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WALKING THE FREEDOM TRAIL: AN ANALYSIS OF THE MASSACHUSETTS HUMAN TRAFFICKING STATUTE AND ITS POTENTIAL TO COMBAT CHILD SEX TRAFFICKING

Melissa Dess*

Abstract: On November 21, 2011, Massachusetts Governor Deval Patrick signed into law House Bill 3808, An Act Relative to the Commercial Exploitation of People. Before the bill’s passage, Massachusetts was one of only three states that did not have a human trafficking law. The law is the Commonwealth’s first anti-human trafficking statute; it creates a safe harbor provision for minors involved in prostitution, a civil cause of action for victims, increased penalties for traffickers, and discretionary training for law enforcement officials on working with minor trafficking victims. This Note explores the Massachusetts Trafficking Law, focusing primarily on its treatment of sex trafficking victims under the age of eighteen, suggesting that sexually exploited minors should be treated as victims rather than criminals under the law. In order to effect this proposal, training for law enforcement officials on child sex trafficking should be mandated, and the Massachusetts Trafficking Law should be amended so that sexually exploited minors cannot be prosecuted for commercial sex acts under any circumstances.

Introduction

Although Jessica escaped from a child sex-trafficking ring more than six years ago, she remains haunted by the abuse and fear that she endured, and by a juvenile arrest record for prostitution.\(^1\) Jessica was in her third year of high school when she met Darryl Tavares on a frigid night in Boston, Massachusetts in 2005.\(^2\) It was one of the first times she ever worked as a prostitute, a job she felt compelled to take after she was forced to move out of her father’s home due to his demand for an

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\(^1\) See Jennifer B. McKim, A Former Teenage Prostitute Struggles to Move on, Bos. Globe, Oct. 10, 2010, at A1. The name “Jessica” is a pseudonym created to protect the victim’s identity from individuals still involved in local prostitution. \(^1\) Id.
\(^2\) Id.
unreasonable sum of rent. Tavares persuaded Jessica, who was shivering in the cold, to work for him by telling her that he would not let her work in such conditions. So began Jessica’s eight-month ordeal as a pawn in an East Coast child sex-trafficking ring. During those months she was beaten and abused, her teeth were shattered, and her face was scarred—all so that she would never forget that she was someone’s property.

After facing months of abuse at the hands of her traffickers and customers, Jessica finally had the courage to walk away. She soon discovered, however, that her freedom had a price; several weeks after leaving, she was assaulted by women whom she believed worked for Tavares. It was in the hospital after the attack that Jessica first met FBI Agent Harty, who would help her seek justice against Tavares and the other men who had exploited her. Eventually Jessica testified in federal district court, helping to secure convictions against six Boston-based pimps, including Tavares, who is currently serving a twenty-five year prison sentence.

Jessica is now a college student and aspiring social worker, but she has not been able to fully escape from the traumatic past she left behind in Boston. Jessica will always carry a juvenile arrest record for prostitution—a record that caused her to be discharged from the Army National Guard because it was considered a “security risk.” At the time of her arrests in 2005, Massachusetts law treated child prostitutes

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3 Id.
4 Id.
5 Id. (“The winter encounter began a punishing eight-month journey during which she traveled to Atlantic City, Florida, New Hampshire, and Philadelphia as various pimps traded her as if she were a commodity.”).
6 Id.
7 McKim, supra note 1.
8 Id.
9 Id.
10 Id. At Tavares’s trial, Judge Nancy Gertner of the U.S. District Court for the District of Massachusetts described his actions as “‘totally callous violence without justification, solely for the purposes of humiliating and degrading women . . . .’” Id.
11 Id.
12 Id.
as criminals rather than victims.\textsuperscript{13} Due to her arrest record, Jessica will spend the rest of her life affected by Tavares’s actions.\textsuperscript{14}

Jessica’s story is not unique.\textsuperscript{15} Human trafficking is a “modern form of slavery,” that poses a significant risk to human rights, labor standards, public health, and commerce.\textsuperscript{16} With an estimated 12.3 million adults and children exploited for prostitution, forced labor, and bonded labor globally, human trafficking is a profitable criminal industry, generating approximately thirty-two billion dollars annually.\textsuperscript{17} Up to two million of these victims are children who are prostituted in the commercial sex industry.\textsuperscript{18} In the United States alone, approximately one hundred thousand American children are exploited in the sex trade each year.\textsuperscript{19} These victims face abhorrent conditions in brothels,

\begin{itemize}
\item \textsuperscript{13} See McKim, supra note 1 (“[Jessica] was arrested several times by Boston police during the few months she spent with Tavares.”). It was not until 2011 that Massachusetts passed a human trafficking law that decriminalized child prostitution under certain circumstances. H.B. 3808, 187th Gen. Court, Ann. Sess. (Mass. 2011).
\item \textsuperscript{14} Interview with Lisa Goldblatt Grace, Director, The My Life My Choice Project, in Newton, Mass. (Feb. 8, 2012) (on file with author). Grace has worked with Jessica as a human trafficking survivor, and stated that Jessica felt as though Tavares only received twenty-five years in prison, while she received a life sentence. Id.
\item \textsuperscript{15} Id. (stating that over 500 sexually exploited youths have been identified in a Massachusetts Child Sexual Exploitation Database since 2005); see also Phillip Martin, \textit{Nail Salons Veil Human Trafficking in Boston Area}, WGBH (July 8, 2010), http://www.wgbh.org/897/sex_and_labor_trafficking_in_new_england_part_one.cfm.
\item \textsuperscript{16} Victims of Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. No. 106–386, § 102(b)(1), (3), (12), 114 Stat. 1464 (codified at 22 U.S.C. § 7101(b)(1), (3), (12) (2000)) (“ Trafficking in persons is a modern form of slavery” that “involves significant violations of labor, public health, and human rights standards worldwide” and “substantially affects interstate and foreign commerce.”). The terms “trafficking” and “smuggling” should not be used interchangeably. See Cynthia Shepherd Torg, \textit{Human Trafficking Enforcement in the United States}, 14 TUL. J. INT’L & COMP. L. 505, 505 (2006). Generally, the difference between the two terms is that “[h]uman trafficking involves the use of force, coercion, or fraud resulting in the conditions of servitude, slavery, or peonage (debt bondage). In contrast, migrant smuggling occurs with the consent of the person being smuggled . . . .” Id. Some trafficking victims were smuggled into the country with their consent, only to be coerced later. See id. at 506.
\item \textsuperscript{18} U.S. Dep’t of State, The 2011 Trafficking in Persons Report 9 (2011) [hereinafter TIP Report 2011], available at http://www.state.gov/j/tip/rls/tiprpt/2011/. I use the term “victim” throughout this Note to describe individuals who are exploited through labor or sex trafficking because it challenges the stigmatization of such individuals as “criminals.”
\item \textsuperscript{19} LINDA A. SMITH ET AL., \textit{Shared Hope Int’l, The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children}, at iv (2009) [hereinafter Na-
massage parlors, and on the street, as well as in the pornography and sex tourism industries. Some, like Jessica, are deceived into believing that they will have legal employment and a working wage. Others initially consent to the work, only to discover later that their employment carries a price that is both dangerous and impossibly high to repay, effectively leaving them in “debt bondage.”

In response to this global epidemic, the United States enacted the Victims of Trafficking and Violence Protection Act (TVPA) in 2000. The TVPA was the first comprehensive federal law aimed at combating human trafficking. It defines and criminalizes human trafficking, enhances penalties for traffickers, provides government support to victims, and strives to raise international awareness about the issue. Additionally, the TVPA states that sexually exploited individuals under the age of eighteen should be recognized as victims and should be treated as such by authorities. Although the TVPA has improved the federal response to trafficking through increased prosecution and access to benefits, it has failed to fully address the problem.

21 See Torg, supra note 16, at 506; see also McKim, supra note 1.
22 TIP Report 2010, supra note 17, at 9; Torg, supra note 16, at 506. Debt bondage occurs “when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment.” TIP Report 2010, supra note 17, at 9.
27 See Jennifer M. Chacón, Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking, 74 Fordham L. Rev. 2977, 3020 (2006) (“[Despite] an increase in the prosecution of sex and labor trafficking prosecutions when compared to the numbers prior to the enactment of the TVPA . . . these numbers remain troublingly low.”); Michelle Crawford Rickert, Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level, 4 Liberty U. L. Rev. 211, 236 (2010) (“Existing federal legislation is holistic and
its passage, the TVPA has been criticized for its “troublingly low” number of prosecutions and its failure to provide adequate protection and benefits for trafficking victims.28

Recognizing the limitations of the TVPA, the U.S. Department of Justice (DOJ) published a Model State Anti-Trafficking Criminal Statute in 2004 for state legislators to use as a guide to create laws that comprehensively address human trafficking.29 The U.S. Senate lauded the Model Statute and "strongly encourage[d] State legislatures to carefully examine the [model statute], and to seriously consider adopting State laws combating human trafficking and slavery wherever such laws do not currently exist . . . ."30 Washington was the first state to criminalize human trafficking in 2003 and, by 2011, forty-eight states had enacted anti-trafficking criminal statutes.31

State laws are an important supplement to federal laws in the fight against human trafficking for several reasons.32 First, federal resources cannot effectively keep up with the considerable number of new cases each year.33 Second, state and local law enforcement are more likely to make the first contact with victims, and are therefore in a better posi-

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28 See Chacón, supra note 27, at 3018–20. There are numerous criticisms of the TVPA; however, only those within the scope of this Note will be addressed.


33 Finckenauer & Liu, supra note 32, at 7 (“[F]ederal resources alone cannot keep up with the size of the problem.”); Human Trafficking Training, supra note 32 (“Federal resources alone cannot keep up with the volume of cases; the prevalence of the problem warrants anti-trafficking legislation at the State level.”).
tion to take action.\(^{34}\) Third, state laws can provide additional resources for victims, training of law enforcement, and investigations.\(^{35}\)

On November 21, 2011, Massachusetts Governor Deval Patrick signed into law House Bill 3808, An Act Relative to the Commercial Exploitation of People (Massachusetts Trafficking Law).\(^{36}\) At the time of its passage, Massachusetts was one of only three states without a human trafficking law.\(^{37}\) The legislation has been touted as a “major step toward ending the exploitation of children and other victims in [the] Commonwealth.”\(^{38}\) The Massachusetts Trafficking Law criminalizes three types of trafficking: sexual servitude, forced labor, and organ trafficking.\(^{39}\) It includes a number of provisions specifically directed at minor sex trafficking, including increased punishments for individuals who exploit or solicit children under the age of eighteen for sex and a potential life sentence for persons convicted of trafficking a minor for

\(^{34}\) Rickert, supra note 27, at 246–47.

\(^{35}\) Human Trafficking Training, supra note 32. Additional reasons for state anti-trafficking legislation include: (1) giving state and federal prosecutors the ability to use state or federal law; (2) providing local jurisdiction; (3) increasing awareness and training in the community; and (4) motivating law enforcement to investigate cases as “first responders.” Id.


\(^{37}\) Press Release, Polaris Project, supra note 31.


Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means . . . another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272 . . . shall be guilty of the crime of trafficking of persons for sexual servitude . . . .

Id. Additionally, the statute states that a person who “knowingly (i) subjects, or attempts to subject, another person to forced services . . . or (ii) benefits[] financially . . . shall be guilty of trafficking of persons for forced services . . . .” § 51(a). Finally, a person who “recruits [or] entices . . . another person, intending or knowing that [a] . . . body part of such person will be removed for sale, against such person’s will . . . shall be guilty of organ trafficking . . . .” § 53(a).
sexual servitude. Additionally, the Massachusetts Trafficking Law sets forth a safe harbor provision for sexually exploited juveniles to avoid prosecution for prostitution, unless they “fail to substantially comply” with services or if their “welfare or safety so requires . . .”

Although the Massachusetts Trafficking Law makes important contributions to the fight against human trafficking, it fails to provide adequate protection to children who are sexually exploited. Specifically, the law allows prostituted minors to be criminalized or deemed delinquent under certain circumstances, thereby preventing their recognition as victims. The law also does not require police officers to receive training on child sex trafficking. Such a mandate has the potential to increase the number of victims identified and ultimately referred to social services to aid in their recovery.

This Note argues that the Massachusetts Trafficking Law could improve in two areas to better assist minor sex trafficking victims: the decriminalization of minors engaging in prostitution; and mandated law enforcement training on minor sex trafficking. Part I provides an introduction to the human trafficking industry with a particular focus on minor sex trafficking in the Commonwealth of Massachusetts. Specifically, it analyzes the scope of the problem, the definition of minor sex trafficking, and the effects of trafficking on its victims. Part II details federal efforts to address human trafficking through the Mann Act and the TVPA. It then examines the importance of state trafficking statutes as a complement to federal law. Part III provides a comprehensive overview of the Massachusetts Trafficking Law and highlights how it compares to existing federal and state laws. Finally, Part IV proposes amending the Massachusetts Trafficking Law to decriminalize prostitu-

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40 Id. § 50 (b).
43 Mass. Gen. Laws ch. 119, § 39L(c); see Birckhead, supra note 26, at 1059 (“[T]he continued criminal liability of minors for prostitution” has led to the perception that “prostituted youth [are] juvenile offenders rather than crime victims.”).
44 Mass. Gen. Laws ch. 119, § 39K(d). Rather than mandating law enforcement training, the Massachusetts Trafficking Law states that “[t]he commissioner of the department may . . . train law enforcement officials likely to encounter sexually exploited children in the course of their law enforcement duties.” Id. (emphasis added).
45 See Resource Guide for State Legislators, supra note 42, at 5–6. Training will help law enforcement personnel to understand their duties under federal and state law and how to better identify and work with traumatized victims. Id.
tion for minors to better serve and protect juvenile victims. Part IV also argues that mandating the training of law enforcement personnel on minor sex trafficking will help identify, prevent, and provide treatment for sexually exploited children in the Commonwealth.

I. AN OVERVIEW OF HUMAN TRAFFICKING

Elementary students across America are taught that slavery ended in the 19th Century. But, sadly, nearly 150 years later, the fight to end this global scourge is far from over.

—Secretary of State Hillary Rodham Clinton

A. The Scope of Human Trafficking

The prevalence of human trafficking is a troubling reality; it is estimated that 1.8 out of every thousand people in the world are trafficking victims, yet its scope could be even greater than reports suggest. Trafficking statistics are often unreliable due to a variety of factors, including the clandestine nature of the industry and underreporting. The problem is a widespread “humanitarian crisis” that affects over 150 countries and is one of the world’s most profitable criminal industries. In countries around the world, men, women, and children are sexually exploited, forced and bonded into labor, and conscripted to serve as soldiers.

The United States is one of many countries affected by the trafficking crisis and currently serves as a “source, transit, and destination” for

46 Hillary Rodham Clinton, Op-Ed., An End to Human Trafficking, U.S. DEP’T OF STATE (Nov. 9, 2010), http://www.state.gov/r/pa/prs/ps/2010/11/150701.htm. Secretary Clinton argues that slavery now “takes a different form and we call it by a different name—‘human trafficking’—but it is still an affront to basic human dignity in the United States and around the world.” Id.

47 TIP Report 2010, supra note 17, at 7; Polaris Project, Human Trafficking Statistics (2010), available at https://na4.salesforce.com/sfc/play/index.jsp?d=0I1GKP5PVjb5g7wMonudOQj20Kk%3D&viewId=05H60000000Xsui&oid=00D300000006E4S&v=0686000000HqNhN.

48 Polaris Project, supra note 47. Other potential reasons for the unreliability of trafficking statistics include “the invisibility of victims . . . inconsistent definitions, reluctance to share data, and a lack of funding for research and standardization of data collection.” Id.


more than one hundred thousand victims, including both U.S. citizens and foreigners. In response to this crisis, the federal government has increased efforts to identify and assist victims, and provide relief from removal for qualified foreign nationals. Between two hundred thousand and three hundred thousand children in the United States are estimated to be at risk. The sexual exploitation of children has been reported across the country in places like massage parlors, strip clubs, and on the Internet. The industry thrives due to a stable demand for prostituted children and increasing profits to their traffickers.

Boston, Massachusetts is considered a “major hub” for human trafficking in the Northeast. Although many of the victims are brought to the area for prostitution, others are smuggled for forced labor in places like nail salons and sweatshops. Often, the line between sex and labor trafficking is blurred, as victims are often forced to work in both operations. Trafficking takes place throughout Massachusetts, from Allston/Brighton and East Boston, to Worcester, Lowell, and affluent suburbs. Although statistics on the prevalence of trafficking in the Commonwealth are not comprehensive, even the limited information

51 See id. at 372; Batstone, supra note 49, at 3. In 2010, foreign victims were primarily trafficked from India, Mexico, Thailand, Philippines, Honduras, Haiti, Dominican Republic, and El Salvador. TIP Report 2011, supra note 18, at 372.

52 TIP Report 2011, supra note 18, at 374. The federal government provides three primary forms of relief for foreign trafficking victims: continued presence, which is a temporary immigration status; nonimmigrant status through the “T visa;” or nonimmigrant status through the “U visa.” Id. Both the “T visa” and the “U visa” provide the victim with up to four years of legal immigration status if he or she cooperates with requests for the investigation or prosecution of the crime. Id.

53 Birckhead, supra note 26, at 1055.


55 Finklea et al., supra note 54, at 2.


57 Martin, supra note 15.

58 Id. Norma Ramos, Executive Director of the Coalition Against Trafficking Women, explained that “[w]ith nail salons, for instance, the labor trafficking of Asian women, you can have those women being labor trafficked to work in those salons during the day, and then pulled into sex trafficking at night . . . .” Id.

available suggests that there is a problem. The Support to End Exploitation Now (SEEN) Coalition, an interagency partnership for exploited youth in Suffolk County, Massachusetts, has identified over five hundred sexually exploited youths in its Child Sexual Exploitation Database since 2005. The Massachusetts Trafficking Law has been heralded as particularly significant in addressing the issue of child sex trafficking within the Commonwealth.

It was the grisly murder of seventeen-year-old prostitute Latasha Cannon that first called attention to the presence of child sex trafficking in Massachusetts. Latasha lived a double life, residing in a state-funded group home in Boston and attending school, while also being forced into prostitution by her pimp. Many of the adults in her life, including her caseworker, group home employees, and family members, had little idea that she was being exploited until her body was discovered in a ditch behind a plant in Bedford, Massachusetts. Latasha’s story led the community to wonder whether this was “an isolated incident or the tip of the iceberg.” It soon became clear that it was the latter.

In the years since Latasha’s murder, the press has given increased attention to child sex trafficking in Massachusetts. Stories like the 2011 kidnapping and forced prostitution of a fifteen-year-old girl by a Dorchester man have garnered headlines. This story and others rep-

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61 Interview with Lisa Goldblatt Grace, supra note 14.
65 Stockman, supra note 63; My Life My Choice Project, supra note 64.
66 Interview with Lisa Goldblatt Grace, supra note 14; My Life My Choice Project, supra note 64.
67 Interview with Lisa Goldblatt Grace, supra note 14; My Life My Choice Project, supra note 64.
68 See, e.g., McKim, supra note 1; Phillip Martin, WGBH Investigates: Sexual and Human Trafficking in the Boston Area (Part Three), WGBH (July 12, 2010), http://www.wgbh.org/897/sex_and_labor_trafficking_in_new_england_part_3.cfm; see also Amy Farrell, State Human Trafficking Legislation, in MARSHALING EVERY RESOURCE: STATE AND LOCAL RESPONSES TO HUMAN TRAFFICKING 20 (Dessi Dimitrova ed., 2007) (noting significant increases in media articles containing “human trafficking” between 1990 and 2006).
resent just a portion of the Commonwealth’s trafficking cases. The term “trafficking in persons” has been defined by the United Nations as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion . . . to achieve the consent of a person having control over another person, for the purpose of exploitation.”72 Trafficking takes on a variety of forms involving sexual and labor servitude; however, all of these forms share a common thread—the exploitation of humans for the service of another.73 Although this Note focuses primarily on minor sex trafficking, victims are frequently subjected to sex and labor trafficking simultaneously.74

B. Major Forms of Human Trafficking

The term “trafficking in persons” has been defined by the United Nations as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion . . . to achieve the consent of a person having control over another person, for the purpose of exploitation.”72 Trafficking takes on a variety of forms involving sexual and labor servitude; however, all of these forms share a common thread—the exploitation of humans for the service of another.73 Although this Note focuses primarily on minor sex trafficking, victims are frequently subjected to sex and labor trafficking simultaneously.74

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70 See Press Release, City of Boston, supra note 38.
71 See, e.g., Travis Anderson, Man Gets 25-Year Prison Term, Bos. Globe, Apr. 24, 2010, at B3; McKim, supra note 1; Press Release, City of Boston, supra note 38 (“[I]n 2010 the Boston Police Department Human Trafficking Unit investigated 100 cases of human trafficking and made referrals for services in other cases which involved youth that were deemed at risk for Commercial Sexual Exploitation of Children.”).

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs[.]

Id.
74 See Barnhart, supra note 73, at 89–90; Martin, supra note 15.
1. Sex Trafficking

At least 1,390,000 persons are trafficked in the commercial sex industry globally. The TVPA defines sex trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” Sex trafficking presents itself in a variety of forms including prostitution, pornography, stripping, mail-order brides, and sex-tourism. Often sex trafficking victims work for pimps out of hotels, truck stops, parties, or on the street. Others outside of pimp-controlled prostitution typically work out of brothels, bars and clubs, or escort services.

Sex traffickers employ a variety of tactics to recruit and retain victims. Victims are typically girls or women, but may also be boys or men, or those who identify as transgender. Although anyone may become a trafficking victim, certain groups are more vulnerable to sexual exploitation. For example, traffickers often recruit individuals who lack education, are homeless, or are victims of abuse. Victims may be lured into the industry through a variety of means, such as false marriage proposals or promises of decent work, or may be forced into the industry through kidnappings or by sale to traffickers by family members. Increasingly, the Internet is being used as a tool not only to recruit potential victims, but also to increase demand for services. Technology widely disseminates information regarding the availability of victims and provides protection for the traffickers by physically separating them from the dealings. Once recruited, victims are often con-

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75 Forced Labour, supra note 17, at 12. This figure represents a minimum estimate for the commercial sex industry in 2005. Id.
76 22 U.S.C. § 7102(9). The term “commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person.” Id. § 7102(3).
78 Polaris Project, Types of Trafficking Cases in the United States (2010), available at https://na4.salesforce.com/sfc/play/index.jsp?viewld=05H6000000KIE5&oid=00D3000000064Sked=01LG5PVjb5g7wWmouadOJ20Kk%3D&v=06860000000Hqh3.
79 See id.
80 HHS, Sex Trafficking, supra note 54.
81 Birckhead, supra note 26, at 1060–61 (noting that “transgender street youth” are at risk for being exploited by the commercial sex industry); HHS, Sex Trafficking, supra note 54.
82 Birckhead, supra note 26, at 1060–61; HHS, Literature Review, supra note 77, at 7.
83 Birckhead, supra note 26, at 1060–61; HHS, Literature Review, supra note 77, at 7.
84 Rickert, supra note 27, at 231; HHS, Sex Trafficking, supra note 54.
85 Finklea et al., supra note 54, at 2.
86 Id.
conditioned to remain in the industry through physical abuse, starvation, isolation, or drug use.\textsuperscript{87}

Approximately one hundred thousand children in America become victims of sex trafficking every year.\textsuperscript{88} The average age at which girls become involved in prostitution is between twelve and fourteen, while the average age for boys and transgender youths is between eleven and thirteen.\textsuperscript{89} Girls and boys generally enter the sex industry by different pathways.\textsuperscript{90} Girls often indicate that feelings of isolation, abandonment, and the lack of a support network made them particularly vulnerable to the commercial sex industry.\textsuperscript{91} The majority of these girls have a pimp who functions as a quasi-omnipotent figure who exerts control through violence, brainwashing, drug addiction, and rape.\textsuperscript{92} Boys, on the other hand, become involved in commercial sex in order to “survive financially, explore their sexuality, and/or make contact with gay men.”\textsuperscript{93} Runaway and homeless youth, both male and female, are particularly at risk for becoming victims.\textsuperscript{94} There is also a strong correlation between sexually exploited youths and childhood sexual abuse, chronic maltreatment and neglect, and otherwise unstable home environments.\textsuperscript{95}

2. Labor Trafficking

The TVPA defines labor trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”\textsuperscript{96}

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\textsuperscript{87} HHS, Sex Trafficking, \textit{supra} note 54. Other means of controlling victims include rape, threats to the safety of victims and their families, and revelation of their sexual activities to family and friends. \textit{Id.}
\textsuperscript{89} HHS, Literature Review, \textit{supra} note 77, at 8–9.
\textsuperscript{90} See \textit{id.} at 10.
\textsuperscript{91} \textit{Id.}
\textsuperscript{92} Bierman, \textit{supra} note 60; Interview with Lisa Goldblatt Grace, \textit{supra} note 14.
\textsuperscript{93} HHS, Literature Review, \textit{supra} note 77, at 10.
\textsuperscript{94} \textit{Id.} at 10–11. Various reports have shown that “the majority of prostituted women had been runaways; for example, 96 percent in San Francisco . . . 72 percent in Boston . . . and 56 percent in Chicago.” \textit{Id.} at 10. Additionally, according to a study, two thirds of males ran away from home before participating in the sex industry. \textit{Id.}
\textsuperscript{95} \textit{Id.} at 9–11.
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Globally, sixty-four percent of human trafficking cases are classified as labor trafficking for the purposes of “economic exploitation.”97 It affects a diverse group of individuals, including children and adults, both male and female.98

Labor trafficking primarily occurs in the following industries: domestic service, agriculture, factory work, and restaurant and hotel work.99 The majority of the individuals trafficked for these purposes are victims of discrimination and oppression who come from economically disadvantaged backgrounds with few viable career options.100 Traffickers may mislead victims into believing that they will earn a working wage; however, once victims arrive, they are subjected to substandard working conditions, their immigration papers are destroyed, and their families are threatened, forcing them to submit.101 In the United States, immigrants are particularly vulnerable to labor trafficking, including students on visas and domestic workers.102

Forced labor is the most prevalent form of human trafficking and occurs when a person is made to work against his or her will, often under physical threats or revelation to law enforcement.103 Bonded labor, where an individual must work off a debt to the trafficker, is one example of how force can be used to control or exploit a victim.104 These debts usually accrue interest, forcing victims to keep working in an effort to repay their ever-increasing debt.105 Child labor is another prevalent subset of forced labor that affects the physical and mental health of

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97 Forced Labour, supra note 17, at 12. Additionally, twenty percent of human trafficking is State or military imposed, eleven percent is identified as commercial sexual exploitation, and approximately five percent could not be identified. Id.
99 To Plead Our Own Cause: Personal Stories by Today’s Slaves 8 (Kevin Bales & Zoe Trodd eds., 2008). Additionally, some individuals may “work in legal occupations . . . while others toil in illegal industries such as the drug and arms trade or panhandling.” HHS, Labor Trafficking, supra note 98.
100 TIP Report 2010, supra note 17, at 8; HHS, Labor Trafficking, supra note 98.
101 HHS, Literature Review, supra note 77, at 8.
103 TIP Report 2010, supra note 17, at 8; HHS, Labor Trafficking, supra note 98.
104 TIP Report 2010, supra note 17, at 9; HHS, Labor Trafficking, supra note 98. Bonded labor “is the most widely used method of enslaving people.” HHS, Labor Trafficking, supra note 98.
105 Polaris Project, In Their Shoes: Understanding Victims’ Mindsets and Common Barriers to Victim Identification (2010) [hereinafter Understanding Victims’ Mindsets], available at https://na4.salesforce.com/sfc/play/index.jsp?viewId=05H60000000KRE5&oid=00D90000006E4S&el=0hGKP5PVjb5g7wWmonaOj20Kk%3Dxv=06860000000Hvge.
Children. Children may be viewed as more desirable laborers because they are less expensive than adults, less likely to complain about working conditions, and more controllable. In 2002 the International Labour Office estimated that 5.7 million children were exploited in forced and bonded labor globally.

C. Effects of Trafficking on Victims

Victims of human trafficking suffer from physical and psychological trauma. These health problems are a result of “inhumane living conditions, poor sanitation, inadequate nutrition, poor personal hygiene, brutal physical and emotional attacks at the hands of their traffickers, dangerous workplace conditions, occupational hazards, and general lack of quality health care.” Victims of sexual exploitation are exposed to sexually transmitted diseases, including HIV and AIDS, and may suffer from pelvic, rectal, and urinary pain. Additionally, women may be forced to have abortions if they are impregnated, which can result in infertility and other health issues if performed incorrectly. Laborers endure grueling physical conditions and may be malnourished, have serious back pain, respiratory difficulties, and poor eyesight. Finally, due to the intense physical and emotional trauma, victims may experience difficulty maintaining employment and relationships.

Even if victims escape from the confines of the industry, the effects of the psychological trauma are long-lasting and debilitating. Victims may suffer from severe anxiety, depression, substance abuse, and Post-Traumatic Stress Disorder. In some cases, victims become traumat-
ally bonded to their trafficker in what is commonly referred to as “Stockholm Syndrome,” an instinctual survival mechanism.\textsuperscript{117} This manifests in a variety of ways, such as rejecting assistance from law enforcement, perceiving those trying to prosecute the trafficker as an “enemy,” and denying the depth of physical and emotional abuse.\textsuperscript{118} Despite these complicated dynamics, complicity with one’s trafficker or rejection of services does not negate the existence of victimization.\textsuperscript{119}

Given their age, child sex trafficking victims are particularly vulnerable, because they have “less life experience, fewer coping mechanisms, and smaller social support mechanisms to draw from.”\textsuperscript{120} This vulnerability is exacerbated by the history of physical and sexual abuse, homelessness, and involvement in child welfare programs that many victims share.\textsuperscript{121} These factors make children especially susceptible to traffickers’ manipulative recruiting tactics.\textsuperscript{122} Child victims may therefore be lured into the industry by a trafficker who establishes a romantic or parental relationship with them, thereby creating a strong sense of dependency.\textsuperscript{123} The trafficker later exploits this attachment, using it to abuse and emotionally control the victim.\textsuperscript{124} The consequences can be devastating to the victim, and may include long-lasting mental health issues and physical trauma.\textsuperscript{125} Over time, however, many trafficking victims are able to rebuild their lives, form trusting relationships, and become empowered.\textsuperscript{126}

\begin{itemize}
\item \textsuperscript{117} HHS, Literature Review, supra note 77, at 14.
\item \textsuperscript{118} Id.
\item \textsuperscript{119} Interview with Lisa Goldblatt Grace, supra note 14.
\item \textsuperscript{120} National Report on Domestic Minor Sex Trafficking, supra note 19, at 9, 30, 31. Children are also vulnerable because of “buyers’ demands for youth due to perceptions of healthiness and vulnerability.” Id. at 16.
\item \textsuperscript{121} Id. at 9.
\item \textsuperscript{122} Id. at 31.
\item \textsuperscript{123} Id. at 38.
\item \textsuperscript{124} Id. at 31.
\item \textsuperscript{125} National Report on Domestic Minor Sex Trafficking, supra note 19, at 42; HHS, Common Health Issues, supra note 109. Some of the most prevalent mental health issues that minor sex trafficking victims face include Anxiety and Stress Disorder, Attachment Disorder, Depression, and Post Traumatic Stress Disorder. National Report on Domestic Minor Sex Trafficking, supra note 19, at 42.
\item \textsuperscript{126} See HHS, Trauma Treatment, supra note 114, at 8.
\end{itemize}
II. GAPS IN FEDERAL LEGISLATION AND THE NEED FOR STATE LAWS

Both federal and state anti-trafficking laws are necessary to effectively combat the human trafficking problem in the United States.\(^{127}\) Although federal laws provide important tools to prosecute traffickers and assist victims, they alone are insufficient.\(^ {128}\) State laws complement federal laws because they can include provisions for additional resources, provide prosecutors with a choice of law, and incentivize local law enforcement to respond more quickly to trafficking situations.\(^ {129}\)

A. Federal Responses to Human Trafficking

Since the United States abolished slavery and involuntary servitude in 1865 through the Thirteenth Amendment, the federal government has passed several statutes to address human trafficking.\(^ {130}\) These statutes have had a significant impact on the treatment and perception of sexually exploited children.\(^ {131}\)

1. The Mann Act

The Mann Act, an early effort by Congress to curb prostitution, helped shape the social perception of sexually exploited individuals as criminals.\(^ {132}\) Enacted in 1910, the Mann Act prohibited the transporta-

\(^{127}\) See Rickert, supra note 27, at 243 (“[T]he federal government cannot and should not embark on this journey alone, due to the overwhelming aspect of the problem of trafficking.”).

\(^{128}\) See Chacón, supra note 27, at 3020; Rickert, supra note 27, at 236.

\(^{129}\) Finckenauer & Liu, supra note 32, at 7; Human Trafficking Training, supra note 32; see Stephanie L. Mariconda, Note, Breaking the Chains: Combating Human Trafficking at the State Level, 29 B.C. THIRD WORLD L.J. 151, 176–77 (2009).

\(^{130}\) U.S. Const. amend. XIII, § 1; Bernadin, supra note 25, at 508–09; Linda Smith & Samantha Healy Vardaman, A Legislative Framework for Combating Domestic Minor Sex Trafficking, 23 REGENT U. L. REV. 265, 270 (2011). The pertinent part of the amendment states that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII, § 1. The trafficking of humans today is distinct from the slave trade at the ratification of the Thirteenth Amendment. See Bernadin, supra note 25, at 508–09. While historically “slavery involved a person’s physical freedom being taken away and then being forced to work against their will,” today trafficked persons are often “allowed to walk freely in the community, but they do not leave their enslavement” because of psychological coercion. Id.

\(^{131}\) See Birkhead, supra note 26, at 1081–83; Nesheba Kittling, God Bless the Child: The United States’ Response to Domestic Juvenile Prostitution, 6 REV. L.J. 913, 920 (2006).

\(^{132}\) See Birkhead, supra note 26, at 1082–83.
tion, inducement, or coercion of women for interstate prostitution.\textsuperscript{133} Also known as the White Slave Traffic Act, the Act was created to prevent immigrant women from being forced into prostitution.\textsuperscript{134} It imposed heavy penalties on perpetrators, providing a maximum penalty of ten to twenty years imprisonment, depending on the perpetrator’s criminal history.\textsuperscript{135} Although the Mann Act was implemented to prosecute pimps and protect women, it was later used to prosecute women whom the government deemed complicit in the sexual activities.\textsuperscript{136} The Mann Act has thus been criticized as “operat[ing] more powerfully as a platform for antiprostitution efforts than actual anti-trafficking efforts.”\textsuperscript{137} Furthermore, the Act has played a role in shaping the perception of individuals who engage in certain sexual conduct as criminals, regardless of their age or ability to consent.\textsuperscript{138}

2. The Trafficking Victims Protection Act

The United States made significant strides against human trafficking when it passed the TVPA in 2000, the first comprehensive federal law addressing human trafficking on both the national and interna-


\begin{quote}
any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery or for any other immoral purpose, or with the intent or purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice . . . shall be deemed guilty of a felony . . . .
\end{quote}

Chacón, supra note 27, at 3014 (quoting White Slave Traffic Act, ch. 395, 36 Stat. 825, 825 (1910)).

\textsuperscript{134} Chacón, supra note 27, at 3013, 3015.

\textsuperscript{135} Torg, supra note 16, at 509–10. The Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003 (PROTECT Act) expands upon the Mann Act by providing prosecutors and law enforcement with additional tools to end child sex trafficking and other forms of exploitation. \textit{Id.; Fact Sheet: Protect Act}, U.S. Dep’t of Justice (Apr. 30, 2003), http://www.justice.gov/opa/pr/2003/April/03_ag_266.htm. For example, the PROTECT Act increases the maximum sentence of imprisonment for the interstate or international transport of minors for illicit sexual conduct to thirty years. Torg, supra note 16, at 509–10.

\textsuperscript{136} Birckhead, supra note 26, at 1082.

\textsuperscript{137} Chacón, supra note 27, at 3017.

\textsuperscript{138} See Birckhead, supra note 26, at 1082–83 (“A century after the Mann Act’s passage, the belief that sexual conduct should be criminalized based on ‘presumed immorality’ still persists in some courtrooms, regardless of the offender’s age.”).
tional level. The purpose of the TVPA is three-fold: (1) prevention of trafficking overseas; (2) protection of victims through federal and state programs; and (3) prosecution of traffickers through the creation of strict federal crimes. The TVPA addresses these goals by criminalizing human trafficking, establishing escalated penalties for perpetrators, providing federal and state benefits and services to victims, and increasing awareness of the trafficking problem.

The TVPA also shapes the way in which trafficking victims—particularly sexually exploited children—should be treated by law enforcement, courts, and the community. The TVPA recognizes that victims are often subject to both physical and psychological abuse, which makes it difficult for them to leave a trafficking situation. Thus, the Act does not punish trafficked persons for their victimhood. Further, the TVPA protects juvenile victims of sex trafficking, even in the absence of force, fraud or coercion, thereby “conclud[ing] that juveniles under the age of eighteen are incapable of consenting to engage in prostitution.”

Despite its commendable intent to curb human trafficking, the TVPA’s three goals of prevention, protection, and prosecution have not yet been fully realized. In the years since its passage, many have criticized the TVPA for its low number of prosecutions and failure to provide adequate protection and benefits for trafficking victims. The DOJ has convicted just 607 individuals of human trafficking from 2000


140 See Susan W. Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad, 11 WM. & MARY J. WOMEN & L. 317, 341 (2005) (“[The TVPA has] restruc[ted] the government’s entire approach to trafficking in an attempt to treat the trafficked persons as victims rather than criminals.”).

141 Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. § 7101(b)(7) (2000); Sadruddin et al., supra note 27, at 383–84 (“[The TVPA] is a clear recognition that psychological trauma can be as severe as physical abuse.”).

142 See Chacón, supra note 27, at 2990.

143 Kittling, supra note 131, at 915, 925; see 22 U.S.C. § 7102(8)(a).


145 See Chacón, supra note 27, at 3017–20. There are numerous criticisms of the TVPA; however, only those within the scope of this Note will be addressed. See id.
to 2010.\textsuperscript{148} Although this number represents an increase from the number of prosecutions secured prior to the enactment of the TVPA, it is nevertheless quite small given the scope of the nation’s trafficking problem.\textsuperscript{149}

In addition, relatively few trafficked persons receive federal benefits through the TVPA, such as temporary visas and permanent residency.\textsuperscript{150} For example, despite the fact that between 14,500 and 17,500 victims are trafficked into the United States each year, in 2010 only 447 victims and 349 of their family members were eligible to receive a “T visa,” which provides legal immigration status for up to four years.\textsuperscript{151} The small number of foreign trafficking victims receiving benefits is believed to be the result of the difficulty in locating victims in a clandestine industry, as well as the plethora of requirements victims must meet in order to obtain benefits.\textsuperscript{152} The introduction of state anti-trafficking laws to supplement the TVPA may well increase the number of trafficking prosecutions, as well as the availability of benefits and services to victims.\textsuperscript{153}

\textbf{B. State Anti-Trafficking Laws As Necessary Supplements to Federal Legislation}

The U.S. government recognized the importance of state laws as supplements to federal legislation through its creation of the DOJ


\textsuperscript{149} See Chacón, supra note 27, at 3019–20. The prosecution of human trafficking may prove difficult due to a variety of factors, including the international scope of the crime, the language barriers between victims and prosecutors, and victim trauma. See id.; see also Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. § 7101(b) (20) (2000). Prosecuting traffickers is difficult because victims may hesitate to report the crime as they “are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation . . . and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship . . . .” 22 U.S.C. § 7101(b) (20).

\textsuperscript{150} Chacón, supra note 27, at 3017–18.


\textsuperscript{152} Rieger, supra note 146, at 245, 247.

\textsuperscript{153} See Rückert, supra note 27, at 243–44.
Model State Anti-Trafficking Criminal Statute (Model Statute). The Model Statute provides a guide for state legislators to create comprehensive anti-trafficking laws. State laws are useful because they can be tailored to address the unique needs of a community. They also have the potential to increase the number of victims who are identified and receive services, as well as the number of traffickers who are prosecuted.

State and local law enforcement agencies are in a better position than federal authorities to detect and respond to human trafficking within their jurisdictions due to their proximity to criminal activities. They are usually the first to arrive at a crime scene and interact with trafficking victims. It is in these situations that state legislation can serve an important role by mandating training for law enforcement officers to respond appropriately to survivors’ unique needs as crime victims. Such legislation may also serve as a deterrent to potential traffickers who may be less likely to engage in criminal activity if anti-trafficking laws are vigorously enforced at the state and local levels. State laws can be further strengthened if they are constructed so that they comply with the TVPA, which will improve collaboration among state, local, and federal law enforcement in the detection and prosecution of human trafficking.

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154 See Barnhart, supra note 73, at 101; Farrell, supra note 68, at 21. The three goals of the Model Statute are to: “(1) prevent gaps between federal and state laws, (2) promote a national legal strategy to combat trafficking that would facilitate greater coordination and reduce confusion on the part of both victims and law enforcement, and (3) provide examples of the most effective legislative approaches to address trafficking.” Farrell, supra note 68, at 21.

155 See Farrell, supra note 68, at 21.

156 See Rickert, supra note 27, at 266–67. States have individualized needs depending on factors like their geographic location, and trafficking laws can be written to address those issues. Id.


158 Finckenauer & Liu, supra note 32, at 7 (“Local police are much more likely (than either state or federal authorities) to run across situations that might ultimately turn out to be human trafficking cases.”); Rickert, supra note 27, at 246–47 (“State and local officers are the most likely to come into contact with the victims of this crime, and thus are uniquely positioned to intervene in this criminal activity.”).

159 Buckwalter et al., supra note 29, at 425; Rickert, supra note 27, at 246–47.

160 Buckwalter et al., supra note 29, at 425 (“Officers must have the proper education and training, which may be mandated by state anti-trafficking legislation, to identify trafficking victims and to understand that these victims should not be considered criminals.”).

161 Id. at 426 (“If traffickers know that local law enforcement officials have the ability to arrest, prosecute, and convict offenders and that they will aggressively enforce the laws, traffickers may be deterred from involvement in human trafficking.”).

state to address trafficking because “law enforcement is, on the whole, a
local issue, and criminal prosecutions are generally a state responsi-

bility.”163

State anti-trafficking laws also have the potential to increase the
number of traffickers who are prosecuted and victims who receive
benefits by providing state attorneys with resources to prosecute of-
fenders.164 Federal courts are inundated with disputes and federal
prosecutors do not have the time, funding, or resources to try every
trafficking case.165 As a result, small-scale trafficking cases are often
overlooked in favor of large-scale or high-profile cases.166 This, in turn,
allows traffickers to go unpunished and deprives non-citizen victims of
benefits under the TVPA.167 State courts have the ability to prosecute
cases that federal courts cannot, thereby benefiting more victims and
prosecuting more offenders.168

163 Buckwalter et al., supra note 29, at 425.
164 See id. (“If the TVPA and TVPRA were the only anti-trafficking laws, there would be
fewer prosecutions and the number of cases prosecuted would be insufficient given the
magnitude of the problem.”); Finckenauer & Liu, supra note 32, at 7 (“[F]ederal resources
alone cannot keep up with the size of the problem.”).
165 See Buckwalter et al., supra note 29, at 425–26; Rickert, supra note 27, at 243, 245.
166 See Buckwalter et al., supra note 29, at 425–26 (“Federal authorities are not always
able, or willing, to prosecute trafficking cases involving only one victim or a small group of
victims; larger trafficking rings or operations take priority.”); Rickert, supra note 27, at 243
(“Federal prosecutors cannot take chances on trying all human trafficking cases . . . [due
to] limited resources and funding, which sometimes results in only the highest profile
cases getting attention.”).
167 See Rickert, supra note 27, at 243. Non-citizen victims are unlikely to be certified as
trafficking victims under the TVPA and therefore would not qualify for benefits if their
case is not prosecuted. Id.
168 See id. at 243–44.
III. STATE LEGISLATION

Today the Legislature has taken a major step toward ending the exploitation of children and other victims in our Commonwealth. The passage of this bill recognizes that these crimes aren’t only occurring in other countries and other states, but right in our own communities.

—Massachusetts Attorney General Martha Coakley, on the passage of HB 3808.

A. HB 3808: The Massachusetts Anti-Human Trafficking Statute

On February 19, 2012, the Massachusetts Trafficking Law, “An Act Relative to the Commercial Exploitation of People,” became effective. The law is the first in the Commonwealth to specifically address human trafficking and explicitly establish the crime of sexual servitude. In addition to criminalizing sexual servitude, the law includes several provisions to assist minors involved in sex trafficking and to punish those who exploit them. First, the definition of a “child in need of services” (CHINS) is amended to include a “sexually exploited child.” Second, there is a presumption that a sexually exploited child should receive state services through a CHINS or “care and protection” case, rather than being subjected to a delinquency or criminal proceed-

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174 Mass. Gen. Laws ch. 119, § 21. Prior to this amendment, a “child in need of services” was defined as:

a child between the ages of 6 and 17 who: (a) repeatedly runs away from the home of a parent or legal guardian; (b) repeatedly fails to obey the lawful and reasonable commands of a parent or legal guardian . . . (c) repeatedly fails to obey lawful and reasonable school regulations; or (d) when not otherwise excused from attendance . . . willfully fails to attend school for more than 8 school days in a quarter.

Id.
Third, subject to the discretion of the Commissioner of the Department of Children and Families, law enforcement officials may receive training specifically tailored to working with sexually exploited children. Finally, the law creates a new crime for enticing a child under the age of eighteen to engage in prostitution through electronic communication. Although the Massachusetts Trafficking Law takes a significant step toward addressing the human trafficking problem in the Commonwealth, it fails to fully protect sexually exploited children because it does not decriminalize prostitution for minors.

1. Court-Ordered Diversion of Sexually Exploited Children

The Massachusetts Trafficking Law aims to treat minors under the age of eighteen who are engaged in commercial sexual activities as victims rather than criminals. Under this law, there is a presumption that a sexually exploited child should receive services through a CHINS or “care and protection” proceeding, instead of being deemed delinquent or convicted in criminal court. A sexually exploited child under a CHINS or “care and protection” petition will be diverted from the delinquency or criminal process, and provided with “appropriate services . . . in order to safeguard the child’s welfare.” These services include an array of benefits ranging from food and medical care, to

\[\text{[Footnotes]}\]

\[\text{174} \text{ Id. } \S 39L(a). \text{ For proceedings involving sexually exploited children who are charged with certain prostitution-related offenses, “there shall be a presumption that a care and protection petition on behalf of such child, or a child in need of services petition under section 39E, shall be filed.” Id.}\]

\[\text{175} \text{ Id. } \S 39K(d). \text{ Id. ch. 265, } \S 26D(c). \text{ Id. ch. 119, } \S 39L(a); \text{ Wendi J. Adelson, Child Prostitute or Victim of Trafficking?, 6 U. Saint Thomas L. J. 96, 98–99 (2008); Birckhead, supra note 26, at 1086, 1114–15.}\]

\[\text{176} \text{ LeBlanc, supra note 172 (“No longer will children that are having sex with adults for money be treated as child delinquents. They are in fact being raped by the very nature of the act.”(quoting Massachusetts Senator Montigny)).}\]

\[\text{177} \text{ MASS. GEN. LAWS ch. 119, } \S 21, \S 39L(a) \text{ (2011). Under the statute a “sexually exploited child” is defined as:} \]

\[\text{any person under the age of 18 who has been subjected to sexual exploitation because such person: (1) is the victim of the crime of sexual servitude . . . or is the victim of the crime of sex trafficking . . . (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee . . . or in exchange for food, shelter, clothing, education or care; (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution . . . or (4) engages in common night walking or common streetwalking . . . .}\]

\[\text{Id. } \S 21.\]

\[\text{178} \text{ LeBlanc, supra note 172 (“No longer will children that are having sex with adults for money be treated as child delinquents. They are in fact being raped by the very nature of the act.”(quoting Massachusetts Senator Montigny)).}\]

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\[\text{any person under the age of 18 who has been subjected to sexual exploitation because such person: (1) is the victim of the crime of sexual servitude . . . or is the victim of the crime of sex trafficking . . . (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee . . . or in exchange for food, shelter, clothing, education or care; (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution . . . or (4) engages in common night walking or common streetwalking . . . .}\]

\[\text{Id. } \S 21.\]

\[\text{180} \text{ LeBlanc, supra note 172 (“No longer will children that are having sex with adults for money be treated as child delinquents. They are in fact being raped by the very nature of the act.”(quoting Massachusetts Senator Montigny)).}\]
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counseling and assessments for an emergency residential placement.\(^{181}\)
Further, such services must be tailored to take into account a victim’s
gender-based needs.\(^{182}\) Throughout the court process, the child will be
provided with an advocate who will serve as a liaison for the child with
service providers and the court.\(^{183}\)

Although the law creates a presumption that a sexually exploited child’s
delinquent or criminal case will be stayed, the court has the dis-
cretion to reinstate these proceedings under certain circumstances.\(^{184}\)
Specifically, the court may arraign the child and restore the criminal or
delinquency case if the child does not “substantially comply” with ser-
vices or if “the child’s welfare or safety so requires.”\(^{185}\) Because the law
does not define “substantial compliance,” it is within the judiciary’s dis-
cretion to determine if and when the delinquency or criminal case will
be reinstated.\(^{186}\)

2. No Mandated Training for Law Enforcement Personnel

The Massachusetts Trafficking Law does not mandate training on
child sex trafficking for law enforcement officials.\(^{187}\) Rather, the law
presents that law enforcement officials who are likely to encounter
sexually exploited children may be trained in “awareness and compli-
ance with the provisions [in order to provide services for sexually ex-
ploded children], identification of, access to, and the provision of ser-
vices for sexually exploited-children and any other services the
Department deems necessary.”\(^{188}\) This training is discretionary; the
Department of Children and Families has the option to contract with
organizations that are knowledgeable about sexually exploited chil-
dren, but has no obligation to do so.\(^{189}\)

\(^{181}\) Id. § 21.
\(^{182}\) Id. § 39K(c).
\(^{183}\) Id. § 39K(a).
\(^{185}\) Id. (“If the court finds that the child has failed to substantially comply with the re-
quirements of services or that the child’s welfare or safety so requires, the court may re-
move the proceeding from file, arraign the child and restore the delinquency or criminal
complaint . . . .”).
\(^{186}\) Id.
\(^{187}\) Id. § 39K(d).
\(^{188}\) Id.
\(^{189}\) Id. (“The commissioner of the department may, subject to appropriation, contract
with non-governmental organizations or entities with experience working with sexually
exploited children to train law enforcement officials likely to encounter sexually exploited
children in the course of their law enforcement duties.”).
Massachusetts has acknowledged the need for mandating law enforcement training for certain crimes involving similarly situated victims who are physically or emotionally exploited. Specifically, officers are required to be trained in domestic violence, and police academies will not receive approval unless they provide training on rape prevention and prosecution. Massachusetts’s inconsistent training mandates have been criticized, and many have recommended that the Commonwealth “[e]nact a statute that specifically mandates training on domestic minor sex trafficking issues for law enforcement officers and requires all officers to participate in this training.”

B. A Comparison of the Massachusetts Statute with Other State Trafficking Legislation

Federal and state legislation employ decidedly different approaches to the criminalization of prostituted juveniles. Under the TVPA, juveniles who engage in prostitution are considered crime victims who cannot consent to prostitution regardless of whether force or coercion is used to induce them to enter the industry. Conversely, the majority of state laws allow courts to find youth under the age of eighteen criminally liable for prostitution. Generally, states adminis-

191 Mass. Gen. Laws ch. 6, § 116A(a) (2010) (“The municipal police training committee shall establish within the recruit basic training curriculum a course for . . . the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence.”); id. § 118 (“No municipal police training school shall be approved unless it provides for training members of the rape prevention and prosecution unit . . . .”); see Analysis and Recommendations: Massachusetts, supra note 190.
192 Analysis and Recommendations: Massachusetts, supra note 190.
193 Adelson, supra note 177, at 96, 105 (“[I]t appears counterintuitive to retain state statutes that punish child prostitutes when the federal anti-trafficking statutes could protect those same minors.”).
194 Chacón, supra note 27, at 2990 (noting that the TVPA is “intended to provide for the care and treatment of trafficking victims in accordance with their status as victims of crimes”); Kittling, supra note 131, at 915 (“The [TVPA] protects juvenile victims of trafficking, regardless of whether offenders utilized force, fraud or coercion . . . per se conclusion] that juveniles under the age of eighteen are incapable of consenting to engage in prostitution.”).
195 Birckhead, supra note 26, at 1067–68. As of 2011, only five states decriminalized prostitution for youths under specific ages: Michigan, New York, Washington, Connecticut, and Illinois. Id.
ter one of the following three models for the treatment of sexually exploited children: (1) “criminal prosecution;” (2) “prevention, intervention, and rehabilitation;” or (3) “decriminalization and diversion.” Massachusetts employs a diversion model.

1. Three State Models Pertaining to the Criminalization of Sexually Exploited Youth

The first model, criminal prosecution, “utilizes arrest and detention to determine the juvenile’s needs, followed by some combination of incarceration, mandatory counseling, and residential treatment, typically resulting in a delinquency adjudication or criminal record.” Nevada is one example of a state that employs the criminal prosecution model in response to the large number of teenagers involved in prostitution in Las Vegas. In Nevada, prostitution is a misdemeanor offense that can result in detention lasting, on average, three weeks. Proponents of the criminal prosecution model argue that detention offers victims temporary protection and access to benefits, while enabling law enforcement to obtain information from the victims to prosecute pimps. Conversely, critics lament that minors do not have the intellectual and psychological maturity to consent to sex, that detention may further traumatize vulnerable victims, and that exploited youth who are incarcerated do not receive adequate social services.

Under the prevention, intervention, and rehabilitation model, youths who are potential victims of, or are involved in, commercial sex are identified and provided with myriad services, including therapy, safe housing, and medical treatment. One barrier to prevention, intervention, and rehabilitation is the identification of potential and cur-

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196 Id. at 1105.
197 See Mass. Gen. Laws ch. 119, § 39L(c) (Supp. 2011); see infra notes 210–211 and accompanying text.
198 Birckhead, supra note 26, at 1105.
200 Id. at 36–37. The length of detention may be due to probation violations, which typically involve extended detentions. Id. at 37 n.183.
201 Id. at 39.
202 Finklea et al., supra note 54, at 28; Birckhead, supra note 26, at 1097.
203 Birckhead, supra note 26, at 1105; see Tex. Juvenile Prob. Comm’n, Alternatives to Juvenile Justice for Youth Involved in Prostitution, Report to the 82nd Legislature 16 (2011) [hereinafter Alternatives to Juvenile Justice].
rent victims.\textsuperscript{204} Victim identification is difficult due to numerous factors such as fear of reprisal, distrust of social services and law enforcement, and a victim’s desire to protect the trafficker because of traumatic bonding.\textsuperscript{205} One possible way to increase the number of victims who are identified is to train service providers, law enforcement, and teachers to recognize signs of commercial sexual exploitation.\textsuperscript{206}

The final way states respond to minors involved in sex trafficking is the decriminalization and diversion model.\textsuperscript{207} In this model, minors first enter the juvenile or criminal justice system and are “then referred to counseling or residential treatment programs, the successful completion of which results in the dismissal of the criminal charge, while the failure . . . triggers the reinstatement of the conviction.”\textsuperscript{208} Diversion has the effect of removing minors from prolonged detention, while using the threat of conviction to induce them to comply with court mandates.\textsuperscript{209} Massachusetts uses a diversion model by staying a child’s delinquency or criminal case and proceeding under a CHINS or care and protection petition.\textsuperscript{210} The court does have the discretion, however, to reinstate the delinquency or criminal case if the child does not comply with services or if it is in the child’s best interest.\textsuperscript{211}

Proponents of the decriminalization and diversion model commend its provision of social services to victims as well as its recognition of prostituted youth as victims rather than offenders.\textsuperscript{212} Critics argue, however, that the law does not go far enough because juveniles can still be criminalized if they do not comply with discretionary judicial standards.\textsuperscript{213} Compliance can prove especially difficult for victims because

\begin{footnotesize}
\textsuperscript{204} See Birckhead, supra note 26, at 1108.
\textsuperscript{205} Understanding Victims’ Mindsets, supra note 105. Other barriers to identification include: confinement, fear, shame, self-blame, language and social barriers, isolation, resignation, drug addiction, trauma, normalization of exploitation, and a belief that no one wants to help. Id.
\textsuperscript{206} See Birckhead, supra note 26, at 1108 (“[T]eachers, administrators, police officers, and social workers must coordinate to identify youth who may be vulnerable to involvement in the sex trade.”).
\textsuperscript{207} Id. at 1105.
\textsuperscript{208} Id.
\textsuperscript{209} See Barton Child L. & Pol’y Clinic, supra note 199, at 58.
\textsuperscript{211} Id. § 39L(c).
\textsuperscript{212} See Toolsi Gowin Meisner, Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution, Update (Nat’l Ctr. for Prosecution of Child Abuse, Alexandria, Va.), Nov. 8, 2009.
\textsuperscript{213} See Barton Child L. & Pol’y Clinic, supra note 199, at 58; Meisner, supra note 212.
\end{footnotesize}
of the psychological control traffickers have over victims. This may lead victims to return to their traffickers on numerous occasions before the cycle is broken, which could lead to the reestablishment of a criminal conviction.

2. New York and Illinois: Diversion vs. Decriminalization

New York and Illinois employ two different approaches regarding the criminalization of sexually exploited minors: diversion and decriminalization. New York, which follows a diversion model, signed the New York Safe Harbor for Exploited Youth Act into law in 2008. The Act provides a presumption that an individual under the age of eighteen who is involved in prostitution is a sex trafficking victim. As a result, courts have the discretion to file a “Person in Need of Supervision” (PINS) petition for the victim instead of a juvenile delinquency petition. There are two primary benefits of being labeled a PINS rather than a delinquent: “1) the child cannot be placed in a secure detention facility, and thus can avoid the harmful psychological effects of being locked up; and 2) the child will be directed to services aimed at addressing his or her problems . . . .” The Act was groundbreaking in its recognition of sexually exploited children as victims in need of services, rather than as delinquents. Regrettably, this treatment does not necessarily extend to minors who were previously found guilty of prostitution, do not comply with court orders, or received a PINS petition in the past. In these cases, the judge has the discretion to proceed with a juvenile delinquency petition rather than converting it into a PINS case.

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214 See HHS, Literature Review, supra note 77, at 14; Meisner, supra note 212.
215 See Meisner, supra note 212. Prostituted youth experience a “cycle of violence” and “may still be under the control or fear of pimps and [will] return to them only to re-offend.” Id.
216 See Barton Child L. & Pol’y Clinic, supra note 199, at 60.
218 Alternatives to Juvenile Justice, supra note 205, at 9; Birckhead, supra note 26, at 1067–68.
219 Alternatives to Juvenile Justice, supra note 203, at 9; Birckhead, supra note 26, at 1068.
220 Barton Child L. & Pol’y Clinic, supra note 199, at 58.
221 Robin Shulman, N.Y. Struggles to Aid Child Prostitutes, Wash. Post, July 13, 2008, at A3 (recognizing the Safe Harbor Act as a “groundbreaking bill that would divert young girls arrested for prostitution to social programs rather than punishing them”).
222 Alternatives to Juvenile Justice, supra note 203, at 9.
223 Id.
Although the New York model has been lauded for its progress in addressing the minor sex trafficking problem in New York, it has also been criticized for its failure to fully recognize a prostituted child as a victim. First, the law’s allowance for juveniles who have a prior arrest for prostitution to be adjudicated delinquent “fails to appreciate the cycle of violence that sexually exploited teens experience.” Second, the stigma of being labeled a “person in need of supervision,” though certainly better than “juvenile delinquent,” “still implies that the child has done something wrong, and seems contrary to a real recognition of the child as a victim of exploitation.” Finally, minors may be placed in detention prior to their court appearance, which can have negative effects on a trauma victim.

Illinois took an uncompromising approach concerning the criminalization of sexually exploited youth when it passed the Safe Children Act in 2010, which decriminalized prostitution for all persons under the age of eighteen. Unlike the New York law, minors under the Safe Children Act cannot be prosecuted for prostitution regardless of the circumstances, even prior infractions. Moreover, the Act removed the term “juvenile prostitute” from the criminal code as an acknowledgment “that children have no capacity to consent to their own commercial sexual exploitation and thus are not prostitutes but rather are victims of a serious sexual offense.” Sexually exploited minors now fall under the category of “abused child;” law enforcement may place the child into temporary custody and alert the Department of Child and

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224 See Barton Child L. & Pol’ly Clinic, supra note 199, at 58, 60.
225 Meisner, supra note 212; accord Birckhead, supra note 26, at 1071 (“[C]riticiz[ing] its one-size-fits-all mentality and its exclusion of juveniles with prior arrests for prostitution-related crimes.”).
226 Barton Child L. & Pol’ly Clinic, supra note 199, at 58.
227 See id.
229 Birckhead, supra note 26, at 1068; IL Safe Children Act Summary, supra note 228.
Family Services, which must commence an investigation of child abuse within twenty-four hours.231

IV. RECOMMENDATIONS FOR THE MASSACHUSETTS TRAFFICKING LAW

Although the Massachusetts Trafficking Law largely improves upon prior efforts to combat human trafficking within the Commonwealth, it fails to adequately protect and provide treatment for sexually exploited youth.232 Under the statute, youth may still be treated as criminals instead of victims due to an exception to the safe harbor provision and inadequate police training.233 Massachusetts should amend its law to decriminalize prostitution for sexually exploited children.234 In addition to decriminalization, the law should mandate training on commercial sex trafficking for all law enforcement officials to better serve and protect sexually exploited children.235

A. Treating Sexually Exploited Minors as Victims, Not Criminals

Massachusetts should follow Illinois and decriminalize prostitution for all minors.236 Under the Massachusetts Trafficking Law, there is a presumption that sexually exploited children will be subject to a “care and protection” or CHINS petition; however, the court has the discretion to reinstate delinquent or criminal proceedings against the

231 325 Ill. Comp. Stat. 5/3 (2011); IL Safe Children Act Summary, supra note 228. “Temporary protective custody” is defined in the Abused and Neglected Child Reporting Act as “custody within a hospital or other medical facility or a place previously designated for such custody by the Department, subject to review by the Court . . . but such place shall not be a jail or other place for the detention of criminal or juvenile offenders.” 325 Ill. Comp. Stat. 5/3.

232 Compare Mass. Gen. Laws ch. 119, § 39K(d) (Supp. 2011) (not mandating law enforcement training on sexually exploited children), and id. § 39L(c) (allowing sexually exploited children’s delinquency or criminal case to be returned to the docket under certain circumstances), with Analysis and Recommendations: Massachusetts, supra note 190 (recommending that Massachusetts “[e]nact a statute that specifically mandates training on domestic minor sex trafficking issues for law enforcement officers and require[,] all officers to participate in this training”), and Birckhead, supra note 26, at 1085–86 (noting that advocates of decriminalization argue that arresting minors for prostitution can “create an adversarial rather than a rehabilitative relationship with the court system,” and detention has been found to increase children’s trauma and sense of powerlessness”).


234 See Resource Guide for State Legislators, supra note 42, at 1; Birckhead, supra note 26, at 1071.

235 See Analysis and Recommendations: Massachusetts, supra note 190.

236 See Birckhead, supra note 26, at 1071.
child. If a child fails to “substantially comply” with court-ordered services, or if his or her “safety so requires,” the court may arraign the child and restore the criminal or delinquency case. The law does not define “substantial compliance” or occasions when a child’s safety may require such an action, thereby leaving the interpretation to judicial discretion.

The criminalization of sexually exploited children is problematic because: (1) children are often re-victimized, making their recovery and investigatory compliance more difficult; (2) victims may experience severe psychological trauma, which makes it hard to leave their traffickers and comply with court orders; and (3) criminalization conflicts with the TVPA and state ages of consent.

Sexually exploited children may feel that they are to blame for their abuse when they are criminalized for prostitution, thereby diminishing their trust in the legal system and impairing their recovery. If a judge finds that a sexually exploited child has not substantially complied with proscribed services, the child may be placed in a juvenile detention facility that is unlikely to provide social services tailored to the child’s needs as a sex trafficking victim. Further, the detention may itself further traumatize the victim and increase his or her “sense of powerlessness.”

Critics of the decriminalization model argue that prosecuting minors for prostitution is necessary because it keeps them away from their trafficker and mandates that they receive social services. Nonetheless, when a child is deemed delinquent or found criminally liable for engaging in prostitution, he or she may feel at fault for the victimization. This process could “create an adversarial rather than a rehabilitative relationship with the court system . . . .” Victims may thus

238 Id.
239 See id.
240 See Finklea et al., supra note 54, at 28; HHS, Literature Review, supra note 77, at 14; National Report on Domestic Minor Sex Trafficking, supra note 19, at 60; Adelson, supra note 177, at 96; Birckhead, supra note 26, at 1068–69.
241 See National Report on Domestic Minor Sex Trafficking, supra note 19, at 60.
242 Finklea et al., supra note 54, at 28.
243 Birckhead, supra note 26, at 1086.
244 Id. at 1085.
245 National Report on Domestic Minor Sex Trafficking, supra note 19, at 60 (“The arrest of a child sex trafficking victim for prostitution is the arrest of a victim for the crime committed against the child . . . [that] sends the child victim a very clear message: You are to blame.”).
246 Birckhead, supra note 26, at 1085–86.
be less likely to cooperate with law enforcement, courts, and service providers in identifying and prosecuting their traffickers.\textsuperscript{247} 

Mandating that child victims "substantially comply" with court-ordered services in order to be diverted from criminal or delinquency procedures fails to take into account the psychological coercion victims experience at the hands of their traffickers.\textsuperscript{248} Child victims may become traumatically bonded to their traffickers as a survival mechanism, and may thus reject assistance from law enforcement and perceive those trying to prosecute the trafficker negatively.\textsuperscript{249} Such an attachment may be "difficult to extinguish once it has been set into motion."\textsuperscript{250} As a result, the child may, and often does, return to his or her trafficker upon release into the community, thereby risking prosecution for noncompliance.\textsuperscript{251}

Critics of the decriminalization model counter that courts need to mandate services and preserve the threat of conviction in order to ensure that victims participate in the trafficker’s prosecution.\textsuperscript{252} Nevertheless, participation in the prosecution of an individual to whom the victim is strongly attached can be quite traumatic.\textsuperscript{253} Further, it may also be difficult for victims to comply with certain court mandates, such as prosecuting the trafficker, even if they are willing participants.\textsuperscript{254} Due to the severe and pervasive abuse that victims experience, they may not

\textsuperscript{247} \textit{National Report on Domestic Minor Sex Trafficking}, supra note 19, at 60. 

[A]fter being arrested, a child victim rarely self-identifies and is frequently uncooperative with law enforcement, service agencies, and other first responders. The result is an uncooperative and often unsympathetic witness. Furthermore, if the trafficker or buyer is brought to trial, juries may be less likely to convict when the victim appears to be complicit in the prostitution. \textsuperscript{Id.} 

\textsuperscript{248} See \textit{HHS, Literature Review}, supra note 77, at 14; Sadruddin et al., supra note 27, at 404. 

\textsuperscript{249} \textit{HHS, Literature Review}, supra note 77, at 14. 

\textsuperscript{250} Sadruddin et al., supra note 27, at 404. 

\textsuperscript{251} See Adelson, supra note 177, at 122–23 ("[T]he fact that the child victim’s sole relationship for months or longer may have been with the pimp or trafficker often means that his or her first instinct is to return to the trafficker even after the child has been removed from this commercially exploitative situation."). 

\textsuperscript{252} Birckhead, supra note 26, at 1083. 

\textsuperscript{253} See \textit{id}. at 1084–85. 

\textsuperscript{254} See Chacón, supra note 27, at 3026. While the prosecution of traffickers is not explicitly required by the Massachusetts Trafficking Law, it is one example of what victims may need to be able to do to fully comply with services (that are not defined by the statute) mandated by the court. \textit{Mass. Gen. Laws ch. 119, § 39L(c)} (Supp. 2011).
fully remember or may block out many integral details and, consequently, may provide conflicting information at trial.255

Finally the Massachusetts Trafficking Law’s exception to the juvenile safe harbor provision conflicts with the TVPA and the Massachusetts state law concerning the age of sexual consent.256 Under the TVPA, victims who are forced or coerced into prostitution are treated as victims rather than criminals.257 The TVPA specifically recognizes that traffickers use psychological coercion to lure and maintain victims and, therefore, it does not criminalize victims.258 Unlike adults, sexually exploited children are afforded additional protections and benefits under the TVPA and do not need to “collaborate” with law enforcement to receive a T Visa.259

In addition, minors are not legally competent to consent to sexual activity in Massachusetts until the age of sixteen.260 Statutes that set the age of legal consent acknowledge that adolescents under the age of consent are not as intellectually and psychologically mature as adults.261 Under the Massachusetts Trafficking Law, however, persons under the age of eighteen can be arraigned for criminal and delinquency proceedings if they do not substantially comply with services or if their safety so requires.262 As a result, minors can be “criminally prosecuted

255 See Chacón, supra note 27, at 3026.

Assisting in prosecution requires a person to be able to think clearly, to remember and give details, and to tell a consistent story . . . [b]ecause of the constant threat under which many victims find themselves, dissociation is a common response. Under the strain of their experiences, trafficking victims may lose track of time and may be unable to account for significant portions of their days. They may also seem emotionally numb, which means they will show no emotion in recounting traumatic events.

Id.

256 Compare Mass. Gen. Laws ch. 119, § 39L(c) (child’s delinquency or criminal complaint can be restored to the docket regardless of the child’s age), and Mass. Gen. Laws ch. 272, § 35(a) (2010) (Massachusetts’s age of consent is sixteen), with Adelson, supra note 177, at 99 (“The TVPA made it indisputable that victims . . . were to be treated not as criminals, but instead as victims of crime.”), and Birckhead, supra note 26, at 1097 (“[T]he harms addressed by statutory rape laws are comparable to those that impact prostituted children . . . both should be considered to lack the capacity to consent to sex.”).

257 See Adelson, supra note 177, at 99.


259 Adelson, supra note 177, at 99–100.


261 See Birckhead, supra note 26, at 1096.

for prostitution under one set of laws despite the fact that they are too young to legally consent to sex under another . . . .”

**B. Mandating Law Enforcement Training on the Sexual Exploitation of Children**

Additionally, Massachusetts should mandate that law enforcement officials receive training on how to identify and work with children who have been commercially sexually exploited. Currently, the Massachusetts Trafficking Law does not require officers to be trained in this way. Rather, the law only provides for the discretionary training of officers on awareness of the Massachusetts Trafficking Law and “identification of, access to, and the provision of services for sexually-exploited children . . . .” Due to a lack of appropriate training, law enforcement officials are susceptible to not only considering sexually exploited youths as criminals rather than victims, but also struggle to identify sexually trafficked youths in the first place. Alternatively, they may charge children with crimes in order to bring them into a “safe” environment, like a detention facility, where they will be separated from their traffickers. Regardless of the officer’s intent, criminalizing juveniles has the effect of re-victimization and making them believe they are to blame for their exploitation.

Law enforcement must be trained to recognize sexually exploited children so that a greater number of victims can be identified and receive the services they require. Sexually exploited children may be unable or unwilling to self-identify as victims, often because they have

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263 Birckhead, supra note 26, at 1068–69. Furthermore, “the harms addressed by statutory rape laws are comparable to those that impact prostituted children; both sets of youth are similarly situated in regard to their psychological and brain development, and, thus, both should be considered to lack the capacity to consent to sex.” Id. at 1097.


266 Id.

267 See Finklea et al., supra note 54, at 29 (“Cases that began through a police report (i.e. a report by the juvenile, a family member, a social service provider, or others) were almost eight times more likely to result in the juvenile being treated as a victim than those cases that began through action taken by the police . . . .”); Birckhead, supra note 26, at 1059 (“[P]olice officers, prosecutors, and judges are more likely to view prostituted youth as juvenile offenders rather than crime victims.”).

268 Finklea et al., supra note 54, at 28; Birckhead, supra note 26, at 1059.

269 Finklea et al., supra note 54, at 28; National Report on Domestic Minor Sex Trafficking, supra note 19, at 19.

270 See Analysis and Recommendations: Massachusetts, supra note 190; Resource Guide for State Legislators, supra note 42, at 5–6.
been coerced by traffickers to believe that they were not exploited, or because they fear repercussions from law enforcement.\textsuperscript{271} It is important that officers are trained specifically in child sex trafficking so that victims receive services that are tailored to their specific needs.\textsuperscript{272} Sex trafficking victims are a particularly vulnerable population and an understanding of the psychological and physical abuse they have suffered may help identify more victims, prosecute more traffickers through the establishment of a trusting relationship, and begin the slow process of recovery.\textsuperscript{273}

**Conclusion**

Although the Massachusetts Trafficking Law makes a significant contribution to the protection of sexually exploited children in the Commonwealth, it still allows these children to be treated as criminals instead of victims. The law increases punishments for traffickers and provides numerous benefits to child sex trafficking victims, including a “safe harbor” provision that allows them to avoid criminal prosecution or juvenile delinquency in certain cases; however, the law permits sexually exploited children to be found criminally liable or delinquent. Further, it does not require law enforcement officials to receive training on child sex trafficking. Mandating such training has the potential to increase the number of victims who are identified and referred to social services. In order to better serve the interests of these children, training for law enforcement officials on child sex trafficking should be mandated, and the Massachusetts Trafficking Law should be amended so that sex trafficking victims under the age of eighteen cannot be criminalized or found delinquent for prostitution under any circumstances.

\textsuperscript{271} National Report on Domestic Minor Sex Trafficking, *supra* note 19, at 60.

\textsuperscript{272} See *id.* at 48, 60.