ought to be monitored.<sup>83</sup>

## 2. Monitoring and Assistance

Other domestic efforts have also been made to improve the human trafficking situation in Finland. The National Anti-trafficking Rapporteur monitors the implementation of new human trafficking regulations.<sup>84</sup> The ombudsman for minorities acts as a National Anti-trafficking Rapporteur and has been monitoring the human trafficking situation since 2009.<sup>85</sup> The Rapporteur's duties consist of monitoring overall human trafficking phenomena in the country, including the implementation of international obligations, as well as the effectiveness of domestic legislation. The rapporteur reports to the Government annually and to the Parliament every four years, issuing "proposals, recommendations, statements and advice relevant to combating human trafficking and implementing the rights of victims," maintaining contacts with international organizations as well as providing legal advice and assistance for victims of human trafficking, when needed.<sup>86</sup>

The first National Plan of Action against Trafficking in Human Beings was introduced in 2005.<sup>87</sup> The purpose of the plan was to suggest measures to recognize and help the victims of human trafficking, convict perpetrators, prevent trafficking in human beings as well as raise awareness and knowledge of human trafficking issues.<sup>88</sup> [\*253] After introducing the first plan, two evaluations of the plan have been prepared. The first evaluation in 2008 focused more on recognizing the victims and raising awareness on human trafficking issues. The plan also concentrated on prevention measures, such as diminishing demand for human trafficking.<sup>89</sup> The most current plan prepared in 2011 evaluates the effectiveness of measures set out in previous plans. The working group points out issues and gives recommendations on how to further affect the human trafficking situation in Finland.<sup>90</sup>

The victims of trafficking in human beings are entitled to protection and assistance through the National Assistance System for victims of human trafficking. This assistance may include various services and support, including legal aid, social services, healthcare, translator services and general assistance, arranging accommodation and providing social welfare. If the victim wishes to return to his or her country of origin, safe return may be arranged. Special needs of the victims ought to be considered as well.<sup>91</sup>

All human trafficking victims are entitled to the assistance, regardless of whether or not they are in the country legally or have any documentation. A person may be admitted to the assistance system on the mere suspicion that

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<sup>83</sup> *Id.*

<sup>84</sup> NAT'L BUREAU OF INVESTIGATION, *supra* note 79.

<sup>85</sup> *Id.*

<sup>86</sup> Act on Ombudsman and Discrimination Board, § 2, PP 1, 2a. See also OMBUDSMAN FOR MINORITIES, *Duties of the Rapporteur on Trafficking in Human Beings*, [http://www.ofm.fi/en/trafficking\\_in\\_human\\_beings/rapporteur\\_on\\_trafficking\\_in\\_human\\_beings](http://www.ofm.fi/en/trafficking_in_human_beings/rapporteur_on_trafficking_in_human_beings).

<sup>87</sup> MINISTRY FOR FOREIGN AFFAIRS OF FINLAND, *National Plan of Action against Trafficking in Human Beings 2005*, available at <http://www.formin.finland.fi/public/default.aspx?contentid=238923&contentlan=2>.

<sup>88</sup> *Id.*

<sup>89</sup> MINISTRY OF THE INTERIOR, *Revised National Plan of Action Against Trafficking in Human Beings*, Publ'n No. 27 (2008), at 3-6, 14-22.

<sup>90</sup> MINISTRY OF THE INTERIOR, *Evaluation of the National Plan of Action against Trafficking in Human Beings and Recommendations to Develop Legislation and Measures Concerning Human Trafficking*, Publ'n No. 17(2011).

<sup>91</sup> Act on Reception of Persons Seeking for International Assistance, *supra* note 83, ch. 4, P 33.

he or she might be a victim of human trafficking. Receiving help is voluntary for the victims.<sup>92</sup> At the moment, assisting victims of human trafficking is concentrated in the Joutseno reception center, located in South-East Finland, close to the city of Lappeenranta. The reception center is responsible for the administration of a victim assistance system. All victim types, including men, women, children, families and groups of people may receive [\*254] assistance.<sup>93</sup> In addition to national assistance, many non-governmental organizations provide help for human trafficking victims.<sup>94</sup>

The national assistance system has official web sites, providing information about human trafficking and the rights of the victims. This information is currently provided in eight languages: Finnish, Swedish, English, Russian, Spanish, Arabic, Thai and Chinese. The information provided in Finnish and Swedish, the national languages of Finland, is quite thorough, containing information and instructions for both possible victims and other people seeking information. In other languages, however, the information provided is still very scarce, including only a few sentences on who can seek assistance and when, as well as a phone number.<sup>95</sup>

Finland provides special training on how to identify victims of human trafficking for personnel working closely with possible human trafficking situations, such as Finnish forces going on peace-keeping missions, as well as the staff of the Finnish airline company Finnair. Finland also participates in providing assistance for counter-trafficking programs and to a regional expert group on trafficking in human beings.<sup>96</sup>

### 3. Court Decisions

The District Court of Helsinki pronounced the first human trafficking conviction in Finland in 2006. Four Estonian men were convicted of aggravated human trafficking. The men trafficked an Estonian, disabled woman to Finland and forced her into sex work. The district court originally convicted six men for aggravated human trafficking.<sup>97</sup> The case was taken to the Helsinki Court of Appeal, [\*255] which confirmed the conviction of four men. The primary offender was sentenced to five and a half years of imprisonment. In addition, another two men originally accused of aggravated human trafficking were eventually convicted for aggravated pandering, and one female was convicted for assisting in it. Some of the key findings of the court were that the victim had been threatened with violence, her freedom had been restricted, and her dependable and insecure state had been taken advantage of. The court also noted her disability when assessing the intensity of the victim's subordination and her actual chances of leaving the situation; the court saw the fact that the victim may have been in possession of her passport and possibly having access to the house keys as irrelevant.<sup>98</sup>

Another human trafficking case occurred in 2008 and was prosecuted in the Kotka District Court. The case was interesting in that all parties were Finnish citizens and it involved no movement across borders. A Finnish female

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<sup>92</sup> THE FINNISH MIGRATION SERV. *System of Assistance for Victims of Human Trafficking* (2014), [http://www.migri.fi/asylum\\_in\\_finland/reception\\_activities/reception\\_services/help\\_for\\_victims\\_of\\_human\\_trafficking](http://www.migri.fi/asylum_in_finland/reception_activities/reception_services/help_for_victims_of_human_trafficking).

<sup>93</sup> I EXIST!, *supra* note 10.

<sup>94</sup> See *id.* (listing some NGO's engaged in providing assistance for victims of human trafficking).

<sup>95</sup> I EXIST!, *supra* note 10.

<sup>96</sup> U.S. DEPT OF STATE, *Trafficking in Persons Rep.* 2013, *supra* note 22.

<sup>97</sup> Helsinki District Court, 2006-07-20 Judgment 6857 (Fin.). Also summarized THE NAT'L BUREAU OF INVESTIGATION OF FINLAND, *Actions against Human Trafficking in Human Beings in Finland*, Poliisi, <http://www.poliisi.fi/poliisi/krp/home.nsf/pages/E0FE673C479190B6C2257589004F8AA2>.

<sup>98</sup> Helsinki Court of Appeal, Judgment 722 of 3/1/2007, Case No. R06/2317.

was violently forced into prostitution. The primary offender was sentenced for aggravated human trafficking to five and a half years of imprisonment. Four other offenders were sentenced to over two years of imprisonment.<sup>99</sup>

The District Court of Helsinki issued the first human trafficking conviction of forced labor in 2012.<sup>100</sup> A Vietnamese couple recruited two Vietnamese employees to work for a nail salon. A young Vietnamese woman, related to the perpetrators, was brought to Finland and made to work in a nail salon for little to no compensation. [\*256] In addition, she had to do domestic work and take care of the couple's children. What made the crime even more aggravated was that the woman was pregnant. The couple tried to force her to have an abortion, and when that did not succeed, to work throughout her pregnancy, including the morning she eventually gave birth, to have her legal maternal leave,<sup>101</sup> but to return to work only two weeks after giving birth. The couple had agreed to bring the father of the child to Finland as well, promising him work. After he arrived, it soon became clear that he would not get paid either, but the perpetrating couple demanded 20,000 Euros<sup>102</sup> from the victims for arranging the father's arrival. The perpetrating couple was sentenced to two years and four months of imprisonment for human trafficking and aggravated usury.<sup>103</sup>

The number of human trafficking cases has steadily increased after the amendments to the Criminal Code. In 2012, eight alleged human trafficking cases were prosecuted. Currently, there is an on-going case of trafficking in human beings in the District Court of Pohjanmaa. The number of victims receiving help through the national assistance system has also steadily increased. In 2012, 52 victims of human trafficking received help through the National Assistance System for Victims of Human Trafficking.<sup>104</sup>

#### [\*257] B. International Law

As stated above, Finland is part of most United Nations human rights treaties. Some of the key treaties are the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and the Convention on the Rights of the Child.<sup>105</sup> Finland has ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Protocol entered into force globally on January 18, 2002. The purpose of the Protocol

<sup>99</sup> *Actions against Human Trafficking in Finland*, *supra* note 98.

<sup>100</sup> Helsinki District Court, Kä0 12/2880, Judgment of March 30, 2012. See also numerous Finnish newspapers before and after the conviction, e.g., *Kynsistudion Pitäjille Vankilatuomiot Ihmiskaupasta*, HELSINGIN SANOMAT, MAR. 30, 2012, available at <http://www.hs.fi/kotimaa/a1305558919243>; *Syyttäjä: Kynsistudiossa Työskennelleeltä Ihmiskaupan Uhrilta laadittiin Aborttia*, MTV3 NEWS Mar. 20, <http://www.mtv.fi/uutiset/rikos/artikkeli/syyttaja--kynsistudiossa-tyoskennelleelta-ihmiskaupan-uhriilta-vaadittiin-aborttia/2048992>; *Kaivokadun Kynsistudion Omistajille Tuomio Ihmiskaupasta*, HELSINKI NEWS, Apr. 2, 2012, available at <http://www.helsingin uutiset.fi/artikkeli/101937-kaivokadun-kynsistudion-omistajille-tuomio-ihmiskaupasta>.

<sup>101</sup> According to Finnish legislation, all Finnish inhabitants who have lived in the country for at least 180 days before the birth of the child are entitled to maternity allowance for 105 days. See Finnish Health Insurance Act (Act No. 1224/2004), § 9, PP 1, 2. Employees have the right to take a leave of absence from work for the period of maternity allowance, as well as other periods of parental allowances set by the law. See Finnish Employment Contracts Act (Act No. / ?) § 4, PP 1,2.

<sup>102</sup> One Euro amounts approximately 1.35 U.S. Dollars; 20,000 Euros is approximately 27,000 USD. EUROPEAN CENTBANK, *Euro Foreign Exchange Rates*, available at <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html> (last visited July 23, 2014).

<sup>103</sup> Helsinki District Court, *supra* note 101.

<sup>104</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REP. 2013*, *supra* note 22. See also *A Vietnamese Foreman Accused of Human Trafficking*, YLE NEWS, Sept. 2, 2013, [http://yle.fi/uutiset/vietnamilaista\\_tyonjohtajaa\\_syytetaan\\_ihmiskaupasta/6810548](http://yle.fi/uutiset/vietnamilaista_tyonjohtajaa_syytetaan_ihmiskaupasta/6810548).

<sup>105</sup> See MINISTRY OF FOREIGN AFFAIRS OF FINLAND, *supra* note 13 (listing U.N. Conventions Finland has ratified), <http://www.formin.fi/public/default.aspx?contentid=67680&contentlan=1&culture=fi-FI>.

is to protect children by prohibiting their sale, child prostitution and child pornography. Finland signed the Protocol in 2000.<sup>106</sup>

Finland has also ratified a number of international and regional conventions regarding trafficking in human beings and has been actively involved in international work to stop human trafficking. Finnish Ambassador Pekka Hyvönen is currently the Chair of the Committee of the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings.<sup>107</sup>

One of the main international treaties regarding fighting against human trafficking is the United Nations Convention against Transnational Organized Crime, from 2000,<sup>108</sup> supplemented by three protocols.<sup>109</sup> Finland signed the Convention in 2000 and ratified **[\*258]** it in 2004.<sup>110</sup> Additionally, Finland has signed and ratified all three optional Protocols to the Convention. The most important instrument of the three protocols addressing human trafficking issues is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the so-called "Palermo Protocol." The Protocol entered into force December 25, 2003. The Protocol is universally significant because it is the first international, legally binding instrument that contains the definition of trafficking in human beings.<sup>111</sup> As of September 7, 2014, 161 states are parties to the Palermo Protocol,<sup>112</sup> which entered into force in 2006.<sup>113</sup>

In addition to international conventions, Finland is part of numerous regional agreements. Most of these are European Union Conventions and Directives. One of the most important regional instruments is the Council of Europe Convention on Action against Trafficking in Human Beings of 2005. The purpose of the Convention is to prevent and combat human trafficking, protect gender equality, effectively investigate and prosecute human

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<sup>106</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Jan. 18, 2002).

<sup>107</sup> COUNCIL OF EUROPE, *Action Against Trafficking in Human Beings: News*, Oct. 18, 2013, [http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp).

<sup>108</sup> United Nations Convention against Transnational Organized Crime, U.N. Doc. RES/55/25 (Nov. 15, 2000) (entered into force Sept. 29, 2003), *available at* [www.unodc.org/unodc/en/treaties/CTOC/index.html](http://www.unodc.org/unodc/en/treaties/CTOC/index.html).

<sup>109</sup> The three supplementing protocols to the Covenant are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which Finland signed in 2000 and accepted in 2006; the Protocol against the Smuggling of Migrants by Land, Sea and Air, which Finland signed in 2000 and accepted in 2006; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, which Finland signed in 2000 and accepted in 2011. *See id.*

<sup>110</sup> U.N. TREATY COLLECTION (listing countries who have signed and/or ratified the Convention against Organized Crime), [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en) (last visited September 7, 2014).

<sup>111</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *supra* note 2 (adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000). *See also United Nations Convention against Transnational Organized Crime*, *supra* note 108.

<sup>112</sup> U.N. TREATY COLLECTION (listing states parties to the Protocol), [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited on Sept. 7, 2014).

trafficking cases, protect the victims and improve international cooperation. The [\*259] Convention came into force in Finland September 1, 2012.<sup>114</sup>

Another important regional instrument is a European Council directive, regarding issuance of residence permits for victims of human trafficking. The Directive concerns issuing residence permits to third-country nationals who are victims of human trafficking or have been subjected to illegal entry to the country. These victims may be issued a residence permit to European Union countries if they cooperate with the competent authorities, for example, in order to catch the perpetrators. The directive was issued in April 2004<sup>115</sup> and adopted by the Finnish Aliens Act (301/2004) in 2006.<sup>116</sup>

The latest regional convention Finland is a part of is the European Union directive on preventing and combating human trafficking and protecting its victims.<sup>117</sup> The Directive "establishes minimum rules at European Union (EU) level concerning the definition of criminal offences and sanctions in the area of trafficking in human beings" and it also "provides measures aimed at better prevention of this phenomenon, and at improving the protection of victims."<sup>118</sup> Since it is an EU directive, all member states of the European Union must adapt their domestic legislation to comply.<sup>119</sup> Finland's domestic efforts to create an effective support system for victims of human trafficking are aimed to be consistent with this EU directive.

#### [\*260] IV. Predicting Future Trends

Problems in detecting human trafficking and overlaps in legislation have been noticed. The Ministry of Justice in 2011 established a working group to identify needs for legislative changes. The purpose of the working group was to investigate how well Finnish legislation is in line with the recent EU directive about combatting human trafficking<sup>120</sup> and what kind of legislative changes may be needed to clarify the difference between human trafficking and crimes with similar aspects, such as pandering and extortionate work discrimination. The working group suggested certain legislative changes to more effectively intervene in human trafficking and protect the victims, as well as to better comply with the international obligations to which Finland has committed.<sup>121</sup>

<sup>113</sup> UNDOC: *World Drug Report 2014*) (listing countries who have signed and/or ratified the Protocol, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited July 23, 2014).

<sup>114</sup> Council of Europe Convention on Action against Trafficking in Human Beings, ch. 1, Art. 1, May 16, 2005, C.E.T.S. 197 (entered into force in Finland September 1, 2012, Bill 427/2012).

<sup>115</sup> Council Directive, *supra* note 75.

<sup>116</sup> Bill HE 32/2006 vp., *available at* <http://www.eduskunta.fi/valtiopaivaasiat/he+32/2006>.

<sup>117</sup> Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101).

<sup>118</sup> Council Directive, *supra* note 75. See also EUROPA: SUMMARIES OF EU LEGISLATION, *Preventing and Combating Trafficking in Human Beings*, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/jl0058\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm).

<sup>119</sup> See European Commission, [http://ec.europa.eu/eu\\_law/introduction/what\\_directive\\_en.htm](http://ec.europa.eu/eu_law/introduction/what_directive_en.htm) (providing more information about EU directives).

<sup>120</sup> See Directive 2011/36, of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

<sup>121</sup> See The Finnish National Rapporteur on Trafficking in Human Beings, Rep. of the Ombudsman for Minorities, Pub. 12, at 11 (2012), *available at* [http://www.ofm.fi/download/39494\\_SM\\_ihmiskauppa\\_uk\\_web.pdf](http://www.ofm.fi/download/39494_SM_ihmiskauppa_uk_web.pdf).



The working group suggests removing the word "coercion" from the current pandering clause and removing all violence-related methods from the aggravated pandering clause. They also suggest amending the wording "takes control over another person" in the human trafficking clause to better comply with the purpose of the clause.<sup>122</sup> This would clarify the line between human trafficking and pandering, making all cases involving pressuring, threatening or violence cases of human trafficking. The working group suggests improving the position of persons subjected to pandering by providing them legal aid and support. It furthermore points out that, in labor cases, the responsibility of the employer should be investigated further, for example, whether using bans on business operations could be effective.<sup>123</sup> These amendments have not yet been made, but will **[\*261]** most likely happen in the near future.

The Steering Group, established to evaluate the human trafficking situation in Finland, points out, as its main recommendation, that a special working group should be established to further investigate needs for legislative changes and to draft a proposal for a comprehensive act regarding human trafficking issues. The Steering Group also points out the need to draft proposals on how to regulate the identification of victims of human trafficking, as well as how to communicate with and pass information between different authorities or among authorities and other parties helping the victims.<sup>124</sup> So far, these suggestions have not been put into practice. They are, however, recommendations of the Steering Group, and therefore the government likely will at least carefully consider them.

The Ministry of Justice has debated whether Finland should follow the methods practiced in Sweden. Sweden has completely criminalized buying sex, and Finland is debating whether the same legislation could work in Finland. Currently Finnish legislation prohibits prostitution in a public place<sup>125</sup> and buying sex from minors or from victims of human trafficking.<sup>126</sup> Needless to say, the legislation is ineffective in practice, since such cases are almost impossible to prosecute. The prosecution should be able to prove that the person buying sexual favors knew at the time that the person was underage or a victim of human trafficking. Complete prohibition of buying sexual services would clarify the legislation and, it is hoped, create a negative public atmosphere towards commercial sex.<sup>127</sup> Most likely complete criminalization of buying sex will not happen due to the strong objection of many parties, but some changes in the legislation **[\*262]** are predicted.

Finland is part of the European Union and actively involved in international cooperation. Human trafficking is more and more condemned universally, and both states and different organizations are increasingly putting effort into victim identification and protection. Finland is likely to follow this international direction, making legislative amendments and finding new ways to improve the position of the victims.

## V. Appraisal, Invention of Alternatives, Recommendations

### A. Appraisal

Finland is generally considered to be a safe Western welfare country, having but few problems with corruption or organized crime. Finland has made numerous efforts in improving the human rights situation in the country. In

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<sup>122</sup> Finnish National Rapporteur, *supra* note 123, at 11-12.

<sup>123</sup> *Id.*

<sup>124</sup> MINISTRY OF THE INTERIOR, *Evaluation of the National Plan of Action against Trafficking in Human Beings and Recommendations to Develop Legislation and Measures Concerning Human Trafficking*, pubs. 17/2011, at 116-117.

<sup>125</sup> Public Order Act (Act No. 612/2003), ch. 2, § 7.

<sup>126</sup> The Criminal Code of Finland, *supra* note 48, at ch. 20, §§ 8, 8a.

<sup>127</sup> MINISTRY OF JUSTICE OF FINLAND, *Publications, Inquests and Instructions* 39/2013, at 112, 116-118, available at [http://oikeusministerio.fi/fi/index/julka-isut/julkaisuarkisto/1378203764840/Files/OMSO\\_39\\_2013\\_Seksikaupan\\_kohteen\\_hyvaksikaytto.pdf](http://oikeusministerio.fi/fi/index/julka-isut/julkaisuarkisto/1378203764840/Files/OMSO_39_2013_Seksikaupan_kohteen_hyvaksikaytto.pdf).

addition to international agreements, Finland has made domestic efforts to stop human trafficking and help the victims get back on their feet.

Despite the fact that certain legislative changes have been made and domestic legislation in Finland is considered to be consistent with international obligations and European Union directives, the legislation in its current form does not give the victims of human trafficking enough protection. Human trafficking statutes are not used broadly enough, and old habits in all levels of legal procedures, from investigation by the police to prosecution and court procedures, are still used all too commonly. Both legislation and the general legislative system in the country need further inspection and improvements before victims of human trafficking can effectively be protected and their perpetrators brought to justice.

On paper, the current National Assistance System for Victims of Human Trafficking is functional. Though some need for improvement may always be found, the basic assistance system is relatively good. The problem, however, remains that victims of human trafficking are not recognized, and therefore stay out of the reach of support systems.

**[\*263]** The system of recognition of possible victims of human trafficking is not effective. No legislative guidelines have been drawn up to assist authorities in their work. General knowledge about human trafficking remains inadequate both among the public and those people who might first interact with the victims, such as ground-level personnel in border control, police, social services or health care. These officials working on the ground level, where victims usually are easiest to spot, do not have enough knowledge to recognize the victims among all other clients. Making a distinction between what is human trafficking and what is something else is not easy without proper training or education; it remains challenging even for those involved in different kinds of training programs.

#### *B. Alternatives*

In order to protect the victims of human trafficking, Finnish legislation needs significant changes. The distinction between human trafficking and pandering statutes must become clearer. At the moment, many victims fall out of the support system because their cases are prosecuted as pandering cases instead of using the more serious human trafficking statute. As long as these two statutes overlap, changing the legal praxis is challenging. Some suggestions to amend the legislation have already been made, and will hopefully happen, but the legislation may still need closer observation.

In many other countries, the clear distinction between pandering and human trafficking is the consent of the person selling services. This distinction would make Finnish legislation more effective and give victims of human trafficking more protection. All cases, when sex workers are not conducting business with their full consent, and cannot truly, freely stop working whenever they want should be prosecuted as human trafficking. Similarly, only those cases when the workers truly have a chance of leaving whenever they want without being pressured financially or in any other way, and they are conducting in prostitution out of their free will, could be prosecuted as pandering.

Enacting a new law regarding trafficking in human beings, as **[\*264]** the working group suggested, could be a useful idea. It might also be useful to set up legislated guidelines for identifying victims of human trafficking. Currently, the guidelines can be found only in different governmental instructions. <sup>128</sup>

The complete prohibition of buying sexual services has been debated. Criminalizing buying sex might help in managing demand for commercial sex and therefore demand for sex trafficking. Complete prohibition, however, has its issues, and so far proof of its effectiveness has been scarce. The suggestion to broaden the clause on prohibiting buying sex from victims of human trafficking, to also include situations where the buyer should have known to suspect human trafficking would probably not have much effect, either. Proving that the buyer should have known he was dealing with a victim of human trafficking is almost as problematic as proving he in fact knew that was the case. One alternative would be to go a little further and make buying sex from a victim of human

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<sup>128</sup> MINISTRY OF THE INTERIOR, Evaluation, *supra* note 126, at 40-44.

trafficking punishable in all cases, whether or not the buyer was fully aware that he in fact was dealing with human trafficking. This method is used in the United Kingdom. <sup>129</sup>

### C. Recommendations

Human trafficking is not an easy crime to tackle. Many efforts have been made globally to stop it, yet trafficking in human beings continues to be an aggravated crime all over the world. Even giving specific recommendations on how to tackle the human trafficking situation in Finland is problematic. Ending human trafficking would require completely abolishing demand and sources, which in the current state of the world seems quite unrealistic. Diminishing human trafficking, however, can be achieved. It requires effective legislation, trained individuals in all fields, changes in public attitude, raising awareness and open discussion, and the public's will to help one another. Victims need to be protected, assisted and supported effectively on a practical level. Putting all of this into specific acts **[\*265]** is not an easy task.

#### 1. Legislation

Different observation groups already suggest changes in domestic legislation. The main suggestion is clearly separating pandering and human trafficking statutes as well as forced labor and extortionate work discrimination from one another. The clear distinction between sex trafficking and pandering is suggested to be the consent of the victim. The distinction of full consent is very clear and broadly used all over the world. <sup>130</sup> It would require either minor changes in the Criminal Code of Finland, or a statute and guidelines for the court and police to follow while investigating possible human trafficking cases. This change could be done quite easily and it would have a significant impact on the future of human rights prosecution. More specifically, broader guidelines and legislation might be needed to fully cover different situations of trafficking in human beings. Therefore, I would suggest a more careful observation of current legislation.

Current legislation does not specifically mention different forms of sex trafficking. Adding some type of guidelines or even statutes on different forms of sex trafficking, such as establishing a notion on what kind of forms sex trafficking may have, but is not limited to, could help in investigating these situations. The distinction between two consenting adults marrying each other compared to a perpetrator buying a victim abroad for exploitation is naturally extremely difficult to detect, and national legislation may not be the best forum for defining forms of sex trafficking; it could limit the use of the statute. However, having mailorder brides mentioned in, for example, law preparation documents as a possible form of human trafficking might make it a little easier for border control and other officers to question these situations. It could also help the victims to see that they may in fact be victims of a crime, and they may seek help.

**[\*266]** Further legislation or guidelines regarding ethnic enterprises, such as massage parlors and restaurants, might also be needed. Sex trafficking and forms of forced labor are changing; the general image of traditional prostitution happening on the streets is not necessarily a reality anymore. New forms of exploitation are surfacing, and legislation, usually one step behind, should try to keep up with the changing world.

#### 2. Attacking Demand

A major change in general attitude is needed to effectively impact human trafficking in Finland. As long as certain forms of human trafficking, such as ethnic massage parlors and mail-order brides, are seen as acceptable and the general public does not understand or want to see the problems behind such behavior, the phenomena will continue. Major campaigns raising awareness of human trafficking issues might help to wake up the public to seeing that human trafficking is in fact happening in Finland and that there are victims all over the country.

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<sup>129</sup> Puu-Oksanen, *supra* note 42.

<sup>130</sup> See Chapter V, A. Appraisal and B. Alternatives.

Both media and the public usually have powerful effects on raising governmental interest, as well as affecting everyday situations. If the public were more aware of the forms of human trafficking taking place, identifying possible victims might become more effective. Change in general attitude and awareness might even have a minor impact on the demand. Being realistic, no awareness campaign will ever completely erase the demand for sex labor. Commercial sex is the oldest form of labor in the world, and that is hardly going to change. However, raising awareness might make some customers think twice before buying services from someone who might fall under the guidelines on how to recognize a victim of human trafficking.

One way of raising awareness and affecting general attitudes towards human trafficking could be including obligatory courses on human rights and trafficking in human beings in the Finnish educational system. It would not have to be too intensive; even a few lessons a year could be effective. This education should be well-tailored for each age group; little children in the first grades of elementary [\*267] school obviously should not be exposed to possibly harmful information. The education could, however, begin already in the first grades, taking the age of the children into account. Providing human rights education including information about human trafficking as a normal part of Finnish educational system could, at least, create a new generation more aware of both their rights and duties as humans. It could also make victim recognition a little bit easier.

### *3. Recognizing the Victims*

The main problem still remains of how to recognize the victims. No matter how effective the supporting system for victims is on paper, it does not make much difference in practice as long as the victims remain unidentified and do not get the help the support system offers.

Ground-level officers are usually the ones first communicating with the victims. They may be social workers, police officers, immigration, border control, or officers in other fields, such as social workers or health care personnel. They are the first ones who should notice when something is wrong and be able to recognize warning signs of potential human trafficking situations, and providing them with proper training to do so is essential. If these ground-level workers do not have the knowledge or resources to recognize these situations and intervene, it is very likely that the abuse of the victims will continue without anyone knowing about it, and the likelihood that the victims will get the help they need before it is too late will significantly diminish.

Officials are not the only parties who encounter possible human rights victims in their everyday work. The Finnish government provides training for Finnish forces and personnel of Finnish national airline company Finnair to help them identify victims of human trafficking. I would suggest expanding this training to concern other transportation personnel, as broadly as possible. Training personnel of airline companies not based in Finland is not in the hands of the Finnish government. It could, however require a certain level of victim identification training from all personnel working at the airports, [\*268] not only from Finnair staff or border control. The same training could be effective when provided to personnel working in other transportation companies, such as the cruise companies Silja Line and Viking Line, as well as the national railway company VR. Since certain trains from Finland go to Russia, training VR personnel, especially those directly working on those trains, to identify human trafficking victims, might be extremely beneficial.

NGOs have an important role in battling human trafficking. The Finnish government is already financially supporting certain NGOs. Cooperation between governmental authorities and organizations and the NGOs should be improved and the NGOs should be engaged more in anti-trafficking work. The options of providing sustainable financial support for the NGOs helping possible victims should be investigated further. The government should also cooperate more with international organizations. Many multinational organizations are making enormous efforts in improving the universal human rights situation. Human trafficking should become one of those efforts. The Finnish government could take the observations of the NGOs into account more effectively when creating new guidelines or legislation concerning human trafficking.

Cooperating with the governments of those countries from which most victims of human trafficking come to Finland is important. Improving international cooperation systems regarding human trafficking could be investigated. This

might include improving systems of providing information between countries in alleged human trafficking situations, even before the victims enter the country.

Since human trafficking is an unreported crime that remains hidden, finding the victims may not be easy, even if the workers know what to look for. Ground-level search work, within reasonable resources, could be an effective way of finding some of those hidden victims. Human trafficking victims cannot come to you; you need to go to them. This might include on-the-spot visitations to massage parlors, restaurants or factories where possible victims may be working. Engaging NGOs could be useful in this ground level search, since victims may not want to talk to people whom they suspect are police officers or other officials, even if the officers are not wearing uniforms. Mail-order bride victims are extremely difficult to spot because [\*269] their exploitation usually happens in their homes by their spouses. Additional checks by immigration authorities on certain groups of foreign marriages could be one way to supervise mail-order marriages. This does not have to happen in a discriminating way just by adding some sort of surveillance and changing protocols. For example, an interview for the foreign spouse alone, with the presence of a translator, could be enough.

In today's society, more and more information is online, including perpetrators and victims of human trafficking. NGO's or special groups could be established to monitor online discussion boards and social media and report suspicious activity. A lot of information can be found online and it should be taken advantage of. If a simple search on google reveals several discussions on specific massage parlors providing "additional services" across the country, a special working group could find a significant amount of information and places to target through online monitoring. Other online services, such as chatting online with possible victims, could be a way to raise awareness.

Many legal documents, especially legislation, can be found in only the two national languages of Finland. On the Finnish online database containing all domestic legislation, only a few statutes are available in English. Finding information about human trafficking in Finland in any language other than Finnish or Swedish turned out to be difficult; information was scarcely available even in English. Even the official Finnish web site [www.humantrafficking.fi](http://www.humantrafficking.fi), set up specifically to provide information about human trafficking to possible victims and other parties, has very little information in any language other than Finnish or Swedish. Basic information is provided in eight different languages, but this information is extremely poor, as scarce as a few sentences.<sup>131</sup> Providing information on a language that the victims understand is essential in order to give them a chance to find understandable information about their rights. Victims may come from all over the world, and translating all documents to dozens of languages is obviously not possible. It might, however, be useful to look into the geographical distribution of the victims and focus [\*270] on providing information in at least a few main languages.

Improving already existing channels of information is a good way to start, but searching for alternative ways to raise awareness could be necessary. The most isolated victims are not likely to have access to Internet. Reaching these victims may need more ground-level work, including targeting workplaces, restaurants and other forums where possible victims of human trafficking may be working or residing.

Battling human trafficking requires work from all parties, including governments, international organizations, and non-governmental organizations, as well as individuals. Trafficking in human beings is a widespread problem all over the world, and ending this crime against human dignity will not be easy. The most important thing, however, is to realize that human trafficking is a crime, that it is not tolerable, and that the government is continuously working, step by step, towards reducing human trafficking and helping the victims to rehabilitate and break free from exploitation.

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<sup>131</sup> See Chapter III.A.2, Monitoring and Assistance.

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End of Document



# SEX TRAFFICKING FACT SHEET



Sex trafficking is a modern-day form of slavery in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is under the age of 18 years. Enactment of the Trafficking Victims Protection Act of 2000 (TVPA) made sex trafficking a serious violation of Federal law. The TVPA also recognizes labor trafficking, which is discussed in a separate fact sheet.

As defined by the TVPA, the term 'commercial sex act' means any sex act on account of which anything of value is given to or received by any person.

The TVPA recognizes that traffickers use psychological and well as physical coercion and bondage, and it defines coercion to include: threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

## **Victims of Sex Trafficking and What They Face**

Victims of sex trafficking can be women or men, girls or boys, but the majority are women and girls. There are a number of common patterns for luring victims into situations of sex trafficking, including:

- A promise of a good job in another country
- A false marriage proposal turned into a bondage situation
- Being sold into the sex trade by parents, husbands, boyfriends
- Being kidnapped by traffickers

Sex traffickers frequently subject their victims to debt-bondage, an illegal practice in which the traffickers tell their victims that they owe money (often relating to the victims' living expenses and transport into the country) and that they must pledge their personal services to repay the debt.

Sex traffickers use a variety of methods to "condition" their victims including starvation, confinement, beatings, physical abuse, rape, gang rape, threats of violence to the victims and the victims' families, forced drug use and the threat of shaming their victims by revealing their activities to their family and their families' friends.

Victims face numerous health risks. Physical risks include drug and alcohol addiction; physical injuries (broken bones, concussions, burns, vaginal/anal tearings); traumatic brain injury (TBI) resulting in memory loss, dizziness, headaches, numbness; sexually transmitted diseases (e.g., HIV/AIDS, gonorrhea, syphilis, UTIs, pubic lice); sterility, miscarriages, menstrual problems; other diseases (e.g., TB, hepatitis, malaria, pneumonia); and forced or coerced abortions.

Psychological harms include mind/body separation/disassociated ego states, shame, grief, fear, distrust, hatred of men, self-hatred, suicide, and suicidal thoughts. Victims are at risk for Posttraumatic Stress Disorder (PTSD) – acute anxiety, depression, insomnia, physical hyper-alertness, self-loathing that is long-lasting and resistant to change (complex-PTSD).

Victims may also suffer from traumatic bonding – a form of coercive control in which the perpetrator instills in the victim fear as well as gratitude for being allowed to live.

**National Human Trafficking Resource Center 1.888.3737.888**



### Types of Sex Trafficking

Victims of trafficking are forced into various forms of commercial sexual exploitation including prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution and sex tourism.

Victims trafficked into prostitution and pornography are usually involved in the most exploitive forms of commercial sex operations. Sex trafficking operations can be found in highly-visible venues such as street prostitution, as well as more underground systems such as closed-brothels that operate out of residential homes. Sex trafficking also takes place in a variety of public and private locations such as massage parlors, spas, strip clubs and other fronts for prostitution. Victims may start off dancing or stripping in clubs and then be coerced into situations of prostitution and pornography.

### Assistance for Victims of Sex Trafficking

When victims of trafficking are identified, the U.S. government can help them adjust their immigration status, and obtain support and assistance in rebuilding their lives in the United States through various programs. By certifying victims of trafficking, the U.S. Department of Health and Human Services (HHS) enables trafficking victims who are non-U.S. citizens to receive Federally funded benefits and services to the same extent as a refugee. Victims of trafficking who are U.S. citizens do not need to be certified to receive benefits. As U.S. citizens, they may already be eligible for many benefits.

Through HHS, victims can access benefits and services including food, health care and employment assistance. Certified victims of trafficking can obtain access to services that provide English language instruction and skills training for job placement. Since many victims are reluctant to come forward for fear of being deported, one of HHS' most important roles is to connect victims with non-profit organizations prepared to assist them and address their specific needs. These organizations can provide counseling, case management and benefit coordination.

If you think you have come in contact with a victim of human trafficking, call the **National Human Trafficking Resource Center at 1.888.3737.888**. This hotline will help you determine if you have encountered victims of human trafficking, will identify local resources available in your community to help victims, and will help you coordinate with local social service organizations to help protect and serve victims so they can begin the process of restoring their lives. For more information on human trafficking visit **[www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking)**.

**National Human Trafficking Resource Center 1.888.3737.888**



# ***Behind Illicit Massage Parlors Lie a Vast Crime Network and Modern Indentured Servitude***

**By Nicholas Kulish, Frances Robles and Patricia Mazzei**

March 2, 2019

She was 49, a recent immigrant and deeply in debt to a loan shark back home in China when she answered an employment ad three years ago that promised thousands of dollars a month, but offered no job description. She realized too late that she had been tricked into working at a massage parlor in Flushing, Queens, where besides kneading backs, she was expected to sexually service up to a dozen men a day.

Some of the clients were violent, and the boss charged \$10 a day for her to sleep on a sofa in a room at the parlor where rats nibbled on her food. “The customers were very terrible,” said the woman, who, ashamed of the stigma of her former profession, asked that her name not be used. “After you perform a service, they would find an excuse to take the money away.” They would, she said, “do even worse things.”

In strip malls across the country, neon signs and brightly colored placards promise hot stones, acupuncture and shiatsu with photos of women or couples receiving relaxing shoulder rubs. But a traditionally Asian form of therapeutic relaxation with deep roots in big-city Chinatowns has spun off a different kind of massage parlor that has little to do with traditional remedies. It has exploded into a \$3 billion-a-year sex industry that relies on pervasive secrecy, close-knit ownership rings and tens of thousands of mostly foreign women ensnared in a form of modern indentured servitude.

The frequently middle-aged women who work in parlors with names like Orchids of Asia and Rainbow Spa are often struggling to pay off high debts to family members, loan sharks, labor traffickers and lawyers who help them file phony asylum claims. In some cases, their passports are taken and their illegal immigration status keeps them further in the shadows, with some of them rotated every 10 days to two weeks between spas operated by the same owners. Forced to pay for their own supplies and even their own condoms, many women must sleep on the same massage tables where they service customers and cook on hot plates in cramped kitchens or on back steps.

“We stopped thinking about just cages, bars and chains as the means of coercion,” said John Richmond, the State Department’s top anti-trafficking official. “They are using nonviolent forms of coercion.”

The recent arrest warrant filed against Robert K. Kraft, owner of the New England Patriots — and the solicitation charges filed against nearly 300 men in multiple jurisdictions as part of the same case — riveted national attention to a stretch of Highway 1 along Florida’s Treasure Coast dotted with strip malls, gas stations and sapphire ocean views. Across the region, parlors were

empty and many frequent clients were phoning their lawyers, wondering if more warrants were going to drop.

Law enforcement officials said there were an estimated 9,000 illicit massage parlors across the country, from Orlando to Los Angeles. The epicenter of this national underground is the bustling Chinatown in Flushing, in the New York City borough of Queens. Women — typically Chinese, but also Korean, Thai and East European — arrive at Kennedy International Airport, learn the trade and are sent out to places like Virginia, Iowa, Texas and Florida. Women are recruited locally through ads in Chinese-language newspapers or over the social network WeChat.

“Flushing is the center of this network,” [said Lori Cohen](#), the director of Sanctuary for Families’ Anti-Trafficking Initiative, which has interviewed around 1,000 massage workers over the past five years and helped the 49-year-old immigrant who was sexually assaulted leave the business after she was arrested. “They are showing up in different parts of the country, but all of them have addresses in Flushing, Queens,” she said.

The women are paid just a sliver of the \$60 or more the client pays for an hour long massage. Their real money — and chance at a better life — comes in the form of tips, which they are encouraged or forced to amplify through illegal means.

A 60-year-old former massage worker from Taiwan, who agreed to be identified only by the nickname she commonly uses, Tina, said she was lured into working at a massage parlor in New York a decade ago by the travel agency broker who helped secure her visa to travel to the United States. “People come here and don’t have a place to live,” she said. “These places offer a place to live, and it seems like a nice idea. They say, ‘It’s not safe to keep your passport on hand,’ and they will ask to hold the passport.”

She was arrested several times before getting out of the business, and feels comparatively lucky. One close friend was spirited to Texas by traffickers, she said, had her passport taken and was forced to see eight to 12 customers a day. One day the tearful calls she often received from her friend came to an abrupt halt.

“A lot of the businesses that look like either nail salons or massage places, especially the places that offer massage, there are bad things happening there,” she said. “It’s 100 percent organized crime.”

The ubiquity of the massage parlors offers an accessibility and sheen of normalcy not offered by traditional brothels. And as the massage parlors have expanded even into small-town America in recent years, meticulously detailed review sites like Rubmaps have served as the Yelp and Foursquare of the illicit parlor business, with graphic anatomical descriptions of the women and explicit breakdowns of the sexual services proffered.

Even at illicit parlors, owners and managers can claim ignorance of the additional services offered by employees behind closed doors. The evidence gathered during raids and searches often tells a far different tale. The police say it is common to find ledgers tracking the number of “dates” women have had, as was found in a bust in Dallas in 2016. In one case in Kansas, a search of the premises yielded a notebook with handwritten Chinese-English translations that “included sexually explicit phrases such as ‘did you bring condom’ and ‘happy ending.’”

A federal law enforcement official, speaking on the condition of anonymity because this person is involved in active cases, said that the most common method for smuggling women from Asian countries was either a fraudulent tourist visa or a fraudulent work visa, such as for nursing work. Many came as students, then overstayed to work in the sex industry.

Many women arrive in the United States from China bearing heavy debt burdens and try to find work in restaurants or nail salons. But the money isn’t good enough for the five-figure debts weighing them down. The massage jobs are presented as opportunities for fast, easy money.

“They will talk about how they used to work in a restaurant and it was really hard physically and they couldn’t make that much money, and then they heard from somebody or saw an ad saying they could make a lot more money in a massage parlor,” said Leigh Latimer, a supervising attorney at the Legal Aid Society’s exploitation intervention project in New York.

One reason the Asian massage parlors remain so poorly understood is the extreme reluctance of the women to speak with the police and even with their own lawyers.

“Even though I’ve represented many, many women arrested in unlicensed massage parlors, because of the level of distrust of people working, almost all immigrants, almost all undocumented, they don’t trust even their attorneys enough to let them know what’s happened to them,” Ms. Latimer said.

Some fear retaliation by traffickers to their families in China, and some feel morally indebted to those who helped find them a job, said Chris Muller, the director of training and external affairs at Restore NYC, an anti-sex-trafficking organization.

“This is a powerful exploitation tactic,” he said. “Any favor is implied there is going to be a payment back. ‘Look at what I have done for you. I found you a job. I found you a place to live and this is how you repay me?’”

Small networks of spas are also common, and their ownership structures are complex and opaque. “It’s rare that you have a mom-and-pop business where they’re just running one,” said Lt. Christopher Sharpe of the New York Police Department’s vice section. “Usually if they’re running one, they have a second or a third business.”

Bradley Myles, chief executive of [Polaris Project](#), a nonprofit that works to combat human trafficking, said that the madams arrested on big raids like the recent ones in Florida — known

as “mamasans” — are often women in their 60s and 70s who have spent decades in the sex trade but are usually pretty far down in the organization.

Above these site managers is usually a person who appears on paperwork as the massage parlor owner, but is often just a frontman running a shell company. The payouts from the shell company go to what is legally known as the “beneficial owner.”

“Very little is known of the behind-the-scene owners,” Mr. Myles said. “They are hiding behind shell companies, hiding behind mamasans. They are hiding behind fake people.”

In addition, the networks have groups of drivers that help move the women from place to place. Some networks are only two or three layers deep, others four or five.

“I’ve certainly seen indicia of larger networks and indicia of powerful transporters,” said the federal law enforcement official.

The Florida Department of Health disciplined 62 massage parlors or therapists last fiscal year, up from 14 the year before, records show. The agency receives upward of 300 complaints about unlicensed massage facilities each year.

Department inspection reports described women inside the spas living in tight quarters cluttered with essentials, including rolling bath carts stuffed with toiletries, shelves lined with coffee mugs and cooking pots and stashes of assorted snacks. The women slept on individual cots and in some cases appeared to keep their belongings and blankets inside locked plastic trunks.

Their IDs showed that several of them had addresses outside Florida, including in Flushing, N.Y.; Lilburn, Ga.; San Gabriel, Calif.; and Temple City, Calif.

Those who are arrested are not necessarily left to their own resources. When sheriff’s deputies in Martin County, Fla., were interviewing Lixia Zhu, 48, one of the massage parlor employees arrested two weeks ago, it wasn’t long before a New York lawyer arrived and identified himself as her lawyer. The lawyer, Baya Harrison IV, told The New York Times that Ms. Zhu used to work in New York and that her friends had hired him to defend her.

The county sheriff, William D. Snyder, said Ms. Zhu had tearfully told deputies and a public defender about how her passport was kept from her in a locked safe and how the woman she worked for once threatened her by brandishing a gun.

One woman in the Florida sting has been charged with human trafficking, after police officers conducting surveillance saw her shuttling two other women carrying suitcases in and out of a spa in Vero Beach.

Bob Houston, a former F.B.I. agent who now works as a consultant to combat trafficking, said that Thai traffickers often employ elaborate schemes to help women intended for the massage industry apply for tourist visas. The traffickers create false back stories, giving women the appearance of an established life at home, including a spouse and bank account, all to help them qualify for a tourist visa. They even produce fake diplomas from massage schools. The tab is usually \$40,000 to \$60,000, he said.

“They owe a bunch of money to the people who recruited them,” he said.

In December, 36 people in Minnesota were convicted for their roles in a Thai sex trafficking ring that shuttled hundreds of women from Bangkok to cities across the United States, including Phoenix, Las Vegas, Atlanta and Minneapolis.

The women, referred to as “flowers” by the criminal organizations, were forced to work at massage parlors with no choice about where, when and with whom they performed sex acts until their debts were paid off. They were permitted to move around outside the parlors only with so-called runners working for the organization, evidence in the case showed.

The decision by law enforcement in Florida to focus on patrons of the establishments in such a public way rather than the women working there has generated a lot of fear among clients.

John Musca, a criminal defense lawyer with an office in Vero Beach whose website advertises sex crime defense, said he has received panicked phone calls from many men who frequented the establishments and are worried that the police are about to come knocking.

“There are a great number of folks who are on pins and needles,” Mr. Musca said.

# Massage parlor raids believed to be the biggest human trafficking bust in Utah history

POSTED 4:59 PM, JUNE 10, 2015, BY [BEN WINSLOW](#), UPDATED AT 07:43AM, JUNE 11, 2015

SALT LAKE CITY -- Utah's attorney general has said he believes raids on massage parlors is the largest human trafficking bust in state history.

More than a dozen women were taken into custody and two people were booked into jail on Tuesday after members of the Utah Attorney General's SECURE Strike Force served warrants on 11 massage parlors from Ogden to West Jordan.

Changfeng Lin, 35, was arrested in a traffic stop in Salt Lake City and booked into the Weber County Jail on suspicion of exploitation of a prostitute and pattern of unlawful activity. According to a probable cause statement filed with the jail and obtained by FOX 13, Lin admitted to owning some of the parlors that were raided.

"SJ, an Asian female located inside Changfeng Lin's Ogden massage parlor, indicated that she performs sexual acts in exchange for money and that her boss is Changfeng Lin," police wrote in the booking statement, adding that customers told them they were given sexual favors in exchange for money.

Under questioning, police wrote, "Changfeng Lin stated he does not have any other means of income and he gets half of what each worker makes inside his massage parlor."

In an interview with FOX 13 on Tuesday, Utah Attorney General Sean Reyes called the businesses "fronts for human trafficking," where women were brought in to work in the parlors to pay off debts to people who got them into the United States. The women were initially being treated as crime victims.

One woman, Lihua Huang, was booked into the Salt Lake County Jail late Tuesday on suspicion of misdemeanor prostitution and unlawful conduct at a massage therapy practice. A jail booking statement said that she was found in a room in a Salt Lake City massage parlor with a naked man who told authorities he went there "for the sole purpose of being sexually stimulated by Ms. Huang."

In recent months, the SECURE Strike Force has begun putting more scrutiny on the massage parlors. On Tuesday, state lawmakers were observing things. Rep. Sophia DiCaro, R-West Valley City, was at the bust of a Midvale massage parlor on April 30.

"I was disturbed," Rep. DiCaro told FOX 13 on Wednesday.

In the April 30 bust, police handcuffed several women. One woman, Chun Xiang Yu, was charged with exploiting prostitution, a third-degree felony, and misdemeanor unlawful practice of massage therapy. According to charging documents, Yu is the owner of the parlor who also paid for an apartment where several of her workers lived.

Prosecutors accused one of Yu's employees of offering an undercover officer a sexual favor. Rep. DiCaro said watching the raid opened her eyes about the nature of sex trafficking in Utah. "That was really hard for me to learn that there are people in our state living like this," she said of the women who are rounded up in the raids.

Rep. DiCaro said lawmakers have discussed ways to combat human trafficking -- and will continue to examine the problem. She said they may look at whether more needs to be done to help women who may be forced to work in the sex trade, and whether more should be done to crack down on customers who keep perpetuating the illegal activity.

"I think there's opportunity to evaluate everything -- the level of fines, the ways we can disincentivize this kind of activity," Rep. DiCaro said. "I definitely think there is appetite to look at this at a more close level."

# DOMESTIC HUMAN TRAFFICKING SERIES: ADDRESSING DEMAND: WHY AND HOW POLICYMAKERS SHOULD UTILIZE LAW AND LAW ENFORCEMENT TO TARGET CUSTOMERS OF COMMERCIAL SEXUAL EXPLOITATION

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## Reporter

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## Text

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[\*297]

Introduction+

+ Cited throughout this Article are newspaper sources that help illustrate the widespread reach of human trafficking throughout the United States and abroad.

Human trafficking affects virtually every country, including the United States. <sup>1</sup> Since the passage of the Trafficking Victims Protection Act of 2000 <sup>2</sup> in the United States as well as the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, <sup>3</sup> many have worked to address this problem of modern-day slavery, from statesmen and stateswomen to world relief organizations and grassroots organizations. Even so, these crimes continue. Some

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<sup>1</sup> See U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 338-45 (10th ed. 2010). See generally id. at 55-359.

<sup>2</sup> Pub. L. No. 106-386, 114 Stat. 1466 (codified as amended in scattered sections of 22 U.S.C. (2000)).

<sup>3</sup> Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, opened for signature Dec. 12, 2000, 2237 U.N.T.S. 319.



estimate there are as many as twenty-seven million people trapped in some form of slavery worldwide.<sup>4</sup> Many of the slaves are women and children-bought, sold, and traded day after day for sexual exploitation.<sup>5</sup> In human trafficking, as in drug trafficking, there is a triangle of activity consisting of supply, demand, [\*298] and distribution.<sup>6</sup> This triangle of activity exists whether the trade is in forced labor or in commercial sexual exploitation-sex trafficking. This Article focuses on trafficking for purposes of commercial sexual exploitation.<sup>7</sup> The following diagram illustrates the triangle of activity in these cases: CHART

[SEE TABLE IN ORIGINAL]

Since the passage of the Trafficking Victims Protection Act, with its emphasis on victim rescue, rehabilitation, and restoration,<sup>8</sup> activity has centered on the "supply" side. Many organizations have designed comprehensive sets of services for trafficking victims, including short-term aid, such as food, clothing, shelter, medical attention, and legal services for those rescued.<sup>9</sup> In addition, "distribution" has also been a focal point, including the investigation, arrest, prosecution, and [\*299] successful conviction of traffickers.<sup>10</sup> Very little attention and few, if any, programs attend to the demand side of this triangle of activity.

This Article addresses some strategies for demand reduction. It suggests a four-point program for addressing demand and discusses ways that different jurisdictions can apply this program. The four points are as follows: (1) drafting laws that penalize patronizing and target customers and consumers of commercial sex; (2) creating first-offender programs, colloquially known as "John's Schools," to educate first offenders about the deleterious effects of commercial sexual exploitation; (3) creating sting and reverse-sting operations to assist law enforcement in identifying, arresting, and prosecuting buyers; and (4) developing social marketing campaigns that not only target exploiters, but also impress upon the general public the message of "no tolerance" for their actions. To put an end to commercial sexual exploitation of women and children in all of its various forms, society must recognize the larger need for continuing values-based and human rights approaches that acknowledge and affirm the dignity, integrity, and sacredness of a human life.

#### I. Penalizing Patrons of Commercial Sex

The first step that jurisdictions may take is to draft and pass laws that target demand, and then they must enforce these laws. In 1999, Sweden became the first country to introduce a law that specifically penalized the customers.

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<sup>4</sup> E.g., KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 8 (rev. ed. 2004).

<sup>5</sup> U.S. DEP'T OF STATE, *supra* note 1, at 9, 12, 34.

<sup>6</sup> See R.I.R. Abeyratne, *International Initiatives at Controlling the Illicit Transportation of Narcotic Drugs by Air*, 63 J. AIR L. & COM. 289, 318 (1997).

<sup>7</sup> Using the term "commercial sexual exploitation of women and children" is a deliberate decision by the author, as it broadly encompasses domestic and international trafficking of persons for purposes of forced prostitution and other sexual services and additionally alludes to the economic component of the crime and the victim status of the women and children who are forced to participate.

<sup>8</sup> Pub. L. No. 106-386, § § 102, 105-07, 114 Stat. 1466.

<sup>9</sup> E.g., NYC OFFICE OF THE CRIMINAL JUSTICE, *HUMAN TRAFFICKING SERVS.: RES. DIRECTORY* (2011), available at <http://www.nyc.gov/html/endht/downloads/pdf/humantraffickingservicesresourcedirectory.pdf>; Services Available for Trafficking Victims, KY RESCUE & RESTORE VICTIMS OF HUMAN TRAFFICKING, <http://www.rescueandrestoreky.org/serving-victims/services-available/> (last visited Apr. 21, 2011).

<sup>10</sup> See, e.g., U.S. DEP'T OF STATE, *supra* note 1, at 45; Michael W. Savage, *State Legislatures Move To Combat Human Trafficking*, WASH. POST, July 19, 2010, at A3 (noting, however, that the increased attention on traffickers has not yet led to increased convictions).

<sup>11</sup> While selling sex is not a crime, buying it has become punishable by up to six months in prison since the passage of the law. <sup>12</sup> This ban on the purchase of sexual services was the first of its kind worldwide. The rationale behind the law, now a decade old, is that prostitution is a form of male violence against women and that it is therefore a form of discriminatory behavior. <sup>13</sup> Accordingly, the purpose of [\*300] this law was to take the onus off the women and children (the supply) and to transfer it to the men purchasing sex. <sup>14</sup>

A report by the government of Sweden evaluating the first ten years of the new approach found positive results. Street prostitution has been cut in half (and there is no evidence that the reduction in street prostitution has led to an increase in prostitution elsewhere, whether indoors or on the Internet). <sup>15</sup> Women have found increased services enabling them to exit prostitution, and fewer men state that they purchase sexual services. <sup>16</sup> Finally, the ban has had a chilling effect on traffickers who find Sweden an unattractive market in which to sell women and children for sex. <sup>17</sup> The law should also reduce pimping, pandering, brothels, and other activities that are already illegal, because if there is no demand, those who are involved in prostitution and related activities for profit will no longer be able to sustain their activities.

In the wake of Sweden's success, Norway recently adopted a similar law. <sup>18</sup> Commenting on the law's purpose, Norwegian Justice Minister Knut Storberget stated, "People are not merchandise, and criminalising the purchase of sexual services will make it less attractive for human traffickers to look to Norway." <sup>19</sup>

Many states in the U.S. have gender-neutral "soliciting" laws that can be utilized to arrest the men soliciting sex. <sup>20</sup> This approach is not as effective as the above-stated approaches, however, because even though these laws are gender-neutral on the books, they are rarely applied in a gender-neutral fashion. <sup>21</sup> Instead, the women or children forced into or trapped in prostitution are arrested for soliciting, while the customers are passed over. <sup>22</sup> Although this is a problem of poor and discriminatory [\*301] law enforcement rather than bad law, the problem remains. To

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<sup>11</sup> 6 ch. 11 § LAG OM F?RBUD MOT K?P AV SEXUELLA TJ?NSTER (Svensk f?rfattningssamling SFS 1998:408) (Swed.) ("A person who . . . obtains a casual sexual relation in return for payment [] shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months."). A penalty is also imposed for attempt. *Id.*

<sup>12</sup> See Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services*, 10 *VIOLENCE AGAINST WOMEN* 1187, 1192 (2004).

<sup>13</sup> See *id.* at 1189 ("In Sweden, prostitution is officially acknowledged as a form of male sexual violence against women and children. One of the cornerstones of Swedish policies against prostitution and trafficking in human beings is the focus on the root cause, the recognition that without men's demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able to flourish and expand.").

<sup>14</sup> *Id.* at 1191-92.

<sup>15</sup> *Statens Offentliga Utredningar* SOU 2010:49 *Forbud mot kop av sexuell tjanst En utvardering 1999-2008*, 34-36 [government report series] (Swed.).

<sup>16</sup> See *id.* at 33, 38.

<sup>17</sup> *Id.* at 37.

<sup>18</sup> *ALMINDELIG BORGERLIG STRAFFELOV STRAFFELOVEN [CIVIL PENAL CODE]* 2008:202a (Nor.) ("Any person who engages in or aids and abets another person to engage in sexual activity or commit a sexual act on making or agreeing payment . . . shall be liable to fines or to imprisonment for a term not exceeding six months or to both.").

<sup>19</sup> John Acher, *Norway Proposes Jail, Fines for Buying Sex*, *REUTERS*, Apr. 18, 2008, available at <http://www.reuters.com/article/idUSL18758677> (internal quotation marks omitted).

<sup>20</sup> E.g. *CAL. PENAL CODE* §§ 266, 266h (West 2008); *FLA. STAT. ANN.* § 796.07(2)(f) (West 2007); *720 ILL. COMP. STAT. ANN.* 5/11-14.1(a) (West 2002).

combat this inequitable application of the law, a few states, such as New York, have introduced higher penalties for customers,<sup>23</sup> but, unfortunately, there are some states that have higher penalties for the victims of prostitution.<sup>24</sup>

In various states, the legislatures have been working on creative strategies to combat commercial sexual exploitation, recognizing that many of those in prostitution are victims of human trafficking. These states have approached the problem from various angles.

In the state of Washington, for instance, a bill was signed into law in April 2010 that increased penalties for those who promote commercial sexual abuse of a minor and those who commit sexual abuse of a minor.<sup>25</sup> The effect of the legislation is to intensify the severity of the punishment for sexual contact with a minor, thereby addressing concerns of minors trafficked into prostitution in the state.<sup>26</sup> The crime of promoting commercial sexual abuse of a minor is now a Class A felony, in the same class as first-degree rape and first-degree assault, and the crime of buying a minor for sex is now a Class B felony, in the same class as arson.<sup>27</sup> Further, it is not a defense that the defendant did not know the **[\*302]** age of the victim.<sup>28</sup> Beside the heightened criminal sentences for these crimes, there are higher fines and punishments. If a car is used in the commission of the crime or the person arrested is the owner of the vehicle, the vehicle must be impounded, and the fine is \$ 2,500 to get the car back-a \$ 2,000 increase from the previous impounding fee.<sup>29</sup> As this is a new law, time is needed to determine whether its increased penalties and fines substantially deter "johns" from purchasing sex.

Some businesses, such as massage parlors and escort services, are fronts for prostitution, commercial sexual exploitation, and sex trafficking.<sup>30</sup> Therefore, another way to attack demand is to regulate these businesses by requiring them to obtain a license and to report their activity. This helps distinguish the legitimate businesses from those providing a facade for illegal activity. Colorado is one state that has taken this route. It requires licensing of escort agencies in the interest of the health, welfare, and safety of the people of the state.<sup>31</sup> The Colorado Escort Service Code, which has been in place since 1980,<sup>32</sup> requires a license for escort agencies to function and

<sup>21</sup> Dana Lynn Radatz, Systematic Approach to Prostitution Laws: A Literature Review and Further Suggestions 1-2 (May 10, 2009) (unpublished M.A. dissertation, Eastern Michigan University), available at <http://commons.emich.edu/cgi/viewcontent.cgi?article=1230&context=theses>. Radatz identifies subjective beliefs of police officers as one of the explanations for the discrepancy between legislation and enforcement. *Id.*

<sup>22</sup> *Id.* at 20.

<sup>23</sup> N.Y. PENAL LAW § 230.04 (McKinney 2008) ("A person is guilty of patronizing a prostitute in the third degree when he or she patronizes a prostitute. Patronizing a prostitute in the third degree is a class A misdemeanor."). Enhanced penalties are provided for patronizing a child less than fourteen years old. *Id.* § 230.05 ("A person is guilty of patronizing a prostitute in the second degree when, being over eighteen years of age, he patronizes a prostitute and the person patronized is less than fourteen years of age. Patronizing a prostitute in the second degree is a class E felony.").

<sup>24</sup> For example, in Louisiana, regardless of the number of times a person is charged with patronizing a prostitute, the penalty shall not exceed \$ 500 or imprisonment for six months. By contrast, a person who commits the offense of prostitution shall be fined in graduated amounts based on the number of offenses, with prison sentences increasing per offense as well. Compare LA. REV. STAT. ANN. § 14:82(B) (2004) (discussing the penalty and enhancements for prostitution), with § 14:83 (discussing the penalty for soliciting for prostitutes). See also KAN. STAT. ANN. § § 21-3512(b), -3515(2) (West 2009) (classifying prostitution as a Class B misdemeanor but patronizing a prostitute as only a Class C misdemeanor); UTAH CODE ANN. § § 76-10-1302(2), -1303(2) (LexisNexis 2011) (penalizing subsequent prostitution offenses with a heightened penalty but not penalizing subsequent patronization offenses with heightened penalties). For further state comparisons on penalties and other regulations regarding prostitution, see US Federal and State Prostitution Laws and Related Punishments, PROCON.ORG (Mar. 15, 2010, 1:33:55 PM), <http://prostitution.procon.org/view.resource.php?resourceID=000119>.

<sup>25</sup> Sex Crimes Involving Minors, S. 6476, 61st Leg., 2010 Reg. Sess. (Wash. 2010).

<sup>26</sup> While no particular section of the legislation explicitly mentions "sex trafficking," in the report for the bill, testimony regarding the bill references the importance of this enactment as a deterrent for "domestic minor trafficking." S. COMM. ON HUMAN SERVS. & CORR., AN ACT RELATING TO SEX CRIMES INVOLVING MINORS, S. 6476, 61ST LEG., at 3 (Wash. 2010).

mandates that any violation of the licensing requirement is a misdemeanor punishable by a maximum of \$ 5,000 or imprisonment for not more than one year, or by both. <sup>33</sup>

Once an application for an escort service is received by the city, a notice to the neighborhood and a public hearing are required. <sup>34</sup> At the public hearing, neighbors and neighboring businesses may testify regarding the needs and desires of the neighborhood, as well as the effects that the escort service could have on the health, welfare, or morals of the neighborhood. <sup>35</sup> The escort service licensing law also mandates that escort agencies require their patrons to sign contracts that explain that prostitution is illegal and that no act of prostitution shall be performed in relation to the services for which they contracted. <sup>36</sup>

Another way that states are pursuing regulation of demand for commercial sex is the approach taken by the state of Missouri. Missouri's recent law, passed in 2010, requires sexually oriented businesses to be **[\*303]** more than one thousand feet from pre-existing schools, day-care centers, places of worship, public parks, libraries, and residences or other sexually oriented businesses. <sup>37</sup> The term "sexually oriented business" encompasses adult bookstores or video stores, adult cabarets, adult motion picture theaters, semi-nude model studios, and sexual encounter centers. <sup>38</sup> This law also restricts the activity that is permitted in sexually oriented businesses. <sup>39</sup> The Missouri legislature explained that the purpose of the regulation was to minimize the impact of adverse secondary effects of such businesses, including drug use, blight on surrounding property, sexual assault and exploitation, and prostitution. <sup>40</sup> The legislature openly hopes to prevent the "negative secondary effects" associated with sexually oriented businesses from occurring. <sup>41</sup>

Similarly, Nebraska attempted to curb demand by two laws introduced in 2009. <sup>42</sup> Unfortunately, the bills did not gain the necessary support and have been indefinitely postponed. <sup>43</sup> Legislative Bill 444 would have created an escort agency and escort licensing requirement, similar to Colorado's Escort Service Code, <sup>44</sup> and Legislative Bill

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<sup>27</sup> 2010 Wash. Sess. Laws 2301, 2309-11; see also WASH. REV. CODE § § 9.68A.100(2), .101(2) (2011).

<sup>28</sup> WASH. REV. CODE § 9.68A.110(3) (2011).

<sup>29</sup> Id. § 9A.88.140 (2), (4)(a).

<sup>30</sup> See U.S. DEP'T OF STATE, *supra* note 1, at 77, 127; Joanne Kimberlin, Women for Hire, THE VIRGINIAN-PILOT, May 18, 2008, at 1 (reporting on the prevalence of prostitution operations under the guise of escort services); Kirk Semple, Human-Trafficking Suspect is Arrested While Gambling, N.Y. TIMES, Jan. 11, 2011, at A23 (discussing the arrest of a woman suspected of running a prostitution scheme under the masquerades of massage parlors, health spas, etc.).

<sup>31</sup> COLO. REV. STAT. ANN. § 12-25.5-102 (West 2010).

<sup>32</sup> Id. § 12-25.5-101.

<sup>33</sup> Id. § 12-25.5-113(1).

<sup>34</sup> DENVER, COLO., CODE § 7-320 (2010).

<sup>35</sup> Id.

<sup>36</sup> COLO. REV. STAT. ANN. § 12-25.5-112(2) (West 2010).

<sup>37</sup> MO. REV. STAT. § 573.531(1) (2010).

<sup>38</sup> Id. § 573.528(15).

<sup>39</sup> Id. § 573.531 (prohibiting full nudity, contact between semi-nude entertainers and patrons, selling or consuming alcohol on the premises, and patrons under the age of eighteen, as well as further requiring closure between the hours of midnight and 6:00 a.m.).

443 would have regulated sexually oriented businesses, similar to the Missouri Sexually Oriented Business Act.<sup>45</sup> The fact that these bills did not pass highlights the need for constituents and policy-makers to continue urging lawmakers to acknowledge the reality that many trafficking victims are bought, sold, and traded through state-allowed businesses, such as escort services, massage parlors, and karaoke bars.

The companion legitimate industry that often serves as a front for illegal prostitution, commercial sexual exploitation, and sex trafficking is the massage business. In 2004, lawmakers in San Francisco responded to community organizations that documented a serious problem of massage parlors serving as brothels. They introduced a regulation, effective as of July 2004, that required massage practitioners to obtain a permit to practice and required massage establishments to obtain [\*304] permits to operate a massage parlor.<sup>46</sup> The city's hope was to curtail the use of massage parlors as fronts for prostitution.<sup>47</sup> Some of the operational requirements for a massage establishment include the prohibition of mattresses and beds in massage rooms, the prohibition of locks on any door to a room where a massage is being conducted, a clothing requirement for the massage practitioners, and a prohibition of alcohol on the premises.<sup>48</sup>

Another related example of local community legal action against commercial sexual exploitation occurred in the Los Angeles metropolitan area in 1992. The "concern that businesses that cater to private karaoke parties were actually . . . fronts for prostitution and video sex prompted Monterey Park officials to temporarily ban the businesses, called KTV."<sup>49</sup> A "twist" on the popular karaoke bars, KTV had multiplied across the western San Gabriel Valley.<sup>50</sup> KTV used buildings divided into small rooms to allow for private karaoke parties.<sup>51</sup> Law enforcement officials conducting surveillance on other crimes found that the businesses were a haven for prostitution, pornography, and gang activity.<sup>52</sup> The Monterey Park City Council voted to impose a forty-five-day moratorium on KTV while the city assumed measures to prevent illegal activities.<sup>53</sup> The ban was later extended for a year.<sup>54</sup>

<sup>40</sup> Id. § 573.525(1)-(2)(1).

<sup>41</sup> Id. § 573.525(2)(3).

<sup>42</sup> Leg. B. 443, 444, 101st Leg., 1st Sess. (Neb. 2009).

<sup>43</sup> LEGIS. JOURNAL, 101st Leg., 2d Sess., at 423, 1467 (Neb. 2010).

<sup>44</sup> Neb. Leg. B. 444.

<sup>45</sup> Neb. Leg. B. 443.

<sup>46</sup> S.F., CAL., HEALTH CODE art. 29, § § 1901(a), 1908(a) (2010).

<sup>47</sup> See id. § 1929 (discussing the interaction between the Department of Public Health and law enforcement necessary to deter common issues with massage parlors, such as trafficking); cf. Robert Selna, An Ambiguous Attitude Toward Massage Parlors, S.F. CHRONICLE, Jan. 5, 2009, at A1 (discussing San Francisco's struggle to deter massage parlors from fronting for prostitution through licensing legislation and sting operations).

<sup>48</sup> S.F. DEP'T OF PUB. HEALTH, MASSAGE PROGRAM RULES & REGULATIONS FOR MASSAGE PRACTITIONER PERMIT AND ESTABLISHMENT PERMIT TO OPERATE § XI (2009). Additionally, the municipality has since repealed the permit requirement that these establishments close at midnight in favor of a more stringent closing hour of 10:00 p.m. HEALTH art. 29, § 1918(b).

<sup>49</sup> Private Karaoke Parties Temporarily Banned, L.A. TIMES, Mar. 11, 1992, at B2.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

Laws regulating various aspects of karaoke bars are now being considered in China, Thailand, Vietnam, the Philippines, and a number of other countries. <sup>55</sup> As one commentator said, "We call them karaoke [**\*305**] bars, or KTV's, but they're not karaoke and they're not bars. . . . These places are brothels masquerading as respectable establishments." <sup>56</sup>

These new laws are some examples of attempts to address commercial sexual exploitation, prostitution, and sex trafficking, recognizing that many in prostitution are minors or trafficking victims. The goal of the various legislation and regulations is to make it more difficult to find sex for purchase, reducing the amount of sex for sale on the streets and in businesses and making it more difficult for men to purchase sex. As such, each approach can be considered helpful in reducing, and ultimately eradicating, demand.

## II. First-Offender Programs

Communities are additionally experimenting with rehabilitation programs-colloquially called "John's Schools"-for men who have been arrested for soliciting for prostitution. These schools were the brainchild of the late Norma Hotaling, who, after founding her own advocacy and victim services organization called Standing Against Global Exploitation (SAGE), united with the San Francisco District Attorney's Office to co-found the first-of-its-kind class for "johns," titled the First Offender Prostitution Program ("FOPP"), in 1995. <sup>57</sup> This program has been replicated in roughly forty other U.S. cities. <sup>58</sup> These schools operate much like the weekend driver's training schools for reckless drivers who are first-time offenders. They offer first-time offenders who have been arrested for soliciting an adult for prostitution an opportunity to go to school to learn the deleterious effects of their behavior. <sup>59</sup> The programs [**\*306**] also offer to drop the solicitation charges if the offenders attend the class. <sup>60</sup> In "John's Schools," they hear from victims of trafficking, learn about the nature, scope, and harm of trafficking, and are forced to examine their own motivations for buying sex. <sup>61</sup>

<sup>54</sup> Moratorium on KTV Businesses Extended, L.A. TIMES, Apr. 29, 1992, at B2.

<sup>55</sup> See Zhang Yan, Vice Crackdown Moves to Bars, CHINA DAILY, July 16, 2010, at M1 (discussing law enforcement's efforts to "crack down" on KTVs and bath houses "to create a safe, civilized and healthy cultural environment"); Ban Lifted on New Discos, Karaoke Joints, VIET. NEWS AGENCY, Nov. 12, 2009, available at <http://en.baomoi.com/Home/society/en.vietnamplus.vn/Ban-lifted-on-new-discos-karaoke-joints/20578.epi> (discussing the limitations placed on discos and karaoke bars); Cebu Lawmaker Asks DOH To Step Up Info Campaign vs HIV, PHIL. NEWS AGENCY, Feb. 1, 2010, available at <http://balita.ph/2010/02/01/cebu-lawmaker-asks-doh-to-step-up-info-campaign-vs-hiv/> (considering regulation of KTVs and bars as necessary to decrease the spread of HIV in the Philippines); Laying Down the Law, THE NATION, July 29, 2009, available at 2009 WLNR 14666931 (discussing Thailand's prohibition on drinking in karaoke bars).

<sup>56</sup> Karaoke Bars or KTV's, ENJOY CEBU! (Feb. 4, 2009, 12:18 AM), <http://cebunightlifegalore.blogspot.com/2009/02/karaoke-bars-or-ktvs.html>.

<sup>57</sup> Norma Hotaling & Leslie Levitas-Martin, Increased Demand Resulting in the Flourishing Recruitment and Trafficking of Women and Girls: Related Child Sexual Abuse and Violence Against Women, 13 HASTINGS WOMEN'S L.J. 117, 120-21 (2002).

<sup>58</sup> Michael Shively et al., Final Report on the Evaluation of the First Offender Prostitution Program: Report Summary 97, 99-100 (Mar. 7, 2008) (unpublished report), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf>; see also Miyoko Ohtake, A School for Johns, NEWSWEEK, July 24, 2008, <http://www.newsweek.com/2008/07/23/a-school-for-johns.html>.

<sup>59</sup> See Meredith Flowe, The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand, 35 N.C. J. INT'L L. & COM. REG. 671, 717 (2010). It is critical to reiterate that the FOPP programs are available only to first-time offenders who solicited an adult-not an offender who solicited a child. See Eligibility Criteria for the San Francisco Pre-Trial Diversion Project, Inc., S.F. PRETRIAL DIVERSION PROJECT, INC., <http://www.sfpretrial.com/eligibilitycriteria.html> (last visited Mar. 22, 2011).

<sup>60</sup> See Flowe, *supra* note 59, at 716-17 (explaining some of the techniques used to reform "johns").

The original FOPP in San Francisco is an eight-hour class for a fee of \$ 1,000.<sup>62</sup> The program's administrative fees fund intervention services for women and girls.<sup>63</sup> The class is taught by sex-trafficking experts, health educators, and neighborhood activists.<sup>64</sup> A 2008 Department of Justice Study found that following the implementation of FOPPs, both San Francisco and San Diego experienced drops in recidivism rates, with San Diego's recidivism rate dropping to less than half of what it was prior to implementation.<sup>65</sup>

There are presently many variants of the FOPP initial model. Some jurisdictions are choosing not to have as substantial a program fee for the offender as the FOPP in San Francisco,<sup>66</sup> some have shorter or longer time commitments,<sup>67</sup> and many emphasize different educational components.<sup>68</sup> The original FOPP is now fifteen years old, but most of the programs only started operating in the last several years.<sup>69</sup> The time is therefore ripe to undertake a comprehensive, comparative analysis of the effectiveness of various schools, highlighting the best practices and components of a successful "John's School." In addition, it is important to examine the program's amenability to replication and the overall effectiveness of the model in different regions of the country and around the world. Presently, it is encouraging that city governments and concerned citizens are beginning to understand that one of the most important tactics in fighting commercial sexual exploitation and sex [\*307] trafficking is an active attempt to deter those who purchase women and children by educating the buyers of sex about the effects of their crime.

### III. Sting Operations and Reverse-Sting Operations

A critical component of any effective demand reduction effort is identification of the customer/consumer/exploiter. Law enforcement plays a key role in curbing demand. According to the Community Oriented Policing Services of the U.S. Department of Justice, police departments get substantial and highly publicized results from conducting prostitution sting operations and reverse-sting operations.<sup>70</sup>

In sting operations, police officers pose as prostitutes to identify and arrest customers. In reverse-sting operations, police officers pose as customers seeking to find sex for hire. Posed as clientele, once the officers are inside supposed massage parlors or other front operations, they make arrests after determining illegal activity is taking

<sup>61</sup> Id. at 716.

<sup>62</sup> Id. at 716-17.

<sup>63</sup> First Offender Prostitution Program (FOPP), STANDING AGAINST GLOBAL EXPLOITATION (SAGE), <http://www.sagesf.org/html/aboutservicesfopp.htm> (last visited Mar. 22, 2011); see also Hotaling & Levitas-Martin, supra note 57, at 121 (further elaborating on the uses of the funds).

<sup>64</sup> Shively et al., supra note 58, at 18-19; see also Justin Berton, Repentant Johns Taught Realities of the Sex Trade, S.F. CHRON., Apr. 14, 2008, at A1.

<sup>65</sup> Shively et al., supra note 58, at v-vi .

<sup>66</sup> For example, the "John's School" in Brooklyn, New York, only charges a \$ 250 fee for participation, while the program in Norfolk County, Virginia, charges \$ 1500. Id. at 106.

<sup>67</sup> For example, the "John's School" in Denver, Colorado, requires offenders to attend two four-hour sessions in addition to twenty to forty hours of community service, while the program in Orange County, New York, consists of a single five-hour session. Id.

<sup>68</sup> Id. at vii (addressing the variations in "John's Schools" across the U.S.).

<sup>69</sup> See Hotaling & Levitas-Martin, supra note 57, at 120; Shively et al., supra note 58, at 104-05 (noting the years that "John's Schools" across the United States started).

<sup>70</sup> See GRAEME R. NEWMAN, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEPT' OF JUSTICE, Sting Operations, at 5-6 (Response Guides Ser. No. 6, 2007), available at <http://www.cops.usdoj.gov/files/ric/Publications/e10079110.pdf> ("When sting operations are concluded, they usually result in many arrests of high-profile people, accompanied by local and national publicity.").

place.<sup>71</sup> Some researchers have concluded that such operations have had no overall effect on clients, but new studies, such as a study by Devon Brewer, highlight evidence that the threat of arrest alone serves to deter men from soliciting sex.<sup>72</sup>

The Internet has added a modern twist to the traditional sting operation. In online sting operations, police detectives pose as potential buyers or sellers of sex on Internet-based sites to gather evidence for cases. Law enforcement has especially targeted online personal advertisements, such as those seen on Craigslist and other similar sites.<sup>73</sup> Because the Internet is increasingly being utilized by traffickers, [\*308] police have successfully uncovered many cases of illegal activity, such as child sex trafficking, in these new sting operations.<sup>74</sup>

#### IV. Social Marketing Campaigns

This fourth method is the development of incisive, targeted social marketing campaigns-aimed primarily at young men and boys, but also at young women and girls-about why it is harmful to purchase sex. The key is to reach young people in their formative years, before they become part of the sex industry.<sup>75</sup> Experts studying First Offender Programs have reported men saying, "Why didn't I hear any of this twenty years ago?"<sup>76</sup> Such campaigns can take as their starting point tailored programmatic materials from First Offender Programs. Their focus should be on everything from public health problems, like the spread of HIV/AIDS and other STDs (as well as other serious communicable diseases such as TB, hepatitis, and Epstein Barr syndrome), to the grim facts about who runs the sex industry and how customers are helping traffickers, street gangs, organized crime, and other criminal syndicates to flourish-while hurting those who have been trafficked.

Although this may seem like an overwhelming task, successful social marketing campaigns purposed to change hearts, minds, and [\*309] behaviors on other social issues are instructive. Consider, for example, the campaigns to curb domestic violence or, on another health-related topic, to stop cigarette smoking. Enormous positive behavioral changes have been documented in these areas after non-profit, health, and governmental agencies

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<sup>71</sup> See, e.g., Julie Pearl, Note, The Highest Paying Customers: America's Cities and the Costs of Prostitution Control, 38 HASTINGS L.J. 769, 775 (1987) (discussing the process of an undercover sting operation).

<sup>72</sup> Compare NEWMAN, *supra* note 70, at 20 (noting that some studies have shown sting operations to be ineffective as deterrence), with Devon D. Brewer et al., A Large Specific Deterrent Effect of Arrest for Patronizing a Prostitute, 1 PLOS ONE 1, 6 (2006), available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0000060> (noting that the arrests of prostitution customers "decreased their patronizing behavior substantially").

<sup>73</sup> Robert Rigg, The Not-So-Risky Business of High-End Escorts and the Internet in the 21st Century, 17 RICH J.L. & TECH. P 38 (2010) (quoting *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 962 (N.D. Ill. 2009)), <http://jolt.richmond.edu/v17i1/article3.pdf>; see also Bruce Lambert, As Prostitutes Turn to Craigslist, Law Enforcement Takes Notice, N.Y. TIMES, Sept. 5, 2007, at A1.

<sup>74</sup> For example, the first human trafficking conviction in Canada involved two teenage girls who were advertised in online advertisements. See Benjamin Perrin, Bill C-268: Minimum Sentences for Child Trafficking Needed, ALTA L. REV. ONLINE SUPPLEMENT (Mar. 12, 2009, 6:40 PM), <http://ualbertalaw.typepad.com/alrsupplement/2009/03/bill-c-268-minimum-sentences-for-child-trafficking-needed.html>; Bob Mitchell, Teens' Pimp Got Rich; Man Who Sold Girls, 14 and 15, for Sex is One of First To Be Convicted of Human Trafficking Since 2005 Law, TORONTO STAR, May 14, 2008, at A06. One victim, who was eighteen years old when she finally escaped from over two years of sexual slavery, had been sold along with a fourteen-year-old girl. *Id.* This is not an isolated instance either; numerous cases of online sex trafficking, child sex trafficking, and commercial sexual exploitation of children have been documented in the U.S. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-915, HUMAN TRAFFICKING: A STRATEGIC FRAMEWORK COULD HELP ENHANCE THE INTERAGENCY COLLABORATION NEEDED TO EFFECTIVELY COMBAT TRAFFICKING CRIMES 51-52 (2007) (noting the increasing number of child convictions).

The fact that Craigslist removed its erotic services sections from its listings in the United States and Canada last year does not mean that there is no need for continuing surveillance and sting operations online. See, e.g., JR Raphael, Craigslist's 'Erotic Services' Shutdown Could Backfire, PC WORLD (May 13, 2009, 3:39 PM), <http://www.pcworld.com/article/164860/craigslistseroticservicesshutdowncouldbackfire.html>. As online industry experts have



designed and executed a series of campaigns, primarily targeted at youth, to reduce smoking.<sup>77</sup> Efforts to reduce cigarette smoking have included the following: 1) providing effective smoking-cessation interventions and guidelines tailored to youths and young adults in school, work, and community settings; 2) conducting counter-marketing campaigns designed to help young people reject messages promoting cigarette use; 3) reducing access by minors to tobacco products; 4) increasing access to school programs for preventing tobacco use; and 5) monitoring smoking trends among youths and young adults.<sup>78</sup> Substitute "commercial sexual exploitation" for "smoking," and we have a starting point for a social marketing campaign to counter demand for commercial sex.<sup>79</sup>

One U.S. city that has taken the lead on a social marketing campaign against commercial child sexual exploitation is Atlanta. Concerned parties in Atlanta became aware of the magnitude of the commercial exploitation of children in their city and became determined to raise awareness in the region. In November of 2006, the city unveiled a public service announcement campaign entitled "Dear John."<sup>80</sup> The [\*310] campaign consisted of a few poignant public service announcements and posters.<sup>81</sup> One such announcement featured the mayor, Shirley Franklin, who spoke as if she were writing a letter to a "john," demanding that he not exploit the children of Atlanta.<sup>82</sup> Other videos were more shocking, including a spot featuring a normal-looking middle-aged white male stating how much he enjoyed the young girls of Atlanta and how easy they were to come by.<sup>83</sup> The "Dear John" campaign was backed by a large coalition of law enforcement, non-profits, and public servants.<sup>84</sup> Unfortunately programs such as these are finding it challenging to continue to be in operation due to a lack of funding.<sup>85</sup>

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noted, these advertisements will now be dispersed in other online venues. Id. In addition, other similar listing and advertising services also carry such advertisements. It is therefore crucial to continue monitoring these activities.

<sup>75</sup> See Flowe, *supra* note 59, at 717-18.

<sup>76</sup> Laura J. Lederer, Addressing Demand: Examining New Practices-The Five S's, GLOBAL CENTURION, <http://www.globalcenturion.org/?pageid=83> (last visited Mar. 4, 2011) (quoting Interview with Norma Hotaling, founder of SAGE, by Laura Lederer (Jan., 2007)).

<sup>77</sup> See DEP'T OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUNG PEOPLE: A REPORT OF THE SURGEON GENERAL (1994), reprinted in U.S. DEP'T OF EDUC., YOUTH & TOBACCO: PREVENTING TOBACCO USE AMONG YOUNG PEOPLE 145-51 (1994); City's High Schools Have Fewer Smokers, NEWSDAY, Jan. 3, 2008, at A15 (remarking on the reduction in teen smoking as a result of New York City's multi-faceted approach); Domestic Violence Falls if Crime Taken Seriously, PALM BEACH POST, July 10, 2005, at 2E (noting the dramatic decrease in reports of domestic violence due to the law enforcement efforts).

<sup>78</sup> DEP'T OF HEALTH & HUMAN SERVS., *supra* note 77, at 5, 6, 8, 9, 132, 133-34, 139-40, 145, 146 (1994).

<sup>79</sup> A thorough study of the prolonged campaign to reduce cigarette smoking in young people is a useful starting point. The U.S. Department of Health and Human Services, in conjunction with the Center for Disease Control and Prevention and other health agencies, funded a series of studies over many decades on effective efforts to reduce smoking. See *id.* at 5; see also *id.* at 132. The report observed that tobacco use usually begins during adolescence or young adulthood, and it agreed that preventing smoking initiation among youths and young adults is critical to reducing tobacco use in the United States. *Id.* at 5-6, 8. It noted that young people constitute a profitable market for the tobacco industry and that adolescents are the target of intensive tobacco industry marketing efforts, including sponsorship of age-specific promotions and other marketing strategies that appeal to persons in these age groups. See *id.* at 9, 145. Similar campaigns must be developed to counter demand. *Id.* at 5, 8, 132-33, 145.

<sup>80</sup> Dear John Campaign, CITY OF ATLANTA (Nov. 6, 2006), <http://www.atlantaga.gov/mayor/dearjohn111006.aspx>; see also Kimberly Kotrla, Domestic Minor Sex Trafficking in the United States: Report, 55 SOC. WORK 181 (2010), available at 2010 WLNR 8848636 (further discussing the campaign).

<sup>81</sup> See, e.g., CITY OF ATLANTA, *supra* note 80.

<sup>82</sup> *Id.* (featuring a copy of the letter that the mayor read during the public service announcement).

<sup>83</sup> See Fighting Child Prostitution (PBS television broadcast May 30, 2008), available at <http://www.pbs.org/now/shows/422/transcript.html>.

<sup>84</sup> CITY OF ATLANTA, *supra* note 80.

## Conclusion

At the heart of the problem of sex trafficking is an increasing commodification in our modern society that extends even to human beings—a belief that anything, even a life, can be bought anytime, anywhere, any place, for any purpose. This license masquerades as liberty and allows the worst kinds of exploitation to flourish. In addition to legal and educational solutions, we must continue to work as a global community to develop religious and values-based visions that promote the dignity, integrity, sacredness, and worth of all human beings. We are in the foothills of consciousness in addressing demand for sex. Considered attention to the demand corner of the triangle of activity of supply, demand, and distribution will help us achieve our goal of eradicating human trafficking—a modern-day form of slavery.

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<sup>85</sup> Compare Letitia Campbell, *Selling Our Children: Atlanta Does Battle Against the Sex Trafficking of Kids*, SOJOURNERS MAG., Aug. 1, 2010, at 22 (speaking on the continued success of Atlanta's stance against commercial sexual exploitation), with Scott Bauer, *Budget Battles Keep States from Tackling Reforms*, ASSOCIATED PRESS, July 4, 2009, available at 2008 WLNR 15990391 (noting the halt of certain state reform programs due to budget constraints, such as Rhode Island's inability to resolve a legal loophole in its prostitution laws), and S.A. Reid, *Campaign Under Way To End Child Prostitution*, ATLANTA J.-CONST., Aug. 24, 2008, at 10D (noting some looming funding uncertainty for Atlanta's campaign against child prostitution).

# ARTICLE: ONLINE PROSTITUTION AND TRAFFICKING

2013 / 2014

## Reporter

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## Highlight

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You are not safer because you work indoors. Craigslist is just the "internet streets," where the same predators and hustlers are meeting you with the same intentions except they look like straight people who go to medical school and have Blackberrys.

I consider myself in the same risk and danger zones as a street worker. I am an upper working class anonymous client worker. <sup>1</sup>

## Text

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[\*1039]

### I. Introduction

The use of Internet technologies to traffic women and children to prostitution will be described in this article. We will summarize the history of online trafficking and the remarkably effective use of the Internet for advertising prostitution locally, regionally, and internationally beginning with the development of social networking sites, discussion forums, message boards and online chats. Examples of sex buyers', pimps', and traffickers' use of the Internet and online classified advertising sites will be provided.

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<sup>1</sup> Marikopassion, An Outlaw's Insurance Policy, Bound, not Gagged (Mar. 7, 2010), <http://deepthroated.wordpress.com/2010/03/07/an-outlaws-insurance-policy/>.

We will also summarize the empirical evidence for the psychological and physical harms of trafficking for prostitution and will discuss the risks of compartmentalizing arms of the sex trafficking industry that are in fact elements of multinational, constantly expanding, businesses. False distinctions have been [\*1040] erected between online and offline prostitution, child and adult prostitution, indoor and outdoor prostitution, pornography and prostitution, legal and illegal prostitution, and prostitution and trafficking.

We will discuss what is known about the involvement of organized crime in online trafficking, and summarize several successful cases brought against online traffickers. We describe public campaigns and educational boycotts against online traffickers and the development of online alternatives to the sex trafficking industry. There has been a range of legal responses to the crimes of prostitution and trafficking. Prosecutorial challenges in this newly developing field include the anonymity of the Internet, blurred jurisdictional boundaries, reluctance to prosecute prostitution cases where there is no evidence of physical coercion, and a very slowly increasing number of cases brought using existing legislation, in part because of the need for special training of criminal justice personnel. Nonetheless, there are tools available that provide both criminal and civil remedies.

Compartmentalization of the various arms of the sex industry, regardless of their location or legal status, has confused and sometimes derailed policymakers, the public, and law enforcement and has resulted in a failure to understand prostitution and trafficking as crimes against vulnerable women and children. Prostitution is the sale of a sex act.<sup>2</sup> Payment for sexual use is usually made in cash but can also be made in housing, food, drugs, clothes, gas, or other basic needs.<sup>3</sup> For young women with few alternatives, Internet prostitution is a portal into the sex trafficking industry.<sup>4</sup> Prostitution is glamorized and mainstreamed for women who believe the recruitment messaging, "prostitution is fun!" "sexy!" and "you make tons of money!"<sup>5</sup> Online classified websites [\*1041] Backpage, myredbook, escortpost, theeroticreview and others have sections advertising prostitution - thus functioning as online brothels. Craigslist was described as "training wheels" for selling sex.<sup>6</sup> In third world or recessionary economies, prostitution is a last-ditch survival option for poor young women or for women who are marginalized because of racism.<sup>7</sup> Korean women, for example, are recruited by traffickers for prostitution in the United States via Internet advertising.<sup>8</sup> An advertisement aimed at financially vulnerable women on the cafeduum.net website read: "We know that in Korea these days, unemployment, the recession and the Special Law on Prostitution make it hard to earn even half of what you made before."<sup>9</sup> Enticing the women into prostitution, the traffickers then specify how much money can be made in a bar or massage parlor, declaring: "Advances possible. We take care of visas and bad credit."<sup>10</sup>

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<sup>2</sup> Slight variations on that definition occur by state. For example, Nevada defines prostitution as follows: "'Prostitution' means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value." Nev. Rev. Stat. Ann. § 201.295(5) (Lexis-Nexis 2014).

<sup>3</sup> See, e.g., Stephanie Mencimer, *Brave New Welfare*, Mother Jones, Jan.-Feb. 2009, at 40, 45, available at <http://www.motherjones.com/politics/2009/01/brave-new-welfare>; Nathan Hardin, *Woman Charged with Prostituting for Gas*, Salisbury Post, (Jan. 15, 2012, 12:20 AM), <http://www.salisburypost.com/Crime/072111-WEBcouplechargedwithprostitution-qcd>.

<sup>4</sup> See Bill McAllister, *From Streetwalking to the Information Superhighway: The New Method in Prostitution, Police Prostitution & Pol.* (July 30, 2011, 2:17 PM), <http://goo.gl/KoussU>.

<sup>5</sup> See, e.g., Phoebe Kay, *On the Wrong Side of a Craigslist Ad*, Salon (Sept. 8, 2010, 9:01 PM), [http://www.salon.com/life/sex\\_work/?story=/mwt/feature/2010/09/08/i\\_was\\_craigslist\\_escort](http://www.salon.com/life/sex_work/?story=/mwt/feature/2010/09/08/i_was_craigslist_escort).

<sup>6</sup> Nick Lucchesi, *Cops Pimp Slap Craigslist on "Erotic Services" Listings*, RFT Blogs, (Nov. 7, 2008, 3:18 PM), [http://blogs.riverfronttimes.com/stlog/2008/11/cops\\_pimp\\_slap\\_craigslist\\_on\\_erotic\\_services\\_listings\\_prostitution\\_rings\\_internet\\_prostitutes.php](http://blogs.riverfronttimes.com/stlog/2008/11/cops_pimp_slap_craigslist_on_erotic_services_listings_prostitution_rings_internet_prostitutes.php).

<sup>7</sup> Timothy C. Lim, *The Dynamics of Trafficking, Smuggling and Prostitution: An Analysis of Korean Women in the U.S. Commercial Sex Industry 1* (2008), available at [http://instructional1.calstatela.edu/tclim/articles/Final\\_report\\_Lim2.pdf](http://instructional1.calstatela.edu/tclim/articles/Final_report_Lim2.pdf).

<sup>8</sup> *Id.* at 21.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Most contemporary legal definitions of trafficking do not require physical movement, but rather coercion, force, fraud, or abuse of power to trap a victim in an exploitive situation. In some international legal definitions, consent is irrelevant.<sup>11</sup> For the purposes of this article, we will use a definition of trafficking like that used in the Trafficking Victims Protection Act: "The recruitment, [enticement,] harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act."<sup>12</sup>

Prostitution often meets the legal definition of human trafficking in that pimping or third-party control of a prostituted person cannot be distinguished from the identical crimes perpetrated in trafficking.<sup>13</sup> According to estimates from eighteen sources [\*1042] including research studies, government reports, and nongovernmental agencies, on average 84% of women in prostitution are under third-party control or pimped or trafficked.<sup>14</sup>

Fifty years ago pimps coerced women to solicit on the street [\*1043] where they were advertised to the relatively limited marketplace of sex buyers who evaluated the women's physical appearances and made selections on the street corner. Prostitution is now a business that is advertised on the Internet, expanding the reach of pimps to a wider market of potential sex buyers. Women can be sold for 15 minutes or for a week for johns' sexual use, selected and purchased online like a rental car. As the following evidence shows, the vast majority of prostitution today takes place online. Police in Syracuse, New York estimated that 90% of that city's prostitution trade had gone online between 2009 and 2011.<sup>15</sup> Eighty-eight percent of sex buyers in a 2011 research study had bought women and children for sexual use indoors via Internet-advertised escort agencies, strip clubs, gentlemen's clubs, brothels, and massage parlors.<sup>16</sup> In the early 2000s, about half of all searches on the Internet search engine AltaVista were related to the business of sexual exploitation.<sup>17</sup>

The Internet and computer technology have been developed and exploited by sex businesses to offer prostitution to men across the globe.<sup>18</sup> Internet websites provide contact information, specifics on sexual acts that will be performed, pornography of the woman to be sold for sex, coded prices, and reviews by sex buyers.<sup>19</sup> Technology,

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<sup>11</sup> See, e.g., Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Annex 2, art. 3(b), Nov. 15, 2000, 2237 U.N.T.S. 319 ("The consent of a victim of trafficking in persons ... shall be irrelevant ...").

<sup>12</sup> 22 U.S.C. § 7102(9) (2012).

<sup>13</sup> Noting the impossibility of separating prostitution from trafficking in the real world, a 2006 report by Sigma Huda, United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children noted that prostitution as it is practiced "usually does satisfy the elements of trafficking." U.N. Econ. & Soc. Council, Comm. on Human Rights, Integration of the Human Rights of Women and a Gender Perspective: Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, P42, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006).

<sup>14</sup> To calculate the number 84% as an estimate of those who were under third-party control, pimped, or trafficked we used either whole number estimates or whole numbers based on the midpoint of a given estimated range. In the United States, 80-90% of those in prostitution had pimps. See Jacqueline B. Helfgott, *Criminal Behavior: Theories, Typologies, and Criminal Justice* 301 (2008); Jean Faugier and Mary Sargeant, *Boyfriends, 'Pimps' and Clients*, in *Rethinking Prostitution: Purchasing Sex in the 1990s* 119-34 (Graham Scambler & Annette Scambler eds., 1997). In New York City, a pimp estimated that "70% of women working in New York City as prostitutes are being compelled to do so by pimps who use beatings and drugs, and most importantly the threat of jail, to keep their girls in line." *Prostitution - Legalize or Decriminalize?*, Davis2013.com (July 30, 2012), <http://davis2013.com/prostitution-legalize-or-decriminalize/>. In Italy, the European Union estimated that 80 % of those in prostitution were trafficked. Scelles Foundation, *Sexual Exploitation: Prostitution and Organized Crime* 173 (2012), [http://www.fondationscelles.org/pdf/rapport\\_mondial /sexual\\_exploitation\\_prostitution\\_Fondation\\_Scelles.pdf](http://www.fondationscelles.org/pdf/rapport_mondial /sexual_exploitation_prostitution_Fondation_Scelles.pdf). In Poland, 90% of prostitution along the roads was assumed to be controlled by organized criminal groups. *Id.* at 233. In Amsterdam 50 to 90% of women in prostitution in the red-light district were considered likely victims of Turkish, Hungarian, Romanian, and Bulgarian human trafficking networks, including those working in legal clubs and brothels, according to the Dutch national police Korps Landelijke Politiediensten (KLPD). *Id.* at 211. In Spain, more than 90% of women in prostitution were victims of human trafficking. *Id.* at 268. In Bulgaria, RiskMonitor Foundation estimated that more than 95% of those in prostitution have pimps linked to organized crime. *Id.* at 64. In Germany SOLWODI estimated that 80% of women in prostitution are placed "under strong pressure and have no alternatives. This pressure may come from a partner or even their family, who send them abroad to work and send money back." Eur. Consult. Ass., *Prostitution, Trafficking and Modern Slavery in Europe*, Doc. No. 13446, at 12

smartphones and other digital devices make it possible to conduct business, advertise, and increase earnings from women who have for the most part been trafficked or coerced by a combination of joblessness, poverty, racism, and sexism into sex businesses.<sup>20</sup> [\*1044] Bitcoin,<sup>21</sup> an unregulated online currency that unlike credit cards provides the anonymity of cash, is being used to pay for web access to sites containing extremely violent or illegal images of real women and children, including online auctions of them.<sup>22</sup> Adapted by traffickers, pimps, and pornographers, the global reach of the Internet has facilitated sex buyers' access to prostituted women and children, thereby increasing sex trafficking.<sup>23</sup> The Internet has facilitated prostitution's shift from the street to indoor locations: to massage parlors, residential brothels, hotels,<sup>24</sup> call girl or escort prostitution (more accurately described as cell phone prostitution), and strip club or gentlemen's club prostitution.<sup>25</sup> Although there is a myth that indoor prostitution is safer than street prostitution, little evidence for this exists. Instead, the evidence of physical and emotional harm caused by prostitution holds constant wherever it happens.<sup>26</sup>

The development of the Internet requires new prosecutorial strategies for arresting pimps, traffickers, and sex buyers - a challenge that requires law enforcement officials and prosecutors to keep up with traffickers' familiarity with, and skills in, web technologies. Online prostitution provides greater anonymity for johns and pimps and it blurs jurisdictional boundaries since Internet content can be accessed and published anywhere. Social networking media such as Facebook, classified advertising websites such as Backpage, message boards, and dating sites all provide platforms for prostitution marketing with relative anonymity and [\*1045] impunity. Sex buyers and traffickers benefit from the relative lack of accountability of Internet service providers for their websites' content, despite token gestures described below. At the same time, online prostitution results in an online record that can be used as evidence in prosecutions.

## II. Marketing Prostitution: Organized Criminals' Use of Web Technology for the Purpose of Trafficking Women

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(2014). In Germany, policy analyst Barbara Yondorf estimated that 80-95% of women in prostitution have pimps. Kathleen Barry, *Female Sexual Slavery* 130 (1979). In San Francisco, 80% of women in prostitution interviewed by Marilyn Neckes and Theresa Lynch had pimps. *Id.* at 119. In Oregon, 84% of women who had escaped prostitution had previously been controlled by pimps. Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 Mich. J. Gender & L. 91, 101 (1993). In Ireland, Ruhama estimated that 80% of women in prostitution were under third-party control. E-mail from Sarah Benson, CEO of Ruhama, to Melissa Farley (April 10, 2014) (on file with the Albany Law Review). In the United States, a study of women prostituted in hotels estimated that more than 80% were controlled by pimps. Robert Prus & Stylianoss Irini, *Hookers, Rounders, and Desk Clerks* 11 (1980). Kathleen Barry noted that 80 to 95 % of all prostitution is pimp-controlled. Kathleen Barry, *The Prostitution of Sexuality* 198 (1995). Ninety-five to 99% of women in German prostitution were under the control of others. Manfred Paulus, *Out of Control: On Liberties and Criminal Developments in the Redlight Districts of the Federal Republic of Germany*, *Prostitution Resources* (May 6, 2014), <http://ressourcesprostitution.wordpress.com/2014/05/06/m-paulus-out-of-control-on-liberties-and-criminal-developments-in-the-redlight-districts-of-the-federal-republic-of-germany/>. Eighty-six percent of Nepali women delivered to brothels in India did not know they were going to be prostituted when they left home. Louise Brown, *Sex Slaves: The Trafficking of Women in Asia* 66 (2000). Cambodian Women's Crisis Centre found that 86% of women rescued from Phnom Penh brothels by police had been tricked or sold into prostitution. *Id.* at 89.

<sup>15</sup> Douglas Dowty, *Syracuse Police Charge 36 in Prostitution Sting Originating on Internet*, *Syracuse.com* (Dec. 7, 2012, 12:18 PM), [http://www.syracuse.com/news/index.ssf/2011/04/syracuse\\_police\\_charge\\_36\\_in\\_p.html](http://www.syracuse.com/news/index.ssf/2011/04/syracuse_police_charge_36_in_p.html).

<sup>16</sup> See Melissa Farley et al., *Comparing Sex Buyers with Men Who Don't Buy Sex* 15 (2011), <http://www.prostitutionresearch.com/pdfs/Farleyetal2011Comparin gSexBuyers.pdf>.

<sup>17</sup> See Lewis Perdue, *EroticaBiz: How Sex Shaped the Internet* 57 (2002).

<sup>18</sup> See Kristie R. Blevins & Thomas J. Holt, *Examining the Virtual Subculture of Johns*, 38 J. Contemp. Ethnography 619, 620 (2009).

<sup>19</sup> See Tammy Castle & Jennifer Lee, *Ordering Sex in Cyberspace: A Content Analysis of Escort Websites*, 11 Int'l J. Cultural Stud. 107, 118 (2008); Thomas J. Holt & Kristie R. Blevins, *Examining Sex Work from the Client's Perspective: Assessing Johns Using On-Line Data*, 28 Deviant Behav. 333, 342, 345-47 (2007); see also Matthew V. Pruitt, *Online Boys: Male-For-Male Internet Escorts*, 38 Soc. Focus 189, 193 (2005) (describing how sex is sold online by prostituted men). Of course sex buyers don't call themselves sex buyers. They refer to themselves as "johns," "hobbyists," "mongers" (abbreviated from "whoremonger"), "punters," "clients," or "customers."

Advertising women for johns' sexual use is essential to pimps and traffickers.

The truth is that a lot of deep marketing-thought goes into the sex industry, whether the entity being sold is an independent escort's companionship or couples' porn... . Mainstream ad agencies deal with versions of this problem all the time as they market brands and lifestyles, but sex workers tangle with it in a different way, because the thing on the market block is them.<sup>27</sup>

Internet access has proved to be far more about men's access to the bodies of women and girls, than about women's and girls' access to resources, education, employment, empowerment... . The vulgarisation of privilege that Engels foresaw has taken strange new directions; every man wealthy enough to own a computer and pay an ISP can enjoy an infinite virtual harem in the seclusion of his home.<sup>28</sup>

"Advertisement is the most important part of the business," said a member of the Mafia crime family, referring to Internet advertising in a case involving organized criminals' use of the Internet to traffic women.<sup>29</sup> Escort agencies, brothels, and strip clubs are advertised on websites and chat rooms, enabling pimps and traffickers to sell women for sex. Furthermore, the Mafia understood that pimps need a flexible business model and that advertising online attracts [\*1046] sex buyers who may be seeking one type of sex business but who can be enticed via the web into buying prostitution in some other form. For example, a sex buyer may first look at free pornography downloads, then be offered hardcore pornography for sale, and then he might see a pop-up advertisement for prostitution in his zip code. Web-based advertising happens daily in all areas of business enterprise on the World Wide Web. While traffickers use the same online sales model as other businesses, they also use Internet technologies usually not accessed by other businesses such as online forums, Skype, and gaming technology such as "Xbox Live, Sony Online Entertainment, or [real-time games such as] World of Warcraft."<sup>30</sup> Gaming technologies are used to facilitate trafficking since they permit midgame user-to-user communication.<sup>31</sup>

<sup>20</sup> See Danah Boyd et al., *Human Trafficking and Technology: A Framework for Understanding the Role of Technology in the Commercial Sexual Exploration of Children in the U.S.*, 1 (2011), <http://research.microsoft.com/en-us/collaboration/focus/education/htframework-2011.pdf>.

<sup>21</sup> See generally Bitcoin, <https://bitcoin.org/en/> (last visited June 14, 2014) (explaining the Bitcoin payment system).

<sup>22</sup> See Boyd et al., *supra* note 20, at 6.

<sup>23</sup> See Brief of Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiff at 4-5, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) (No. 09 CV 1385). A study conducted by the Sex Trafficking Intervention Research Office of Arizona State University's School of Social Work estimated that an average of 5% of men in fifteen cities used online prostitution ads, ranging from 0.6% in San Francisco to 21.4% in Houston. Dominique Roe-Sepowitz et al., *Ariz. State Univ. Sch. of Soc. Work, Invisible Offenders: A Study Estimating Online Sex Customers* 8-9 (2013).

<sup>24</sup> In April 2011, a Travelodge motel was seized as part of an indictment against a prostitution ring in California. Press Release, Fed. Bureau of Investigation, *Members and Associates of Oceanside Crip Street Gangs and One Hotel Charged with Racketeering Conspiracy Relating to Prostitution of Minors and Adults and Other Crimes and Criminal Forfeiture* (Apr. 18, 2011), available at <http://www.fbi.gov/sandiego/press-releases/2011/sd041811.htm>.

<sup>25</sup> See Melissa Farley, *Prostitution Harms Women Even if Indoors*, 11 *Violence Against Women* 950, 952 (2005).

<sup>26</sup> See *id.* at 955-62; Melissa Farley, "Bad for the Body, Bad for the Heart": *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 *Violence Against Women* 1087, 1099-1117 (2004).

<sup>27</sup> Audacia Ray, *Naked on the Internet: Hookups, Downloads, and Cashing in on Internet Sexploration* 178 (2007).

<sup>28</sup> D. A. Clarke, *Prostitution for Everyone: Feminism, Globalization, and the "Sex" Industry*, in *Not for Sale: Feminists Resisting Prostitution and Pornography* 149, 176 (Rebecca Whisnant & Christine Stark eds., 2004).

<sup>29</sup> See Press Release, Fed. Bureau of Investigation, *Manhattan U.S. Attorney Charges 14 Gambino Crime Family Associates with Racketeering, Murder, Sex Trafficking, and Other Crimes* (Apr. 20, 2010), available at <http://www.fbi.gov/newyork/press->

Organized crime is an essential element in the sex trafficking industry. <sup>32</sup> Profits from the business of selling sex "contribute to the expansion of organized crime in the United States and worldwide." <sup>33</sup> "Trafficking in persons is often [facilitated] by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law." <sup>34</sup> Russian and Balkan organized criminals' trafficking of women on the Internet was noted in 2000 when gangs placed ads in an Internet magazine *Streetwalking the World* which was aimed at sex buyer markets in Europe, the United States, and Australia. <sup>35</sup> "The fact that they can put these human beings out for viewing not only shows how they regard the women, but also underlines how strong the market is," said a UK police officer. <sup>36</sup>

The trade is fuelled by the insatiable appetite of punters for "new" girls and by the need for pimps to cater for more extreme sexual demands, such as torture, as well as unprotected sex. The trade in imported women is slowly spreading across the UK, centering on cities where there is a major off-street sex industry, such as Glasgow. According to [\*1047] sources in the trade, one flat in the city connected to a sauna offers eastern European women for clients with "exotic" tastes.

In Edinburgh, three Lithuanian women were deported after police discovered they had been put to work in the city's sex trade by a Russian gang. Two worked in a sauna and the other in a lap-dancing bar, but information that they were working against their will soon went round the city's small but highly competitive industry and police were called in. <sup>37</sup>

Organized crime operates in similar ways regardless of the criminals' national or ethnic origins. Criminal gangs in Taipei used hundreds of websites to advertise the sale of young women to sex buyers and used online chat rooms to lure teenagers into prostitution with bribes of money and free drugs. <sup>38</sup> Four United States criminal cases from 2011 illustrate organized criminals' commitment to the use of online technologies for trafficking. Nine men from the Gambino organized crime family in New York were convicted and sentenced for sex trafficking, murder, racketeering, extortion, and wire fraud. <sup>39</sup> The men trafficked young women for sexual use by advertising their prostitution on Craigslist. <sup>40</sup> The trafficked women were offered to gamblers in the Mafia's high-stakes poker

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releases/2010/nyfo042010.htm. The indictment included the crimes of murder, assault, witness tampering, extortion, narcotics, mail fraud, loan sharking, and gambling in addition to sex trafficking. Sealed Indictment at 1-49, *United States v. Marino*, S1 09 Cr. 1243 (LAK) (S.D.N.Y. June 20, 2010).

<sup>30</sup> Boyd et al., *supra* note 21, at 7.

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., Gillian Caldwell et al., *Capitalizing on Transition Economies: The Role of the Russian Mafiya in Trafficking Women for Forced Prostitution*, in *Illegal Immigration and Commercial Sex: The New Slave Trade* 42, 42-43 (Phil Williams ed., 1999); cf. 22 U.S.C. § 7101(b)(8) (2012) ("Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises.").

<sup>33</sup> 22 U.S.C. § 7101(b)(8).

<sup>34</sup> *Id.*

<sup>35</sup> Stuart Millar, *Sex Gangs Sell Prostitutes over the Internet*, *Observer* (July 15, 2000), <http://www.guardian.co.uk/technology/2000/jul/16/internetnews.t heobserver1>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See Joseph Yeh, *Groups Highlight Risks of Online Sex Trade*, *China Post* (Aug. 3, 2011, 11:50 PM), <http://www.chinapost.com.tw/taiwan/national/national-news/2011/08/03/312070/Groups-highlight.htm>.

<sup>39</sup> Press Release, U.S. Attorney, S. Dist. of N.Y., *Nine Gambino Crime Family Members Sentenced in Manhattan Federal Court for Racketeering, Murder Conspiracy, Extortion, Sex Trafficking, and Other Crimes* (May 12, 2011), available at <http://www.justice.gov/usao/nys/pressreleases/May11/marinodanie letalsentencingspr.pdf>.

<sup>40</sup> *Id.*



businesses. <sup>41</sup> A second case from Atlanta included indictments for kidnapping, sex trafficking, and transporting women across state lines for prostitution. <sup>42</sup> The male and female defendants recruited young women into prostitution on Internet sites Craigslist and Backpage, then terrorized them (for example binding them with duct tape and imprisoning them in a closet; forcibly addicting them to cocaine, and handcuffing them to beds) and sold them in various cities to sex buyers. <sup>43</sup> A multistate sex trafficking gang's use of the Internet triggered a third 2011 **[\*1048]** organized crime case. <sup>44</sup> The Internet was the prostitution ring's primary marketing tool with online ads for prostitution in Tennessee, North Carolina, New Mexico, and Ohio. <sup>45</sup> One of the traffickers took photos of the women and posted them to Backpage, USAsexguide, Preferred 411, Date Check and other websites offering "adult services" or "escort" services that included pornography of the prostituting women. <sup>46</sup> In a fourth case, police discovered an online prostitution ring, Escorts.com, in Pennsylvania. <sup>47</sup> Evidence used against the companies was based on fees and payments from website users including money orders, checks and credit cards, and numerous accounts at various financial institutions, funds, and financial services. <sup>48</sup> In 2011, the companies who controlled the prostitution ring pled guilty to money laundering and agreed to pay \$ 6.4 million for developing and operating Escorts.com, which was subsequently shut down. <sup>49</sup> The organized crime groups kept numerous accounts at various financial institutions, funds, and financial services. <sup>50</sup> After the link to the online prostitution ring was uncovered, the FBI, State Police, IRS and city police raided the corporate offices and found eighty boxes of evidence. <sup>51</sup>

Alternatives to classified advertising sites such as Craigslist and Backpage have begun to appear. Geebo.com is a website aimed at providing safe and socially responsible classified advertising. <sup>52</sup> **[\*1049]** During the period of time that consciousness about online trafficking was increasing, from January 2009 to June 2010, Geebo's revenue increased 300%. <sup>53</sup> Despite this innovative trend, sex industry businessmen continue to use online technologies for the purpose of paid sexual exploitation and abuse.

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<sup>41</sup> Id.

<sup>42</sup> Press Release, U.S. Attorney, N. Dist. of Ga., Pair Charged in Sex Trafficking Ring (May 18, 2011), available at <http://www.justice.gov/usao/gan/press/2011/05-18-11.html>.

<sup>43</sup> Id.

<sup>44</sup> Press Release, U.S. Attorney, W. Dist. of N.C., California Man Sentenced to 18 Months in Prison for Prostitution-Related Charges (July 25, 2012), available at <http://www.justice.gov/usao/ncw/pressreleases/Charlotte-2012-07-25-rodgers.html>.

<sup>45</sup> FBI's Charlotte Division Arrests Multi-State "Online" Prostitution Ring, CrimeinCharlotte.com (May 18, 2011), <http://www.crimeincharlotte.com/fbis-charlotte-division-arrests-multi-state-online-prostitution-ring/#.UvISmCiJV0x>.

<sup>46</sup> Cleve R. Wootson Jr., Man Accused of Running Online Prostitution Ring, Wopular (May, 17, 2011), <http://www.wopular.com/man-accused-running-online-prostitution-ring-0>.

<sup>47</sup> Wendy Ruderman & Barbara Laker, Porn King's Empire Pays Feds \$ 6.4M Penalty, Philly.com (Nov. 2, 2011), <http://www.philly.com/philly/news/133042343.html?cmpid=1558579>.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id. According to The Vienna Forum to Fight Human Trafficking, E-business including electronic banking, benefits organized criminals: it provides "virtual identities" on the internet, disguises financial activities and allows the exchange of money and services with anonymity. The Internet permits rapid global movement of money. Some internet payment options allow the payer the same anonymity as with cash, but with the ability to conduct global transfers of funds. See U.N. Global Initiative to Fight Human Trafficking, The Vienna Forum to Fight Human Trafficking 13-15 February 2008, at 5 (Austria Ctr. Vienna Background Paper, 2008), [http://www.unodc.org/documents/human-trafficking/2008/BP017TechnologyandHumanTrafficking.pdf.\[eb\]](http://www.unodc.org/documents/human-trafficking/2008/BP017TechnologyandHumanTrafficking.pdf.[eb])

<sup>52</sup> Our Commitment to Social Responsibility, Geebo, [http://geebo.com/pages/view/id/5-social\\_responsibility/](http://geebo.com/pages/view/id/5-social_responsibility/) (last visited June 8, 2014).

### III. The Harms of Prostitution and Trafficking

For most of the world's prostituted women, prostitution is the experience of being hunted, dominated, harassed, assaulted, and battered. Prostitution is a gendered survival strategy that requires the person in it to assume unreasonable risks.<sup>54</sup> Most people would not be willing to assume these risks. Prostitution formalizes women's subordination by sex, race, and class and thus poverty, racism, and sexism are inextricably connected in prostitution.<sup>55</sup> Women are prostituted because they are vulnerable as a result of poverty, a lack of educational options, lack of employment opportunities, and as a result of previous physical and emotional harm. They are purchased on the basis of race as well as sex stereotypes.

Childhood abuse is such a common precursor to prostitution that it is nearly universal among those in prostitution. Survivors link physical, sexual, and emotional abuse as children to later prostitution.<sup>56</sup> Seventy percent of the adult women in prostitution in one study stated that childhood sexual assault was responsible for their entry into prostitution.<sup>57</sup> Family abuse and neglect not only caused direct physical and emotional harm, but also created a cycle of victimization that affected their futures.<sup>58</sup> Familial sexual [\*1050] abuse functions as a training ground for prostitution.<sup>59</sup> One young woman said, "I started turning tricks to show my father what he made me."<sup>60</sup> Dworkin described sexual abuse of children as "boot camp" for prostitution.<sup>61</sup> These histories make girls and young women particularly susceptible to the manipulations of traffickers who often lure their victims by initially providing a supportive family-like environment, housing and food, protection from others who have exploited them and special gifts like clothing and jewelry. Adolescence is the most frequently reported age of entry into any type of prostitution. Boyer and colleagues interviewed sixty women prostituting in escort, street, strip club, phone sex, and massage parlors (brothels) in Seattle, Washington.<sup>62</sup> All of them began prostituting between the ages of twelve and fourteen.<sup>63</sup>

Childhood abuse has been shown to increase the likelihood of online sexual victimization.<sup>64</sup> Adolescents who have been victims of childhood physical or sexual abuse and/or neglect are at risk because they are more likely to

<sup>53</sup> E-mail from Greg Collier, Chief Executive Officer, Geebo, to Melissa Farley (Aug. 13, 2011) (on file with author).

Geebo was started with the commitment to provide safe and socially responsible classified advertising. As a result, the website never had an "adult services" or "erotica" section, and has both automated and manual screening of all ads before they are posted. In addition, Geebo does not allow users to change ads once they are posted to the site in order to prevent criminals from circumventing their screening process. Geebo.com has become a model for online classifieds who want to avoid trafficking and sexual exploitation.

Telephone Interview with Greg Collier, Chief Executive Officer, Geebo (Aug. 13, 2011).

<sup>54</sup> Andrea Dworkin, Prostitution and Male Supremacy, in *Life and death* 139, 139, 141 (1997).

<sup>55</sup> *Id.* at 141.

<sup>56</sup> Mimi H. Silbert & Ayala M. Pines, Sexual Child Abuse as an Antecedent to Prostitution, 5 *Child Abuse & Neglect* 407, 410 (1981).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Dworkin, *supra* note 54, at 143

<sup>60</sup> Mimi H. Silbert & Ayala M. Pines, Entrance into Prostitution, 13 *Youth & Society* 471, 488 (1982).

<sup>61</sup> Dworkin, *supra* note 54, at 143.

<sup>62</sup> Debra Boyer, et al., *Survival Sex in King County: Helping Women Out* (1993).

<sup>63</sup> *Id.*

<sup>64</sup> Jennie G. Noll, et al., Childhood Abuse, Avatar Choices, and Other Risk Factors Associated with Internet-Initiated Victimization of Adolescent Girls, 123 *Pediatrics* 1078, 1078 (2009), available at <http://pediatrics.aappublications.org/content/123/6/e1078.full.pdf+html>.

visit chat rooms,<sup>65</sup> be solicited sexually online and offline,<sup>66</sup> and receive aggressive sexual solicitations<sup>67</sup> than their nonabused peers. Moreover, childhood abuse victims are likely to experience physical and sexual revictimization and exploitation.<sup>68</sup>

A number of authors have described and summarized the sexual and physical violence that is the norm for women in prostitution.<sup>69</sup> [\*1051] Silbert and Pines reported that 70% of women suffered rape in prostitution with 65% having been physically assaulted by customers and 66% assaulted by pimps.<sup>70</sup> The Council for [\*1052] Prostitution Alternatives in Portland reported that prostituted women were raped an average of once a week.<sup>71</sup> In the Netherlands, 60% of prostituted women suffered physical assaults; 70% experienced verbal threats of physical assault; 40% experienced sexual violence; and 40% had been forced into prostitution and/or sexual abuse by acquaintances.<sup>72</sup> Most young women in prostitution were abused or beaten by pimps as well as johns.<sup>73</sup> Eighty-five percent of prostituting women in Minnesota had been raped in prostitution.<sup>74</sup> Of 854 people in prostitution in nine countries (Canada, Colombia, Germany, Mexico, South Africa, Thailand, Turkey, United States, and Zambia), 71% had experienced physical assaults in prostitution and 62% had been raped in prostitution.<sup>75</sup> Eighty-nine percent of those people stated that they wished to leave prostitution but did not have other options.<sup>76</sup> In another study 94% of those in street prostitution had experienced sexual assault and 75% had been raped by one or more johns.<sup>77</sup>

Prostitution can be lethal.<sup>78</sup> A Canadian commission found that the death rate of women in prostitution was forty times higher than that of the general population.<sup>79</sup> A study of Vancouver prostitution reported a 36% incidence of attempted murder.<sup>80</sup> An occupational survey noted that 99% of women in prostitution were victims of violence, with more frequent injuries "than workers in [those] occupations considered ... most dangerous, like mining, forestry and fire fighting."<sup>81</sup>

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<sup>65</sup> Timothy J. Beebe et al., Heightened Vulnerability and Increased Risk-Taking Among Adolescent Chat Room Users: Results from a Statewide School Survey, 35 *J. Adolescent Health* 116, 119 (2004).

<sup>66</sup> Kimberly J. Mitchell et al., Youth Internet Users at Risk for the Most Serious Online Sexual Solicitations, 32 *Am. J. Preventive Med.* 532, 535 (2007).

<sup>67</sup> Melissa Wells & Kimberly J. Mitchell, How Do High-Risk Youth Use the Internet? Characteristics and Implications for Prevention, 13 *Child Maltreatment* 227, 231-32 (2008).

<sup>68</sup> David Finkelhor et al., Re-Victimization Patterns in a National Longitudinal Sample of Children and Youth, 31 *Child Abuse & Neglect* 479, 492 (2007); Terri L. Messman-Moore & Patricia J. Long, The Role of Childhood Sexual Abuse Sequelae in the Sexual Revictimization of Women: An Empirical Review and Theoretical Reformulation, 23 *Clinical Psychol. Rev.* 537, 538 (2003).

<sup>69</sup> For some authors providing authoritative data on the violence of prostitution see Kathleen Barry, *Female Sexual Slavery* 40 (1979); Kathleen Barry, *The Prostitution of Sexuality* 36 (1995); Boyer et al., *supra* note 62; Andrea Dworkin, *Life and Death* 141 (1997) [hereinafter Dworkin, *Life and Death*]; Andrea Dworkin, *Pornography: Men Possessing Women* 203-04 (1981) [hereinafter Dworkin, *Pornography*]; Andrea Dworkin, *Scapegoat: The Jews, Israel, and Women's Liberation* 330-31 (2000) [hereinafter Dworkin, *Scapegoat*]; Cecilie Hoigard & Liv Finstad, *Backstreets: Prostitution, Money and Love* 115 (1996); Sheila Jeffreys, *The Idea of Prostitution* 254-55, 259 (1997); Catharine A. MacKinnon & Andrea Dworkin, *In Harm's Way: The Pornography Civil Rights Hearings* 333-34 (1997); Mimi H. Silbert et al., *Sexual Assault of Prostitutes: Phase One* 119 (1980); Ine Vanwesenbeeck, *Prostitutes Well-Being and Risk* 108 (1994); D. Kelly Weisberg, *Children of the Night: A Study of Adolescent Prostitution* 108-10 (1985); Margaret A. Baldwin, "A Million Dollars and an Apology": Prostitution and Public Benefits Claims, 10 *Hastings Women's L.J.* 189, 192-93 (1999); Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 *Mich. J. Gender & L.* 65, 71-72 (1993); Devon D. Brewer et al., *Extent, Trends, and Perpetrators of Prostitution-Related Homicide in the United States*, 51 *J. Forensic Sci.* 1101, 1107 (2006) (estimating that 2.7% of female homicide victims in the United States were prostituted women - the highest rate of victimization for any group of women previously studied); Phyllis Chesler, *A Woman's Right to Self-Defense: The Case of Aileen Carol Wuornos*, 66 *St. John's L. Rev.* 933, 948-53 (1993);

**[\*1053]** Two factors are associated with greater violence in prostitution. The greater the poverty, the greater the violence, and the longer one is in prostitution, the more likely one is to experience violence.<sup>82</sup>

Posttraumatic stress disorder (PTSD) commonly occurs among prostituted women and is indicative of their extreme emotional distress. PTSD is characterized by anxiety, anhedonia, depression, insomnia, irritability, flashbacks, emotional numbing, and hypervigilance.<sup>83</sup> In nine countries researchers found that 68% of those in prostitution met criteria for a diagnosis of PTSD,<sup>84</sup> a prevalence that was comparable to battered women seeking shelter,<sup>85</sup> rape survivors seeking treatment,<sup>86</sup> and survivors of state-sponsored torture.<sup>87</sup> Across widely varying cultures on five continents, the traumatic consequences of prostitution were similar.<sup>88</sup> Vanwesenbeeck found anxiety and hypervigilance among 90% of a sample of women in legal Dutch prostitution (brothels, windows, and clubs).<sup>89</sup> Two studies of prostituted Korean women reflect the women's intense psychological distress with PTSD prevalence rates of 78% and 80%.<sup>90</sup> Web-based pornography of women trafficked in prostitution increases their vulnerability and **[\*1054]** increases their emotional distress and traumatic stress.<sup>91</sup>

The assault on women's sexuality in prostitution is overwhelming, yet invisible to most people. Survivors describe prostitution as a process whereby they are turned into objects into which men masturbate causing great psychological harm to the woman acting as receptacle.<sup>92</sup> Dissociation is a response to overwhelming and uncontrollable traumatic events in which the mind detaches from one's current emotional or physical state.<sup>93</sup> Dissociation occurs during extreme stress among prisoners of war who are tortured, among children who are being sexually assaulted, and among women being battered, raped, or prostituted.<sup>94</sup> Dissociative disorders, depression and other mood disorders are common among prostituted women in street, escort, and strip club prostitution.<sup>95</sup> Dissociation in prostitution results from both childhood sexual violence and sexual violence in adult prostitution. The dissociation necessary to survive rape in prostitution is much like the dissociation that enables a victim to endure familial sexual assault.<sup>96</sup> Vanwesenbeeck noted that a "'dissociative proficiency' contributed to the professional attitudes among women in prostitution in the Netherlands."<sup>97</sup> A Thai woman said, "You make yourself empty inside."<sup>98</sup>

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Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in *Prostitution, Trafficking, and Traumatic Stress* 60 (Melissa Farley ed., 2003) [hereinafter, Farley et al., *Nine Countries*]; Melissa Farley et al., *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, 8 *Feminism & Psychol.* 405, 406 (1998); Melissa Farley et al., *Prostitution in Vancouver: Violence and the Colonization of First Nations Women*, 42 *Transcultural Psychiatry* 242, 243 (2005); Evelina Giobbe, *An Analysis of Individual, Institutional, and Cultural Pimping*, 1 *Mich. J. Gend. & L.* 33, 49-50 (1993); Evelina Giobbe, *Prostitution: Buying the Right to Rape*, in *Rape and Sexual Assault III: A Research Handbook* 147-48 (Ann Wolbert Burgess ed., 1991); Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 *Mich. J. Gend. & L.* 91, 92-94 (1994); Quarraisha Abdool Karim et al., *Reducing the Risk of HIV Infection among South African Sex Workers: Socioeconomic and Gender Barriers*, 85 *Am. J. Pub. Health* 1521, 1523 (1995); Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 *Cardozo Women's L.J.* 133, 138 (1993); Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 *Mich. J. Gend. & L.* 13, 13 (1993); Jody Miller & Martin D. Schwartz, *Rape Myths and Violence Against Street Prostitutes*, 16 *Deviant Behav.* 1, 7-8 (1995); John J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 *Am. J. Epidemiology* 778, 782-84 (2004) (concluding, based on a study of prostituted women in Colorado Springs, Colo., that no population of women studied previously has had a crude mortality rate, standardized mortality ratio, or percentage of deaths due to murder even approximating those observed in the study cohort); Janice G. Raymond, *Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere*, 21 *Women's Stud. Int'l F.* 1, 1 (1998); Silbert & Pines, *Entrance into Prostitution*, *supra* note 60, at 490; Mimi H. Silbert & Ayala M. Pines, *Victimization of Street Prostitutes*, 7 *Victimology* 122, 127-28, 130 (1982); Debra Boyer, *Seattle Human Servs. Dep't, Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle* 27, 37 (2008), [http://www.seattle.gov/humanservices/domesticviolence/report\\_youthinprostitution.pdf](http://www.seattle.gov/humanservices/domesticviolence/report_youthinprostitution.pdf); Donna M. Hughes, *Pimps and Predators on the Internet: Globalizing the Sexual Exploitation of Women and Children*, *U. of R.I.* (1999), <http://www.uri.edu/artsci/wms/hughes/pprep.htm>.

<sup>70</sup> See Silbert & Pines, *Victimization of Street Prostitutes*, *supra* note 69, at 127-28; see generally Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 *Child Abuse & Neglect* 407, 409 (1981) (identifying high levels of childhood sexual abuse among women in street prostitution).

<sup>71</sup> See Hunter, *supra* note 69, at 92-93.

<sup>72</sup> See Vanwesenbeeck, *supra* note 69, at 91.

#### IV. Compartmentalization and False Distinctions

While theory about prostitution as a "choice" abounds,<sup>99</sup> it is **[\*1055]** impossible to distinguish prostitution from trafficking in most cases.<sup>100</sup> Thus conceptual walls between prostitution and trafficking limit enforcement and prosecutorial options that are available. Noting the impossibility of separating prostitution from trafficking in the real world, a 2006 report by Sigma Huda, United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children noted that prostitution as it is practiced "usually does satisfy the elements of trafficking"<sup>101</sup> and therefore, legalization of prostitution is "to be discouraged."<sup>102</sup> The Special Rapporteur observed that "the issue of demand is of crucial importance in addressing trafficking,"<sup>103</sup> noting that, "by engaging in the act of commercial sex, the prostitute-user is ... directly inflicting an additional and substantial harm upon the trafficking victim, tantamount to rape, above and beyond the harmful means used by others to achieve her entry or maintenance in prostitution."<sup>104</sup> Pimp-controlled prostitution is indistinguishable from trafficking. Seeking to be qualified as an expert witness, a New York pimp argued that beatings of prostituted women are simply "part of the pimp-prostitute relationship."<sup>105</sup>

Compartmentalization of what is actually a global trafficking industry is both a factual and a strategic error that functions as a barrier to the prosecution of pimps, traffickers, and sex buyers. There are no boundaries in the sex trafficking industry that distinguish physically coerced from psychologically coerced victims. Confusion reigns regarding techniques of mental control used by pimps and traffickers whereby victims appear to collude happily in **[\*1056]** their own victimization.<sup>106</sup> There is also a failure by many - the public, law enforcement, NGOs, health care personnel - to recognize the coercive force of a history of abuse, neglect, racism, sexism, and poverty in channeling women into prostitution. False distinctions create legal and conceptual confusion about the nature of the sex trafficking industry. The following conceptual distinctions are based on myths rather than empirical data: trafficking versus prostitution, adult versus child prostitution, domestic versus international prostitution, legal versus illegal prostitution, indoor versus outdoor prostitution, street versus escort prostitution, and voluntary versus involuntary prostitution.<sup>107</sup> The United States Department of Health and Human Services acknowledged that

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<sup>73</sup> See Barry, *The Prostitution of Sexuality*, supra note 69, at 36; Hoigard & Finstad, supra note 69, at 115; Jeffreys, supra note 69, at 254-55, 259; MacKinnon & Dworkin, supra note 69, at 333-34.

<sup>74</sup> Ruth Parriott, *Health Experiences of Twin Cities Women Used in Prostitution (1994)* (unpublished manuscript) (commissioned by Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER)).

<sup>75</sup> See Farley, supra note 26, at 1095.

<sup>76</sup> *Id.*

<sup>77</sup> See Miller & Schwartz, supra note 69, at 7-8.

<sup>78</sup> See Potterat et al., supra note 69, at 782; see also Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 *Law & Ineq.* 609, 618-19 (1984) (recounting a number of horrendous murders of women in prostitution).

<sup>79</sup> Special Comm. on Pornography and Prostitution, *Pornography and Prostitution in Canada* 350 (1985).

<sup>80</sup> Leonard Cler-Cunningham & Christine Christenson, *Studying Violence to Stop It: Canadian Research on Violence Against Women in Vancouver's Street Level Sex Trade*, 4 *Res. for Sex Work* 25, 26 (2001).

<sup>81</sup> Erin Gibbs Van Brunschot et al., *Images of Prostitution: The Prostitute and Print Media*, 10 *Women & Crim. Just.* 47, 61-62 (1999).

<sup>82</sup> See Vanwesenbeeck, supra note 69, at 95. A helpful paradigm for understanding the harm of prostitution is that of domestic violence. Prostitution is domestic violence. Giobbe compared pimps and batterers and found similarities in the ways they used extreme physical violence to control women, the ways they forced women into social isolation, used minimization and denial, threats, intimidation, verbal and sexual abuse, and had an attitude of ownership. Giobbe, *Prostitution: Buying the Right to Rape*, supra note 69, at 151. The techniques of physical violence used by pimps are often the same as those used by torturers. Harvey Schwartz et al., *Pimp Subjugation of Women by Mind Control*, in *Prostitution and Trafficking in Nevada: Making the Connections* 51-52 (Melissa Farley ed., 2007).

trafficking victims are located not only in street and brothel prostitution but also in pornography, strip clubs, massage parlors, spas, live video-cam sex shows, mail-order bride or servile marriage services, military prostitution, and sex tourism or prostitution tourism.<sup>108</sup>

Compartmentalization of the sex industry into illegal versus quasi-legal prostitution benefits pimps and traffickers in that it frequently avoids accountability for criminal acts. The goal of pimps' lawyers appears to be to legally blur any distinction between prostitution and not-prostitution. For example, an attorney for seekingarrangement.com argued that prostitution is simply the sale of sex with no emotional relationship.<sup>109</sup> The lawyer failed to note that in today's prostitution market GFE (girlfriend experience), which his client's website advertised, is precisely that: purchased sex with the veneer of a "girlfriend experience."<sup>110</sup> His strategy was to carve out an area of the sex industry that would be difficult to [\*1057] prosecute as prostitution. The seekingarrangement website's goal is to create what the site's pimps describe as mutually beneficial relationships between two people, usually a man willing to pay for sex with a woman.<sup>111</sup> The same strategy is used in online advertisements for escort prostitution. Payment is alleged to be for companionship.<sup>112</sup> If sex occurs, it is alleged to be outside the scope of the financial agreement. Similarly, in strip clubs, pimps allege that the \$ 500 payment for private time in a back room is for the bottle of champagne not for the woman's performance of a sex act on a john.

Some assume that men in strip clubs watch women dance on a stage and chat with them afterward. Today, strip clubs are where prostitution happens.<sup>113</sup> As a Gambino organized crime family member said, "If I'm gonna build a fucking hooker business, I'm gonna hang out in strip clubs."<sup>114</sup> Today "sex shows" and "strip shows" are forms of online pornography (private strip prostitution) as well as a means of trafficking women.<sup>115</sup> Strip clubs are advertised online.<sup>116</sup> A lap dance, available in all strip clubs, is a form of prostitution in which a man is masturbated by a woman's body to ejaculation even though it may not be named as prostitution by men who purchase those sex acts or by the club's attorneys. A recent case against a pimp demonstrates the lack of difference between prostitution in strip clubs and prostitution elsewhere. Corey Davis was "charged in a fifteen-count Superseding Indictment with charges including sex trafficking, forced labor, kidnapping, and violations of the

<sup>83</sup> Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders § 309.81 (5th ed. 2013)

<sup>84</sup> See Farley et al., *Nine Countries*, supra note 69, at 44.

<sup>85</sup> See Beth M. Houskamp & David W. Foy, *The Assessment of Posttraumatic Stress Disorder in Battered Women*, 6 *J. Interpersonal Violence* 367, 371 (1991) (citing 45%); Anita Kemp et al., *Post-Traumatic Stress Disorder (PTSD) in Battered Women: A Shelter Sample*, 4 *J. Traumatic Stress* 137, 143 (1991) (citing 84%).

<sup>86</sup> See I.T. Bownes et al., *Assault Characteristics and Posttraumatic Stress Disorder in Rape Victims*, 83 *Acta Psychiatrica Scandinavica* 27, 28 (1991) (citing 70%).

<sup>87</sup> See Rosalind Ramsay et al., *Psychiatric Morbidity in Survivors of Organised State Violence Including Torture: A Retrospective Series*, 162 *Brit. J. Psychiatry* 55, 56 (1993) (citing 51%).

<sup>88</sup> See Farley et al., *Nine Countries*, supra note 69, at 55-56.

<sup>89</sup> Vanwesenbeeck found that 90% of women who were prostituted primarily in clubs, brothels, and windows reported "extreme nervousness." Vanwesenbeeck, supra note 69, at 82.

<sup>90</sup> Melissa Farley & Sungjean Seo, *Prostitution and Trafficking in Asia*, 8 *Harv. Asia Pac. Rev.* 9, 10 (2006).

<sup>91</sup> Melissa Farley, "Renting an Organ for 10 Minutes:" What Tricks Tell Us About Prostitution, Pornography, and Trafficking, in *Pornography: Driving the Demand for International Sex Trafficking* 148 (David E. Guinn & Julie DiCaro eds., 2007).

<sup>92</sup> Hoigard & Finstad, supra note 69, at 95-96.

<sup>93</sup> Judith Lewis Herman, *Trauma and Recovery* 1-2 (1992).

<sup>94</sup> *Id.* at 2-3; Harvey L. Schwartz, *Dialogues with Forgotten Voices: Relational Perspectives on Child Abuse Trauma and Treatment of Dissociative Disorders* 5-6 (2000).

<sup>95</sup> Melissa Farley, *Prostitution and the Invisibility of Harm*, in *Women with Visible and Invisible Disabilities: Multiple Intersections, Multiple Issues, Multiple Therapies* 265 (Martha E. Banks & Ellyn Kaschak eds., 2003); Colin A. Ross et al., *Dissociation and*

Mann Act," to which he later "pled guilty to a single count of sex trafficking." <sup>117</sup> The Grand Jury Superseding Indictment detailed how he pimped minor girls and adult women between a Queens, NY home (where he kept them locked up) and Connecticut strip clubs. <sup>118</sup> Davis used physical [\*1058] violence and psychological coercion to force his victims to engage in prostitution at the strip clubs and collected their earnings. <sup>119</sup> A 2011 police undercover operation in North Carolina investigated prostitution on backpage.com, <sup>120</sup> which published a job advertisement that was a virtual shout-out to Eastern European and United States pimps. <sup>121</sup> The South 13 Gentlemen's Club posted "Currently hiring entertainers... . Must ... have ... a willing and motivated work ethic... . Seeking select Eastern European ladies and Southern Cuties that may be willing to relocate ... ." <sup>122</sup>

Like other multinational businesses, the sex trafficking industry has many interconnections. Local businesses are connected with national and international distributors of women and children in prostitution. One arm of the sex trafficking business fosters and expands another and can eventually morph into a new enterprise. Online pornography encourages viewers to take the additional step of searching for women in prostitution after seeing their photos. For example, a sex buyer who was arrested for attempting to buy a woman in prostitution said, "'I'm watching a little porn at home, so I get a little horny and decide I want a blow job' ... . 'I head to the Tenderloin [district] ... and bang! The bitch is a cop.'" <sup>123</sup> Prostitution is advertised online, where it is indistinguishable from pornography. Pornography is one specific means of trafficking women for the purpose of selling women into prostitution. <sup>124</sup> On pornography/prostitution websites, women are for rent and sale. One of the world's largest pornography sites with 10 million users worldwide, located in China and the United States, was busted in 2011. <sup>125</sup> The site used a typical online sex trafficking business model: in addition to selling pornography, the site also advertised [\*1059] prostitution. <sup>126</sup> Visual pornography is a record of prostitution or trafficking. Pornography is a document of what men's domination of women in prostitution looks like in all its sexist, racist, and classist specificity. Pornography is a documentary of specific women's abuses in prostitution, and its consumers obtain pornography as a filmed document of a woman's sexual humiliation. <sup>127</sup> A Danish website advertised "real life amateur slaves," encouraging men to "submit a slave to the picture farm." <sup>128</sup> Sex buyers use pornography to solicit children for prostitution. <sup>129</sup> Both prostitution survivors and the men who buy them understand that

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Abuse Among Multiple-Personality Patients, Prostitutes, and Exotic Dancers, 41 *Hosp. & Community Psychiatry* 382, 328-330 (1990).

<sup>96</sup> Eleanor M. Miller, *Street Woman* 114-15 (1986); Giobbe, *Prostitution: Buying the Right to Rape*, supra note 69, at 151-58.

<sup>97</sup> Vanwesenbeeck, supra note 69, at 107.

<sup>98</sup> Ryan Bishop & Lillian S. Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* 47 (1998).

<sup>99</sup> Shannon Bell, *Reading, Writing, and Rewriting the Prostitute Body* 1-4 (1994); see, e.g., Celine Parrenas Shimizu, *Master-Slave Sex Acts: Mandingo and the Race/Sex Paradox*, 21 *Wide Angle* 42, 43 (1999) (noting the "paradox of pleasure and violence in racial subjection," Shimizu explores the rapes of slaves by their masters and recommends that we not prematurely dismiss "a telling of slavery from the point of view of slave sexual contentment"); Celine Parrenas Shimizu, *Sex for Sale: Queens of Anal, Double, Triple, and the Gang Bang: Producing Asian/American Feminism in Pornography*, 18 *Yale J.L. & Feminism* 235, 235-36 (2006) (discussing some Asian American women's pornography that expresses racialized and sexual degradation); Audrey Extavasia & Tessa Dora Addison, *Fucking (with Theory) for Money: Toward an Interrogation of Escort Prostitution*, 2 *Postmodern Culture* (1992), available at <http://www3.iath.virginia.edu/pmc/text-only/issue.592/add-ext.592>.

<sup>100</sup> Catherine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 *Harv. C.R.-C.L. L. Rev.* 271, 299-300 (2011); see supra note 13.

<sup>101</sup> *Id.* at 300; see *Comm'n on Human Rights, Rep. on its 62nd Sess.*, Feb. 20, 2006, U.N. Doc. E/CN.4/2006/62, at 9 (2006) (by Sigma Huda).

<sup>102</sup> *Comm'n on Human Rights*, supra note 101, at 17.

<sup>103</sup> *Id.* at 7.

<sup>104</sup> *Id.* at 12. The Special Rapporteur noted that "the terms 'sex work', 'sex worker' and 'client' wrongly suggest that prostitution, as currently practised, does not typically fall within the category of trafficking." *Id.* at 10.

pornography is prostitution with a camera. <sup>130</sup> "Yes, the woman in pornography is a prostitute," said a sex buyer, "They're prostituting before the cameras." <sup>131</sup> A number of courts have understood that making pornography is an act of prostitution. <sup>132</sup> Pimps make more money from sex buyers when they advertise women in prostitution as "adult film stars" who are available as "escorts." <sup>133</sup> Exploiting women's poverty, pornographers use prostituted women from Eastern Europe, where "they cost less and do more," said one German producer. <sup>134</sup>

Pornographers are indistinguishable from other pimps. <sup>135</sup> Both exploit women's and girls' economic and psychological vulnerabilities or coerce them to get into and stay in the sex industry. Pornographers and pimps both take pictures to advertise their "products," suggest specific abuses for johns to perpetrate against women and minimize the resulting harms. Eliminating the imagined boundary between pornography and prostitution, a pornographer advertised that he was "in the business of degrading [\*1060] whores for your viewing pleasure." <sup>136</sup>

Web-based, video, and print pornography are inseparable from the rest of the sex industry, with crossovers from prostitution to pornography to sex trafficking. Nevada pimps declared their interest in "cross-fertilizing" legal brothels with other arms of the sex trafficking industry - strip clubs, escort prostitution, websites, and pornography. <sup>137</sup> A strip club website telegraphed the intimate connection between stripping and pornography by advertising, "Breeding pornstars one showgirl at a time!!!" <sup>138</sup> New York Elites, an escort prostitution agency, was busted for numerous offenses including promoting prostitution by flying pornography stars to many locations in the United States for "dates." <sup>139</sup>

Police in Las Vegas located a multi-use sex industry operation that included online prostitution, illustrating the interconnectedness of different arms of the sex trafficking industry. <sup>140</sup> Looking like a small office complex from the street, the business functioned simultaneously as Internet pornography production, cyber-peepshow or webcam prostitution, and a location out of which women in escort prostitution were pimped to Las Vegas hotels and to an illegal brothel. <sup>141</sup>

<sup>105</sup> Pimp Denied "Expert" Status at Trial, myfoxny.com (Nov. 22, 2011, 6:06 AM), <http://www.myfoxny.com/story/17442950/pimp-denied-expert-status-at-trial>.

<sup>106</sup> Schwartz et al., supra note 82, at 51-59 (describing brainwashing and other techniques used by pimps and torturers to control and manipulate their victims).

<sup>107</sup> See MacKinnon, supra note 100, at 272, Melissa Farley, Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly, 18 Yale J.L. & Feminism 109, 111 (2006) [hereinafter Farley, What We Must Not Know], Melissa Farley, Theory Versus Reality: Commentary on Four Articles About Trafficking for Prostitution, 32 Women's Stud. Int'l Forum, 311, 311 (2009), and Schwartz et al., supra note 106, at 52-59, for further discussions of conceptual confusions regarding trafficking.

<sup>108</sup> Sex Trafficking Fact Sheet, U.S. Dep't of Health & Hum. Servs., [http://www.acf.hhs.gov/sites/default/files/orr/fact\\_sheet\\_sex\\_trafficking.pdf](http://www.acf.hhs.gov/sites/default/files/orr/fact_sheet_sex_trafficking.pdf) (last visited June 9, 2014).

<sup>109</sup> Is It Prostitution? Website Helps Female Students Pay Off Debts By Dating "Sugar Daddies", MailOnline (Aug 1, 2011, 7:00 AM), <http://www.dailymail.co.uk/news/article-2021003/Is-prostitution-Sugar-daddy-dating-site-accused-targeting-debt-laden-college-students.html>.

<sup>110</sup> See id.

<sup>111</sup> What's an Arrangement?, SeekingArrangement, <https://www.seekingarrangement.com/arrangement.php> (last visited June 9, 2014).

<sup>112</sup> Id.

<sup>113</sup> See Dana DiFilippo & Phillip Lucas, Dirty Dancing: Strippers Bring Prostitution, Violence, Cops Say (Mar. 28, 2012), Philly.com, [http://www.philly.com/philly/news/20120328\\_Dirty\\_Dancing\\_\\_Strippers\\_bring\\_prostitution\\_\\_violence\\_\\_cops\\_say.html](http://www.philly.com/philly/news/20120328_Dirty_Dancing__Strippers_bring_prostitution__violence__cops_say.html).



Live video technology enables johns to obtain prostitution online that is indistinguishable from filmed sexual assaults of children and trafficking. Writing in 2004, Peter Landesman described the evolving sameness of Internet pornography, prostitution, trafficking, and slavery:

Immigration and Customs Enforcement agents at the Cyber Crimes Center in Fairfax, Va., are ... tracking a clear spike in the demand for harder-core pornography on the Internet... Cybernetworks like KaZaA and Morpheus through which you can download and trade images and videos - have become the Mexican border of virtual sexual exploitation... [A website selling sex slaves showed] [\*1061] thumbnail images of young women of every ethnicity in obvious distress, bound, gagged, contorted. The agents in the room pointed out probable injuries from torture. Cyberauctions for some of the women were in progress; one had exceeded \$ 300,000. "With new Internet technology," [ICE Special Agent Perry] Woo said, "pornography is becoming more pervasive. With Web cams we're seeing more live molestation of children." <sup>142</sup>

## V. Origins of Online Prostitution

Beginning with websites <sup>143</sup> and email, online technologies have enabled pimps to sell women in prostitution by using new forms of sexual exploitation. Bulletin boards were used to download pornography in the 1970s before the advent of the Internet. The use of credit card payments was pioneered by bulletin board pornographers. <sup>144</sup> Since 1990 pagers and cell phones have been used as the principal technology for escort or call girl prostitution. <sup>145</sup> A pimp who advertised men and women for sale for sex explained that the online sex trafficking industry was constantly evolving and regrouping, "before Craigslist, there was Yahoo Groups; before Yahoo there was AOL." <sup>146</sup> Next came live video chat, web cam prostitution, and message boards.

With the development of Netscape's Web browser in 1994, transmission of Web pages with text, images, sounds, and video made it possible to traffic women on the World Wide Web. "The first web-based prostitution business, A Personal Touch Services, from Seattle, WA, U.S.A., appeared in late September, 1994" and was described as the year's "most significant Internet marketing innovation." <sup>147</sup> The Internet Business Journal's endorsement of the

<sup>114</sup> See Sealed Indictment, *United States v. Marino*, No. 1:09-cr-01243-LAK (S.D.N.Y. Apr. 19, 2010).

<sup>115</sup> DiFilippo & Lucas, *supra* note 113.

<sup>116</sup> For example, Sapphire's in Las Vegas offers free transportation if payment is made in advance online. See Sapphire, <http://www.sapphirelasvegas.com> (last visited June 9, 2014).

<sup>117</sup> See *United States v. Davis*, No. 3:07-cr-11 (JCH), 2008 U.S. Dist. LEXIS 99802, at 1-2 (D. Conn. Nov. 26, 2008).

<sup>118</sup> *United States v. Davis*, Case No. 3:07cr11, Grand Jury B-06-1, at 1-23 (D. CT), available at <http://www.scribd.com/doc/48989066/Corey-Davis-Indictment> (last visited June 14, 2014) [hereinafter *Davis Indictment*]. The strip clubs were named Pleasant Moments and Bishop's Corner Cafe. *Id.* at 5, 7.

<sup>119</sup> See *id.* at 4.

<sup>120</sup> Undercover Operation at Gentleman's Clubs Yields 9 Arrests, WMBF News (Oct. 15, 2012), <http://www.wmbfnews.com/story/15132069/undercover-operation-at-gentlemans-clubs-yields-9-arrests>.

<sup>121</sup> South 13 Gentlemans Club of Greenville NC - 34, Backpage.com (Apr. 28, 2011), <http://myrtlebeach.backpage.com/Strippers/south-13-gentlemans-club-of-greenville-nc-34/3997007>.

<sup>122</sup> *Id.*

<sup>123</sup> Victor Malarek, *The Johns: Sex for Sale and the Men Who Buy It* 253 (2009).

<sup>124</sup> Catharine A. MacKinnon, *Pornography as Trafficking*, 26 *Mich. J. Int'l L.* 993, 993 (2005).

<sup>125</sup> Wang Qingchu, *Biggest Chinese Porn Site Busted by Police in China and US*, *ShanghaiDaily.com* (Aug. 25, 2011), <http://www.shanghaidaily.com/national/Biggest-Chinese-porn-site-busted-by-police-in-China-and-US/shdaily.shtml>.

<sup>126</sup> *Id.*

<sup>127</sup> Clarke, *supra* note 28, at 151-54.

**[\*1062]** sex industry's marketing approach "was an early indication of the mutually beneficial relationship between" web technology businesses and sex trafficking industries. <sup>148</sup>

Sex industry entrepreneurs developed the ability to "pagejack" web urls by 1999. <sup>149</sup> In this process, when a web user enters a web address, a criminal has rewritten the html code (usually by one character) and inserted it into, for example, a skateboard video website. When the user attempts to go to the website a hardcore pornography site pops up instead. Often, it is impossible to backtrack and the browser must be shut down to exit the pornography site. While incurring the wrath of some, this method generates enough new customers that sex industry web developers continue to use it. <sup>150</sup>

Today, cell phones permit web browsing of prostitution websites and applications bring the sex buyer in more contact with the pimp and the woman being sold. A 2011 iPhone application advertised "SugarSugar.com is for generous men looking to spoil, and dynamic women looking for financial support with bills, or who just need some excitement in life! ... SugarSugar.com ... provides a staff of sugar dating experts to help you find the perfect mutually beneficial arrangement." <sup>151</sup>

## VI. Sex Buyers', Traffickers', and Pimps' Use of the Internet

### A. Social Networking Sites

Social networking websites allow users to create a personal profile that they share with friends, other users, or the public at large. Social networking site users stay in touch with existing friends but also bring online acquaintances into the real world for in-person meetings, <sup>152</sup> thereby providing an opportunity for traffickers to use the Internet for recruitment to prostitution. **[\*1063]** Pimps brag about using these sites to traffic women and children. "It's Y2K pimpin," wrote a pimp in an online chat log seized by police. <sup>153</sup> A pimp sentenced in 2010 for trafficking children into prostitution had initially contacted and then recruited them on MySpace. <sup>154</sup> A U.K. pimp used MySpace to recruit women for an escort prostitution agency and created new profiles if the more blatant advertisements for

<sup>128</sup> Maggie Easter, Sex Trafficking and the Internet, *Urbanette Magazine*, <http://www.urbanette.com/sex-trafficking-and-the-internet/> (last visited June 14, 2014).

<sup>129</sup> See, e.g., Tom Haydon, Old Bridge Man Charged with Showing Porn to 14-Year-Old Boy, Offering to Pay for Sex, *NJ.com* (Feb. 10, 2011, 5:01 PM), [http://www.nj.com/news/index.ssf/2011/02/old\\_bridge\\_man\\_charged\\_with\\_sh.html](http://www.nj.com/news/index.ssf/2011/02/old_bridge_man_charged_with_sh.html).

<sup>130</sup> Farley, *What We Must Not Know*, *supra* note 106, at 127.

<sup>131</sup> *Id.* at 127-28 (quoting Farley, *supra* note 91, at 147).

<sup>132</sup> Catharine A. MacKinnon, *Sex Equality* 1524 (2001).

<sup>133</sup> Thomas Zambito, 2 Plead Guilty in 13M Prosty Ring, *N.Y. Daily News* (Jan. 7, 2006, 12:00 AM), <http://www.nydailynews.com/archives/news/2-plead-guilty-13m-prosty-ring-article-1.627326>.

<sup>134</sup> Giving the Customer What He Wants, *Economist* (Feb. 12, 1998), <http://www.economist.com/node/113208> (reporting that pornographers and pimps pay women much less for excruciating and/or humiliating sex acts when economies are in dire straits).

<sup>135</sup> See, e.g., Akiyuki Nozaka, *The Pornographers* (Michael Gallagher trans., Alfred A. Knopf, Inc., 1968) (telling the story of threats against a pornographer by thieves, the government, and his family).

<sup>136</sup> Robert Jensen, The Paradox of Pornography, *OpEdNews* (Feb. 1, 2006, 7:55 AM), [http://www.opednews.com/articles/opedne\\_robert\\_j\\_060201\\_the\\_paradox\\_of\\_porno.htm](http://www.opednews.com/articles/opedne_robert_j_060201_the_paradox_of_porno.htm) (internal quotation marks omitted).

<sup>137</sup> Kathryn Hausbeck & Barbara G. Brents, Inside Nevada's Brothel Industry, in *Sex for Sale: Prostitution, Pornography, and the Sex Industry* 217, 237 (Ronald Weitzer ed., 2000).

<sup>138</sup> Stripclubnetwork.com, <http://tour.stripclubnetwork.com/> (last visited Feb. 22, 2014).

<sup>139</sup> Mark Jacobson, The \$ 2,000 an-Hour Woman, *N.Y. Mag.*, <http://nymag.com/nymetro/nightlife/sex/features/12193/> (last visited June 14, 2014).

<sup>140</sup> Conversation with Two Las Vegas Police Department Vice Detectives, (June 29, 2005) (on file with the author).

prostitution were deleted. <sup>155</sup> Pimps easily recruit via Facebook as well. For example, a woman was arrested in Jakarta on suspicion of running a prostitution business involving seven junior high school girls, who had been recruited and then sold on Facebook. <sup>156</sup> Such comments serve as a document of illegal use of the Internet, enabling discovery of evidence for prosecution.

About half of all Internet users are estimated to be using social media sites. <sup>157</sup> MySpace and Facebook, the two largest social networking Internet sites promote casual, anonymous social interactions. Facebook was developed in 2004 for college students but soon expanded to include high school students and the general public. <sup>158</sup> In December 2010 MySpace had 50 million U.S. visitors and Facebook had 153.9 million U.S. visitors. <sup>159</sup> Globally, Facebook had 500 million users by mid-2010 - if it were a country, Facebook "would be the third most populous nation in the world after China and India." <sup>160</sup> Facebook easily accommodated advertisements for prostitution. In a 2011 survey, 83% of prostituted women in New York City had a Facebook page <sup>161</sup> despite the Facebook advertising and safety policies prohibiting "ads for adult friend finders or **[\*1064]** dating sites with a sexual emphasis." <sup>162</sup> When teen users of Facebook began to exit for Twitter, Facebook loosened restrictions to protect minors from advertiser - and pimp - manipulation, granting thirteen to seventeen year olds the ability to post not just to friends but to everyone, becoming "fresh meat for marketers" in the words of one analyst. <sup>163</sup> In 2013, Twitter did not respond to complaints about increased prostitution advertising. <sup>164</sup>

The number of users of MySpace dramatically increased after minors were permitted to join the site as members. <sup>165</sup> Public concerns then grew about the site's facilitation of adult/minor sexual interactions, leading to legal complaints about potential abuse. <sup>166</sup> There have been both successes and setbacks in challenging trafficking of women and children via social networking sites. A victim from Texas sued MySpace after she was raped by a man she had met on the social networking site. <sup>167</sup> A group of child victims who had been contacted by and engaged with predators online sued MySpace for not protecting underage members. <sup>168</sup> Both cases were dismissed based on the Communications Decency Act (CDA) which protects Internet service providers from some forms of liability for third party actions. <sup>169</sup> The CDA does not provide **[\*1065]** immunity from prosecution in all cases, for example

<sup>141</sup> Id.

<sup>142</sup> Peter Landesman, The Girls Next Door, N.Y. Times (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html>.

<sup>143</sup> xxx" domains went on sale in 2011, however, there were already numerous platforms where pimps could sell women in prostitution. See Website Names Ending in .xxx Go on Sale, cbcnews (Dec. 6, 2011, 12:55 PM), <http://www.cbc.ca/news/canada/ottawa/story/2011/12/06/technology-xxx-domain-names.html?cmp=rss>.

<sup>144</sup> Perdue, supra note 17, at 117-20.

<sup>145</sup> James F. Quinn & Craig J. Forsyth, Describing Sexual Behavior in the Era of the Internet: A Typology for Empirical Research, 26 Deviant Behav. 191, 197 (2005).

<sup>146</sup> Jessie Pounds, Craigslist Is Hotbed of Online Prostitution: Crackdown in Progress; Sellers, Clients Trying to Stay a Step Ahead, knoxnews.com (Oct. 5, 2008, 12:00 AM), <http://www.knoxnews.com/news/2008/oct/05/craigslist-is-hotbed-of-online-prostitution/> (internal quotation marks omitted).

<sup>147</sup> Donna M. Hughes, The Internet and Sex Industries: Partners in Global Sexual Exploitation, Tech & Soc'y Mag. (2000), available at <http://www.uri.edu/artsci/wms/hughes/siii.htm>.

<sup>148</sup> Donna M. Hughes, Prostitution Online, in Prostitution, Trafficking, and Traumatic Stress, supra note 69, at 115, 117.

<sup>149</sup> Perdue, supra note 17, at 97.

<sup>150</sup> See id. at 99.

<sup>151</sup> SugarSugar, <http://www.sugarsugar.com>; see also Stephen J. Vaughan-Nichols, Hire a Hooker? There's an App for That, ZDNet (May 11, 2011, 11:00 AM) <http://www.zdnet.com/blog/networking/hire-a-hooker-theres-an-app-for-that/1040>.

where the website operator fails to act after being warned that illegal content is present<sup>170</sup> or in cases where website operators contributed to the creation or development of injurious or tortious content.<sup>171</sup> Pressure from states' Attorneys General led to the removal by MySpace of 90,000 sex offenders from its site in 2009.<sup>172</sup> MySpace pursued various approaches in 2008 meant to protect children, including enhanced parent controls, faster response time to complaints about inappropriate content, and increased privacy settings for users under age sixteen.<sup>173</sup>

In 2009 Cooke County Sheriff Dart sued Craigslist alleging liability for the costs of law enforcement, providing substantial evidence that the site was being used to facilitate prostitution of child and adult victims and that it was a public nuisance.<sup>174</sup> An Illinois court dismissed the case.<sup>175</sup> Questions regarding website operators' invocations of CDA immunity nonetheless remain. At what point does tolerance of criminally illegal activity, content or misuse of a website constitute "encouraging" that illegal conduct, as in the Jones<sup>176</sup> and Roommates<sup>177</sup> cases; and at what point do [\*1066] website operators become liable for violating state criminal laws that are not preempted by the CDA? While the prostitution and public nuisance laws in Dart may not have been sufficient in Illinois, other states' laws may be broader and more effective. The equitable defenses against the CDA also remain untested but are applicable in cases of women trafficked for prostitution. The doctrine of "unclean hands" for the bad faith conduct of certain website operators would challenge CDA immunity from liability. CDA immunity should not benefit those who participate in or knowingly tolerate criminal attacks against persons trafficked for prostitution.<sup>178</sup> When do online advertisers become virtual traffickers?

In other attempts to block Internet crimes against teens, the Japanese government experimented with blocking social networking sites for users under eighteen, but the results of this policy are unclear.<sup>179</sup> Public pressure has been aimed at online classifieds, urging them to shut down their variously named prostitution advertising.<sup>180</sup>

## B. Message Boards

<sup>152</sup> Danah M. Boyd & Nicole B. Ellison, Social Network Sites: Definition, History, and Scholarship, 13 J. Computer-Mediated Comm. 210, 221 (2008); M. Alexis Kennedy & Melanie A. Taylor, Online Harassment and Victimization of College Students, 7 Just. Pol'y J., Spring 2010, at 1, 9.

<sup>153</sup> Kevin Poulsen, Pimps Go Online to Lure Kids into Prostitution, Wired (Feb. 25, 2009, 8:30 PM), <http://www.wired.com/threatlevel/2009/02/pimping/> (internal quotation marks omitted).

<sup>154</sup> Press Release, FBI, L.A. Div., Man Pleads Guilty and Is Sentenced to 17 1/2 Years in Fed. Prison for Sex Trafficking of Minors (June 10, 2010), available at <http://www.fbi.gov/losangeles/press-releases/2010/la061010.htm>.

<sup>155</sup> Helen Croydon, Undercover with the Escorts Trying to Recruit Through MySpace, Mirror (Mar. 25, 2009), <http://www.mirror.co.uk/news/technology-science/technology/undercover-with-the-escorts-trying-to-recruit-through-384307>.

<sup>156</sup> Woman Arrested for Running Prostitution Ring Through Facebook, Jakarta Post (Jan. 19, 2011, 4:43 PM), <http://www.thejakartapost.com/news/2011/01/19/man-arrested-running-prostitution-ring-through-facebook.html>.

<sup>157</sup> The Rise of Social Networking, ITU News, July-Aug. 2010, available at <http://www.itu.int/net/itunews/issues/2010/06/35.aspx>.

<sup>158</sup> Boyd & Ellison, *supra* note 152, at 218.

<sup>159</sup> comScore, A Recap of the Year in Digital Media 11-12 (2011).

<sup>160</sup> The Rise of Social Networking, *supra* note 157.

<sup>161</sup> Sudhir Venkatesh, How Tech Tools Transformed New York's Sex Trade, Wired (Jan. 31, 2011, 12:00 PM), [http://www.wired.com/2011/01/ff\\_sextrade/all/1](http://www.wired.com/2011/01/ff_sextrade/all/1).

<sup>162</sup> Facebook Advertising Guidelines, Facebook, [http://www.facebook.com/ad\\_guidelines.php](http://www.facebook.com/ad_guidelines.php) (last updated June 4, 2014).

<sup>163</sup> See Helen A.S. Popkin, Facebook Offers Public Posting for Teens ... and Fresh Meat for Marketers, NBCNews (Oct. 17, 2013, 6:48 PM), <http://www.nbcnews.com/technology/facebook-offers-public-posting-teens-fresh-meat-marketers-8C11414020>.

<sup>164</sup> See Facebook and Twitter Battle to Rid Themselves of Ads for Prostitutes, Bus. Insider (Jan. 13, 2013, 8:39 AM), <http://www.businessinsider.com/facebook-and-twitter-battle-to-rid-themselves-of-ads-for-prostitutes-2013-1>.

There is seamless communication between pimps and sex buyers, ensuring delivery of women to the men who want to buy them. Increasing numbers of online sex buyer communities support predatory behaviors and exchange information regarding where and how women can be bought.<sup>181</sup> The Internet facilitates communication between sellers (pimps and traffickers) and sex buyers (johns), enabling pimps and traffickers to respond rapidly to [\*1067] men's demand for purchased sex. By enabling men to evade arrest for soliciting prostitution since they can remain hidden, indoors, and anonymous, the Internet is sex buyer-friendly.<sup>182</sup> Its anonymity has created a private environment in which it is possible to engage in prostitution with a lower risk of arrest, fewer legal penalties, and less public exposure.

With private messaging, warnings about police undercover agents and stings can be broadcast to brother johns.<sup>183</sup> Atlanta sex buyers for example discussed their awareness of law enforcement's infiltration of online conversations in their forum:

GreekFan: We have always known LE looks at this Board and others. But as indicated, talk is not illegal. Only trusted mongers and PM [private messaging] gets the job done. Watch your back people, always. There is no substitute for that.

Blazer: for all you newbies, elly<sup>184</sup> monitors and POSTS to this board so watch yo' six. They usually ask dumbass questions that make it obvious that they are elly in the first place, like, can you tell me where to go to monger in Cobb, I mean names and numbers please, or \*\*\*\* like that. The danger is ever present, however, and we must stay aware.<sup>185</sup>

Sex trafficking industry businesses such as Room Service provide background checks that help sex buyers avoid arrest for prostitution.<sup>186</sup> A customer can pay a fee to have a background check run.<sup>187</sup> Then when the sex buyer contacts a prostituting woman, he can provide access to his background check that is now anonymous. This arrangement allows women in prostitution to screen out undercover police officers while enabling sex buyers to avoid blackmail that might be possible if a woman had his personal information.<sup>188</sup>

<sup>165</sup> See Tamyra A. Pierce, Talking to Strangers on MySpace: Teens' Use of Internet Social Networking Sites, Calstatela.edu (Nov. 7, 2006), <http://web.calstatela.edu/faculty/sfisco/myspace.htm>.

<sup>166</sup> See generally Joseph Menn & Jessica Guynn, Facebook Agrees to Shield Minors, L.A. Times, Oct. 17, 2007, at C3 (describing an investigation conducted by New York Attorney General Cuomo to capture Facebook's response to online harassment and abuse of children); Pierce, supra note 165 (suggesting that social networking sites facilitate adult/minor sexualized interactions because they foster anonymity).

<sup>167</sup> Eric Bangeman, MySpace Sued in Wake of Sexual Assault, Ars Technica (June 20, 2006, 4:58 PM), <http://arstechnica.com/uncategorized/2006/06/7096-2/>.

<sup>168</sup> Bobbie Johnson, Child Sex Victims Sue MySpace, Guardian (Jan 19, 2007), <http://www.guardian.co.uk/technology/2007/jan/20/news.usnews>.

<sup>169</sup> Communications Decency Act of 1996, 47 U.S.C. § 230(c)(1) (2012). The CDA has sometimes functioned as an obstacle to effective prosecution of website operators such as Craigslist, Backpage, and MySpace. First signed into law in 1996, the purpose of the CDA was to incentivize the development of blocking and filtering technologies. 47 U.S.C. § 230(b)(4). Section 230(c)(1) of the CDA asserts that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230 (c)(1). The CDA has sometimes been interpreted by the courts to provide broad immunity to website operators from defamation arising from third party content. See, e.g., Dart v. Craigslist, Inc., 665 F. Supp. 2d 961, 965-66 (N.D. Ill. 2009). Defining protected speech, as distinct from hate speech or speech advocating criminal activity, is a discussion with critical implications for the safety of women, generally. Websites and social media promoting prostitution are not the only source of likely harms to women. The stalking and predation that occur on sites like Reddit and CreepShots fetishize women's inability to consent. Marinda Valenti, CreepShots: Are You Being Creeped On?, Ms. Mag. Blog (June 12, 2013), <http://msmagazine.com/blog/2013/06/12/creepshots-are-you-being-creeped-on/>. Surreptitious photos of women are taken by using what the site advertises as "stealth, cunning and deviousness to capture the beauty of your unsuspecting, chosen target." Id. For another discussion of the tensions between men's speech and women's safety, see Jenna Wortham, When the Web's Chaos Takes an Ugly Turn, N.Y. Times, Oct. 21, 2012, at BU3.

Two cases illustrate sex buyers' use of the Internet to locate women and evade arrest. Southwest Companions, a members-only website and chatboard, had 1400 members including many professors and a former University of New Mexico president who [\*1068] served as leader of the site's "Hunt Club."<sup>189</sup> His job, in effect online pimping, was to recruit women in prostitution to travel to the Albuquerque/Santa Fe area.<sup>190</sup> According to reports, the website featured the ability to share information with other johns about police stings, to provide "physical descriptions and cell phone numbers of undercover police to help members avoid arrest."<sup>191</sup> The Southwest Companions website provided training videos on what to do if arrested for prostitution and posted sex buyers' evaluations of women's prostitution performances, including prices and rankings of the women.<sup>192</sup> Several of the arrested men were charged with promoting prostitution, conspiracy, and tampering with evidence.<sup>193</sup> Charges against the men running the Southwest Companions online prostitution ring were dismissed by a judge who ruled that the website was not physically a brothel,<sup>194</sup> illustrating the challenge of applying laws that were written before the Internet was invented. "'Sometimes states' laws are too specific and were written years ago, long before the Internet,' said Scott Cunningham, a Baylor University economics professor who has written about technology and prostitution. 'That's why we are seeing some successful challenges to laws when websites are involved.'"<sup>195</sup>

The Minnesota Nice Guys, a self-named sex buyer group, was organized by a pimp who was a former assistant county attorney.<sup>196</sup> The pimp received high ratings on Theeroticreview (TER), a sex buyers' message board, for providing attractive and compliant women to sex buyers, often trafficking undocumented [\*1069] immigrants.<sup>197</sup> The attorney/pimp was charged with 6 felony counts of promoting prostitution.<sup>198</sup> Although the pimp admitted weakness of character, the judge seemed to empathize with his "medical fragility" and sentenced him only to probation.<sup>199</sup>

Global communications forums on the Internet provide an anonymous social support network for predatory men to share their experiences, legitimize their behaviors, and mentor inexperienced sex buyers. The Internet plays a crucial role in validating the norms, cultures, and beliefs of the sex buyers' subculture. A language that normalizes sexual predation is developed in online chat rooms and bulletin boards. Because of the stigma of the words johns or tricks, online sex buyers refer to themselves as mongers, trolls, or hobbyists.<sup>200</sup>

<sup>170</sup> See 47 U.S.C. § 230 (2012); Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008); Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

<sup>171</sup> Fair Hous. Council v. Roommates.com, LLC, 521 F.3d 1157, 1174 (9th Cir. 2008) (holding that CDA immunity does not protect website operators who "directly participate[] in developing" illegal content); Jones v. Dirty World Entm't Recordings, LLC, 766 F. Supp. 2d 828, 836 (E.D. Ky. 2011) ("The immunity afforded by the CDA is not absolute and may be forfeited if the site owner invites the posting of illegal materials or makes actionable postings itself.").

<sup>172</sup> Marlon A. Walker, MySpace Removes 90,000 Sex Offenders, NBCNews.com (Feb. 3, 2009, 10:02 PM), [http://www.nbcnews.com/id/28999365/ns/technology\\_and\\_science-security/t/myspace-removes-sex-offenders/#.U5yOJXb-lcs](http://www.nbcnews.com/id/28999365/ns/technology_and_science-security/t/myspace-removes-sex-offenders/#.U5yOJXb-lcs).

<sup>173</sup> See Emma Henry, MySpace Agrees Child Protection Measures, Telegraph (Jan. 15, 2008, 10:45 AM), <http://www.telegraph.co.uk/news/uknews/1575635/MySpace-agrees-child-protection-measures.html>.

<sup>174</sup> Dart, 665 F. Supp. 2d at 961, 962-63.

<sup>175</sup> Id. at 970.

<sup>176</sup> See generally Jones, 766 F. Supp. 2d at 830-31 (describing the defamatory posts made on the defendant's website).

<sup>177</sup> See generally Fair Hous. Council v. Roommates.com, LLC, 521 F.3d 1157, 1161-62 (9th Cir. 2008) (describing the creation of subscriber profiles on a website allegedly used to match compatible roommates).

<sup>178</sup> Michael Dolce, Esq. who practices law in West Palm Beach, Florida provided this discussion of possible challenges to CDA immunity.

<sup>179</sup> Nick Farrell, Japanese Teens Barred from Social Networking, ITEXaminer.com (Feb 2, 2009, 6:22 AM), <http://www.itexaminer.com/japanese-teens-barred-from-social-networking.aspx>.

<sup>180</sup> Press Release, Robert E. Cooper, Jr., Tennessee Attorney Gen., Attorneys General Urge Backpage.com to Do More to Combat Sex Trafficking Through its Classified Ads (Aug. 31, 2011), available at

While allegedly serving as community discussion forums, message boards aimed at sex buyers ("hobbyists") and women in prostitution ("providers") are in fact sites where reviews of women in prostitution occur and where prostitution is facilitated.<sup>201</sup> Buyers post judgmental, often nasty reviews of women that pressure the women to act as if they enjoy the rape-like sex of prostitution.<sup>202</sup> Consequences from negative message board reviews are rapid and usually result in decreased earnings.<sup>203</sup> The message board rating system in effect coerces women to perform sex acts that they would prefer not to so that they can obtain good ratings and thereby maintain an income amount that is frequently set by pimps.<sup>204</sup> The [\*1070] women who perform acts of prostitution in such a way that they convince sex buyers they truly enjoy the sex of prostitution, or who permit the buyer to rationalize his behavior, are praised as providing a "Girlfriend Experience."<sup>205</sup> Research findings suggest that a surprisingly high number of sex buyers actually believe that women enjoy the sex of prostitution.<sup>206</sup> In a study of 110 Scottish sex buyers, 49% believed that women in prostitution were sexually satisfied with sex with johns more than half of the time.<sup>207</sup>

Discussion forums such as theeroticreview (TER) and bigdoggie groom men to buy sex.<sup>208</sup> These misogynist sites help sex buyers locate women and teach them how to relentlessly bargain down prices when they buy sex.<sup>209</sup> Reflecting a mistrust of women in prostitution, the men who control TER describe its message board system as

the section where the guys get to review providers who advertise on the web. You can now know exactly what to expect before you make the call and spend your hard earned money. The bonus is that the opinions expressed are real and not sent in by the adult entertainers themselves. It's about time!<sup>210</sup>

In August 2008 there were more than 500,000 reviews of 94,000 women in prostitution on TER.<sup>211</sup> Among other topics, TER offers discussion forums on how to buy sex from pornography actresses, legal concerns, and a special forum for sex buyers over age sixty.<sup>212</sup>

[\*1071] The message boards facilitate the racist and sexist objectification of women in prostitution. Women are referred to as SWs [sex workers] and are almost always defined by ethnicity.<sup>213</sup> For example, "a week & 1/2 ago I

<http://www.tn.gov/attorneygeneral/press/2011/pr11-26.pdf>; *Craigslist Shuts Down Adult Services Section*, Fox News (Sept. 4, 2010), <http://www.foxnews.com/scitech/2010/09/04/craigslist-shuts-adult-services-section/>.

<sup>181</sup> Sven-Axel Mannson, *Men's Practices in Prostitution and Their Implications for Social Work*, ProCon.org, <http://prostitution.procon.org/sourcefiles/mens-practices-in-prostitution-and-their-implications-for-social-work.pdf> (last visited June 14, 2014).

<sup>182</sup> Angie Jackson, *Prostitution: Internet Classifieds Create Element of Secrecy, Challenge for Grand Rapids Police*, MLive (Nov. 17, 2013, 11:28 AM), <http://www.mlive.com/news/grand-rapids/index.ssf/2013/11/internet.html>.

<sup>183</sup> Blevins & Holt, *supra* note 18, at 627.

<sup>184</sup> In this excerpt, "elly" refers to law enforcement.

<sup>185</sup> Blevins & Holt, *supra* note 18, at 627 (alterations in original).

<sup>186</sup> See *RoomService2000*, <http://www.roomservice2000.com/> (last visited June 14, 2014).

<sup>187</sup> See *id.*

<sup>188</sup> See *id.*

<sup>189</sup> Jeri Clausing, *F. Chris Garcia, Former University of New Mexico President, Arrested in Connection with Prostitution Website*, Huffington Post (June 23, 2011, 10:32 PM), [http://www.huffingtonpost.com/2011/06/23/f-chris-garcia-former-uni\\_n\\_883238.html](http://www.huffingtonpost.com/2011/06/23/f-chris-garcia-former-uni_n_883238.html); Russell Contreras, *F. Chris Garcia, Former University of New Mexico President, Cleared of Criminal Charges Concerning 'Southwest Companions'*, Huffington Post (June 20, 2012, 7:41 PM), [http://www.huffingtonpost.com/2012/06/20/f-chris-garcia-prostitution-ring\\_n\\_1613009.html](http://www.huffingtonpost.com/2012/06/20/f-chris-garcia-prostitution-ring_n_1613009.html).

<sup>190</sup> Michel Santo, *Professors Arrested for Running Escort Service for 'Esteemed' Men*, Examiner.com (June 24, 2011), <http://www.examiner.com/article/professors-arrested-for-running-escort-service-for-esteemed-men>.

<sup>191</sup> Jeri Clausing, *Police: Profs Ran Site for 'Esteemed' Men to Get Sex*, naplesnews.com (June 24, 2011, 9:21 PM), <http://www.naplesnews.com/news/2011/jun/24/albuquerque-william-roseman-police/>.

was driving by 111th & saw 5 SW's. 3 BSW's & 1 WSW & 1 LSW." <sup>214</sup> Men use the term "mileage" to refer to women whose appearances reflect the damage inflicted on them by men who use them for sex. <sup>215</sup> "High mileage" means that women are older or unattractive. <sup>216</sup> A woman spoke about sex buyers who obsessively evaluate the sexual performance of every woman used in prostitution in special anticipation of writing about her for other men: "He's the type of john I religiously steer away from, and that's largely due to his immersion in review board "culture." <sup>217</sup> What is it about "message board culture" that women in prostitution dislike?

TER reviews are primarily based on [sexual] performance ... and appearance ... . You, as a provider, are dehumanized. TER hobbyists, feeding on these reviews, see you as less than human. They are looking for 5-star blowjobs and model looks, rather than a human being with a personality. Instead of respecting your limits and preferences, they expect you to give them what it says you provided someone else in your last review. <sup>218</sup>

Described by another pimp as "the most influential man in the prostitution business in America," <sup>219</sup> CEO of TER Dave Elms and other sex buyers have been accused of using the threat of poor ratings to extort sex acts, perform unsafe sex, or decrease prices. <sup>220</sup> Elms, who founded TER in 1999 with the goal of empowering sex buyers, has been accused of bribery and rape. <sup>221</sup> TER was acquired in 2004 by Treehouse Park, a company that currently operates out **[\*1072]** of the Netherlands - reflecting the global nature of the sex trafficking industry. <sup>222</sup>

Sex buyers' posts promote the prostitution of the women as they lobby for their favorites. <sup>223</sup> Yet there has been resistance to the selling of women on message boards. <sup>224</sup> A British member of Parliament asked California's Governor in 2009 to shut down the US-owned punternet website that permits men to rate British women in prostitution. <sup>225</sup> While message boards are used to thwart law enforcement efforts with posts about where police stings are occurring and suggestions about how to avoid law enforcement actions, <sup>226</sup> at the same time, message boards can be used to monitor and prosecute criminal activity. The information on these sites can provide intelligence for police officers investigating prostitution and trafficking. <sup>227</sup> Message boards and online classifieds have provided **[\*1073]** an opportunity for sting operations. <sup>228</sup> Online john community sites such as TER can deter

<sup>192</sup> Id.

<sup>193</sup> Id.

<sup>194</sup> Russell Contreras, F. Chris Garcia and David Flory Cleared in Online Prostitution Case, Experts Say Laws Out of Date, Huffington Post (Aug. 19, 2012, 3:13 PM), [http://www.huffingtonpost.com/2012/08/20/f-chris-garcia-david-flory-online-prostitution-\\_n\\_1810147.html](http://www.huffingtonpost.com/2012/08/20/f-chris-garcia-david-flory-online-prostitution-_n_1810147.html).

<sup>195</sup> Id.

<sup>196</sup> David Chanen, Cops Bust "Nice Guys" Sex Ring, Star Trib. (Minneapolis), June 7, 2009, at 1A.

<sup>197</sup> Id.

<sup>198</sup> David Chanen, Charges Filed in "Nice Guys" Sex Ring, Star Trib. (Minneapolis), July 30, 2010, at 1A.

<sup>199</sup> Debra Cassens Weiss, Ex-County Attorney Gets Probation for Role in "Nice Guy" Prostitution Ring, A.B.A. J. (Jan. 21, 2011, 10:23 AM), [http://www.abajournal.com/news/article/ex-county\\_attorney\\_gets\\_probation\\_for\\_role\\_in\\_nice\\_guy\\_prostitution\\_ring](http://www.abajournal.com/news/article/ex-county_attorney_gets_probation_for_role_in_nice_guy_prostitution_ring). The lead pimp, John Paul St. Marie, who pled guilty to three felonies and was granted probation appears to be a white man. See Emily Gurnon, Former Assistant Hennepin County Attorney and "Nice-Guy" Prostitution Broker Re-Arrested, Pioneer Press (May 7, 2012, 11:01 PM), [http://www.twincities.com/ci\\_20566169/former-assistant-hennepin-county-attorney-arrested-prostitution-charge](http://www.twincities.com/ci_20566169/former-assistant-hennepin-county-attorney-arrested-prostitution-charge). One wonders if a young black pimp who pled guilty to three felonies would be granted probation due to his medical problems as was Mr. St. Marie.

<sup>200</sup> See Blevins & Holt, *supra* note 18, at 626.

<sup>201</sup> See *id.* at 627, 630.

<sup>202</sup> See generally Melissa Farley et al., Attitudes and Social Characteristics of Men Who Buy Sex in Scotland, 3 Psychol. Trauma: Theory, Res., Prac., & Pol'y 369, 375 (2011) (explaining that some men who use women in prostitution want to control and dominate women, attitudes that are visible in reviews posted on many of the sites).



prostitution and trafficking when police monitoring of the site is publicized with posted messages such as "Police are present." This would likely create fear among sex buyers and pimps who would flee the site. Public exposure has been documented as a deterrent to prostitution.<sup>229</sup> The Chicago Police Department website posts photos, names, addresses, and other information about those arrested for soliciting prostitution.<sup>230</sup> A similar website in Ohio which posted the photographs of men charged with soliciting prostitution was viewed more than 100,000 times in its first year.<sup>231</sup>

### C. Online Classified Advertising for Prostitution

Originally presenting itself as a community-oriented garage sale, Craigslist is an Internet site where people can post at no cost what they want to buy and sell.<sup>232</sup> Because posting a personal ad was free and because posts can be anonymous, the website developed into a primary site for prostitution advertising. With no questions asked, Craigslist set aside a significant portion of its website for sex buyers' and sex sellers' advertising.<sup>233</sup> This provided "an extraordinary opportunity for coordinating domestic and transnational sex trafficking."<sup>234</sup> The process of trafficking via online classifieds is stunningly simple: a cell phone and an ad on Craigslist (or other online prostitution sites) enables a pimp to set [\*1074] up a woman for sexual exploitation in exchange for cash.

After 2000, Craigslist and other online classifieds became virtual prostitution zones. In March 2005, Craigslist averaged 25,000 new ads in the United States every 10 days for "casual sex" and "erotic services" that were prostitution.<sup>235</sup> A 2007 study of 12,444 Las Vegas online classified advertisements found that 90% advertised escort prostitution.<sup>236</sup> Ethnicity was specified 92% of the time,<sup>237</sup> reflecting the importance to johns of choosing the race/ethnicity of the women to be used for sex. Photos were included in 96% of the posts.<sup>238</sup> A phone number was included in the ad 83% of the time.<sup>239</sup> Prostitution advertising on Craigslist included code words that imply domestic trafficking ("here for a short stay," "looking for an inexperienced girl"), or international trafficking (both Mexican and U.S. phone numbers given).<sup>240</sup> Other classified advertising websites promoting prostitution include Backpage, Eros, CityVibe, MyRedbook, and AdultSearch.<sup>241</sup> Spikes in online demand for [\*1075] purchased sex

<sup>203</sup> 1 Encyclopedia of Prostitution and Sex Work 228 (Melissa Hope Ditmore ed., 2006).

<sup>204</sup> Telephone Interview with Lauren Hersh, New York Director of Equality Now (Dec. 10, 2013). Sex buyers posting ratings of women on punternet.com in UK and myredbook comment, "Couldn't take a light spanking and complained about me pulling her hair. Told me I was rough. All I wanted to do was spread her legs in the missionary position and pound away. Kept pushing me back. I've had better and wouldn't return." Noting physical injuries as if he were grading meat, another noted, "Minor defects include: 5.0 cm. X 1 cm. horizontal cafe au lait patch above the right buttock, two stellate scars left deltoid (smallpox vaccinations), and a small nevus left medial breast." A third john observed, "Hurt face, but nice little body." All examples from PunterNet, <http://www.punternet.com/> (last visited June 14, 2014); MyRedBook, <http://www.myredbook.com/> (last visited June 14, 2014).

<sup>205</sup> See Blevins & Holt, *supra* note 18, at 635.

<sup>206</sup> See Farley, *supra* note 202, at 376.

<sup>207</sup> *Id.* at 371, 376.

<sup>208</sup> See The Erotic Review, <http://www.theeroticreview.com/main.asp> (last visited June 14, 2014).

<sup>209</sup> One john's need to subordinate women was reflected in his proud purchase of an airfare for \$ 1,000 to fly to Mexico or the Dominican Republic from the United States so that he could buy \$ 15 sex acts "at bargain rates" from desperately poor women.

<sup>210</sup> Reviews, The Erotic Review, <http://classic.theeroticreview.com/reviews/index.asp> (last visited June 14, 2014).

<sup>211</sup> Scott Cunningham & Todd D. Kendall, Prostitution 2.0: The Changing Face of Sex Work, 69 J. Urb. Econ. 273, 278 (2011).

<sup>212</sup> See TER General Boards, The Erotic Review, [http://www.theeroticreview.com/discussion\\_boards/vi ewmsg.asp?MessageID=358534&boardID=12&page](http://www.theeroticreview.com/discussion_boards/vi ewmsg.asp?MessageID=358534&boardID=12&page) (last visited June 14, 2014).

generally occur near or on military bases and at political conventions, electronics conventions, and sporting events.<sup>242</sup> During the 2008 United States political conventions online advertisements for prostitution peaked in the host cities.<sup>243</sup>

While Craigslist claimed to be a non-commercial site with a non-corporate culture of public service, in fact, the business was extremely lucrative for its owners.<sup>244</sup> In 2003, the site's earnings were estimated at \$ 7 million.<sup>245</sup> By 2010, Craigslist's earnings were estimated at \$ 122 million with approximately one-third of its revenue coming from prostitution advertising.<sup>246</sup> Backpage.com and five similar websites were estimated in February 2011 to generate annual revenue of \$ 37.3 million from the sale of ads for prostitution.<sup>247</sup> Village Voice Media, publisher of Backpage.com and 13 alternative weeklies in the United States, generated an estimated \$ 17.5 million in ads for escorts and adult services in 2010.<sup>248</sup> While smaller than Craigslist, Backpage has become the primary Internet prostitution advertiser since the closure of much of Craigslist's prostitution advertising.<sup>249</sup> A Seattle police officer estimated in 2011 that 80% of the young women his department investigated for prostitution were advertised on Backpage.<sup>250</sup> In 2013, 82% of the nearly \$ 45 million generated annually by online classifieds for prostitution (usually escort and bodyrub ads) was obtained by Backpage, the leading publisher of such ads.<sup>251</sup> Backpage averaged \$ 4.5 million a month in online classifieds, up **[\*1076]** 78% from the previous year, and 200% from two years previously.<sup>252</sup> Several other websites tracked by AIM Group (Eros.com, CityVibe.com, MyRedbook.com and AdultSearch.com) "generated \$ 5.3 million in May [2013], ... up 67% from \$ 3.2 million the same month in 2012."<sup>253</sup>

ErosGuide is a sex trafficking industry website offering a range of products using multiple web technologies.<sup>254</sup> Women place advertisements for prostitution describing themselves as escorts, pimps place advertisements selling women for sex, pornography can be downloaded or videos purchased, sex and fetish toys are sold, strip clubs and massage parlors can be located by zip code, and webcam pimps offer "live girls on home webcams with amateurs and housewives."<sup>255</sup> ErosGuide provides a range of webcam pornography and chat options for johns who can

<sup>213</sup> Scott Cunningham & Todd Kendall, Men in Transit and Prostitution: Using Political Conventions as a Natural Experiment, 11 B.E. J. Econ. Analysis & Pol'y 1 (2011), available at [http://business.baylor.edu/scott\\_cunningham/cunningham-and-kendall-2011.pdf](http://business.baylor.edu/scott_cunningham/cunningham-and-kendall-2011.pdf).

<sup>214</sup> Id.

<sup>215</sup> Id.

<sup>216</sup> Id.

<sup>217</sup> James Gartler, Chester Brown "Pays for It", Comic Book Resources (Aug. 8, 2011, 9:58 AM), <http://www.comicbookresources.com/?page=article&id=33769> (last updated Aug. 15, 2011, 11:12 AM).

<sup>218</sup> TER Hobbyist = Bad Customer, TER Sucks Blog (Nov. 15, 2006), <http://tersucks.blogspot.com>.

<sup>219</sup> Matt Richtel, Sex Trade Monitors a Key Figure's Woes, N.Y. Times, June 17, 2008, at A12.

<sup>220</sup> See Melissa Gira Grant, Online Critics Accuse TheEroticReview.com CEO Dave Elms of Rape, Gawker (May 12, 2008, 3:00 PM), <http://gawker.com/389612/online-critics-accuse-theeroticreviewcom-ceo-dave-elms-of-rape?tag=valleywag>.

<sup>221</sup> Id.

<sup>222</sup> The Erotic Review and David Elms Part Ways, EIN Presswire (Mar. 3, 2009) <http://www.einpresswire.com/article/56530882/the-erotic-review-and-david-elms-part-ways>. Elms has an extensive criminal history which is described here because he's not unique among online pimps. In 2006 Elms raped a woman at gunpoint. Richtel, supra note 219. He was arrested in 2008 on weapons and narcotics violations. Id. The police investigation of Elms evidenced that he had extorted sex from women reviewed on TER website in exchange for removing damaging reviews about them. Id. In 2009, Elms missed a court date, with charges pending for "conspiracy to commit aggravated assault, [and] various [felony] drugs and weapons charges." Ray Stern, "TheEroticReview.com" Founder, David Elms, on the Lam, Phoenix New Times (Mar. 18, 2009, 12:01 PM), [http://blogs.phoenixnewtimes.com/valleyfever/2009/03/theeroticreviewcom\\_founder\\_dav\\_1.php](http://blogs.phoenixnewtimes.com/valleyfever/2009/03/theeroticreviewcom_founder_dav_1.php). The charges for conspiracy to commit aggravated assault stemmed from February 15, 2009 when Elms met with undercover officers to contract for murdering two people. Rhett Pardon, TheEroticReview Founder Ordered to Pay \$ 20,000, XBIZ Newswire (July 19,

choose breast and buttocks size, hair color, skin color, and other sexualized physical features of women they use for sex. These can be seen clearly in their website options.<sup>256</sup> ErosGuide, Backpage and other sites with prostitution advertising usually offer forums where there is general social commentary by posters about romance, sex, and dating. The forums serve to legitimize both the website and the sex industry much as an article by Margaret Atwood or Ray Bradbury in Playboy legitimized the magazine pornography of the 1960-70's era. Other sex trafficking industry sites such as Bootytag present themselves as adult community culture, and include pornography and prostitution but also sell products such as crotchless panties and sex toys.<sup>257</sup> Similar online sales are found at adultsearch, CityVibe, eros.com, netchixx.com, titsandass.com, eros.com, and rentboy.com.

**[\*1077]** Arrests for online prostitution-related crimes and trafficking have increased in the past decade.<sup>258</sup> Violent crimes have been associated with Backpage just as they were with Craigslist. Using Backpage to locate young women in prostitution, a Seattle sex buyer impersonated a police officer and was subsequently charged with multiple counts of rape, kidnapping, extortion and criminal impersonation.<sup>259</sup>

Craigslist's and other online traffickers' assertions that their advertising was for sex between consenting adults was countered by a 2010 study in which researchers placed ads on Craigslist and Backpage that were typical of prostitution advertising.<sup>260</sup> Two hundred eighteen men telephoned in response to the ads.<sup>261</sup> When the men inquired about details regarding the sale of sex, researchers who posed as escort agency pimps gave each of the men three escalating warnings that the girl they were about to buy was probably younger than eighteen.<sup>262</sup> Researchers found that 47% of sex buyers in the Atlanta area were willing to proceed to buy sex even after being given three warnings that the girl they were about to buy was probably a minor.<sup>263</sup>

In response to community and government criticism of prostitution posts that facilitated sex trafficking, Craigslist made token changes such as announcing that minors should not use its erotic services section, providing links to antitrafficking websites, and charging ten dollars for posts.<sup>264</sup> Craigslist's requirement that **[\*1078]** posts be verified with a phone number was relatively meaningless given pimps' ability to purchase disposable cell phones.

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2011, 4:30 PM), <http://newswire.xbiz.com/view.php?id=136443>. One person he wanted to have killed was the owner of a competing escort review website SexWork.com. Id. Elms fled the country after posting \$ 150,000 bond. Id. According to border patrol agents who arrested him when he tried to re-enter the United States, "Elms told them that after skipping bail, he fled to Toronto, then Dubai, Armenia, Iran and Mexico." Matt Richtel, Founder of Prostitution Site is Arrested at Border, N.Y. Times, June 4, 2009, available at <http://bits.blogs.nytimes.com/2009/06/04/prostitution-site-founder-david-elms-arrested-at-border>; see also Ray Stern, "TheEroticReview.com" Founder David Elms Arrested in California; Was On Run from Maricopa Charges, Phoenix New Times (Jun. 4, 2009, 2:11 PM), [http://blogs.phoenixnewtimes.com/valleyfever/2009/06/theeroticreviewcom\\_founder\\_dav\\_2.php](http://blogs.phoenixnewtimes.com/valleyfever/2009/06/theeroticreviewcom_founder_dav_2.php).

<sup>223</sup> See BestGFE, <http://www.bestgfe.com> (last visited June 14, 2014) (promoting users' reviews of women in prostitution).

<sup>224</sup> See Stefano Ambrogi, Britain Asks Schwarzenegger to Close Prostitute Web Site, Reuters (Sept. 30, 2009, 4:25 PM) <http://www.reuters.com/article/2009/09/30/us-britain-prostitutes-idUSTRE58T69420090930?feedType=RSS&feedName=technologyNews>.

<sup>225</sup> Id. Minister for women and equality Harriet Harman called the website a "sinister development" that promoted men's demand for prostitution thereby fuelling trafficking. Id. MP Harman said: "surely it can't be too difficult for 'The Terminator' to terminate Punternet and that's what I am demanding that he does." Id. (first internal quotation marks omitted).

<sup>226</sup> See BestGFE, *supra* note 223 (discussing ways to evade law enforcement).

<sup>227</sup> See Ken Franzblau, Sex Trafficking: Looking at Demand, in Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims 291, 295 (Jill Laurie Goodman & Dorchen A. Leidholt eds., 2011) (discussing the prostitution-related internet posts of an individual using the name SlamasterJay and law enforcement use of those posts). "SlamasterJay, later identified as Jeffrey Whyte, was subsequently arrested and charged with promoting prostitution in New York County." Id. at 300 n.23 (citing Jamie Schram, NYPD Daily Blotter, N.Y. Post (Dec. 10, 2009, 5:00 AM), <http://nypost.com/2009/12/10/nypd-daily-blotter-2705/>).

<sup>228</sup> See, e.g., Gary Taylor, Child-Sex Sting: Men Tote Candy, Condoms, Orlando Sentinel, Aug. 17, 2010, at B1 (describing sting operation using Craigslist conducted by Florida sheriff's department).

<sup>229</sup> See Farley et al., *supra* note 16, at 5, 33, 37.

<sup>265</sup> The requirement that implying an exchange of sex for money was not permitted was also easily circumvented by pimps' code words well known to sex buyers (according to chat board jargon) such as "roses" or "hugs" for "dollars" and the phony disclaimer that all payment was for escort companionship and not for sex acts which were "voluntary" and "consenting." <sup>266</sup> Craigslist agreed to report suspected abuse or trafficking to the National Center for Missing and Exploited Children (NCMEC), a quasi-law enforcement agency, thereby manipulating public perception and avoiding direct contact with appropriate law enforcement, such as local police departments or federal agencies. <sup>267</sup>

Like Craigslist, Backpage has been unwilling to screen advertisers, a process that would entail reviewing posts for sex solicitation or hate speech. If a screener were not employed, filters could block certain keywords, jargon or images from the ad posting process. <sup>268</sup> Backpage has offered children for sale through thinly veiled prostitution advertising, with at least one lawsuit against Village Voice Media/Backpage for posting pornography of a child available for prostitution. <sup>269</sup> Pornography of either adults or children used in this way functions as human trafficking.

#### D. Live and Streaming Video

As in any enterprise, novelty and spinoffs are typical of sex **[\*1079]** trafficking businesses. Videoconferencing technology (live video and audio connections between users) was immediately adapted for prostitution by pimps and traffickers. By 1995, the web technology of live video chat, such as Skype, AIM, and MSN Messenger, permitted johns to obtain prostitution online. <sup>270</sup> In addition to viewing photos or films of prostitution, johns could comment by voice or keyboard or they could direct the woman to perform specific sex acts in real time. <sup>271</sup>

Using live video chat a U.S. pimp offered johns the choice to pay for and view women being tortured in Phnom Penh, Cambodia at rapecamp.com. <sup>272</sup> Extreme violence and humiliation of impoverished women has continued with LiveJasmin advertising "sexy Eastern European girls" on one website, and iFriends, one of the largest

<sup>230</sup> See Gretchen Ruethling, Chicago Police Put Arrest Photos of Prostitution Suspects Online, N.Y. Times, June 23, 2005, at A16.

<sup>231</sup> U.S. Government Efforts to Fight Demand Fueling Human Trafficking, U.S. Dep't State (Jan. 7, 2008), <http://2001-2009.state.gov/g/tip/rls/fs/08/100208.htm>; see also Shaming, Demandforum.net, <http://www.demandforum.net/shaming/> (last visited June 14, 2014).

<sup>232</sup> About, Craigslist, <http://www.craigslist.org/about/> (last visited June 14, 2014).

<sup>233</sup> See Brief for Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiffs at 8, *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) (No. 09 CV 1385), 2009 WL 2446750.

<sup>234</sup> *Id.*

<sup>235</sup> See Farley, What We Must Not Know, *supra* note 107.

<sup>236</sup> M. Alexis Kennedy & Melanie A. Taylor, Prostitution on Craigslist 7-8 (2010) (unpublished manuscript) (on file with author). A random number generator was used to select 180 one-hour time frames from the "Women for Men" section of Craigslist. *Id.* at 7. Data from each post during that hour was collected. *Id.* A total of 12,444 advertisements were coded by research assistants in a university forensic psychology lab. *Id.*

<sup>237</sup> *Id.* at 9.

<sup>238</sup> See *id.*

<sup>239</sup> See *id.* at 10.

<sup>240</sup> Three ads from Craigslist (on file with author) that suggest trafficking include:

1) SF bay area craigslist > north bay > services offered > adult services

Sweet Asian Apple -w4m (mill valley)

Date: 2010-06-29, 9:00AM PDT

prostituting/dating websites in the world on another, separately advertising Eastern European women and "some Asian babes." <sup>273</sup>

Livestreamed pornography of the women's prostitution is used by pimps, traffickers, and sex buyers to control and humiliate women. <sup>274</sup> The existence of a video or photograph that is on the web for the world to see is profoundly disturbing to most women. <sup>275</sup> It removes their ability to control the image, removes their dignity and removes their ability to put prostitution out of their lives when they escape it. <sup>276</sup>

**[\*1080]** Pornographers produce films or streaming video for sex trafficking industry websites. In this practice, a webcam company advertises via a network of affiliates who post ads on their websites. The affiliates earn a fee whenever someone signs up to purchase webcam pornography. <sup>277</sup> San Francisco's torture pornography site Kink.com offered sex buyers in 2011 the opportunity to chat with, interact with, and control Kink.com's slaves and bondage porn stars in live streamed interactive bondage pornography cam shows. <sup>278</sup> In addition to Kink.com's live cam shows, the site features live streaming video, live bondage chats, live bondage sex parties, and other live streamed BDSM reality shows. <sup>279</sup>

#### E. Dating and Sugar Daddy Websites

Webcam video and escort prostitution sites have merged with some adult dating sites. Since 2000 prostitution advertising has increased on dating websites with many dating websites now largely consisting of locations where johns seek women who they presume are prostituting. Adultfriendfinder, for example, features gonzo pornography <sup>280</sup> of women seeking dates for prostitution in **[\*1081]** dozens of countries and every state in the United States. The site is available in German, Spanish, Japanese, French, Portuguese, Italian, Dutch, and Swedish. Some dating websites ask users to bid for a first date with a woman. <sup>281</sup> "Creat[ing] a financial market for first dates," women who are beautiful are asked to join the site and get paid for dates. <sup>282</sup> Casual dating sites such as onlinebootycall

Reply to: Sweet Asian Apple Here for short stay.

Please Call: (415) 000-0000

2) sacramento craigslist > gigs > adult gigs

Looking for an inexperienced girl (Sacramento)

Date: 2010-06-21, 12:56PM PDT Reply to:

Looking for a fun and friendly non pro girl for an adult gig in return for some \$ \$ \$ compensation. Would love to hear from any of you that may have an interest. Please send me a message, some pics, phone and lets have some fun. Please Be Serious No phone means you're not serious. You must be at least 18 years old !!!

3) puerto vallarta craigslist > personals > erotic services

12 hours for only \$ 250 - THE GIRLFRIEND EXPERIENCE!

w4m - 18 (13 Girls to choose from!)

Date: 2010-06-29, 1:38PM PDT

Take as much time as you want - up to 12 hours with the girl of your choice! There are 13 of us. All of us will give you an unforgettable girlfriend experience! For only 3100 pesos [\$ 250] we'll come stay with you for 12 hours! This includes our undivided attention, cuddling and 2 complete services! For more information, see our web site at [www.escort.com](http://www.escort.com). Email us or call us now! From Mexico Cell 322-000-0000 From US 011-521-322-000-0000

<sup>241</sup> See Mark Whittaker, Backpage Continues to Gain from Prostitution Advertising, AIM Group (Feb. 25, 2011), <http://aimgroup.com/blog/2011/02/25/backpage-continues-to-gain-from-prostitution-advertising/>. The AIM Group also summarizes prostitution advertising on three additional sites - NaughtyReviews.com, Eccie.com, and A1List.net. Id.

<sup>242</sup> See Farley, What We Must Not Know, supra note 107, at 121.

<sup>243</sup> Craigslist prostitution postings increased 41% during the Minneapolis convention and 74% in the during the Denver convention. Cunningham & Kendall, supra note 213, at 9.

are dominated by prostitution advertising. The seekingarrangement.com website's goal is to create what the site's pimps describe as mutually beneficial relationships between two people. "Such a relationship is usually between an older and wealthy individual who gives a young person expensive gifts or financial assistance in return for friendship, or intimacy." <sup>283</sup> The prostitution culture often seen in dating websites has expanded to include children. A fourteen-year-old boy in Tokyo met a thirteen-year-old girl through an online dating service and paid her for sex in a public bathroom. <sup>284</sup>

## VII. Prosecutorial Strategies

The global nature of prostitution and trafficking has led to the creation of federal anti-trafficking laws that include the Mann Act and the Trafficking Victims Protection Act (TVPA). <sup>285</sup> Given the range of felonies committed by pimps and traffickers, other laws are applicable for prosecuting them such as Racketeer Influenced and Corrupt Organizations Act (RICO). <sup>286</sup> Whereas in the past, those prostituting have been primary targets of arrest, <sup>287</sup> states are now starting to enforce prostitution laws against sex buyers. <sup>288</sup>

**[\*1082]** The TVPA was signed into law in 2000 with reauthorizations that expanded it passed in 2003, 2005 and 2008. <sup>289</sup> In addition to defining the crimes and penalties for trafficking, the TVPA established civil remedies, provides services for victims, and created T-visas and U-visas for foreign victims of trafficking to obtain immigration relief. <sup>290</sup> The T-visa is available to victims of trafficking in the U.S. who are willing to assist in the prosecution of traffickers and who can show that they would suffer extreme hardship if removed from the U.S. <sup>291</sup> The U-visa is available to victims of criminal activity in the U.S. who have "suffered substantial physical or mental abuse," who have information about the criminal activity, and who are helpful to law enforcement in prosecuting the crime. <sup>292</sup>

The TVPA defines a perpetrator of sex trafficking as a person who "knowingly ... recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or benefits, financially ... knowing ... that means of force, ... fraud, [or] coercion ... will be used to cause the person to engage in a commercial sex act." <sup>293</sup> No

<sup>244</sup> Peter M. Zollman, *Craigslist Revenue, Profits Soar*, AIM Group (Apr. 30, 2010) <http://aimgroup.com/2010/04/30/craigslist-revenue-profits-soar/>.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*; *Online Prostitution Ads Generated at Least \$ 37.3 Million in Last Year*, AIM Group (Oct. 25, 2012), <http://aimgroup.com/2012/10/25/online-prostitution-ads-generated-at-least-37-3-million-in-last-year/>.

<sup>247</sup> Whittaker, *supra* note 241.

<sup>248</sup> *Women's Funding Network Continues to Pressure Outlets Facilitating Demand for Domestic Child Sex Trafficking*, Women's Funding Network (Sept. 30, 2010, 6:00 AM), <http://www.womensfundingnetwork.org/about/news/press-releases/womens-funding-network-continues-to-pressure-outlets-facilitating-demand-f>.

<sup>249</sup> Whittaker, *supra* note 241.

<sup>250</sup> Sara Jean Green, *The Weekly, Its Parent Company Face Backlash Over Online Sex Ads That Exploit Teens*, Seattle Times (July 23, 2011, 9:50 PM), [http://seattletimes.com/html/localnews/2015710216\\_prostitution24m.html](http://seattletimes.com/html/localnews/2015710216_prostitution24m.html).

<sup>251</sup> *Online Prostitution-Ad Revenue Crosses Craigslist Benchmark*, AIM Group (July 10, 2013), <http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslist-benchmark/>.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* For documentation of the trajectory of backpage.com since Craigslist shuttered its prostitution advertising, see Kat Stoeffel, *Village Voice Media Getting Down and Dirty with Escort Ads*, N.Y. Observer (Apr. 26, 2011, 11:42 PM), <http://observer.com/2011/04/village-voice-media-getting-down-and-dirty-with-escort-ads/>; Emma Bazilian, *Backpage.com a Hit, Filling Craigslist Sex Ad Void*, Adweek.com (Apr. 27, 2011, 8:25 AM), <http://www.adweek.com/news/advertising-branding/backpagecom-hit-filling-craigslist-sex-ad-void-131043>; and *Escort-Ad Revenue Migration Continues*, AIM Group (July 13, 2011), <http://aimgroup.com/blog/2011/07/13/escort-ad-revenue-migration-continues-2/#more-12002>.

<sup>254</sup> ErosGuide, <http://www.eros-guide.com> (last visited June 14, 2014).

transportation is required in order to meet the legal requirement of trafficking under the TVPA. Prostitution of minors under TVPRA 2005 is presumed to be exploitive and any person who causes another person under the age of 18 to engage in a commercial sex act is guilty of sex trafficking.<sup>294</sup> Adult trafficking victims must prove force, fraud, or coercion.<sup>295</sup> The Department of Justice prosecuted 162 defendants for sex trafficking under the TVPA in 2012,<sup>296</sup> with 366 T-visas issued to victims and 103 issued **[\*1083]** to foreign national children.<sup>297</sup> These numbers remain limited because of the burdensome requirements for the visas. Created primarily to prosecute traffickers rather than to assist victims, the TVPA is onerous for trafficking victims. It is often too dangerous for victims to testify since traffickers and organized crime groups threaten not only their lives but the lives of family members, sometimes holding them hostage.<sup>298</sup> Other forms of immigration relief are less burdensome to victims, such as U-visas or self-petitioning under VAWA remedies for domestic violence.<sup>299</sup>

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 amended the TVPA to make civil remedies available for victims.<sup>300</sup> Thus victims can sue traffickers as well as individuals or corporations who are complicit with traffickers. No foreknowledge is required - only that the third party "should have known."<sup>301</sup> The civil remedy under the TVPRA holds traffickers and those who are complicit liable for damages arising out of her prostitution even after the criminal case has terminated.<sup>302</sup> The TVPRA remedy has some advantages: it would implicate individuals and corporations in a pattern of detrimental practices that would serve as a deterrent based on the financial and reputational risks involved.<sup>303</sup> Civil remedies also hold third parties accountable and create opportunities for survivors of trafficking to obtain necessary services.<sup>304</sup> In a case in progress a survivor of trafficking used the civil remedy section of the TVPRA to sue a sex buyer for facilitation **[\*1084]** of trafficking when he bought her for sexual use.<sup>305</sup> In this case, the sex buyer and the pimp pled guilty to criminal charges of trafficking and sexual exploitation. The United States Attorney for the Western District of Missouri has used the language from the TVPA to prosecute buyers of sex under that statute.<sup>306</sup> This case marked the first time that sex buyers were convicted under the TVPA in a sex trafficking case in which the victim was an adult.<sup>307</sup>

There have been a number of successful prosecutions of pimps and traffickers who used online prostitution classifieds to advertise and sell women and children for sexual use.<sup>308</sup> Many federal antitrafficking cases against

<sup>255</sup> See *id.* While Craigslist was originally a free site that evolved into a site requiring pay for prostitution advertising, eroguide charged for listings on the site.

<sup>256</sup> Eros Cams: The Ultimate Guide to Webcams, BR.Naked.com, [http://br.naked.com/ads/naked/pop/eroscams.php?cmp=popunde\\_r2&id=&ad\\_id=](http://br.naked.com/ads/naked/pop/eroscams.php?cmp=popunde_r2&id=&ad_id=) (last visited June 14, 2014). Options for models to chat with or view include "live girls, 18+, small tits, big tits, White, Latin, Asian, Ebony, Big Black Women, Foot Show, Big Ass, Moms I'd Like to Fuck, and Squirters." *Id.*

<sup>257</sup> BootyTag, <http://www.sextoyfun.com/?a=bootytag> (last visited June 14, 2014).

<sup>258</sup> Green, *supra* note 250.

<sup>259</sup> Levi Pulkkinen, Charge: Fake Cop Raped Child Prostitutes Hired Off Backpage, Seattle Post-Intelligencer (Aug. 10, 2011, 12:36 PM), <http://www.seattlepi.com/local/article/Charge-Fake-cop-raped-child-prostitutes-hired-1802787.php>.

<sup>260</sup> Schapiro Group, Men Who Buy Sex with Adolescent Girls: A Scientific Research Study 12 (2010), available at <http://prostitutionresearch.com/2014/04/29/men-who-buy-sex-with-adolescent-girls-a-scientific-research-study/>.

<sup>261</sup> *Id.* at 6.

<sup>262</sup> *Id.* at 11 (The three warnings issued by the "escort agency operator" who was actually the researcher are as follows: "1. We're talking about the really young girl, right? 2. She doesn't look like she's 18. 3. I don't believe this girl is actually 18, and I have no reason to believe she is.").

<sup>263</sup> *Id.* at 12. In response, Craigslist attempted to suppress this independently conducted research on use of minors in prostitution in the Atlanta area by sending a cease and desist letter both to the funder of the research study (Women's Funding Network, San Francisco) and to the Governor of Georgia. See Press Release, Chris Grumm, Women's Funding Network, Women's Funding Network Releases Georgia Demand Study to Craigslist (June 17, 2010), available at <http://www.womensfundingnetwork.org/about/news/press-releases/women%E2%80%99s-funding-network-releases-georgia-demand-study-to-craigslist>.

Craigslist have been based on its advertising of children for sale in prostitution.<sup>309</sup> Pimps have been charged with violating child pornography laws as a result of posting online advertisements of children for use in prostitution.<sup>310</sup>

**[\*1085]** States' rights to protect children from being pimped online have been opposed by the Electronic Frontier Foundation using First Amendment arguments.<sup>311</sup> Attorney General Rob McKenna and prosecutors were restrained from enforcing a Washington state law that would require online classified advertisers such as Backpage to verify the ages of people advertised in "adult services."<sup>312</sup> Similar measures have been introduced in New York, New Jersey, and Tennessee.<sup>313</sup> Attorneys from Backpage cited the Communications Decency Act protecting them as website operators from liability over the speech of "unaffiliated parties." AG McKenna stated, "Backpage is many things, but an ally in the fight against trafficking it's not. It's a cash machine churning out tens of millions a year for its owners by charging \$ 1 and up for prostitution advertisements."<sup>314</sup> The National Association of Attorneys General has begun to lobby Congress to narrow section 230 of the CDA so that it will protect against civil but not criminal liability.<sup>315</sup>

Social networking sites and online classified advertising sites maintain data servers in more than one state.<sup>316</sup> The interstate commerce element of the TVPA allows prosecution of online traffickers as illustrated in the Eleventh Circuit decision in *United States v. Myers*.<sup>317</sup> The defendants placed pornography of their victims on Craigslist and Backpage and were charged with trafficking two girls for sex.<sup>318</sup> The court concluded that the interstate commerce element of the statute was satisfied by the movement of funds through accounts and servers in various states.<sup>319</sup>

The Mann Act criminalizes the act of transporting or enticing a **[\*1086]** person - adult or child - to travel for the purpose of engaging in prostitution.<sup>320</sup> Only the intent of the perpetrator is relevant; whether or not the victim consented is irrelevant.<sup>321</sup> Unlike the TVPRA, there is no need to prove force, fraud or coercion under the Mann Act.<sup>322</sup> Providing transportation<sup>323</sup> with the intent of prostituting the victim is sufficient for conviction under the Mann Act.<sup>324</sup> The Act's focus on the perpetrator's behavior can spare the victim from testifying - a major

<sup>264</sup> David Sarno, *Craigslist to Remove Erotic Services Section, Monitor Adult Services Posts*, L.A. Times (May 13, 2009, 8:40 AM), <http://latimesblogs.latimes.com/technology/2009/05/craigslist-attorneys-general-erotic-services-prostitution.html>; Peter M. Zollman, *Craigslist Revenue: 100 Million Smackers, 10 Classified Intelligence Rep.*, June 10, 2009, at 2, 5.

<sup>265</sup> Tracy Coenen, *No More Free Advertising for Prostitutes on Craigslist*, DailyFinance (Nov. 7, 2008, 8:00 AM), <http://www.dailyfinance.com/2008/11/07/no-more-free-advertising-for-prostitutes-on-craigslist/>.

<sup>266</sup> Thomas J. Holt, Kristie R. Belvins & Joseph B. Kuhns, *Examining the Displacement Practices of Johns with On-Line Data*, 36 J. Crim. Just. 522, 522, 523, 527 (2008).

<sup>267</sup> Adam Thierer, *State AGs + NCMEC = The Net's New Regulators?*, Tech. Liberation Front (Nov. 24, 2008), <http://techliberation.com/2008/11/24/state-ags-ncmec-the-nets-new-regulators/>; Steve Turnham & Amber Lyon, *Online Sex Ads Complicate Crackdowns on Teen Trafficking*, CNN.com (Sept. 15, 2010, 9:52 AM), [http://articles.cnn.com/2010-09-14/justice/us.craigslist.sex.ads\\_1\\_craigslist-ads-law-enforcement?\\_s=PM:CRIME](http://articles.cnn.com/2010-09-14/justice/us.craigslist.sex.ads_1_craigslist-ads-law-enforcement?_s=PM:CRIME); Domestic Minor Sex Trafficking: Hearing on H.R. 5575 Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H.R. Comm. on the Judiciary, 111th Cong. 3-4 (2010) (testimony of Elizabeth L. McDougall, counsel to Craigslist, Inc.) (discussing Craigslist's reporting agreement with NCMEC which permits Craigslist to avoid reporting to local or federal police).

<sup>268</sup> E-mails from Greg Collier, CEO, Geebo, (Mar. 26, 2012, 7:47 AM, Mar. 29, 2012, 7:26 AM) (explaining screening and filtering of online classified ads) (on file with author).

<sup>269</sup> *M.A. ex rel P.K. v. Vill. Voice Media Holdings*, 809 F. Supp. 2d 1041, 1043-44 (E.D. Mo. 2011).

<sup>270</sup> Hughes, *supra* note 148, at 118.

<sup>271</sup> *Id.* at 118-19; Malarek, *supra* note 123, at 202. In order to assure themselves that they are really in direct contact, johns ask for the woman to make special signals or show today's newspaper to indicate that the prostitution is live. Hughes, *supra* note 148, at 119. Multiple viewers can be linked at one time or johns can pay extra for a private performance of prostitution. *Id.* On a web cam site the john pays to chat with live women who perform prostitution on live streaming video, performing what the johns pay them to do. Melissa Farley, *Pornography, Prostitution, and Trafficking in Nevada*, in *Prostitution and Trafficking in Nevada*:



advantage over the TVPRA. When a TVPRA prosecution appears difficult, the penalty, not inconsequential, of a ten-year prison sentence calls for wider use of the Mann Act.<sup>325</sup>

Online prostitution has blurred jurisdictional boundaries. When an online sex buyer in New Jersey solicits prostitution from a seller (pimp or trafficker) normally located in New York, the Mann Act can be applied. Transportation may be proved through travel receipts, toll records or other documentary evidence that do not require a victim's testimony. Electronic conversations arranging the meeting can be used as evidence that the sex buyer negotiated a commercial sex act with the trafficker. Some courts have ruled that warrantless cell phone searches are permissible when police are searching for evidence of a specific crime such as selling drugs or soliciting prostitution.<sup>326</sup> Emails, text messages, and other **[\*1087]** electronic communications are likely to be a rich source of evidence for Mann Act prosecutions and possibly other crimes.<sup>327</sup>

The "persuades, induces, entices" language in the Mann Act means that it can be applied to sex buyers as well pimps.<sup>328</sup> A sex buyer in New Jersey for example, who contacts a person in prostitution that he discovered on Backpage under listings in New York, could be held liable if he urges her to come to New Jersey to perform an act of prostitution. If it can be proved that he knew the woman was in New York, he will have violated the Mann Act.

Pimps have been prosecuted under RICO. In 2011, U.S. Attorneys charged thirty-eight California gang members under RICO for trafficking women and children via social networking sites.<sup>329</sup> Gang members recruited vulnerable girls and women through MySpace, Facebook, and Twitter and then held them in captivity.<sup>330</sup> The women and children were then "sold, traded, or 'gifted' [by gang members] to other 'pimps.'" <sup>331</sup> Gang members from Texas and from United Arab Emirates continue this practice of MySpace recruitment, captivity, and sales of humans.<sup>332</sup> RICO **[\*1088]** punishes any persons who have received any income derived either directly or indirectly from any racketeering activity as well as persons employed by or associated with any enterprise that conducts its affairs through a pattern of racketeering activity.<sup>333</sup> According to Lieutenant Derek Marsh, Co-Director of the Orange County, California Human Trafficking Task Force, charging sex buyers with conspiracy to commit the crime of

Making the Connections, *supra* note 82, at 153, 156. When johns are bored with online pornography, they can create their own pornography with webcam prostitution. See Malarek, *supra* note 123, at 201-02.

<sup>272</sup> Hughes, *supra* note 148, at 119.

<sup>273</sup> Malarek, *supra* note 123, at 203.

<sup>274</sup> Melissa Farley, Pornography, Prostitution, and Trafficking in Nevada, in *Prostitution and Trafficking in Nevada: Making the Connections*, *supra* note 82, at 157 n.470 (explaining how one pimp/pornographer would withhold payment to prostituting women who refused to be filmed).

<sup>275</sup> *Id.* ("[Women in prostitution] resist being filmed because that would be a record of their prostitution, and often a part of their lives that they prefer to leave behind them, rather than have on view indefinitely into the future.").

<sup>276</sup> Telephone Interview, *supra* note 204; see also Farley, *supra* note 91, at 146 (discussing how women in prostitution whose johns or pimps made pornography of them in prostitution had significantly more severe symptoms of PTSD than did women who did not have pornography made of their prostitution).

<sup>277</sup> Melissa Farley, Pornography, Prostitution, and Trafficking in Nevada, in *Prostitution and Trafficking in Nevada: Making the Connections*, *supra* note 82, at 156, 157, 261-62. The connections between web cam pornography, prostitution and casual sex/dating websites such as adultfriendfinder ("the largest sex and swingers personals site in the world") can be seen in the history of webcams.com. The parent company of webcams.com is Streamray (<http://www.streamray.com>). In January 2006 Streamray announced the broadcast of 400 pornographic videos simultaneously with the goal of becoming the world's largest webcam company. AvOnline.com, [http://www.avnonline.com/index.php?Primary\\_Navigation=Editorial&Action=View\\_Article&Content\\_ID=255014](http://www.avnonline.com/index.php?Primary_Navigation=Editorial&Action=View_Article&Content_ID=255014). Streamray subsequently merged with Various, the parent company of Adultfriendfinder.com, owned by Andrew Conru. Adultfriendfinder features gonzo pornography. In August 2005, Adultfriendfinder claimed that 17 million people visit the site, and that the company employs 200 people. See AvOnline.com, [http://www.avnonline.com/index.php?Primary\\_Navigation=Editorial&Action=View\\_Article&Content\\_ID=235604](http://www.avnonline.com/index.php?Primary_Navigation=Editorial&Action=View_Article&Content_ID=235604). Other sites owned by Various are AdultFriendFinder.com, FriendFinder.com, Alt.com, OutPersonals.com, Passion.com, GradFinder.com, NiceCards.com, QuizHappy.com, BreakThru.com, Dine.com, BigChurch.com, ShareRent.com, FriendPages.com,

human trafficking would subject them to liability for the same penalties as traffickers and pimps.<sup>334</sup> Marsh argued that because "the crime of conspiracy is already familiar to investigators, prosecutors, and judges, and its application has a long history of success," the consistent use of conspiracy charges would have "a real chance ... of making these demanders of inhumane services cease their demands."<sup>335</sup> Racketeering activity includes any acts that are indictable under numerous code sections, including the Trafficking Victims Protection Act and the Mann Act.<sup>336</sup> Once evidence of a conspiracy - for example a conspiracy to buy prostituted women - is shown, the sex buyer's "connection to the conspiracy, need only be slight, and the government is only required to prove that the defendant was a party to the general conspiratorial agreement."<sup>337</sup> RICO could thus be used against sex buyers who did not admit to conspiring to trafficking but who shared a common purpose and were involved in some aspect of trafficking. Many of the more than thirty "state RICO statutes have significantly broader civil and criminal applications than the federal [RICO] statute," providing for civil liability, criminal liability, and forfeiture.<sup>338</sup> Some states' statutes have longer periods of limitations than the federal statute and "many state RICO statutes have fewer essential elements than the federal statute."<sup>339</sup> Prosecutors should use these laws more aggressively against sex traffickers.

The Travel Act can be used to prosecute sex traffickers when **[\*1089]** interstate or foreign travel is involved.<sup>340</sup> This law provides that whoever travels in interstate and foreign commerce with intent to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity," is in violation of federal law.<sup>341</sup> The statutory definitions of unlawful activity include "prostitution offenses in violation of the laws of the State in which they are committed or of the laws of the United States."<sup>342</sup>

Some states have laws that criminalize online traffickers or pimps of children, if not traffickers or pimps of adults. In 2011, Florida enacted an internet child solicitation statute that criminalizes the use of the internet to solicit or seduce a minor for sex, including prostitution, and criminalizes traveling to meet a child for sex.<sup>343</sup> A section of the Florida law imposes criminal penalties on the Internet owner/operator for knowing use of the service for the prohibited purposes.<sup>344</sup> A 2011 Massachusetts anti-trafficking law establishes the crime of enticing a child into prostitution by

FilipinoFriendFinder.com AsiaFriendFinder.com, GUANXI.com, IndianFriendFinder.com, SeniorFriendFinder.com JewishFriendFinder.com, Amigos.com, GermanFriendFinder.com, FrenchFriendFinder.com, KoreanFriendFinder.com.

<sup>278</sup> Warning: viewing the kink.com site is disturbing. Kink.com, <http://goo.gl/bVFEbL> (last visited June 15, 2014).

<sup>279</sup> See id.; see also Melissa Farley, Kink.com in San Francisco: Women and Gay Men's Abu Ghraib, Prostitution Res. & Educ. (Oct. 22, 2007), [http://prostitutionresearch.com/pre\\_blog/2007/10/22/kinkcom\\_in\\_san\\_francisco\\_women/](http://prostitutionresearch.com/pre_blog/2007/10/22/kinkcom_in_san_francisco_women/) (deconstructing torture pornography and comments in response).

<sup>280</sup> Gonzo pornography is extremely violent pornography where women are violently raped, obviously injured, painfully tied up, often terrified and/or crying. See Martin Amis, A Rough Trade, Guardian (Mar. 16, 2001), <http://www.theguardian.com/books/2001/mar/17/society.martinamis1>.

<sup>281</sup> Conor Friedersdorf, Worse Than Prostitution?, Atlantic (Apr. 25, 2011, 10:30 AM), <http://www.theatlantic.com/national/archive/2011/04/worse-than-prostitution/237795/>.

<sup>282</sup> Id. Continuing to promote the interests of sex buyers, Brandon Wade developed Carrot Dating, a 2013 mobile app where men "can use bribery to get first dates." CarrotDating.com, <http://www.carrotdating.com/> (last visited June 15, 2014).

<sup>283</sup> Mark Berman, College Girls and Sugar Daddies: Is SeekingArrangement.com Just Prostitution?, Opposing Views (Aug. 1, 2011), <http://www.opposingviews.com/i/society/crime/college-girls-and-sugar-daddies-seekingarrangementcom-just-prostitution>.

<sup>284</sup> Boy, 14, Buys Sex with Girl, 13, Destroyer J. (Sep. 8, 2009), <http://destroyerjournal.com/2009/09/08/boy-14-buys-sex-from-girl-13/>.

<sup>285</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466-469 (codified as amended at 22 U.S.C. § 7101 (2012)); White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§2421-2424 (2012)).

<sup>286</sup> Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961-1968 (2012).

<sup>287</sup> Boyer et al., supra note 62.

electronic communication.<sup>345</sup> Statutory rape laws should also be used against sex buyers when the victim is a minor. For instance New York Penal Law section 130.30 penalizes rape in the second degree.<sup>346</sup> The statute provides that a person over the age of eighteen commits rape in the second degree when he or she engages in sexual intercourse with a person less than 15 years of age.<sup>347</sup> There is no requirement in this law that force, fraud or coercion must have been used.<sup>348</sup> Like the TVPA, engaging in a commercial sex act with an individual less than 18 years of age requires no proof other than the commission of the act. States' statutory rape laws should not be ignored.<sup>349</sup>

A Florida civil law provides victims of prostitution and trafficking with the right to sue pimps for damages they inflict and could be used to prosecute online trafficking cases.<sup>350</sup> The Florida law **[\*1090]** permits women who are coerced into prostitution via exploitation of their social and legal vulnerability to sue, defining coercion as restriction of communication with others, exploitation of a person's developmental disability, cognitive limitation, affective disorder, or addiction, exploitation of previous victimization by sexual abuse, exploitation during the production of pornography, and exploitation of the human needs for food, shelter, safety, or affection.<sup>351</sup>

### VIII. Concluding Thoughts

"For a Web site like Backpage to make \$ 22 million off our backs," said a trafficking survivor, "it's like going back to slave times."<sup>352</sup>

The transition of trafficking and prostitution to the Internet has created unique challenges for law enforcement. "'Technology creates new ways for people to interact with each other,' said Eric Goldman, a law professor at Santa Clara University in California. 'You have to figure out if old law maps to new interactions.'"<sup>353</sup> Today the prostitution transaction includes not only victim, buyer and trafficker/pimp but the most invisible partner: the online advertiser.<sup>354</sup> When prostitution happened on the street in someone's neighborhood, it was clear whose

<sup>288</sup> E.g., Kyle Nagel, Cops Focusing More on "Johns" in Prostitution Busts, Dayton Daily News (Aug. 21, 2012, 8:00 PM), <http://www.daytondailynews.com/news/news/cops-focusing-more-on-johns-in-prostitution-busts/nRGxG/>.

<sup>289</sup> Victims of Trafficking and Violence Protection Act of 2000, 114 Stat. at 1464-548; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. (2008) (enacted).

<sup>290</sup> Melynda H. Barnhart, Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation, 16 Wm. & Mary J. Women & L. 83, 97-101 (2009).

<sup>291</sup> Victims of Human Trafficking: T Nonimmigrant Status, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last updated Oct. 3, 2011).

<sup>292</sup> Victims of Criminal Activity: U Nonimmigrant Status, U.S. Citizenship & Immigr. Services, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status#U%20Nonimmigrant%20Eligibility> (last updated Jan. 9, 2014).

<sup>293</sup> 18 U.S.C. § 1591(a) (2012).

<sup>294</sup> *Id.*

<sup>295</sup> Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. § 237(a)(2)(B) (2008).

<sup>296</sup> U.S. Dep't of State, Trafficking in Persons Report 382 (2013), <http://www.state.gov/documents/organization/210742.pdf>.

<sup>297</sup> *Id.* at 384.

jurisdiction that was. Enforcement of a range of laws against johns and pimps was sometimes fueled by citizens' concern about prostitution as a neighborhood nuisance rather than concern about prostitution's exploitation and violence. Communities wanted prostitution out of sight and out of their neighborhoods. Because online sex businesses are less visible to the public, victims of sexual exploitation in prostitution are isolated and can be in greater danger from sex [\*1091] buyers. A survivor of prostitution opined that street prostitution was actually safer than online prostitution since friends watched out for her on the street. "They don't know what they are doing," she said about women who are sold via online websites, "they're alone." <sup>355</sup>

The United States has shown ambivalence regarding enforcement of laws on prostitution and trafficking. This is highlighted in public comments of U.S. Attorney Michael J. Garcia about a sex buyer's purchase and interstate transport of a prostituted woman that was facilitated via an online escort advertisement, Emperor's Club VIP. Mr. Garcia indicated that the Department of Justice (DOJ) does not typically prosecute sex buyers who buy women from pimps except in cases of prostitution of children.

"In light of the policy of the Department of Justice with respect to prostitution offenses and the longstanding practice of this Office, as well as Mr. Spitzer's acceptance of responsibility for his conduct, we have concluded that the public interest would not be further advanced by filing criminal charges in this matter." <sup>356</sup>

This federal indifference to the prostitution and often co-occurring trafficking of adult women has had an additional adverse impact on the enforcement of state laws against prostitution. Because of a lack of resources and also because of the need for special training, it has been difficult to monitor online prostitution and trafficking. <sup>357</sup> Nonetheless, police in many states including Washington, Tennessee, New York, and Virginia conducted sting operations by posting fake prostitution advertisements online resulting in numerous arrests of men seeking to buy sex. <sup>358</sup>

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<sup>298</sup> U.S. Dep't of Justice, Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal year 2008 3, 40 (2009).

<sup>299</sup> Telephone Interview with Margaret Baldwin, Executive Director of Refuge House, Tallahassee, Fla. (Feb. 2012).

<sup>300</sup> The Act provided that not only could victims of trafficking sue the immediate perpetrator, but anyone who "knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter." H.R. 7311, § 221(2)(A)(ii).

<sup>301</sup> Sallie Pullman, Exploring Civil Remedies for Child Trafficking Victims: Class Action Litigation and Our Capacity to Reduce Demand, NDAA.org, 2 (2011), [http://www.ndaa.org/ncpca\\_update\\_newsletter.html](http://www.ndaa.org/ncpca_update_newsletter.html). In other laws with similar language the notion of benefit includes financial benefit as well as business opportunities, gaining access to file-sharing websites that contain illicit images of children, and being provided pornography. *Id.*

<sup>302</sup> *Id.* at 3. The civil suit will be stayed until the criminal case has been terminated. *Id.* at 4.

<sup>303</sup> *Id.* at 3.

<sup>304</sup> Max Waltman, Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential, 34 *Women's Stud. Int'l F.* 449, 463 (2011), available at <http://goo.gl/XdOyfr>.

<sup>305</sup> Julia Dahl, Suing Lawrence Taylor "Next Frontier" in Fighting Sex Trafficking, Says Expert, CBSNews.com (Dec. 1, 2011, 2:34 PM), [http://www.cbsnews.com/8301-504083\\_162-57334731-504083/suing-lawrence-taylor-next-frontier-in-fighting-sex-trafficking-says-expert/](http://www.cbsnews.com/8301-504083_162-57334731-504083/suing-lawrence-taylor-next-frontier-in-fighting-sex-trafficking-says-expert/).

**[\*1092]** In this article we have summarized information about online prostitution and trafficking. Describing the history of technological advances that permitted pimps, traffickers and sex buyers to expand the sex industry online, we discussed the use of websites, online classified advertising, message boards, dating and sugar daddy sites, live streaming video, and the involvement of organized crime in online trafficking. We have also noted that these technologies leave digital traces that can be used by law enforcement, and that online technologies raise new issues for those involved in challenging trafficking such as adult pornography, child pornography, and interstate commerce.<sup>359</sup> We have discussed some challenges to prosecutors: the inseparability of different arms of the sex industry despite the insistence of some that they are discrete entities. Other prosecutorial challenges include complex jurisdictional boundaries, lack of resources and funding. We also described creative and successful prosecutions.

Challenging Internet giants Google and Facebook and accusing them of protecting massive profits via free speech arguments, a Huffington Post blogger wrote,

This is a human rights fight. It's not about sex. This isn't about left or right, liberal versus conservative but about freedom. This isn't about actual free speech either. It is about trillion-dollar interests too lazy to move this issue to priority one. Everyone needs to get involved to change the internet giants minds. That includes the LGTB community, liberal and feminist activists, evangelicals, and everyone else. We need to unite - for once - to make it clear that fighting to stop slavery, child rape and sex trafficking is not about fighting human sexuality. It is the opposite. We are freeing people to make their own choices.<sup>360</sup>

New community alliances have been formed in response to the human rights violations of trafficking. After police complained of a lack of funding and resources to combat prostitution, Big Sisters, based in Iceland,<sup>361</sup> gave the Reykjavik Metropolitan Police "56 **[\*1093]** names, 117 telephone numbers and 29 emails of men who expressed interest in" buying sex acts from women in prostitution "through the websites einkamal.is, mypurplerabbit.com, raudatorgid.is and classified ads offering "massages" in [the] daily newspaper Frettabladid."<sup>362</sup> The activist group noted that although sex buyers attempt to hide their identities, their computer skills are sometimes limited.<sup>363</sup> San

<sup>306</sup> Press Release, U.S. Attorney's Office for the W.D. of Mo., Lebanon Man Sentenced to 20 Years for Coercing a Minor to Become a Sex Slave; Two Customers also Sentenced for Sex Trafficking (Sept. 11, 2013), available at <http://www.justice.gov/usao/mow/news2013/bagley.sen.html>.

<sup>307</sup> Id.

<sup>308</sup> Press Release, U.S. Attorney's Office for the W.D. of N.C., California Man Sentenced to 18 Months in Prison for Prostitution-Related Charges (July 25, 2012), available at <http://www.justice.gov/usao/ncw/pressreleases/Charlotte-2012-07-25-rodgers.html>; see also Chicago Man Found Guilty of Sex Trafficking of Minors, Examiner.com (Nov. 21, 2011), <http://www.examiner.com/residential-in-chicago/chicago-man-found-guilty-of-sex-trafficking-of-minors> (arranging locations through Craigslist and other websites); Craigslist Named as America's Biggest Pimp, TheAge.com (Mar. 6, 2009, 11:01 AM), <http://www.theage.com.au/news/web/craigslist-named-as-americas-biggest-pimp/2009/03/06/1235842625281.html> (noting that a 2008 FBI investigation found that "more than 2800 child prostitution ads had been posted on Craigslist"); Prison, Indictment in NYC Sex Trafficking Cases, Wall St. J. (Nov. 23, 2011, 7:03 AM), <http://online.wsj.com/article/APf611332ac6944e65a760327f4d5c4d4b.html> (reporting on a man indicted on sex trafficking charges for forcing a woman to prostitute in Queens and coercing her to advertise on Craigslist); Levi Pulkkinen, Charge: Pimp Promised Disabled Seattle Teen Thanksgiving Dinner if She "Made Some Money," seattlepi.com (Dec. 1, 2011, 11:25 PM), <http://www.seattlepi.com/local/article/Charge-Pimp-promised-disabled-Seattle-teen-2338672.php> (reporting that a 37-year-old man sold an eighteen-year-old for sex on backpage.com); Liz Robbins, 4 in Brooklyn Charged with Sex Trafficking, N.Y. Times (Nov. 21, 2011, 4:34 PM), [http://cityroom.blogs.nytimes.com/2011/11/21/4-in-brooklyn-charged-with-sex-trafficking/?\\_php=true&\\_type=blogs&\\_r=0](http://cityroom.blogs.nytimes.com/2011/11/21/4-in-brooklyn-charged-with-sex-trafficking/?_php=true&_type=blogs&_r=0) (reporting that a man forced a thirteen-year-old into prostitution and advertised her prostitution by posting photos of her on the internet).

<sup>309</sup> Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3559, 3563 (2008); H.R. 7311, § 235.

<sup>310</sup> Pimp Daniels was convicted on child pornography charges, Mann Act, and sex trafficking charges. United States v. Daniels, 653 F.3d 399, 404 (6th Cir. 2011). He unsuccessfully claimed that he didn't know the girl he was advertising for sale for sexual

Antonio police have mentioned similar concerns about a lack of funding for prosecution of online trafficking cases. <sup>364</sup> Applications that detect suspected money laundering by trafficking networks have been developed by JP Morgan Chase. For example, sex trafficking was discovered by "investigation of several credit card transactions at a nail salon during nonbusiness hours." <sup>365</sup> It is worth noting that police in 2013 closed down Hong Kong's largest prostitution website, charging the owners who they described as members of criminal syndicates with money-laundering and living off the avails of a prostitute. <sup>366</sup>

Citizen assistance and cooperation with law enforcement could be a major step forward in providing evidence of online trafficking. This might occur via crowdsourcing, the online broadcast of a problem, such as trafficking, to a large and undefined group of people who then apply their talents to solving the problem. Via crowdsourcing, new collaborations between the public, NGOs, law enforcement, and researchers can produce new information such as mapping the location of trafficked individuals or those at high risk for trafficking. <sup>367</sup>

**[\*1094]** Despite the obstacles to combating online prostitution and trafficking, law enforcement and prosecutors have tools to successfully charge and convict pimps, traffickers and most importantly sex buyers. It is incumbent upon policy makers and law enforcement to enforce existing laws and where needed, to develop new laws and policies that will abolish online (and offline) trafficking and prostitution. While many have been recruited, sold and trafficked into prostitution on social networking sites, the sites can also be turned against traffickers. A thirty-year-old New Jersey woman used Facebook to contact a family member who then rescued her and others from a trafficker who held them captive. <sup>368</sup> The creative and proactive use of online technologies against sex buyers, pimps, and traffickers is cause for hope.

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use on Craigslist was a minor. *Id.* at 410-11. It should be noted that jurisdictions that continue to arrest and treat minors in prostitution as criminals are at odds with the federal law.

<sup>311</sup> Sheri Qualters, EFF Challenges as Overbroad Washington State Law Targeting Child Trafficking Ads, *Nat'l L. J.*, June 18, 2012 (accessed using LexisAdvance).

<sup>312</sup> *Id.*; see James R. Marsh, EFF Joins the Child Exploitation Bandwagon, *ChildLaw Blog* (June 19, 2012), [http://www.childlaw.us/eff\\_joins\\_the\\_child\\_exploitati/](http://www.childlaw.us/eff_joins_the_child_exploitati/) (stating that in its opposition to a Washington state law preventing child sex trafficking the EFF is supporting freedom of speech on the internet).

<sup>313</sup> Qualters, *supra* note 311.

<sup>314</sup> Robert McKenna, Backpage: An "Ally" in the Fight Against Trafficking?, *WA St. Off. Attorney Gen.* (May 31, 2012, 3:56 PM), <http://www.atg.wa.gov/ingeneralpost.aspx?id=29800#UvVhyYWPvW0>.

<sup>315</sup> Letter from the Nat'l Ass'n of Attorneys Gen. to Senator Rockefeller, Senator Thune, Representative Upton & Representative Waxman (July 23, 2013), available at <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1465&context=historical>.

<sup>316</sup> See *United States v. Myers*, 430 F. App'x 812, 815 (11th Cir. 2011).

<sup>317</sup> *Id.* at 815-16.

<sup>318</sup> *Id.* at 816.

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<sup>319</sup> *Id.* at 817; Mark Latonero, Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds 20-21 (2011), [http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking\\_FINAL.pdf](http://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf).

<sup>320</sup> The Mann Act provides that the knowing transport of "any individual in interstate or foreign commerce ... with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both." 18 U.S.C. § 2421 (2012).

<sup>321</sup> *See id.*

<sup>322</sup> *See id.*

<sup>323</sup> Transportation is not a requirement of TVPRA. *See supra* text accompanying notes 300-07.

<sup>324</sup> 18 U.S.C. § 2421.

<sup>325</sup> After pleading guilty to pimping women between NY and CT for prostitution, Corey Davis launched an appeal to overturn his guilty plea following his 293 month sentence under the Mann Act. *United States v. Davis*, No. 3:07-cr-11 (JCH), 2008 U.S. Dist. LEXIS 99802, at 1, 6 (D. Conn. Nov. 26, 2008).

<sup>326</sup> In *United States v. Flores-Lopez*, 670 F.3d 803 (7th Cir. 2012) a judge ruled that the search of a cell phone was legal because the officer conducted a limited search and only looked for phone numbers associated with the alleged drug deal. *Id.* at 810. The judge argued it was similar to flipping through a diary to search for basic information such as addresses and phone numbers. *Id.* at 807. Understanding that data from cell phones of men arrested for buying sex are a potential source of information about organized criminals and traffickers, the California Supreme Court in January 2011 ruled in *People v. Diaz* that it is legal in California for detained arrestees' cell phones to be searched by police without requiring a warrant, a decision the Supreme Court refused to overturn in October 2011. *People v. Diaz*, 244 P.3d 501, 502 (Cal. 2011). Several other appellate courts have ruled similarly to California in this regard. *See* Timothy B. Lee, Obama Administration Asks Supreme Court to Allow Warrantless Cellphone Searches, *Wash. Post* (Aug. 19, 2013, 2:24 PM), <http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/19/obama-administration-asks-supreme-court-to-allow-warrantless-cellphone-searches/>.

<sup>327</sup> For examples of such evidence, see the indictment of Corey Davis who transported victims from Queens, NY to strip clubs in CT. *See* Grand Jury Indictment at 12, 5 B-06-1, *United States v. Davis*, 2008 U.S. Dist. LEXIS 99802 (D. Conn. 2008), available at <http://www.scribd.com/doc/48989066/Corey-Davis-Indictment> (providing evidence that victims were transported across state lines and were given a cell phone to communicate with pimp Davis and potential sex buyers). The Mann Act has been used successfully in other states. *See, e.g.,* Press Release, U.S. Attorney's Office D. Minn., Federal Jury Convicts Woodbury Man of Sex Trafficking a Minor (Aug. 18, 2011), available at <http://www.justice.gov/usao/mn/press/aug030.pdf>; Press Release, U.S. Attorney's Office S.D. Fla., Two Martin County Women Plead Guilty to Interstate Prostitution Charges (Aug. 3, 2011), available at <http://www.justice.gov/usao/fls/PressReleases/2011/110803-02.html>; *see United States v. Daniels*, 653 F.3d 333, 410 (6th Cir. 2011) (stating that the crime is committed any time a person of any age is transported for the purpose of prostitution). A former New York Sheriff was charged under the Mann Act for hiring a limousine to transport several prostituted women to another state for a freemasons' convention. Dan Herbeck, Ex-Deputy Charged in Jesters Case, *BuffaloNews.com* (June 9, 2010, 12:00 AM), <http://www.buffalonews.com/article/20100609/CITYANDREGION/306099974>.

<sup>328</sup> *See United States v. Farner*, 251 F.3d 510, 511 (5th Cir. 2001); *see also* Carrie Johnson, Spitzer Won't Face Charges for Scandal, *Wash. Post*, Nov. 7, 2008, at A2 (reporting that "Justice Department guidelines disfavor indictments against clients of prostitution rings," such as Eliot Spitzer, even when it appears that the client violated the Mann Act).

<sup>329</sup> Press Release, *supra* note 24.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> Facebook' Human Trade Ring Busted by Dubai, Emirates 24 7 (Feb. 4, 2012), <http://www.emirates247.com/crime/local/facebook-human-trade-ring-busted-in-dubai-2012-02-04-1.441088>; Tecca, Police Warn About Gangs Recruiting Prostitutes Via Facebook, *Yahoo Tech. News Blog* (Sept. 26, 2012, 2:04 PM), <http://news.yahoo.com/blogs/technology-blog/police-warn-gangs-recruiting-prostitutes-via-facebook-180449666.html>.

<sup>333</sup> 18 U.S.C. § 1962 (2012).

<sup>334</sup> Human Trafficking: Recent Trends: Hearing Before the Subcomm. on Border, Maritime and Global Counterterrorism of the H. Comm. on Homeland Security, 111th Cong. 13 (2009) (statement of Lieutenant Derek Marsh, Co-Director, Orange County, California Human Trafficking Task Force).

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335 *Id.*

336 18 U.S.C. § 1961 (2012); see 18 U.S.C. §§1582-1592; 18 U.S.C. §§2421-2424.

337 Kendal Nicole Smith, *Human Trafficking and RICO: A New Prosecutorial Hammer in the War on Modern Day Slavery*, 18 *Geo. Mason L. Rev.* 759, 781 (2011) (internal quotation marks omitted); see *United States v. Dietz*, 577 F.3d 672, 677 (6th Cir. 2009).

338 ABA Section of Antitrust Law, *RICO State By State: A Guide to Litigation Under the State Racketeering Statutes* 1 (2d ed. 2011).

339 *Id.* at 2.

340 18 U.S.C. § 1952 (2012).

341 *Id.* at § 1952 (a)(3).

342 *Id.* at § 1952 (b)(1).

343 Fla. Stat. Ann. § 847.0135 (West 2014).

344 *Id.* It would be preferable if the word "knowing" was removed from the law.

345 *An Act Relative to the Commercial Exploitation of People*, ch. 178, sec. 22, 2011 Mass. Legis. Serv. 839, 846 (West).

346 N.Y. Penal Law § 130.30 (McKinney 2014).

347 *Id.* § 130.30(1); Asaph Glosser et al., *Statutory Rape: A Guide to State Laws and Reporting Requirements* 86 (2004), <http://aspe.hhs.gov/hsp/08/sr/statelaws/report.pdf>.

348 N.Y. Penal Law § 130.30; Glosser et al., *supra* note 347, at 86.

349 For an analysis of each state's statutory rape laws, see Glosser et al., *supra* note 347.

350 Fla. Stat. Ann. § 796.09 (West 2014); see Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 *Mich. J. Gender & L.* 65, 70-71 (1993).

351 Fla. Stat. Ann. § 796.09(3)(k)-(o); see also *Captive Daughters and Int'l Human Rights Law Inst. of DePaul Univ. Coll. of Law, Demand Dynamics: The Forces of Demand in Global Sex Trafficking* 88-89, 111 (Morrison Torrey & Sara Dubin eds., 2004), available at [http://www.law.depaul.edu/centers\\_institutes/ihri/downloads/demand\\_dynamics.pdf](http://www.law.depaul.edu/centers_institutes/ihri/downloads/demand_dynamics.pdf) (discussing claims brought and won under section 796.09). In 2006, the Florida Council Against Sexual Violence, in collaboration with Florida Legal Services, the Jacksonville Women's Center, and Refuge House, sought federal funding to support civil legal claims that may be brought by prostituted women under section 796.09 of the Florida Code. E-mail from Margaret Baldwin (Mar. 17, 2006, 1:48 PST) (on file with author).

352 Nicholas D. Kristof, *Where Pimps Peddle Their Goods*, *N.Y. Times Sunday Rev.*, Mar. 18, 2012, at 1.

353 Somini Sengupta, *Case of 8,000 Menacing Posts Tests Limits of Twitter Speech*, *N.Y. Times*, Aug. 27, 2011, at A1.

354 Andrea Powell, *Sex Trafficking in America: The Role of Online Advertisers*, *Fair Observer* (Sept. 26, 2013), <http://www.fairobserver.com/article/sex-trafficking-america-role-online-advertisers>.

355 Jennifer Quinn & Robert Cribb, *Inside the World of Human Trafficking*, *Toronto Star*, Oct. 5, 2013, at IN1, available at [http://www.thestar.com/news/gta/2013/10/05/inside\\_the\\_world\\_of\\_human\\_sex\\_trafficking.html](http://www.thestar.com/news/gta/2013/10/05/inside_the_world_of_human_sex_trafficking.html).

356 Melissa Farley & Norma Ramos, *Opinion: Why Spitzer Should be Prosecuted*, *Newsweek* (Mar. 13, 2010, 6:47 PM), <http://www.newsweek.com/id/168395> (quoting Michael J. Garcia).

357 Personal observation by the second author, during his tenure as Director of Human Trafficking Prevention and Training with New York State Division of Criminal Justice Services.

358 Associated Press, *Cops Bust 66 People in Craigslist Prostitution Ring*, *NY Daily News* (Jan. 12, 2008, 1:48 PM), <http://www.nydailynews.com/news/crime/cops-bust-66-people-craigslist-prostitution-ring-article-1.345129>; Hector Castro, *Ad on Craigslist Really a Sex Sting: Nearly 100 Men Arrested in Police Prostitution Ploy*, *Seattle Post-Intelligencer* (Nov. 15, 2006, 10:00 PM), <http://www.seattlepi.com/local/article/Ad-on-Craigslist-really-a-sex-sting-1219955.php>; Freeman Klopott, *Va. Man Nabbed in Craigslist Sex Sting; Drawn in by Fake Ad*, *Washington Examiner* (Nov. 30, 2009, 3:00 AM), <http://washingtonexaminer.com/va-man-nabbed-in-craigslist-sex-sting-drawn-in-by-fake-ad/article/19931>; Amy Hunter, *Attorney*



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<sup>359</sup> Boyd et al., *supra* note 20, at 3.

<sup>360</sup> Frank Schaeffer, Uncool! - Google and Facebook's Human Trafficking Complicity, Huffington Post (June 6, 2013, 8:57 AM), [http://www.huffingtonpost.com/frank-schaeffer/google-and-facebooks-comp\\_b\\_3389538.html](http://www.huffingtonpost.com/frank-schaeffer/google-and-facebooks-comp_b_3389538.html).

<sup>361</sup> Buying sex is illegal in Iceland, although selling it is not. This law is similar to that of Sweden. General Penal Code [Gen. Penal C.] No. 19/1940, ch. XXII, art. 206 (Ice.); see also A New Law Makes Purchase of Sex Illegal in Iceland, Jafnrettisstofa (Apr. 21, 2009), <http://www.jafnretti.is/jafnretti/?D10cID=ReadNews&ID=523>.

<sup>362</sup> Big Sister Watches Buyers of Prostitution in Iceland, Iceland Rev. Online (Oct. 19, 2011), [http://www.icelandreview.com/icelandreview/daily\\_news/Big\\_Sister\\_Watches\\_Buyers\\_of\\_Prostitution\\_in\\_Iceland\\_0\\_383393.news.asp](http://www.icelandreview.com/icelandreview/daily_news/Big_Sister_Watches_Buyers_of_Prostitution_in_Iceland_0_383393.news.asp).

<sup>363</sup> *Id.*

<sup>364</sup> Phil Anaya, Constables Busy Busting Men Suspected of Soliciting Sex on Craigslist, KENS5.com (Oct. 27, 2011, 9:05 PM), <http://www.kens5.com/news/Constables-office-busts-men-soliciting-sex-for-drugs-using-Craigslist-132732983.html>.

<sup>365</sup> Judge Herbert B. Dixon, Jr., Human Trafficking and the Internet (and Other Technologies, too), ABA, [http://www.americanbar.org/publications/judges\\_journal/2013/winter/human\\_trafficking\\_and\\_internet\\_and\\_other\\_technologies\\_too.html](http://www.americanbar.org/publications/judges_journal/2013/winter/human_trafficking_and_internet_and_other_technologies_too.html) (last visited June 15, 2014).

<sup>366</sup> HK Closes Largest Prostitution Website, Bangkok Post (Dec 6, 2013, 3:49 AM), <http://www.bangkokpost.com/news/asia/383475/hong-kong-largest-prostitution-website-paralysed><http://au.news.yahoo.com/world/a/20182940/hong-kongs-largest-prostitution-website-paralysed/>.

<sup>367</sup> Survivors Connect has used an open-source platform, Ushahidi, to crowdsource information about cases of violence against women, potential trafficking, and resources. Aashika Damodar, founder of Survivors Connect noted, "No one individual or organization can know everything there is to know about the conditions or locations of trafficking, however, with increased awareness, all individuals may have some piece of knowledge that can be critical to solving the larger puzzle." Telephone Interview with Aashika Damodar, Founder of Survivors Connect (Nov. 15, 2011) (on file with the author). Damodar suggested that individuals can contribute to ending trafficking via the use of simple online technologies such as a text message or email about suspicious web activity. *Id.*; see also Jeff Howe, The Rise of Crowdsourcing, *Wired Mag.*, June 2006, at 176, 176-78 (identifying several fields in which crowdsourcing has been used effectively); Dan Woods, The Myth of Crowdsourcing, *Forbes.com* (Sept. 29, 2009, 6:00 AM), <http://www.forbes.com/2009/09/28/crowdsourcing-enterprise-innovation-technology-cio-network-jargonspy.html> (describing misconceptions about how crowdsourcing works to solve problems by sending issues to uniquely qualified individuals rather than by sheer number of participants).

<sup>368</sup> Bob Holt, Facebook to the Rescue for NJ Woman Coerced into Prostitution, *NewJerseyNewsroom.com* (Dec. 31, 2011, 12:10 PM), <http://www.newjerseynewsroom.com/state/facebook-to-the-rescue-for-nj-woman-coerced-into-prostitution>.

# ARTICLE: HUMAN TRAFFICKING IN FINLAND

2014

## Reporter

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## Highlight

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*It ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at our social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name--modern slavery.*

-- President Barack Obama

## Text

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### [\*229] Introduction

Human trafficking is one of the largest criminal industries in the world. Human trafficking, also referred to as modern-day slavery, ruthlessly intervenes with a person's freedom and human dignity. It is a widespread phenomenon all over the world and no country is completely immune to it. Countries can act as places of source, transit or destination. The perpetrators take control of the victims and take away their freedom for the purpose of exploitation, prostitution and other sexual abuse, forced labor or trade in bodily organs. Victims have no control over their work, living conditions or movement, and cannot choose whether they work or not. <sup>1</sup>

This article focuses on trafficking in human beings in Finland using policy-oriented jurisprudence as guidance. To be able to understand the phenomenon of human trafficking in Finland, we will first [\*230] define human trafficking as an international crime and then discuss the trade in human beings in Finland. Conflicting claims and perspectives of both claimants will be considered. After discussing past trends in decision concerning human trafficking, the article will focus on predicting future decisions. It will end by appraising past and future decisions,

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<sup>1</sup> UNODC, *UNODC Global Report on Trafficking in Persons 1* (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

discuss alternatives, and present recommendations on how to prevent human trafficking and improve the situation of victims in the country.

### *I. Delimitation of the Problem*

#### *A. Human Trafficking: An International Crime*

Human trafficking is always an aggravated crime and a violation of human rights. The victims of modern-day slavery are deprived of their liberty, freedom of choice and right to personal integrity. They may be transported to another country and forced to work for little or no compensation, facing abuse and inhuman treatment. The United Nations Trafficking in Persons Protocol defines human trafficking as having three key elements: act, means and purpose.

Trafficking in Persons means the recruitment, transportation, transfer, harbouring or receipt of persons [act], by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation [means]. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs [purpose].<sup>2</sup>

**[\*231]** The international community commonly denounces this modern day slavery and has made many efforts to stop it.<sup>3</sup> Many international and regional conventions address the prohibition and prevention of human trafficking. The most challenging issue, however, is recognizing possible victims of human trafficking and getting them the help they need.

According to the International Labour Organization, there are approximately 20.9 million victims of forced labor globally, including victims of human trafficking for labor and sexual exploitation.<sup>4</sup> The majority of the victims are women and girls; UNODC statistics show that women and girls together constitute approximately 75% of victims of human trafficking.<sup>5</sup> The ILO report goes even further stating that approximately 98% of victims of sexual exploitation in the private economy are female.<sup>6</sup> Even more disturbing is the fact that 27% of all human trafficking victims are children.<sup>7</sup> This is more than the whole population of Finland. These numbers are only estimates; human trafficking is a very well-hidden crime and it is impossible to know the real number of victims. UNODC statistics, however, give a good estimate of the severity of this form of crime.

It is commonly believed that human trafficking involves actual movement of people from one state to another. However, this is not necessarily the case because persons may be victims of human trafficking without ever leaving

<sup>2</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art. 3a (Nov. 15, 2000), available at <http://www.osce.org/odihr/19223>; see also <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (emphasis added).

<sup>3</sup> UNODC, *World Drug Report 2014: Human Trafficking* (2014), <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuasidePalermo> Protocol.

<sup>4</sup> INT'L LABOUR OFFICE: SPECIAL ACTION PROGRAMME TO COMBAT FORCED LABOUR, *ILO Global Estimate of Forced Labour: Results and Methodology* 13 (2012), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf).

<sup>5</sup> UNODC, *Global Report on Trafficking in Persons 2012: Key Findings* 7 (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

<sup>6</sup> *ILO Global Estimate of Forced Labour*, *supra* note 4.

<sup>7</sup> *Global Report on Trafficking in Persons*, *supra* note 5.

the country, or even their homes. According to the UNDOC report, 27% of all trafficking cases consist [\*232] of domestic trafficking; in certain cases persons were never transported to another country nor even out of their current residences.<sup>8</sup> In addition, approximately 24% of victims were trafficked interregionally, meaning they may have been moved to a different region within a country, but not across borders.<sup>9</sup> Perpetrators may be part of organized crime as well as the victims' close family members, friends or acquaintances of the victims.<sup>10</sup>

### *B. Human Trafficking in Finland*

Finland is a small constitutional republic in Northern Europe with a population of approximately 5.43 million people;<sup>11</sup> it is a democracy with a directly elected president and parliament.<sup>12</sup> The country is part of the European Union and has ratified most United Nations treaties addressing human trafficking and related human rights protocols, as well as related protocols of the Council of Europe.<sup>13</sup>

All in all, Finland is considered to be a safe country, having few problems with corruption or serious human rights violations.<sup>14</sup> [\*233] According to Transparency International, Finland is one of the world's least corrupt countries.<sup>15</sup> During the past years it has steadily scored high points in corruption surveys, indicating it to be a highly corruption-free country.<sup>16</sup> In 2012, Finland shared first place in the Corruption Perceptions index with Denmark and New Zealand.<sup>17</sup> The corruption statistics, however, do not tell the whole story of the level of this hidden crime in the country.

Corruption and human trafficking in Finland are both hidden, unreported crimes. Many people do not know that these kinds of crimes happen. During the past few years, more corruption cases involving high level officials have emerged. Quite recently, in November 2013, a Finnish Police Chief of the Narcotics Unit of Helsinki Police was suspended from his duties and arrested on "serious criminal charges."<sup>18</sup> The Helsinki Police have yet to give any further information on these charges. Allegedly, the charges involve crimes such as taking bribes, misuse of power and breach of official duty.<sup>19</sup> All of these crimes are said to be aggravated. The actions of the Police Chief are

<sup>8</sup> *Global Report on Trafficking in Persons*, *supra* note 5.

<sup>9</sup> *ILO Global Estimate of Forced Labour*, *supra* note 4.

<sup>10</sup> I EXIST! (website of the Finnish National Assistance System for victims of human trafficking), [www.humantrafficking.fi](http://www.humantrafficking.fi) (last visited July 22, 2014).

<sup>11</sup> STATISTICS FINLAND, *Population Structure 2012* [http://tilastokeskus.fi/til/vaerak/2012/vaerak\\_2012\\_2013-03-22\\_tie\\_001\\_en.html?ad=notify](http://tilastokeskus.fi/til/vaerak/2012/vaerak_2012_2013-03-22_tie_001_en.html?ad=notify) (last visited Oct. 19, 2013).

<sup>12</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *Country Reports on Human Rights Practices for 2012: Finland*, <http://www.state.gov/p/eur/ci/fi/index.htm>. See also SUOMI.FI, *State Administration and General Government*, [http://www.suomi.fi/suomifi/english/state\\_and\\_municipalities/state\\_administration\\_and\\_central\\_government/index.html](http://www.suomi.fi/suomifi/english/state_and_municipalities/state_administration_and_central_government/index.html) (last updated May 28, 2014).

<sup>13</sup> See MINISTRY OF FOREIGN AFFAIRS OF FINLAND (listing Human Rights Conventions Finland has ratified by October 13, 2013), <http://formin.finland.fi/Public/default.aspx?nodeid=31353&contentlan=1&culture=fi-FI>.

<sup>14</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *Country Reports on Human Rights Practices for 2013: Finland*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>; Olga Khazan, *Map: The Most- and Least-Corrupt Countries in the World*, WASHINGTON POST, May 12, 2012, available at <http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/05/map-the-most-and-least-corrupt-countries-in-the-world/>.

<sup>15</sup> TRANSPARENCY INT'L: THE GLOBAL COALITION AGAINST CORRUPTION, *Corruption Perceptions Index* (The corruption index by Transparency International (measuring perceived levels of public sector corruption in 177 countries and territories yearly, years 2005-13), <http://www.transparency.org/research/cpi/> (last visited July 22, 2014).

<sup>16</sup> *Id.* at 15.

also alleged to have links in organized crime, more specifically him having close relations to a well-known Finnish [\*234] crime organization, United Brotherhood.<sup>20</sup> He is also accused of engaging in prostitution by helping a prostitute in running her activities and selecting clients.<sup>21</sup> While these crimes are only alleged, the situation shows how corruption is a growing issue in Finland that increases the difficulty of dealing with other serious crimes such as human trafficking.

Finland is mainly a country of transit and destination for victims of sex trafficking and forced labor.<sup>22</sup> In limited cases it may also be a source. Finnish teenagers, especially ones involved in prostitution, [\*235] are at a higher risk of falling victims to human trafficking.<sup>23</sup> So far, no cases of trading in bodily organs for financial benefits have been detected.<sup>24</sup> Trafficking women and girls to Finland for sex work is the most common form of human trafficking in the country, but cases of labor related trafficking have also surfaced. Most forced labor cases are believed to be connected to ethnic businesses, and in many cases involve some form of sexual exploitation.<sup>25</sup> This article focuses on Finland as a country of destination and source, without discussing further the transit aspects of human trafficking in the country.

### 1. Sex Trafficking

Victims of sex trafficking usually come from neighboring countries, such as Russia, Estonia, Latvia and Lithuania, as well as Eastern European countries, including countries in Asia and Africa.<sup>26</sup> Sex trafficking happens in many different forms, ranging from prostitution and ethnic massage parlors to arranged marriages and mail order brides.<sup>27</sup> Women coming to Finland due to an arranged marriage through human trafficking are usually exploited at home. They may be forced into domestic slavery, including sexual exploitation, and may also be forced by their spouses to sell sexual services to others.<sup>28</sup> Sex trafficking is also connected to ethnic massage parlors, [\*236] where workers are forced to sell sexual services.<sup>29</sup>

<sup>17</sup> TRANSPARENCY INT'L, *supra* note 15 (Corruption Perceptions index 2012).

<sup>18</sup> POLIISI: POLICE OF FINLAND, *Chief of Helsinki Police Narcotics Unit Jari Aarnio Suspended from Duty* (Nov. 15, 2013), <http://www.poliisi.fi/poliisi/helsin-ki/home.nsf/PFBD/A2768FD6915E45FFC2257C2400567D94?opendocument>.

<sup>19</sup> *Chief of Helsinki Narcotics Police Arrested*, YLE NEWS, Nov. 15, 2013, [http://yle.fi/uutiset/helsingin\\_huumepoliisin\\_paallikko\\_vangittiin/6937087](http://yle.fi/uutiset/helsingin_huumepoliisin_paallikko_vangittiin/6937087) (YLEis-radio, abbreviated as YLE, is the Finnish National public broadcasting company, owned by the Finnish state. It is very similar to, e.g., the British BBC).

<sup>20</sup> HELSINGIN SANOMAT, *Police Equipment Purchases Connected to Criminal Groups September 12, 2013*, <http://www.hs.fi/kotimaa/Poliisin+laitehankinnoilla+on+yhteys+rikollisryhm%C3%A4%C3%A4n/a1384579864841?ref=hs-art-new-1&siivu=1>. See also ILTALEHTI, *Jari Aarnio and United Brotherhood* (Nov. 18, 2013), [http://m.iltalehti.fi/uutiset/2013111817735900\\_uu.shtml](http://m.iltalehti.fi/uutiset/2013111817735900_uu.shtml).

United Brotherhood is a criminal organization operating in Finland. It was formed in 2010, when three other criminal gangs, Natural Born Killers, Rogues Gallery and M.O.R.E, united together as a brotherhood to make themselves more powerful. Members of the gangs have been accused of crimes, such as narcotics offences, economic offences and murder. See TURUN SANOMAT, *The New Gang of the Underworld Born in Finland* (Nov. 22, 2010) (general information on United Brotherhood), <http://www.ts.fi/uutiset/kotimaa/175945/Suomeen+synty+i+uusi+alamaailman+jengi++jasenilla+raju+tausta>.

<sup>21</sup> More information can be found on YLE News and several articles in major Finnish newspaper HELSINGIN SANOMAT, available at <http://www.hs.fi>, especially articles *Chief of Helsinki Narcotics Police Suspected of Malfeasances*, [http://www.hs.fi/kotimaa/Helsingin+huumepoliisin+p%C3%A4%C3%A4llikk%C3%B6%C3%A4+ep%C3%A4ill%C3%A4%C3%A4n+virkarikoksista/a137834850\\_7536;Crime+suspect+Chief+of+Helsinki+Narcotics+Police+Arrested](http://www.hs.fi/kotimaa/Helsingin+huumepoliisin+p%C3%A4%C3%A4llikk%C3%B6%C3%A4+ep%C3%A4ill%C3%A4%C3%A4n+virkarikoksista/a137834850_7536;Crime+suspect+Chief+of+Helsinki+Narcotics+Police+Arrested), <http://www.hs.fi/kotimaa/Rikoksista+ep%C3%A4ilty+Helsingin+huumepoliisin+p%C3%A4%C3%A4llikk%C3%B6+on+pid%C3%A4tety/a1384226707528?siivu=2>; *Police Equipment Purchases Connected to Criminal Groups*, <http://www.hs.fi/kotimaa/Poliisin+laitehankinnoilla+on+yhteys+rikollisryhm%C3%A4%C3%A4n/a1384579864841?ref=hs-art-new-1&siivu=1>; TALOUSSANOMAT: FINNISH FIN. TIMES, available at <http://www.taloussanomat.fi/politiikka/2013/11/17/hs->

In Finland, the vast majority of sexual workers originate from Eastern European countries. While some cases include facilitation of illegal entry to the country, this is not always so. Many neighboring countries, such as Estonia, Latvia and Lithuania are part of the European Union (EU),<sup>30</sup> which allows the citizens of its member states to move and reside freely in any other EU country.<sup>31</sup> Therefore, it is possible that victims of human trafficking have entered the destination country legally and could even legally work there. In addition to other ways of coercion, discussed later, the perpetrators control their victims by taking away their travel documents and other papers of identification.<sup>32</sup> Even if the victims are not illegal immigrants and technically could move to and reside in another EU country without any legal issues, having no documentation makes their presence in the country almost nonexistent. Seeking assistance, even applying for general services like public healthcare, becomes much more difficult when persons lack proper identification documents. This makes them dependent on the perpetrators.

## 2. Forced Labor

Victims of forced labor come to Finland from various countries, including China, India, Thailand, Ukraine and Vietnam, as well as neighboring countries, such as Estonia, Latvia and Lithuania.<sup>33</sup> They may be recruited through different agencies and subcontractors as well as through family members. The farther the victims come from, the more common it is for them to use recruitment agencies. On the other hand, victims recruited by family members [\*237] are in a particularly vulnerable situation, being extremely dependent on the perpetrators.<sup>34</sup>

The most common occupations for victims of forced labor are in the construction industry, restaurants, cleaners, massage parlors, and as domestic servants. The victims work long hours with little to no compensation in lousy working conditions. They may face violence or threats of violence; their freedom of movement may be restricted; perpetrators may take away their traveling documents such as passports; and the victims have practically no free time. Even the little free time the victims may have is often restricted; the victims may be prohibited to interact with other people. Having very little interaction with the outside world, the victims remain ignorant of their rights, and perpetrators may easily continue their exploitation.<sup>35</sup> According to TIP reports, most cases of forced labor in the

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poliisin-laitehankinta-yhteydessa-rikollisjarjestoon/201315985/12; ILTASANOMAT, available at <http://www.iltasanomat.fi>, especially, *The Roots of the Mess Reach to the Police* (Nov. 18, 2013), <http://www.iltasanomat.fi/kotimaa/art-1288622342136.html>; FINLAND TIMES, *Drug Unit Police Chief Arrested on Bribery Charge* (Nov. 13, 2013, 12:03 AM), <http://www.finlandtimes.fi/national/2013/11/13/3145/Drug-unit-police-chief-arrested-on-bribery-charge>.

<sup>22</sup> U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REP. 2013, at 169-70, available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REP. 2010, at 148-49, available at <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm>. See also Anniina Jokinen, Natalia Ollus, & Minna Viuhko, *Whatever it Takes: Labor Trafficking and Exploitation of Foreign Employees in Finland*, at 87, EUROPEAN INST. FOR CRIME PREVENTION & CONTROL, AFFILIATED WITH THE U.N. (HEUNI), Rep. Series 67 (2011), available at [http://www.heuni.fi/en/index/publications/heunireports/reportseries67.ehdoillamillahyvansatyoperainenihtmiskauppajaulkomaalais\\_tentyontekijoidenhyvaksikayttosuomessa.html](http://www.heuni.fi/en/index/publications/heunireports/reportseries67.ehdoillamillahyvansatyoperainenihtmiskauppajaulkomaalais_tentyontekijoidenhyvaksikayttosuomessa.html).

<sup>28</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 87.

<sup>29</sup> TRAFFICKING IN PERSONS REP. 2013, *supra* note 22.

<sup>30</sup> See EUROPEAN UNION, *List of Countries*, [http://europa.eu/about-eu/countries/index\\_en.htm](http://europa.eu/about-eu/countries/index_en.htm) (last visited 7/22/14).

country are connected to ethnic businesses, such as restaurants and massage parlors.<sup>36</sup> The work in massage parlors usually involves sexual exploitation, and the line between sex trafficking and forced labor in many cases is very fine.

Debt bondage is a common feature in forced labor. Victims pay large sums of money to the employers in exchange for the jobs, and usually hope for a better life in Finland. This means that the victims may have significant debts even before arriving in Finland. In addition to overpaying for traveling expenses, the victims might have to pay outrageous extra costs for accommodation or other fees. These fabricated debts lead to the employer completely taking control of the person.<sup>37</sup>

So far the definition of forced labor under Finnish legislation is not clear. Human trafficking and extortionate work discrimination statutes have similar features.<sup>38</sup> Abusing foreign employees is **[\*238]** strongly related to human trafficking. While many cases of abuse surface annually, most cases remain unknown. Perpetrators are both Finnish nationals and foreigners.<sup>39</sup>

Legislative amendments regarding both sex trafficking and forced labor came into force in 2004. Until 2012, however, no instances of human trafficking based on forced labor had been detected. The first human trafficking conviction based on forced labor occurred in 2012. This shows how common trafficking human beings for sexual exploitation is compared to labor trafficking. It is interesting, that the majority of victims receiving help through the national support system in Finland have forced labor backgrounds.<sup>40</sup> Some cases of forced labor include some forms of sexual exploitation and are investigated as sex trafficking or pandering cases. Therefore, in order to narrow down this very broad topic, this paper focuses more on sex trafficking.

### 3. Issues

Finland has ratified most international conventions and agreements regarding human trafficking. Laws have been changed and different kinds of support systems established for human trafficking victims.<sup>41</sup> On paper, the legal system and support mechanisms are effective and everything seems to be fine. So why is this not working in practice?

<sup>31</sup> Council Directive 2004/38, 2004 (EC) (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States).

<sup>32</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 74-88.

<sup>33</sup> TRAFFICKING IN PERSONS REP. 2013, *supra* note 22, at 169-70.

<sup>34</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 74-88.

<sup>35</sup> *Id.*

<sup>36</sup> Trafficking in Persons Report (2013), *supra* note 27.

<sup>37</sup> NAT'L BUREAU OF INVESTIGATION OF FINLAND, *Actions Against Human Trafficking in Finland*, available at <http://www.poliisi.fi/poliisi/krp/home.nsf/pages/E0FE673C479190B6C2257589004F8AA2?opendocument>.

<sup>38</sup> See *infra* Chapter III, Past Trends in Decision, A. The Domestic Legal System, 1. Legislation.

<sup>39</sup> Jokinen, Ollus, & Viuhko, *supra* note 27, at 74-88.

<sup>40</sup> NAT'L SUPPORT SYSTEM FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS, *Statistics Report* (2012), at 4, available at [http://www.migri.fi/download/39357\\_ihmiskaupan\\_uhrien\\_auttamisjarjestelma\\_tilastokatsaus\\_2012.pdf](http://www.migri.fi/download/39357_ihmiskaupan_uhrien_auttamisjarjestelma_tilastokatsaus_2012.pdf).

<sup>41</sup> See *infra* Chapter. III.

The biggest problem with human trafficking in Finland is the difficulty of identifying possible victims. Only a few human trafficking cases are reported yearly, while most victims remain unidentified and fall out of the support system. Recognizing possible victims is essential and has to be more effective. Currently, authorities and ground level workers do not have enough knowledge and resources to identify possible victims. Especially in sex-related trafficking, the [\*239] victims are difficult to detect and a negative attitude towards prostitutes increases the chances of possible victims falling out of the support system.<sup>42</sup> Negative attitudes make it especially difficult to detect victims who have left their country knowing they will be engaging in prostitution in their country of destination.<sup>43</sup> The victim's initial consent is irrelevant if any elements of human trafficking such as force, fraud or coercion are present.

There are many reasons why possible victims of human trafficking are so difficult to detect. In addition to general societal attitudes, the perpetrators as well as the victims make enormous efforts to avoid authorities, and human trafficking stays as an unreported crime. The victims may not want to involve authorities for fear of the perpetrators as well as authorities. The victims may be in a country they know nothing about. They do not know the language or their rights and may fear being punished or deported for possible criminal acts they have themselves committed in the country.<sup>44</sup> The perpetrators may have given the victims false information about the country, leading them to mistrust the authorities.

In addition to fear, the victims may not have the knowledge, language skills or resources to seek help. It may well be that they do not even realize they in fact are victims of human trafficking. If living conditions in their country of origin are poor, their situation in Finland may not differ much from the original situation. In some cases living conditions in Finland could even be slightly better than those in the country of origin. Therefore, it may be difficult for a victim to understand that the conditions in which he or she is living are not normal.<sup>45</sup>

When the victims are not recognized, they fall out of the support system. Their abuse may continue, which may lead to the victims not receiving the physical and mental help they need and to their [\*240] perpetrators not facing punishment for their crimes.<sup>46</sup> Even though Finland has a public health care system, legal aid and other assistance technically available to all, the difference between having those services and guidance on how to receive help offered to you and having to seek assistance alone with no support is enormous, especially for foreign victims, who may not know how the Finnish system works and to what kind of services they are entitled. Victims may be afraid to seek help, and they might not have any documentation, which makes seeking all kinds of public services more difficult.<sup>47</sup>

Another issue in considering human trafficking in Finland is the overlap in the legislation between pandering and human trafficking. Under international perspective, the difference between human trafficking and pandering is the consent of the victim. If a person is pressured, threatened, or anyhow subjected to prostitution, the criteria of human trafficking are fulfilled. However, the two statutes have inconsistencies. In Finnish legislation, pandering can involve pressuring, threatening and even violence.<sup>48</sup> Prostitutes may have been financially blackmailed due to made up debts, their movement may have been controlled, and their chances of leaving the business have in reality been

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<sup>42</sup> Pia Puu-Oksanen, Amnesty Int'l Finland Div., MAASEUDUN TULEVAISUUS (Nov. 28, 2011).

<sup>43</sup> *Id.*

<sup>44</sup> I EXIST!, *supra* note 10.

<sup>45</sup> Lotta Knuutila & Anne-Maarit Pullinen, *The Professional Capabilities of Social Workers to Identify and Guide Victims of Human Trafficking* 25-27 (Laurea 2010).

<sup>46</sup> Puu-Oksanen, *supra* note 42.

<sup>47</sup> Knuutila & Pullinen, *supra* note 45.

<sup>48</sup> The Criminal Code of Finland, 39/1889, ch. 20, § 9, *available at* [www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf](http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf) (unofficial English translation, MINISTRY OF JUSTICE).



nonexistent. Cases have been reported where victims and their families have been threatened and even assaulted, yet the perpetrators have been convicted of aggravated pandering.<sup>49</sup> Forced labor related human trafficking faces the same legislative issues. Many cases having human trafficking features are instead prosecuted and convicted as work discrimination or extortionate work discrimination, and the penalties are significantly lower.<sup>50</sup>

The definition of human trafficking under Finnish law is thus [\*241] problematic. The overlap results in possible human trafficking situations investigated and convicted under a non-trafficking statute such as pandering. The penalties under these statutes are lower and the victims do not get access to the necessary victim protection and aid. The human trafficking statute is not used as broadly as suggested and needed.<sup>51</sup> The overlap also causes inconsistencies in different authorities' handling the same case. The police, prosecution and the court may have different views on what truly is considered human trafficking. Investigating and prosecuting a crime under the more serious clause becomes a problem when the court does not see the human trafficking connection, and the conviction will not take into account the seriousness of the crime. More problematic, however, is the situation where a possible case of trafficking in human beings is investigated and prosecuted under a non-trafficking statute, because the court can "pass a sentence only for the act for which a punishment has been requested or for which the court may pass a sentence on its own initiative." However, even though the court "is not bound by the heading or the reference to the applicable provisions in the charge,"<sup>52</sup> the court is unlikely to use the human trafficking statute if the case is brought under a non-trafficking statute.

The difference between handling a case as pandering compared to human trafficking is tremendous for the victim. In human trafficking cases, victims are heard and treated as the injured parties. They qualify for the assistance programs, get medical help, support and legal aid, and guidance from the government. Victims may also get temporary visas and are allowed to stay in the country for a period of six months while recovering and deciding whether they want to go back to their own country or apply for a Finnish residence permit, to which victims of human trafficking are entitled. If they wish to return home, safe return is arranged. In pandering cases, victims are treated merely as witnesses; they do not get the assistance they need and the victims illegally in the country are most likely deported. After [\*242] deportation, their situation remains unknown.<sup>53</sup>

Ground level work by the authorities and organizations can have an important role in detecting and recognizing possible victims of human trafficking. So far this has proven to be problematic. Authorities working on a practical level may not have enough knowledge and tools to recognize persons who might be victims of some form of exploitation. Furthermore, even if they detect exploitation, the ground level personnel investigating the situation may not have enough knowledge about trafficking in human beings to sort out a possible victim from persons subjected to other crimes.<sup>54</sup>

General societal attitude and awareness has an important role in recognizing possible human trafficking cases. Even though studies show that human trafficking is an increasing problem everywhere and cases of trafficking in human beings have been noted all over the country, the common attitude of denial remains strong. Especially in smaller cities, it is very common to think that problems like human trafficking happen "in the big world," not there.

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<sup>49</sup> The Finnish National Rapporteur on Trafficking in Human Beings: Report 2012, available at [http://www.ofm.fi/download/38665\\_lhmiskaupparaportti\\_FI\\_2012\\_pdf.pdf](http://www.ofm.fi/download/38665_lhmiskaupparaportti_FI_2012_pdf.pdf).

<sup>50</sup> The Criminal Code of Finland, *supra* note 48, at ch. 47, §§ 3, 3a. See also *infra* Chapter III.A.1, Domestic Legislation.

<sup>51</sup> Puu-Oksanen, *supra* note 42. See also Trafficking in Persons Report 2013, *supra* note 22, at 169-70.

<sup>52</sup> Criminal Procedure Act 689/1997, § 11, P 3, available at [www.finlex.fi/en/laki/kaannokset/1997/en19970689.pdf](http://www.finlex.fi/en/laki/kaannokset/1997/en19970689.pdf) (unofficial English translation, MINISTRY OF JUSTICE).

<sup>53</sup> Puu-Oksanen, *supra* note 42.

<sup>54</sup> Knuutila & Pullinen, *supra* note 45.

Some may not even see certain forms of human trafficking as a crime at all. Mail-order brides and massage parlors are good examples of such mistaken beliefs. When contemplating sex trafficking, more traditional forms of prostitution are easily linked with human trafficking. It is not unusual that an older man from a town somewhere in Finland travels to Asia or Eastern Europe, finds a much younger girl, pays a certain amount of money to the girl's family to marry her and brings her back to Finland. Many people do not see anything wrong with that. In reality, the girl's family practically sells her to the man. Her consent to the marriage was probably never asked for, and she has no say in anything. She is transported to a foreign country where she does not know the language and has no support system. Her husband has complete control over her.

These types of marriages are not automatically considered a human trafficking issue or even illegal. Drawing a line between what constitutes human trafficking and what falls under the category of some other crime -- or no crime at all -- is extremely difficult, even [\*243] more so in the case of marriage. No law regulates how one should find a spouse. If no exploitation or coercion is involved, both parties are adults free to consent to the marriage, and they have the possibility of leaving if they so wish, the human trafficking features are not met. Finding a spouse through so-called mail-order bride sites or through other similar forums is perfectly legal. However, there is a very good chance the young wife may face domestic abuse and sexual exploitation and has no freedom to leave. Yet, she may not even see herself as a victim, but doing what she has to do to help her family. In addition, all of this happens very quietly. No one speaks about it, no one writes about it, and everything happens behind closed doors in private homes. Family privacy is extremely protected; proving a marriage took place only for human trafficking purposes is extremely difficult. For the purpose of this paper, finding legitimate sources to investigate the human trafficking effects of mail-order brides or buying a wife abroad turned out to be nearly impossible.<sup>55</sup> Nevertheless, the topic is very common in Finnish online discussion boards.<sup>56</sup>

As mentioned, not all mail-order bride or similar marriage cases fit the characteristics of human trafficking. The problem, however, is the extremely tolerant attitude toward mail-order brides. The Internet is full of dating sites for men searching for an easy way to find a wife abroad.<sup>57</sup> The popularity of such sites makes it equally easy for perpetrators to find their victims. The public rarely sees the human trafficking connection, even if the case clearly involves its elements.

A similar situation unfortunately happens with ethnic massage parlors. Massagers are forced to sell sexual services to willing [\*244] customers and face abuse. The general attitude toward buying services from massage parlors is disturbingly positive; massage parlors are everywhere and buying such services is seen almost as "normal."<sup>58</sup> Finnish online discussion boards are full of open discussion about ethnic massage parlors and the "additional services" they offer. On these discussion sites men openly, but anonymously, ask for information and share their experiences on where to get the best "service" in their city, how much it costs and what is the "quality" of the girls: what they look like, how old they are, and how well they perform. A nickname "Selkä jumissa" starts a conversation on a popular Finnish online discussion board suomi24.fi.<sup>59</sup>

What kind of thai-massage parlors are there in ...? Where do you get the best massage, how about the best other services? How about the quality of the massagers, age, looks? What do you recommend?

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<sup>55</sup> *Human trafficking: Mail-order Bride Abuses: Hearing before the Subcomm. On East Asian and Pacific Affairs*, (July 13, 2004) (testimony of Donna M. Hughes, Ph.D.), available at [http://www.uri.edu/artsci/wms/hughes/testimony\\_senate\\_july04.pdf](http://www.uri.edu/artsci/wms/hughes/testimony_senate_july04.pdf) (information about mail order brides as a form of human trafficking in general). See also Kirfsi Junttila, *Casualties of the Human Trade*, MAAILMA (Oct. 19, 2006), [http://maailma.net/artikkelit/ihmiskaupan\\_uhrit](http://maailma.net/artikkelit/ihmiskaupan_uhrit).

<sup>56</sup> Conversations about traveling abroad to buy a wife can be found on various Finnish online discussion boards, such as [www.suomi24.fi](http://www.suomi24.fi), [www.vauva.fi](http://www.vauva.fi).

<sup>57</sup> General search on google, using term "mail order bride" shows tens of different dating sites offering said services.

<sup>58</sup> General search on Google on words "thai hieronta" (Thai massage) shows review of several discussions on popular online discussion boards, such as [www.suomi24.fi](http://www.suomi24.fi) and [www.kaksplus.fi](http://www.kaksplus.fi).

<sup>59</sup> Discussion about Thai massage on a popular Finnish online discussion board, available at <http://keskustelu.suomi24.fi/node/11011549>.

--Selkä jumissa 10/27/2012 11:06 am (translated by the author).

He gets plenty of answers, including one from nickname "Kaiken Kokenut":

All places offer massage at first and at the end you can give a little "internal massage", if you want. Take one hour massage. First they massage and in the end ask, if you want it more intimate. If you do, just drop your pants. After that begins the sucking practice. Doesn't even cost much if you know how to bargain. Recommended!

--Kaiken Kokenut 10/27/2012 11:35 pm (translated by the author).

**[\*245]** These kinds of discussions are very common on popular discussion boards. Many do not see these services as a form of prostitution, not to mention as human trafficking. <sup>60</sup>

## *II. Conflicting Claims*

### *A. Perpetrators and Third Parties*

The motive for traffickers is usually financial benefit. Human trafficking is one of the largest, as well as the wealthiest, criminal industries in the world. Victims are willing to pay large amounts of money in hopes for a better life. Industries want cheap labor and are willing to pay for that, and trafficking human beings for sex labor is extremely beneficial financially. Organized crime is not necessarily involved in all cases, but the perpetrator may also be a private actor, even a family member. It is increasingly common that the perpetrator is someone close to the victim, such as family member, a friend or an acquaintance. <sup>61</sup> Regardless of the perpetrators' status, the main motive is usually still financial benefit, power and well-being.

The perpetrators may be part of organized crime when financial benefit is usually the main motive. Trafficking in human beings is extremely profitable for the traffickers; a lot of money is moved annually in the human trafficking business. Victims coming from poorer countries are especially easy targets for traffickers, which also means easy money.

Individual persons may be after the financial benefit as well as their own well-being. When a person is selling the victim for sexual exploitation or using them as free labor in a business, money and obtaining free services is usually the motive. Parents selling their children, who then end up being exploited, may also be after the money, but for different reasons. They seek financial benefit to be **[\*246]** able to support themselves, their other children or to improve their general well-being. When victims are used for domestic services and the perpetrator is the only exploiter, the financial benefit received is not that significant. Personal well-being of the perpetrator may be more important than financial benefit. For example, the mail-order bride phenomenon is usually not about directly making money, but the victim is used for personal purposes, such as domestic servitude and sexual exploitation.

Third parties are the ones who are not directly perpetrators, but they are still usually benefitting in some form from exploiting the victims. The buyers of sexual services are looking for pleasure and well-being for themselves; they want to have fun and fulfill their sexual needs. They could also be seeking affection, someone to be close to for a while.

Businesses, whether small private entrepreneurs or multinational companies, are after wealth. They want cheap labor to minimize their costs and maximize the profits of running the business, maybe to avoid paying taxes and other fees set by the government. Using cheap foreign labor is easy, and the employees are willing to work long days without claiming holidays or compensation for working overtime. Even if businesses may not directly be involved in trafficking persons, many of them are closing their eyes to the phenomenon. Cheap labor is financially

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<sup>60</sup> General search on Google on words "thai hieronta" (Thai massage) shows review of several discussion on popular online discussion boards, such as [www.suomi24.fi](http://www.suomi24.fi) and [www.kaksplus.fi](http://www.kaksplus.fi).

<sup>61</sup> I EXIST!, *supra* note 10.

beneficial for the companies, so they do not ask too many questions about where the labor is coming from, just silently let the trafficking continue.

### *B. The Victims*

The main claim of the victims is to not be abused. They leave their homes and travel to another country in hopes of a better life, not to be sexually exploited or forced to work with little or no compensation. Victims desire freedom and a better quality of life. Some victims may want to go back to their own country; some wish to stay and try to build a life. Whatever the case, they wish to have better working conditions, adequate compensation for their work and reasonable working hours.

**[\*247]** Recovering victims may continue facing problems even after their exploitation has ended. If the perpetrators do not face any penalty for their actions, victims may have the continuing fear of becoming victimized again. They may have to face other kinds of legal battles, too. In some cases, the victims may have children with the perpetrators and, if the perpetrators are not prosecuted, the victims may even have to go through legal battles for the custody of their children.

### *III. Past Trends in Decision and Conditioning Factors*

#### *A. The Domestic System*

##### *1. Legislation*

Trafficking in human beings is criminalized under Finnish laws. Human trafficking legislation came into force in 2004. Before modifying the human trafficking statute into the Finnish Criminal Code, crimes now considered as human trafficking were prosecuted, inter alia, as work discrimination or prostitution.<sup>62</sup> The law acknowledges three forms of trafficking in persons: sexual abuse and prostitution, forced labor or other types of forcing someone into demeaning circumstances, and trade in bodily organs for financial gain. The Finnish Criminal Code defines trafficking in human beings as follows:

A person who (1) by abusing the dependent status or vulnerable state of another person, (2) by deceiving another person or by abusing a mistake made by that person, (3) by paying remuneration to a person who has control over another person, or (4) by accepting such remuneration takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1(1) **[\*248]** or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial benefit shall be sentenced for trafficking in human beings.<sup>63</sup>

The key element in defining human trafficking is taking control of a person using deception, by abusing the person's dependent status, insecure state or by deluding the person into the country by giving false information about the nature of work the person will be performing. If the victim is under the age of 18, the case shall be prosecuted as human trafficking, even if none of the methods mentioned above have been used. The penalty for human trafficking is no less than four months and no more than six years of imprisonment.<sup>64</sup> If the perpetrators use violence or threats, cause the victim severe injury, illness or life threatening conditions or other similar suffering, if the victims are minors with limited capability to defend themselves, or if organized crime is involved, the statute used is aggravated human trafficking. Also, enslaving a person, keeping them in servitude or transporting or trading in slaves is aggravated human trafficking. The penalty for aggravated human trafficking is at least two and up to ten

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<sup>62</sup> I EXIST!, *supra* note 10.

<sup>63</sup> The Criminal Code of Finland, *supra* note 48, at ch. 25 (650/2004), § 3.

<sup>64</sup> *Id.*

years of imprisonment. <sup>65</sup> Knowing about trafficking in human beings and failing to report such offence is also punishable. <sup>66</sup>

Some victims of human trafficking have entered the country without proper documentation or travel permits. Finnish legislation does not see human trafficking victims as having committed border offences, even if they have entered the country illegally through trafficking in human beings. <sup>67</sup>

Finnish legislation on pandering and human trafficking statutes overlap. Pandering generally includes crimes of so-called pimping of prostitutes, who are in the business by consent. Under the **[\*249]** Finnish Criminal Code, however, pandering also includes acts done by seducing or coercing someone into prostitution:

A person who, in order to seek financial benefit for himself or herself or for another person. . . (5) tempts or pressures another person to engage in such an act, shall be sentenced for pandering to a fine or imprisonment for at most three years. (650/2004) (2). An attempt is punishable. <sup>68</sup>

If the person is under 18 years old or the crime is committed systematically, aiming for significant financial profit or causing serious harm or suffering to the person, the offence is aggravated pandering. The penalty for aggravated pandering is four months to six years of imprisonment. <sup>69</sup>

Another overlap in legislation considers forced labor-related human trafficking and other employment offences. The Finnish Criminal Code prohibits work discrimination based on "race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference, inheritance, disability or state of health, or. . . because of religion, political opinion, political or industrial activity or a comparable circumstance" in both selecting an employee and during a work contract. <sup>70</sup> No one is to be put in an inferior position without "an important and justifiable reason." The penalty for work discrimination is a fine or up to six months of imprisonment. <sup>71</sup>

While forced labor-related human trafficking cases obviously include work discrimination, the significant overlap is found between the human trafficking statute and the statute on extortionate work discrimination.

If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's **[\*250]** economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years. <sup>72</sup>

Key elements in many forced labor cases are using economic distress, such as debt bonding, as well as taking advantage of victims' dependent positions or lack of understanding to gain control over them. Overlap between extortionate work discrimination <sup>73</sup> and forced labor is clear, and drawing the line between these two statutes is

<sup>65</sup> *Id.* at §§ 3, 3a.

<sup>66</sup> *Id.* at ch. 15, § 10:1.

<sup>67</sup> *Id.* at ch. 17, Section 7:2

<sup>68</sup> *Id.* at 20, Section 9.

<sup>69</sup> *Id.* at Section 9a.

<sup>70</sup> *Id.* at ch. 47, § 3 (885/2009).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at ch. 47, § 3a (302/2004).

<sup>73</sup> *Id.*

extremely difficult. From the victim's point of view, the difference between the uses of these two statutes, however, is as significant as the difference mentioned in sex trafficking cases.

Citizens of the European Union are automatically allowed to legally reside in Finland,<sup>74</sup> meaning victims of human trafficking coming from within the European Union do not face the problem of deportation; however, victims coming from countries outside the European Union may have entered the country illegally and lack proper documentation, such as residence and work permits. Finnish legislation protects victims of human trafficking from deportation, and it guarantees certain forms of support and protection.<sup>75</sup> The victims may be issued a temporary residence permit, if the residence in Finland "is justified on account of the pre-trial investigation or court proceedings considering trafficking in human beings," the victim is prepared to co-operate with the authorities, and the victim no longer **[\*251]** has ties to the perpetrators.<sup>76</sup>

In some cases, when a victim of human trafficking is considered to be in a particularly vulnerable position, a victim may be issued a residence permit on a continuous basis. In these cases none of the requirements set out above have to be met. A residence permit on a continuous basis means that also the family members of the victim staying abroad may be issued a residence permit in Finland on the basis of family ties. A temporary permit of residence does not allow this option.<sup>77</sup>

Before issuing a residence permit, District Police or border control authorities give the victim a reflecting period of thirty days to six months, during which the victim must decide whether or not to cooperate with the authorities in catching the perpetrators of human trafficking.<sup>78</sup> During this reflection period, victims receive help and support and may decide whether they wish to stay in Finland and co-operate with the authorities or return to their own country. Support may include providing accommodation, health care, therapy, legal aid and interpreter services. If the victim wishes to return home, safe return is arranged.<sup>79</sup>

The Act on Promoting Integration includes statutes providing for refund of costs accruing to municipalities from providing services and support for victims of human trafficking,<sup>80</sup> as well as providing a representative to each minor who is a victim of human trafficking and in the country without a guardian.<sup>81</sup> The Act on Reception of Persons Seeking International Assistance contains guidelines for supporting victims of human trafficking.<sup>82</sup> This

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<sup>74</sup> Council Directive, *supra* note 31.

<sup>75</sup> Finnish Aliens Act (Act No. 301/2004), §§ 52a-52c (619/2006). Amendments are based on EU Council Directive 2004/81, 2004 (EC) (on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities). See also Act on Promoting Integration, 1386/2010, Section 6, paragraph 53; Section 7, paragraph 56; Act on Reception of persons seeking for international assistance, 746/2011, Chapter 4.

<sup>76</sup> *Id.* at § 52a (619/2006).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at §§ 52b, c (619/2006).

<sup>79</sup> NAT'L BUREAU OF INVESTIGATION, *Actions Against Human Trafficking in Finland*, available at <http://www.poliisi.fi/poliisi/krp/home.nsf/pages/E0FE673C479190B6C2257589004F8AA2>.

<sup>80</sup> Act on Promotion of Immigrant Integration (Act No. 1386/2010), § 6, P 53, available at <http://finlex.fi/en/laki/kaannokset/2010/en20101386>.

<sup>81</sup> *Id.* at § 7, P 56.

<sup>82</sup> Act on Reception of Persons Seeking for International Assistance, (Act. No. 746/2011), ch. 4.

includes the kind of [\*252] assistance with which victims may be provided, who is the competent authority to decide on the assistance, and how this assistance system ought to be monitored.<sup>83</sup>

## 2. Monitoring and Assistance

Other domestic efforts have also been made to improve the human trafficking situation in Finland. The National Anti-trafficking Rapporteur monitors the implementation of new human trafficking regulations.<sup>84</sup> The ombudsman for minorities acts as a National Anti-trafficking Rapporteur and has been monitoring the human trafficking situation since 2009.<sup>85</sup> The Rapporteur's duties consist of monitoring overall human trafficking phenomena in the country, including the implementation of international obligations, as well as the effectiveness of domestic legislation. The rapporteur reports to the Government annually and to the Parliament every four years, issuing "proposals, recommendations, statements and advice relevant to combating human trafficking and implementing the rights of victims," maintaining contacts with international organizations as well as providing legal advice and assistance for victims of human trafficking, when needed.<sup>86</sup>

The first National Plan of Action against Trafficking in Human Beings was introduced in 2005.<sup>87</sup> The purpose of the plan was to suggest measures to recognize and help the victims of human trafficking, convict perpetrators, prevent trafficking in human beings as well as raise awareness and knowledge of human trafficking issues.<sup>88</sup> [\*253] After introducing the first plan, two evaluations of the plan have been prepared. The first evaluation in 2008 focused more on recognizing the victims and raising awareness on human trafficking issues. The plan also concentrated on prevention measures, such as diminishing demand for human trafficking.<sup>89</sup> The most current plan prepared in 2011 evaluates the effectiveness of measures set out in previous plans. The working group points out issues and gives recommendations on how to further affect the human trafficking situation in Finland.<sup>90</sup>

The victims of trafficking in human beings are entitled to protection and assistance through the National Assistance System for victims of human trafficking. This assistance may include various services and support, including legal aid, social services, healthcare, translator services and general assistance, arranging accommodation and providing social welfare. If the victim wishes to return to his or her country of origin, safe return may be arranged. Special needs of the victims ought to be considered as well.<sup>91</sup>

All human trafficking victims are entitled to the assistance, regardless of whether or not they are in the country legally or have any documentation. A person may be admitted to the assistance system on the mere suspicion that

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<sup>83</sup> *Id.*

<sup>84</sup> NAT'L BUREAU OF INVESTIGATION, *supra* note 79.

<sup>85</sup> *Id.*

<sup>86</sup> Act on Ombudsman and Discrimination Board, § 2, PP 1, 2a. See also OMBUDSMAN FOR MINORITIES, *Duties of the Rapporteur on Trafficking in Human Beings*, [http://www.ofm.fi/en/trafficking\\_in\\_human\\_beings/rapporteur\\_on\\_trafficking\\_in\\_human\\_beings](http://www.ofm.fi/en/trafficking_in_human_beings/rapporteur_on_trafficking_in_human_beings).

<sup>87</sup> MINISTRY FOR FOREIGN AFFAIRS OF FINLAND, *National Plan of Action against Trafficking in Human Beings 2005*, available at <http://www.formin.finland.fi/public/default.aspx?contentid=238923&contentlan=2>.

<sup>88</sup> *Id.*

<sup>89</sup> MINISTRY OF THE INTERIOR, *Revised National Plan of Action Against Trafficking in Human Beings*, Publ'n No. 27 (2008), at 3-6, 14-22.

<sup>90</sup> MINISTRY OF THE INTERIOR, *Evaluation of the National Plan of Action against Trafficking in Human Beings and Recommendations to Develop Legislation and Measures Concerning Human Trafficking*, Publ'n No. 17(2011).

<sup>91</sup> Act on Reception of Persons Seeking for International Assistance, *supra* note 83, ch. 4, P 33.

he or she might be a victim of human trafficking. Receiving help is voluntary for the victims.<sup>92</sup> At the moment, assisting victims of human trafficking is concentrated in the Joutseno reception center, located in South-East Finland, close to the city of Lappeenranta. The reception center is responsible for the administration of a victim assistance system. All victim types, including men, women, children, families and groups of people may receive [\*254] assistance.<sup>93</sup> In addition to national assistance, many non-governmental organizations provide help for human trafficking victims.<sup>94</sup>

The national assistance system has official web sites, providing information about human trafficking and the rights of the victims. This information is currently provided in eight languages: Finnish, Swedish, English, Russian, Spanish, Arabic, Thai and Chinese. The information provided in Finnish and Swedish, the national languages of Finland, is quite thorough, containing information and instructions for both possible victims and other people seeking information. In other languages, however, the information provided is still very scarce, including only a few sentences on who can seek assistance and when, as well as a phone number.<sup>95</sup>

Finland provides special training on how to identify victims of human trafficking for personnel working closely with possible human trafficking situations, such as Finnish forces going on peace-keeping missions, as well as the staff of the Finnish airline company Finnair. Finland also participates in providing assistance for counter-trafficking programs and to a regional expert group on trafficking in human beings.<sup>96</sup>

### 3. Court Decisions

The District Court of Helsinki pronounced the first human trafficking conviction in Finland in 2006. Four Estonian men were convicted of aggravated human trafficking. The men trafficked an Estonian, disabled woman to Finland and forced her into sex work. The district court originally convicted six men for aggravated human trafficking.<sup>97</sup> The case was taken to the Helsinki Court of Appeal, [\*255] which confirmed the conviction of four men. The primary offender was sentenced to five and a half years of imprisonment. In addition, another two men originally accused of aggravated human trafficking were eventually convicted for aggravated pandering, and one female was convicted for assisting in it. Some of the key findings of the court were that the victim had been threatened with violence, her freedom had been restricted, and her dependable and insecure state had been taken advantage of. The court also noted her disability when assessing the intensity of the victim's subordination and her actual chances of leaving the situation; the court saw the fact that the victim may have been in possession of her passport and possibly having access to the house keys as irrelevant.<sup>98</sup>

Another human trafficking case occurred in 2008 and was prosecuted in the Kotka District Court. The case was interesting in that all parties were Finnish citizens and it involved no movement across borders. A Finnish female

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<sup>92</sup> THE FINNISH MIGRATION SERV. *System of Assistance for Victims of Human Trafficking* (2014), [http://www.migri.fi/asylum\\_in\\_finland/reception\\_activities/reception\\_services/help\\_for\\_victims\\_of\\_human\\_trafficking](http://www.migri.fi/asylum_in_finland/reception_activities/reception_services/help_for_victims_of_human_trafficking).

<sup>93</sup> I EXIST!, *supra* note 10.

<sup>94</sup> See *id.* (listing some NGO's engaged in providing assistance for victims of human trafficking).

<sup>95</sup> I EXIST!, *supra* note 10.

<sup>96</sup> U.S. DEPT OF STATE, *Trafficking in Persons Rep.* 2013, *supra* note 22.

<sup>97</sup> Helsinki District Court, 2006-07-20 Judgment 6857 (Fin.). Also summarized THE NAT'L BUREAU OF INVESTIGATION OF FINLAND, *Actions against Human Trafficking in Human Beings in Finland*, Poliisi, <http://www.poliisi.fi/poliisi/krp/home.nsf/pages/E0FE673C479190B6C2257589004F8AA2>.

<sup>98</sup> Helsinki Court of Appeal, Judgment 722 of 3/1/2007, Case No. R06/2317.



was violently forced into prostitution. The primary offender was sentenced for aggravated human trafficking to five and a half years of imprisonment. Four other offenders were sentenced to over two years of imprisonment.<sup>99</sup>

The District Court of Helsinki issued the first human trafficking conviction of forced labor in 2012.<sup>100</sup> A Vietnamese couple recruited two Vietnamese employees to work for a nail salon. A young Vietnamese woman, related to the perpetrators, was brought to Finland and made to work in a nail salon for little to no compensation. [\*256] In addition, she had to do domestic work and take care of the couple's children. What made the crime even more aggravated was that the woman was pregnant. The couple tried to force her to have an abortion, and when that did not succeed, to work throughout her pregnancy, including the morning she eventually gave birth, to have her legal maternal leave,<sup>101</sup> but to return to work only two weeks after giving birth. The couple had agreed to bring the father of the child to Finland as well, promising him work. After he arrived, it soon became clear that he would not get paid either, but the perpetrating couple demanded 20,000 Euros<sup>102</sup> from the victims for arranging the father's arrival. The perpetrating couple was sentenced to two years and four months of imprisonment for human trafficking and aggravated usury.<sup>103</sup>

The number of human trafficking cases has steadily increased after the amendments to the Criminal Code. In 2012, eight alleged human trafficking cases were prosecuted. Currently, there is an on-going case of trafficking in human beings in the District Court of Pohjanmaa. The number of victims receiving help through the national assistance system has also steadily increased. In 2012, 52 victims of human trafficking received help through the National Assistance System for Victims of Human Trafficking.<sup>104</sup>

#### [\*257] B. International Law

As stated above, Finland is part of most United Nations human rights treaties. Some of the key treaties are the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and the Convention on the Rights of the Child.<sup>105</sup> Finland has ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Protocol entered into force globally on January 18, 2002. The purpose of the Protocol

<sup>99</sup> *Actions against Human Trafficking in Finland*, *supra* note 98.

<sup>100</sup> Helsinki District Court, Kä0 12/2880, Judgment of March 30, 2012. See also numerous Finnish newspapers before and after the conviction, e.g., *Kynsistudion Pitäjille Vankilatuomiot Ihmiskaupasta*, HELSINGIN SANOMAT, MAR. 30, 2012, available at <http://www.hs.fi/kotimaa/a1305558919243>; *Syyttäjä: Kynsistudiossa Työskennelleeltä Ihmiskaupan Uhrilta laadittiin Aborttia*, MTV3 NEWS Mar. 20, <http://www.mtv.fi/uutiset/rikos/artikkeli/syyttaja--kynsistudiossa-tyoskennelleelta-ihmiskaupan-uhriilta-vaadittiin-aborttia/2048992>; *Kaivokadun Kynsistudion Omistajille Tuomio Ihmiskaupasta*, HELSINKI NEWS, Apr. 2, 2012, available at <http://www.helsingin uutiset.fi/artikkeli/101937-kaivokadun-kynsistudion-omistajille-tuomio-ihmiskaupasta>.

<sup>101</sup> According to Finnish legislation, all Finnish inhabitants who have lived in the country for at least 180 days before the birth of the child are entitled to maternity allowance for 105 days. See Finnish Health Insurance Act (Act No. 1224/2004), § 9, PP 1, 2. Employees have the right to take a leave of absence from work for the period of maternity allowance, as well as other periods of parental allowances set by the law. See Finnish Employment Contracts Act (Act No. / ?) § 4, PP 1,2.

<sup>102</sup> One Euro amounts approximately 1.35 U.S. Dollars; 20,000 Euros is approximately 27,000 USD. EUROPEAN CENTBANK, *Euro Foreign Exchange Rates*, available at <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html> (last visited July 23, 2014).

<sup>103</sup> Helsinki District Court, *supra* note 101.

<sup>104</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REP. 2013*, *supra* note 22. See also *A Vietnamese Foreman Accused of Human Trafficking*, YLE NEWS, Sept. 2, 2013, [http://yle.fi/uutiset/vietnamilaista\\_tyonjohtajaa\\_syytetaan\\_ihmiskaupasta/6810548](http://yle.fi/uutiset/vietnamilaista_tyonjohtajaa_syytetaan_ihmiskaupasta/6810548).

<sup>105</sup> See MINISTRY OF FOREIGN AFFAIRS OF FINLAND, *supra* note 13 (listing U.N. Conventions Finland has ratified), <http://www.formin.fi/public/default.aspx?contentid=67680&contentlan=1&culture=fi-FI>.

is to protect children by prohibiting their sale, child prostitution and child pornography. Finland signed the Protocol in 2000.<sup>106</sup>

Finland has also ratified a number of international and regional conventions regarding trafficking in human beings and has been actively involved in international work to stop human trafficking. Finnish Ambassador Pekka Hyvönen is currently the Chair of the Committee of the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings.<sup>107</sup>

One of the main international treaties regarding fighting against human trafficking is the United Nations Convention against Transnational Organized Crime, from 2000,<sup>108</sup> supplemented by three protocols.<sup>109</sup> Finland signed the Convention in 2000 and ratified **[\*258]** it in 2004.<sup>110</sup> Additionally, Finland has signed and ratified all three optional Protocols to the Convention. The most important instrument of the three protocols addressing human trafficking issues is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the so-called "Palermo Protocol." The Protocol entered into force December 25, 2003. The Protocol is universally significant because it is the first international, legally binding instrument that contains the definition of trafficking in human beings.<sup>111</sup> As of September 7, 2014, 161 states are parties to the Palermo Protocol,<sup>112</sup> which entered into force in 2006.<sup>113</sup>

In addition to international conventions, Finland is part of numerous regional agreements. Most of these are European Union Conventions and Directives. One of the most important regional instruments is the Council of Europe Convention on Action against Trafficking in Human Beings of 2005. The purpose of the Convention is to prevent and combat human trafficking, protect gender equality, effectively investigate and prosecute human

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<sup>106</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Jan. 18, 2002).

<sup>107</sup> COUNCIL OF EUROPE, *Action Against Trafficking in Human Beings: News*, Oct. 18, 2013, [http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp).

<sup>108</sup> United Nations Convention against Transnational Organized Crime, U.N. Doc. RES/55/25 (Nov. 15, 2000) (entered into force Sept. 29, 2003), *available at* [www.unodc.org/unodc/en/treaties/CTOC/index.html](http://www.unodc.org/unodc/en/treaties/CTOC/index.html).

<sup>109</sup> The three supplementing protocols to the Covenant are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which Finland signed in 2000 and accepted in 2006; the Protocol against the Smuggling of Migrants by Land, Sea and Air, which Finland signed in 2000 and accepted in 2006; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, which Finland signed in 2000 and accepted in 2011. *See id.*

<sup>110</sup> U.N. TREATY COLLECTION (listing countries who have signed and/or ratified the Convention against Organized Crime), [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en) (last visited September 7, 2014).

<sup>111</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *supra* note 2 (adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000). *See also United Nations Convention against Transnational Organized Crime*, *supra* note 108.

<sup>112</sup> U.N. TREATY COLLECTION (listing states parties to the Protocol), [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited on Sept. 7, 2014).

trafficking cases, protect the victims and improve international cooperation. The **[\*259]** Convention came into force in Finland September 1, 2012. <sup>114</sup>

Another important regional instrument is a European Council directive, regarding issuance of residence permits for victims of human trafficking. The Directive concerns issuing residence permits to third-country nationals who are victims of human trafficking or have been subjected to illegal entry to the country. These victims may be issued a residence permit to European Union countries if they cooperate with the competent authorities, for example, in order to catch the perpetrators. The directive was issued in April 2004 <sup>115</sup> and adopted by the Finnish Aliens Act (301/2004) in 2006. <sup>116</sup>

The latest regional convention Finland is a part of is the European Union directive on preventing and combating human trafficking and protecting its victims. <sup>117</sup> The Directive "establishes minimum rules at European Union (EU) level concerning the definition of criminal offences and sanctions in the area of trafficking in human beings" and it also "provides measures aimed at better prevention of this phenomenon, and at improving the protection of victims." <sup>118</sup> Since it is an EU directive, all member states of the European Union must adapt their domestic legislation to comply. <sup>119</sup> Finland's domestic efforts to create an effective support system for victims of human trafficking are aimed to be consistent with this EU directive.

#### **[\*260]** IV. Predicting Future Trends

Problems in detecting human trafficking and overlaps in legislation have been noticed. The Ministry of Justice in 2011 established a working group to identify needs for legislative changes. The purpose of the working group was to investigate how well Finnish legislation is in line with the recent EU directive about combatting human trafficking <sup>120</sup> and what kind of legislative changes may be needed to clarify the difference between human trafficking and crimes with similar aspects, such as pandering and extortionate work discrimination. The working group suggested certain legislative changes to more effectively intervene in human trafficking and protect the victims, as well as to better comply with the international obligations to which Finland has committed. <sup>121</sup>

<sup>113</sup> UNDOC: *World Drug Report 2014*) (listing countries who have signed and/or ratified the Protocol, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited July 23, 2014).

<sup>114</sup> Council of Europe Convention on Action against Trafficking in Human Beings, ch. 1, Art. 1, May 16, 2005, C.E.T.S. 197 (entered into force in Finland September 1, 2012, Bill 427/2012).

<sup>115</sup> Council Directive, *supra* note 75.

<sup>116</sup> Bill HE 32/2006 vp., *available at* <http://www.eduskunta.fi/valtiopaivaasiat/he+32/2006>.

<sup>117</sup> Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101).

<sup>118</sup> Council Directive, *supra* note 75. See also EUROPA: SUMMARIES OF EU LEGISLATION, *Preventing and Combating Trafficking in Human Beings*, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/jl0058\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm).

<sup>119</sup> See European Commission, [http://ec.europa.eu/eu\\_law/introduction/what\\_directive\\_en.htm](http://ec.europa.eu/eu_law/introduction/what_directive_en.htm) (providing more information about EU directives).

<sup>120</sup> See Directive 2011/36, of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

<sup>121</sup> See The Finnish National Rapporteur on Trafficking in Human Beings, Rep. of the Ombudsman for Minorities, Pub. 12, at 11 (2012), *available at* [http://www.ofm.fi/download/39494\\_SM\\_ihmiskauppa\\_uk\\_web.pdf](http://www.ofm.fi/download/39494_SM_ihmiskauppa_uk_web.pdf).

The working group suggests removing the word "coercion" from the current pandering clause and removing all violence-related methods from the aggravated pandering clause. They also suggest amending the wording "takes control over another person" in the human trafficking clause to better comply with the purpose of the clause.<sup>122</sup> This would clarify the line between human trafficking and pandering, making all cases involving pressuring, threatening or violence cases of human trafficking. The working group suggests improving the position of persons subjected to pandering by providing them legal aid and support. It furthermore points out that, in labor cases, the responsibility of the employer should be investigated further, for example, whether using bans on business operations could be effective.<sup>123</sup> These amendments have not yet been made, but will **[\*261]** most likely happen in the near future.

The Steering Group, established to evaluate the human trafficking situation in Finland, points out, as its main recommendation, that a special working group should be established to further investigate needs for legislative changes and to draft a proposal for a comprehensive act regarding human trafficking issues. The Steering Group also points out the need to draft proposals on how to regulate the identification of victims of human trafficking, as well as how to communicate with and pass information between different authorities or among authorities and other parties helping the victims.<sup>124</sup> So far, these suggestions have not been put into practice. They are, however, recommendations of the Steering Group, and therefore the government likely will at least carefully consider them.

The Ministry of Justice has debated whether Finland should follow the methods practiced in Sweden. Sweden has completely criminalized buying sex, and Finland is debating whether the same legislation could work in Finland. Currently Finnish legislation prohibits prostitution in a public place<sup>125</sup> and buying sex from minors or from victims of human trafficking.<sup>126</sup> Needless to say, the legislation is ineffective in practice, since such cases are almost impossible to prosecute. The prosecution should be able to prove that the person buying sexual favors knew at the time that the person was underage or a victim of human trafficking. Complete prohibition of buying sexual services would clarify the legislation and, it is hoped, create a negative public atmosphere towards commercial sex.<sup>127</sup> Most likely complete criminalization of buying sex will not happen due to the strong objection of many parties, but some changes in the legislation **[\*262]** are predicted.

Finland is part of the European Union and actively involved in international cooperation. Human trafficking is more and more condemned universally, and both states and different organizations are increasingly putting effort into victim identification and protection. Finland is likely to follow this international direction, making legislative amendments and finding new ways to improve the position of the victims.

## V. Appraisal, Invention of Alternatives, Recommendations

### A. Appraisal

Finland is generally considered to be a safe Western welfare country, having but few problems with corruption or organized crime. Finland has made numerous efforts in improving the human rights situation in the country. In

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<sup>122</sup> Finnish National Rapporteur, *supra* note 123, at 11-12.

<sup>123</sup> *Id.*

<sup>124</sup> MINISTRY OF THE INTERIOR, *Evaluation of the National Plan of Action against Trafficking in Human Beings and Recommendations to Develop Legislation and Measures Concerning Human Trafficking*, pubs. 17/2011, at 116-117.

<sup>125</sup> Public Order Act (Act No. 612/2003), ch. 2, § 7.

<sup>126</sup> The Criminal Code of Finland, *supra* note 48, at ch. 20, §§ 8, 8a.

<sup>127</sup> MINISTRY OF JUSTICE OF FINLAND, *Publications, Inquests and Instructions* 39/2013, at 112, 116-118, available at [http://oikeusministerio.fi/fi/index/julka-isut/julkaisuarkisto/1378203764840/Files/OMSO\\_39\\_2013\\_Seksikaupan\\_kohteen\\_hyvaksikaytto.pdf](http://oikeusministerio.fi/fi/index/julka-isut/julkaisuarkisto/1378203764840/Files/OMSO_39_2013_Seksikaupan_kohteen_hyvaksikaytto.pdf).

addition to international agreements, Finland has made domestic efforts to stop human trafficking and help the victims get back on their feet.

Despite the fact that certain legislative changes have been made and domestic legislation in Finland is considered to be consistent with international obligations and European Union directives, the legislation in its current form does not give the victims of human trafficking enough protection. Human trafficking statutes are not used broadly enough, and old habits in all levels of legal procedures, from investigation by the police to prosecution and court procedures, are still used all too commonly. Both legislation and the general legislative system in the country need further inspection and improvements before victims of human trafficking can effectively be protected and their perpetrators brought to justice.

On paper, the current National Assistance System for Victims of Human Trafficking is functional. Though some need for improvement may always be found, the basic assistance system is relatively good. The problem, however, remains that victims of human trafficking are not recognized, and therefore stay out of the reach of support systems.

**[\*263]** The system of recognition of possible victims of human trafficking is not effective. No legislative guidelines have been drawn up to assist authorities in their work. General knowledge about human trafficking remains inadequate both among the public and those people who might first interact with the victims, such as ground-level personnel in border control, police, social services or health care. These officials working on the ground level, where victims usually are easiest to spot, do not have enough knowledge to recognize the victims among all other clients. Making a distinction between what is human trafficking and what is something else is not easy without proper training or education; it remains challenging even for those involved in different kinds of training programs.

#### *B. Alternatives*

In order to protect the victims of human trafficking, Finnish legislation needs significant changes. The distinction between human trafficking and pandering statutes must become clearer. At the moment, many victims fall out of the support system because their cases are prosecuted as pandering cases instead of using the more serious human trafficking statute. As long as these two statutes overlap, changing the legal praxis is challenging. Some suggestions to amend the legislation have already been made, and will hopefully happen, but the legislation may still need closer observation.

In many other countries, the clear distinction between pandering and human trafficking is the consent of the person selling services. This distinction would make Finnish legislation more effective and give victims of human trafficking more protection. All cases, when sex workers are not conducting business with their full consent, and cannot truly, freely stop working whenever they want should be prosecuted as human trafficking. Similarly, only those cases when the workers truly have a chance of leaving whenever they want without being pressured financially or in any other way, and they are conducting in prostitution out of their free will, could be prosecuted as pandering.

Enacting a new law regarding trafficking in human beings, as **[\*264]** the working group suggested, could be a useful idea. It might also be useful to set up legislated guidelines for identifying victims of human trafficking. Currently, the guidelines can be found only in different governmental instructions. <sup>128</sup>

The complete prohibition of buying sexual services has been debated. Criminalizing buying sex might help in managing demand for commercial sex and therefore demand for sex trafficking. Complete prohibition, however, has its issues, and so far proof of its effectiveness has been scarce. The suggestion to broaden the clause on prohibiting buying sex from victims of human trafficking, to also include situations where the buyer should have known to suspect human trafficking would probably not have much effect, either. Proving that the buyer should have known he was dealing with a victim of human trafficking is almost as problematic as proving he in fact knew that was the case. One alternative would be to go a little further and make buying sex from a victim of human

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<sup>128</sup> MINISTRY OF THE INTERIOR, Evaluation, *supra* note 126, at 40-44.

trafficking punishable in all cases, whether or not the buyer was fully aware that he in fact was dealing with human trafficking. This method is used in the United Kingdom. <sup>129</sup>

### C. Recommendations

Human trafficking is not an easy crime to tackle. Many efforts have been made globally to stop it, yet trafficking in human beings continues to be an aggravated crime all over the world. Even giving specific recommendations on how to tackle the human trafficking situation in Finland is problematic. Ending human trafficking would require completely abolishing demand and sources, which in the current state of the world seems quite unrealistic. Diminishing human trafficking, however, can be achieved. It requires effective legislation, trained individuals in all fields, changes in public attitude, raising awareness and open discussion, and the public's will to help one another. Victims need to be protected, assisted and supported effectively on a practical level. Putting all of this into specific acts **[\*265]** is not an easy task.

#### 1. Legislation

Different observation groups already suggest changes in domestic legislation. The main suggestion is clearly separating pandering and human trafficking statutes as well as forced labor and extortionate work discrimination from one another. The clear distinction between sex trafficking and pandering is suggested to be the consent of the victim. The distinction of full consent is very clear and broadly used all over the world. <sup>130</sup> It would require either minor changes in the Criminal Code of Finland, or a statute and guidelines for the court and police to follow while investigating possible human trafficking cases. This change could be done quite easily and it would have a significant impact on the future of human rights prosecution. More specifically, broader guidelines and legislation might be needed to fully cover different situations of trafficking in human beings. Therefore, I would suggest a more careful observation of current legislation.

Current legislation does not specifically mention different forms of sex trafficking. Adding some type of guidelines or even statutes on different forms of sex trafficking, such as establishing a notion on what kind of forms sex trafficking may have, but is not limited to, could help in investigating these situations. The distinction between two consenting adults marrying each other compared to a perpetrator buying a victim abroad for exploitation is naturally extremely difficult to detect, and national legislation may not be the best forum for defining forms of sex trafficking; it could limit the use of the statute. However, having mailorder brides mentioned in, for example, law preparation documents as a possible form of human trafficking might make it a little easier for border control and other officers to question these situations. It could also help the victims to see that they may in fact be victims of a crime, and they may seek help.

**[\*266]** Further legislation or guidelines regarding ethnic enterprises, such as massage parlors and restaurants, might also be needed. Sex trafficking and forms of forced labor are changing; the general image of traditional prostitution happening on the streets is not necessarily a reality anymore. New forms of exploitation are surfacing, and legislation, usually one step behind, should try to keep up with the changing world.

#### 2. Attacking Demand

A major change in general attitude is needed to effectively impact human trafficking in Finland. As long as certain forms of human trafficking, such as ethnic massage parlors and mail-order brides, are seen as acceptable and the general public does not understand or want to see the problems behind such behavior, the phenomena will continue. Major campaigns raising awareness of human trafficking issues might help to wake up the public to seeing that human trafficking is in fact happening in Finland and that there are victims all over the country.

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<sup>129</sup> Puu-Oksanen, *supra* note 42.

<sup>130</sup> See Chapter V, A. Appraisal and B. Alternatives.

Both media and the public usually have powerful effects on raising governmental interest, as well as affecting everyday situations. If the public were more aware of the forms of human trafficking taking place, identifying possible victims might become more effective. Change in general attitude and awareness might even have a minor impact on the demand. Being realistic, no awareness campaign will ever completely erase the demand for sex labor. Commercial sex is the oldest form of labor in the world, and that is hardly going to change. However, raising awareness might make some customers think twice before buying services from someone who might fall under the guidelines on how to recognize a victim of human trafficking.

One way of raising awareness and affecting general attitudes towards human trafficking could be including obligatory courses on human rights and trafficking in human beings in the Finnish educational system. It would not have to be too intensive; even a few lessons a year could be effective. This education should be well-tailored for each age group; little children in the first grades of elementary [\*267] school obviously should not be exposed to possibly harmful information. The education could, however, begin already in the first grades, taking the age of the children into account. Providing human rights education including information about human trafficking as a normal part of Finnish educational system could, at least, create a new generation more aware of both their rights and duties as humans. It could also make victim recognition a little bit easier.

### *3. Recognizing the Victims*

The main problem still remains of how to recognize the victims. No matter how effective the supporting system for victims is on paper, it does not make much difference in practice as long as the victims remain unidentified and do not get the help the support system offers.

Ground-level officers are usually the ones first communicating with the victims. They may be social workers, police officers, immigration, border control, or officers in other fields, such as social workers or health care personnel. They are the first ones who should notice when something is wrong and be able to recognize warning signs of potential human trafficking situations, and providing them with proper training to do so is essential. If these ground-level workers do not have the knowledge or resources to recognize these situations and intervene, it is very likely that the abuse of the victims will continue without anyone knowing about it, and the likelihood that the victims will get the help they need before it is too late will significantly diminish.

Officials are not the only parties who encounter possible human rights victims in their everyday work. The Finnish government provides training for Finnish forces and personnel of Finnish national airline company Finnair to help them identify victims of human trafficking. I would suggest expanding this training to concern other transportation personnel, as broadly as possible. Training personnel of airline companies not based in Finland is not in the hands of the Finnish government. It could, however require a certain level of victim identification training from all personnel working at the airports, [\*268] not only from Finnair staff or border control. The same training could be effective when provided to personnel working in other transportation companies, such as the cruise companies Silja Line and Viking Line, as well as the national railway company VR. Since certain trains from Finland go to Russia, training VR personnel, especially those directly working on those trains, to identify human trafficking victims, might be extremely beneficial.

NGOs have an important role in battling human trafficking. The Finnish government is already financially supporting certain NGOs. Cooperation between governmental authorities and organizations and the NGOs should be improved and the NGOs should be engaged more in anti-trafficking work. The options of providing sustainable financial support for the NGOs helping possible victims should be investigated further. The government should also cooperate more with international organizations. Many multinational organizations are making enormous efforts in improving the universal human rights situation. Human trafficking should become one of those efforts. The Finnish government could take the observations of the NGOs into account more effectively when creating new guidelines or legislation concerning human trafficking.

Cooperating with the governments of those countries from which most victims of human trafficking come to Finland is important. Improving international cooperation systems regarding human trafficking could be investigated. This

might include improving systems of providing information between countries in alleged human trafficking situations, even before the victims enter the country.

Since human trafficking is an unreported crime that remains hidden, finding the victims may not be easy, even if the workers know what to look for. Ground-level search work, within reasonable resources, could be an effective way of finding some of those hidden victims. Human trafficking victims cannot come to you; you need to go to them. This might include on-the-spot visitations to massage parlors, restaurants or factories where possible victims may be working. Engaging NGOs could be useful in this ground level search, since victims may not want to talk to people whom they suspect are police officers or other officials, even if the officers are not wearing uniforms. Mail-order bride victims are extremely difficult to spot because [\*269] their exploitation usually happens in their homes by their spouses. Additional checks by immigration authorities on certain groups of foreign marriages could be one way to supervise mail-order marriages. This does not have to happen in a discriminating way just by adding some sort of surveillance and changing protocols. For example, an interview for the foreign spouse alone, with the presence of a translator, could be enough.

In today's society, more and more information is online, including perpetrators and victims of human trafficking. NGO's or special groups could be established to monitor online discussion boards and social media and report suspicious activity. A lot of information can be found online and it should be taken advantage of. If a simple search on google reveals several discussions on specific massage parlors providing "additional services" across the country, a special working group could find a significant amount of information and places to target through online monitoring. Other online services, such as chatting online with possible victims, could be a way to raise awareness.

Many legal documents, especially legislation, can be found in only the two national languages of Finland. On the Finnish online database containing all domestic legislation, only a few statutes are available in English. Finding information about human trafficking in Finland in any language other than Finnish or Swedish turned out to be difficult; information was scarcely available even in English. Even the official Finnish web site [www.humantrafficking.fi](http://www.humantrafficking.fi), set up specifically to provide information about human trafficking to possible victims and other parties, has very little information in any language other than Finnish or Swedish. Basic information is provided in eight different languages, but this information is extremely poor, as scarce as a few sentences.<sup>131</sup> Providing information on a language that the victims understand is essential in order to give them a chance to find understandable information about their rights. Victims may come from all over the world, and translating all documents to dozens of languages is obviously not possible. It might, however, be useful to look into the geographical distribution of the victims and focus [\*270] on providing information in at least a few main languages.

Improving already existing channels of information is a good way to start, but searching for alternative ways to raise awareness could be necessary. The most isolated victims are not likely to have access to Internet. Reaching these victims may need more ground-level work, including targeting workplaces, restaurants and other forums where possible victims of human trafficking may be working or residing.

Battling human trafficking requires work from all parties, including governments, international organizations, and non-governmental organizations, as well as individuals. Trafficking in human beings is a widespread problem all over the world, and ending this crime against human dignity will not be easy. The most important thing, however, is to realize that human trafficking is a crime, that it is not tolerable, and that the government is continuously working, step by step, towards reducing human trafficking and helping the victims to rehabilitate and break free from exploitation.

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<sup>131</sup> See Chapter III.A.2, Monitoring and Assistance.



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End of Document



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members  
**FROM:** Chief Kelly Bennett, Police Department  
**MEETING DATE:** March 12, 2019  
**SUBJECT:** Interlocal Cooperation Agreement for Animal Services Amendment No. 3

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### **RECOMMENDED ACTION**

Approve Resolution 2019R-07 authorizing Amendment No. 3 to the Interlocal Cooperation Agreement with Davis County modifying the City's 2019 calendar year obligations for animal services.

### **DESCRIPTION / BACKGROUND**

Clearfield City entered into an Interlocal Cooperation Agreement for Animal Services in 2016. This Amendment No. 3 is the current year's agreement set forth by the Animal Care and Control with the revisions of costs associated with these services.

### **CORRESPONDING POLICY PRIORITY (IES)**

The services provided by the Davis County Animal Care and Control correspond with providing quality municipal services to the residents of Clearfield City. The City continually reviews the amendments to ensure fiscal responsibility. This service is essential to the residents of Clearfield City in order to promote safety and follow City and County Ordinances. In addition, these services improve Clearfield's image and livability. Animal Services and Control enforces animal nuisances as well as the removal of dead wildlife and domestic animals. City staff is not able to provide these services.

### **FISCAL IMPACT**

The City's calendar year obligation to the County for service calls has increased by \$13,503.20 with this new agreement.

Operational costs have <b>increased by</b>	\$12,571.71
Wild Animal pick up costs have <b>increased by</b>	\$927.00
Capital Projects costs have <b>increased by</b>	\$4.49



**ALTERNATIVES**

The only alternative method of providing animal and control services would be to provide this service. This would include building a new shelter or contracting with an existing shelter as well as hiring employees and purchasing the necessary equipment.

**SCHEDULE / TIME CONSTRAINTS**

N/A

**LIST OF ATTACHMENTS**

- Proposed Amendment 3 to the Interlocal Agreement with Davis County
- Resolution 2019R-07

**AMENDMENT NO. 3 TO INTERLOCAL COOPERATION AGREEMENT FOR ANIMAL SERVICES**

This Amendment No. 3 to Interlocal Cooperation Agreement for Animal Services (this “Amendment No. 3”) is made and entered into as of January 1, 2019, by and between Davis County, a political subdivision of the state of Utah (the “County”), and Clearfield City, a municipal corporation of the state of Utah (the “City”). The County and the City may be collectively referred to as the “Parties” herein.

**RECITALS**

This Amendment No. 3 is made and entered into by and between the Parties based, in part, upon the following recitals:

- A. In 2016, the Parties entered into an *Interlocal Cooperation Agreement for Animal Services*, which is labeled by the County as Contract No. 2016-284 (the “Agreement”); and
- B. The Parties, through this Amendment No. 3, desire to modify certain terms and/or provisions of the Agreement.

Now, based upon the foregoing, and in consideration of the terms set forth in this Amendment No. 3, the Parties do hereby agree as follows:

- 1. **Exhibit A of the Agreement is replaced in its entirety with the Exhibit A below:**

**EXHIBIT A**

The City’s 2019 calendar year obligation to the County for service calls, excluding calls for wild nuisance animal pick up and/or euthanization:

<u>Title/Category</u>	<u>Subtitle/Subcategory</u>	<u>Amount</u>
Budgeted 2019 Expenditures by Davis County for Animal Care and Control:	Personnel:	\$1,915,670.01
	Operating:	\$312,275.00
	Capital Equipment:	\$58,100.00
	Allocations:	+ \$135,000.71
	Total Expenditures:	\$2,421,045.72
Projected 2019 Revenues of Davis County Animal Care and Control:	Licenses:	\$220,000.00
	Shelter Fees:	\$180,500.00
	Surgical Fees:	\$42,750.00
	Wildlife Fees:	\$57,139.25
	Donations:	+ \$11,500.00
	Total Revenues:	\$511,889.25
Projected 2019 Expenditures Less Projected 2019 Revenues:		\$2,421,045.72 - \$511,889.25 \$1,909,156.47
Combined Cities’ 50% Obligation:		\$1,909,156.47 x 50% 954,578.24
Average of the City’s Total Billable Calls for 2017 and 2018:		1,267.00
Average of Combined Cities’ Total Billable Calls for 2017 and 2018:		10,766.50
The City’s 2018 Usage Rate:		1,267.00 / 10,766.50 11.77%
The City’s 2019 Calendar Year Obligation to the County:		\$112,334.61

The City shall pay the foregoing calendar year obligation to the County on a monthly basis and within thirty calendar days of receipt of a monthly invoice from the County.

The City's 2019 calendar year obligation to the County for wild nuisance animal pick up and/or euthanization calls or services:

Title/Category	Frequency/Amount
The City's Wildlife Calls for 2018:	122
Cost to City for Each Wildlife Call in 2018:	\$25.75
The City's 2019 Calendar Year Obligation to County for Wildlife Calls:	\$3,141.50

The City shall pay its calendar year obligation to the County for wild nuisance animal pick up and/or euthanization calls or services on a monthly basis and within thirty calendar days of receipt of a monthly invoice from the County.

The City's 2019 calendar year obligation to the County for the capital projects fund regarding the Shelter:

Title/Category	Amount
Total of Capital Projects Fund Regarding the Shelter:	\$562,000.00
Combined Cities' Portion of the Capital Projects Fund Regarding the Shelter:	\$281,000.00
2019 Obligation of the Combined Cities:	\$56,200.00
The City's 2018 Usage Rate:	11.77%
The City's 2019 Calendar Year Obligation to the County:	\$6,613.61

The City shall pay the foregoing calendar year obligation to the County on a monthly basis and within thirty calendar days of receipt of a monthly invoice from the County.

2. **Continuing Effect of the Agreement.** Except to the extent specifically modified by this Amendment No. 3, the terms and conditions of the Agreement shall remain in full force and effect.
3. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall have the same force and effect as original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 3 to be signed by their duly authorized representatives on the dates indicated below.

<p>DAVIS COUNTY</p> <p>By: _____ Chair, Board of Davis County Commissioners</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____</p> <p>Davis County Clerk/Auditor</p> <p>Date: _____</p> <p>Reviewed and Approved as to Proper Form and Compliance with Applicable Law:</p> <p>_____</p> <p>Davis County Attorney's Office</p> <p>Date: _____</p>	<p>CLEARFIELD CITY</p> <p>By: _____ Mayor</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____</p> <p>City Recorder</p> <p>Date: _____</p> <p>Reviewed and Approved as to Proper Form and Compliance with Applicable Law:</p> <p>_____</p> <p>City Attorney</p> <p>Date: _____</p>
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# CLEARFIELD CITY RESOLUTION 2019R-07

## A RESOLUTION APPROVING THE AMENDMENT TO THE INTERLOCAL COOPERATION AGREEMENT BETWEEN CLEARFIELD CITY AND DAVIS COUNTY FOR ANIMAL CONTROL SERVICES

WHEREAS, the County provides animal care and control services through Davis County Animal Services; and

WHEREAS, the City desires animal care and control services from the County to enforce its Animal Control Ordinance; and

WHEREAS, Clearfield City previously entered into an Interlocal Cooperation Agreement with Davis County for Animal Control Services which sets forth the terms and conditions under which said animal control services will be provided and for the payment of the fees due for such; and

WHEREAS, Davis County proposed amendments to the amount of compensation being paid by the City for said services; and,

WHEREAS, the Clearfield City Council has reviewed the attached Amendment to the Interlocal Cooperation Agreement and finds that it is beneficial to approve it.

NOW, THEREFORE, be it resolved by the Clearfield City Council that the attached Amendment to the Interlocal Cooperation Agreement is approved and the Mayor is authorized to execute the agreement.

DATED this 12<sup>th</sup> day of March, 2019.

ATTEST:

CLEARFIELD CITY CORPORATION

\_\_\_\_\_  
Nancy R. Dean, City Recorder

\_\_\_\_\_  
Mark R. Shepherd, Mayor

### VOTE OF THE COUNCIL

AYE:

NAY:



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members  
**FROM:** Nancy Dean, City Recorder  
**MEETING DATE:** March 12, 2019  
**SUBJECT:** Interlocal Agreement with Davis County for Assistance with the 2019 Municipal Election

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### **RECOMMENDED ACTION**

Approve Resolution 2019R-08 authorizing the Interlocal Agreement with Davis County for assistance in administering the 2019 Municipal Election.

### **DESCRIPTION / BACKGROUND**

The City has successfully conducted its last two municipal elections by mail with the assistance of the Davis County Clerk's office. The County has the resources and equipment necessary to continue to assist in administering the election by mail and has offered its help again in 2019. Voters appear to have adapted to the format and staff feels it is good to keep the process the same from year to year creating less confusion for voters. The Interlocal Agreement identifies the services provided by the County Clerk's office. The City Recorder continues to act as the City's election officer providing services to candidates and voters, establishing an election plan, assisting with the appointment of poll workers, fulfilling noticing requirements, and all other election duties and responsibilities required by State Statute.

As a note, the City previously participated in the pilot program for same day voter registration which was adopted by the State Legislature in 2018. That opportunity will again be offered to residents and appears to have been successful in engaging more voters. The County is the entity responsible for registering voters. Depending on the number of voters who choose to use this method, there can be a delay in determining election winners on election night. Preliminary results will be provided on election night but the actual winners of the election will be officially declared during the canvass following the election.

### **CORRESPONDING POLICY PRIORITY (IES)**

This agreement with Davis County provides the City the resources necessary to continue to provide quality municipal services to its residents. It provides residents the opportunity to take the time necessary to research candidate information, make informed decisions, and vote with ease.





## **FISCAL IMPACT**

This year's proposed costs for the County's services for each election (primary and general) is approximately \$16,603 which is an increase of a little over \$1000 per election from 2017. The increase is most attributed to the cost of postage, more specifically the returned undeliverable fee. In the past the County did not charge the City for those ballots because it was difficult to know what that cost would be. With several elections now having been held by mail the County is better able to identify that cost for each city. The County makes every effort to locate voters of undeliverable ballots before voting deadlines, but the return postage has already been assessed. Staff fully anticipates there will be a primary this year given the increased voter participation over the past few years and intends to budget with that expectation.

## **ALTERNATIVES**

Approve the Interlocal Agreement with Davis County for election services in 2019.

The Council may decide not to enter into the Interlocal Agreement with the County and the City Recorder would hold a manual election. Under this scenario, the costs would need to be evaluated and further discussed.

## **SCHEDULE / TIME CONSTRAINTS**

The County Clerk's office has asked to have the Interlocal Agreement considered by city councils as soon as possible so it can begin planning its election commitments.

## **LIST OF ATTACHMENTS**

- Resolution 2019R-08 authorizing the Interlocal Agreement with Davis County for election services
- Interlocal Agreement with Davis County for election services.

# CLEARFIELD CITY RESOLUTION 2019R-08

A RESOLUTION AUTHORIZING AN INTERLOCAL AGREEMENT WITH DAVIS COUNTY PROVIDING THE TERMS FOR ASSISTING THE CITY WITH ITS MUNICIPAL ELECTION

WHEREAS, Clearfield City is authorized to hold municipal elections in each odd-number year; and

WHEREAS, Chapter 5, Title 20A, Utah Code Ann. (1953) as amended allows the election officer to employ and agent professional services to assist with conducting an election; and

WHEREAS, Davis County has equipment and resources needed to carry out an election and is willing to make those resources available for the City's needs during its municipal elections; and

WHEREAS, the parties are authorized by the Utah Interlocal Cooperation Act as set forth in Chapter 13, Title 11, Utah Code Ann. (1953) as amended, to enter into an agreement.

NOW, THEREFORE, be it resolved by the Clearfield City Council that the attached Interlocal Agreement with Davis County for assistance with election services is approved and the Mayor is authorized to execute the agreement.

Passed and adopted by the City Council at its regular meeting on the 12<sup>th</sup> day of March, 2019.

ATTEST

CLEARFIELD CITY CORPORATION

\_\_\_\_\_  
Nancy R. Dean, City Recorder

\_\_\_\_\_  
Mark R. Shepherd, Mayor

## VOTE OF THE COUNCIL

AYE:

NAY:

## INTERLOCAL COOPERATION AGREEMENT FOR MUNICIPAL ELECTION SERVICES

This Interlocal Cooperation Agreement for Municipal Election Services is made and entered into by and between DAVIS COUNTY, a body corporate and politic of the state of Utah, hereinafter referred to as "County," and \_\_\_\_\_ CITY, a municipal corporation of the state of Utah, hereinafter referred to as "City." County and City may be referred to collectively as the "Parties" herein or individually as a "Party" herein.

WITNESSETH:

WHEREAS, pursuant to Sections 20A-1-201.5 and 20A-1-202, *Utah Code Ann.* (1953) as amended, City is authorized and required to hold municipal elections in each odd-numbered year;

WHEREAS, County has equipment and resources needed to carry out an election and is willing to make available the resources and equipment to assist City in holding its municipal primary and general elections in 2019 upon the following terms and conditions; and

WHEREAS, the Parties are authorized by the *Utah Interlocal Cooperation Act* as set forth in Title 11, Chapter 13 (the "Act"), and Section 20A-5-400.1 of the *Utah Code Ann.* (1953) as amended, to enter into this Agreement.

NOW, based upon the foregoing and in consideration of the mutual terms and conditions set forth hereafter, the Parties hereto agree as follows:

1. County agrees to provide to City, if needed for the primary election in August 2019, and if needed for the general election in November 2019, the following:
  - 1.1. Test, program, assemble and make available to City voting machines and poll supplies;
  - 1.2. Provide for delivery and retrieval of voting equipment;
  - 1.3. Polling location management, which includes, but is not necessarily limited to making arrangements for use, ADA compliance survey and contact information;
  - 1.4. Absentee and By-Mail ballot processing, which includes mailing, receiving, signature verification and tabulation;
  - 1.5. Provide electronic ballot files for Optical Scan Ballots printing;
  - 1.6. Provide Information System assistance, which includes, but is not necessarily limited to, election programming, tabulation, programmers and technicians;
  - 1.7. Canvass reports;
  - 1.8. Electronic tabulation results transmitted to the Office of the Lieutenant Governor;
  - 1.9. Provide personnel and technical assistance throughout the election process and equipment and/or supplies required specifically for voting;
  - 1.10. Recruit poll workers; provide training, scheduling, supplies and compensation;
  - 1.11. Publish legal notices, which include, polling locations, sample ballots public demonstration and election results;
  - 1.12. Provide preparation and personnel for the public demonstration of the tabulation equipment;
  - 1.13. If required, in cooperation with the City, conduct an election audit; and

- 1.14. Store all election returns for the required twenty-two (22) months.
2. City agrees to do the following:
  - 2.1. Provide the Recorder or other designated officer to act as the election officer and assume all duties and responsibilities as outlined by law;
  - 2.2. Enter into a polling location Hold Harmless Agreement, if needed;
  - 2.3. Perform Declaration of Candidacy filing;
  - 2.4. Provide County with ballot information, which includes, but is not necessarily limited to, races, candidates and ballot issues;
  - 2.5. Approve the election plan, which includes, but is not necessarily limited to, accuracy of polling location and precinct assignments, voter turnout percentages, paper ballot quantities, voting machine quantities and poll worker assignments;
  - 2.6. Perform City's legislative body poll worker approval;
  - 2.7. Proof and approve the accuracy of the printed and audio of ballot formats;
  - 2.8. Arrange and conduct election canvass;
  - 2.9. Prepare candidate certificates;
  - 2.10. Perform all other election related duties and responsibilities not outlined in this Agreement but required by law; and
  - 2.11. Pay County repair or replacement costs for damaged voting equipment, which occurs at the polling locations, beyond the normal wear and tear.
3. The Parties each agree to conduct the election according to the statutes, rules, Executive Orders, and Policies of the Lieutenant Governor as the Chief Elections Officer of the state.
4. City agrees to pay County the costs for providing the election equipment, services and supplies in accordance with the election costs schedule, attached hereto, incorporated herein, and made a part hereof as Exhibit "A". The payment by City to County under this Agreement shall be made within thirty (30) days of City receiving an invoice prepared by County relating to this Agreement. If this Agreement is terminated early by either Party, pursuant to the provisions of Section 7 below, City shall pay County for all services rendered by County under this Agreement prior to the date that this Agreement is terminated.
5. The Effective Date of this Agreement shall be on the earliest date after this Agreement satisfies the requirements of the Act (the "Effective Date").
6. This Agreement shall continue in effect until 30 days after the 2019 elections or upon invoicing, whichever occurs later, unless extended or terminated earlier by the Parties.
7. This Agreement may be terminated by any of the following actions:
  - 7.1. The mutual written agreement of the Parties;
  - 7.2. By either Party after any material breach of this Agreement;
  - 7.3. By either Party, with or without cause, 30 days after the terminating Party mails a written notice to terminate this Agreement to the other Party; or
  - 7.4. As otherwise set forth in this Agreement or as permitted by law, ordinance, rule, regulation, or otherwise.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THIS AGREEMENT IS SUBJECT TO ANNUAL APPROPRIATIONS BY THE PARTIES AND THE PARTIES SHALL EACH HAVE THE RIGHT TO TERMINATE THIS AGREEMENT, AT ANY TIME UPON WRITTEN NOTICE TO THE OTHER PARTY, IF ANNUAL APPROPRIATIONS, AS PART OF THE PARTY'S ANNUAL PUBLIC BUDGETING PROCESS, ARE NOT MADE BY THE PARTY TO ADEQUATELY OR SUFFICIENTLY PAY FOR THE OBLIGATIONS UNDER THIS AGREEMENT, WITHOUT FURTHER OBLIGATION OR LIABILITY TO THE TERMINATING PARTY UNDER THIS AGREEMENT.

8. The Parties acknowledge, understand, and agree that, for the duration of this Agreement, the Parties are fully and solely responsible for their own actions, activities, and/or business sponsored or conducted.
9. City, for itself, and on behalf of its officers, officials, owners, members, managers, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of City (collectively, the "City Representatives"), agrees and promises to indemnify, save and hold harmless County, as well as the County's officers, officials, employees, agents, representatives, contractors, and volunteers (collectively, the "County Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, including defense costs, fee, or otherwise (collectively, the "Claims") that may arise from, may be in connection with, or may relate in any way to this Agreement and/or the negligent acts or omissions of City and/or the City Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise.
10. County, for itself, and on behalf of its officers, officials, owners, members, managers, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of County (collectively, the "County Representatives"), agrees and promises to indemnify, save and hold harmless City, as well as City's officers, officials, employees, agents, representatives, contractors, and volunteers (collectively, the "City Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, including defense costs, fee, or otherwise (collectively, the "Claims") that may arise from, may be in connection with, or may relate in any way to the negligent acts or omissions of County and/or the County Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise.
11. The Parties recognize and acknowledge that each Party is covered by the Governmental Immunity Act of Utah, codified at Section 63G-7-101, et seq., *Utah Code Ann.* (1953) as amended, and nothing herein is intended to waive or modify any and all rights, defenses or provisions provided therein. Officers and employees performing services pursuant to this Agreement shall be deemed officers and employees of the Party employing their services, even if performing functions outside of the territorial limits of such Party and shall be deemed officers and employees of such Party under the provisions of the Utah Governmental Immunity Act.
12. No separate legal entity is created by this Agreement.

13. This Agreement shall be submitted to the authorized attorney for each Party for review and approval as to form in accordance with applicable provisions of Section 11-13-202.5, *Utah Code Ann.* (1953) as amended. A duly executed original and/or counterpart of this Agreement shall be filed with the keeper of records of each Party in accordance with Section 11-13-209, *Utah Code Ann.* (1953) as amended.
14. Termination of this Agreement shall not extinguish or prejudice either Party's right to enforce this Agreement, or any term, provision, or promise under this Agreement, regarding indemnification, defense, save or hold harmless, or damages, with respect to any uncured breach or default of or under this Agreement.
15. The Parties acknowledge, understand, and agree that the respective representatives, agents, contractors, officers, officials, members, employees, volunteers, and/or any person or persons under the supervision, direction, or control of a Party are not in any manner or degree employees of the other Party and shall have no right to and shall not be provided with any benefits from the other Party. County employees, while providing or performing services under or in connection with this Agreement, shall be deemed employees of County for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits. City employees, while providing or performing services under or in connection with this Agreement, shall be deemed employees of City for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits.
16. No waiver or failure to enforce one or more parts or provisions of this Agreement shall be construed as a continuing waiver of any part or provision of this Agreement, which shall preclude the Parties from receiving the full, bargained for benefit under the terms and provisions of this Agreement. A waiver or modification of any of the provisions of this Agreement or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Agreement cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the Party whose rights will be diminished or adversely affected by the waiver.
17. This Agreement is binding upon the Parties and their officers, directors, employees, agents, representatives and to all persons or entities claiming by, through or under them. This Agreement, including all attachments, if any, constitutes and/or represents the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. Unless otherwise set forth herein, this Agreement supersedes and cancels all prior agreements, negotiations, and understandings between the Parties regarding the subject matter herein, whether written or oral, which are void, nullified and of no legal effect if they are not recited or addressed in this Agreement. Neither this Agreement nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. Rather, this Agreement and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by the Parties.

18. In the event that either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, acts of the United States Government, the State of Utah Government, fires, floods, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inclement weather, restrictive governmental laws, ordinances, rules, regulations or otherwise, delays in or refusals to issue necessary governmental permits or licenses, riots, insurrection, wars, or other reasons of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act(s) shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, without any liability to the delayed Party.
19. The Parties agree that neither this Agreement nor the duties, obligations, responsibilities, or privileges herein may be assigned, transferred, or delegated, in whole or in part, without the prior written consent of both of the Parties.
20. This Agreement and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Agreement or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the state of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in Davis County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Agreement, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Anyone who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing Party for its attorneys' fees, and the Party prevailing in any such dispute shall be awarded its attorneys' fees.
21. If any part or provision of this Agreement is found to be invalid, prohibited, or unenforceable in any jurisdiction, such part or provision of this Agreement shall, as to such jurisdiction only, be inoperative, null and void to the extent of such invalidity, prohibition, or unenforceability without invalidating the remaining parts or provisions hereof, and any such invalidity, prohibition, or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Agreement, which are not invalid, prohibited, or unenforceable, shall remain in full force and effect.
22. The rights and remedies of the Parties under this Agreement shall be construed cumulatively, and none of the rights and/or remedies under this Agreement shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.
23. This Agreement is entered into by the Parties for the exclusive benefit of the Parties and their respective successors, assigns and affiliated persons referred to herein. Except and only to the extent provided by applicable statute, no creditor or other third party shall have any rights or interests or receive any benefits under this Agreement. Notwithstanding anything herein to the contrary, County is expressly authorized by City to enter into similar

agreements with any or all of the other cities, or other governmental or quasi-governmental entities, located within Davis County.

24. Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
25. The persons executing this Agreement on behalf of a Party hereby represent and warrant that they are duly authorized and empowered to execute the same, that they have carefully read this Agreement, and that this Agreement represents a binding and enforceable obligation of such Party.
26. Time is of the essence in respect to all parts or provisions of this Agreement, which specify a time performance or otherwise, and the Parties agree to comply with all such times.
27. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all such counterparts taken together shall constitute one and the same Agreement.

WHEREFORE, the Parties have signed this Agreement on the dates set forth below.

DAVIS COUNTY

\_\_\_\_\_  
Randy B. Elliott, Chair,  
Board of Davis County Commissioners  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Curtis Koch  
Davis County Clerk/Auditor

The undersigned and authorized attorney of Davis County has reviewed and approved this Agreement as to proper form and compliance with applicable law.

\_\_\_\_\_  
Michael Kendall  
Davis County Deputy Attorney



\_\_\_\_\_ CITY

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The undersigned and authorized attorney of \_\_\_\_\_ City has reviewed and approved this Agreement as to proper form and compliance with applicable law.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**(Election Costs Schedule)**

**2019 General  
DAVIS COUNTY ELECTION EXPENSES**

<b>Poll Worker Compensation</b>	<b>COST</b>	<b>Notes</b>
Poll Manager (PM)	\$160.00	
Training Course(s)	\$50.00	
Assistant Poll Manager	\$160.00	
Training Course(s)	\$50.00	
Receiving Clerk	\$135.00	
Training Course(s)	\$35.00	
Provisional Clerk	\$135.00	
Training Course(s)	\$35.00	
Ballot Clerk	\$135.00	
Training Course(s)	\$35.00	
Host	\$125.00	
Training Course(s)	\$25.00	
Alternate Poll Workers	\$500.00	Shared equally with all cities/districts
Mileage Reimbursement for Poll Manager		
<b>Poll Worker Recruitment and Training</b>		
Poll Worker Recruitment and Processing	\$8.00	
Training Creation and Preparation (Includes equipment and preparation)	\$500.00	Shared with all cities/districts
Poll Worker Handbook and Supplies	\$2.89	Or Actual Printing Cost
Poll Worker Training (per person)	\$20.00	
<b>Equipment</b>		
Express Vote	\$75.00	
Testing Pre and Post election		
Security Seals		
Express Vote Ballot Stock		
Memory Media Programming	\$15.00	
DS200	\$75.00	
Testing Pre and Post election		
Security Seals		
Report Paper Roll		
Memory Media Programming	\$15.00	
Voting Booth Rental	\$5.00	
Vote Here Signs (4 per location)	\$5.00	
WiFi Connection	\$61.00	
Receiving Clerk Electronic Poll Book	\$75.00	
Provisional Clerk Electronic Poll Book	\$75.00	
Balotar Laptop and Printer	\$75.00	
<b>Consumable Supplies</b>		
Ballot Stock (BOD)	\$0.20	
Polling Location Supplies	\$35.00	(Forms, poll books, instructions, signs, stickers, pens, etc.)
Rover Kits (each)	\$25.00	Shared equally by all cities/districts
<b>Administrative Services</b>		
Election Programming	\$100.00	
City/District set-up (cities/districts with new recorders/clerks)	\$25.00	
Audio Programming	\$25.00	
Public L&A Demonstration (testing, programming & demonstration)	\$300.00	Shared equally by all cities/districts
County Rovers Compensation (training & election day - per person)	\$500.00	Shared equally by all cities/districts
Election Night Clerk Staff Support	\$1,500.00	Shared equally by all cities/districts
Election Night Security	\$150.00	Shared equally by all cities/districts
Rovers Training Class	\$200.00	Shared equally by all cities/districts
Election Day Help Desk Staff	\$450.00	Shared equally by all cities/districts
Pre-Canvas Ballot Issues Audit, if needed	\$250.00	
Canvas Preparation	\$25.00	
Delivery (per location)	\$50.00	
Pickup (per location)	\$50.00	
Drop Box Delivery	\$50.00	
Drop Box Pick up	\$50.00	
Web Support	\$75.00	Shared equally by all cities/districts
Provisional Verification	\$0.80	
Election Administration Support	\$45.00	
Clerk Staff (per-hour for any additional services)	\$25.00	

**By-Mail Supplies and Services****Supplies**

By-Mail Outer Envelopes	\$0.06	or actual printing cost
By-Mail Inner Return Envelopes	\$0.095	or actual printing cost
By-Mail Ballots	\$0.28	or actual printing cost
Test Deck Paper Ballots	\$2,898.00	Shared by all cities based upon number of precincts
Printed Inserts for ID requirements	\$100.00	Shared equally by all cities/districts

**Services**

Ballot set-up (per style) By IVS	\$1.00	
Database Setup for Ballots By IVS	\$500.00	Shared equally by all cities/districts
Database Setup for Integrovote (ballot insertion) By IVS	\$500.00	Shared equally by all cities/districts
Ballot Preparation Assembly into Envelopes (each sent out) By IVS	\$0.29	or actual cost
Signature Verification and Tabulation (each returned) By County	\$0.40	

**Postage**

Freight to Salt Lake City for Non-Profit Rate Outbound (each)	\$3,375.00	Shared by all cities based upon number of precincts
Shipping Envelopes to County	\$333.95	Shared by all cities based upon number of precincts
Shipping of Test Ballots	\$249.03	Shared by all cities based upon number of precincts
Postage Outbound	\$0.12	Actual Postage
Postage In-Bound	\$0.68	Actual Postage
Returned Undeliverable	\$0.75	Actual Postage+Processing