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WHEN SEX TRAFFICKING VICTIMS TURN EIGHTEEN:
THE PROBLEMATIC FOCUS ON FORCE, FRAUD, AND
COERCION IN U.S. HUMAN TRAFFICKING LAWS

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INTRODUCTION

How we define a concept matters both informally and formally in society. Informally, when sex trafficking is discussed, media-driven images of despairing conditions abroad, shackles and chains, and trafficker-induced violence come to mind. Sex trafficking in the United States is often portrayed as affecting foreign-born women who were forced to come to the United States against their will (by foreign-born men) and rely on Western saviors to “rescue” these helpless (usually female) victims.¹ Such representations distract the public from what is actually happening here in the United States where U.S.-born women, men, and children are trafficked every day within our borders (by U.S.-born men and women).² Evidence suggests

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1. Nicole F. Bromfield & Moshoula Capous-Desyllas, *Underlying Motives, Moral Agendas and Unlikely Partnerships: The Formulation of the U.S. Trafficking in Victims Protection Act through the Data and Voices of Key Policy Players*, 13 *ADVANCES IN SOC. WORK* 243, 245 (2012). *See also* Carrie N. Baker, *An Intersectional Analysis of Sex Trafficking Films*, 12 *MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM* 208, 209 (2014).

2. *See* DUREN BANKS & TRACEY KYCKELHAHN, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008–2010*, 6–7 (2011) <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

that U.S. citizens are more likely to be trafficked here in the United States than non-citizens.³ The existing media narrative and framing of sex trafficking brings the focus to individual-level victim-and-rescuer against the evil trafficker, distracting the public, policy makers, and even those involved, from the institutional and systemic issues that lead both to sex trafficking and what are considered unlawful commercial sex acts (prostitution). More formally, the U.S. has enacted the Victims of Trafficking and Violence Protection Act that provides guidelines as to who is considered a trafficking victim, offers sanctions for those facilitating sex trafficking, and assigns funds for resources and services for victims of trafficking.⁴ The intention of this legislation is clearly a move toward recognizing the vulnerabilities that trafficking victims face and the need for government-initiated assistance, not unlike the sentiment that calls for saviors to rescue individual victims depicted in what we see in popular culture and news media.

This Article examines these more formal labels and framing of sex trafficking that, while intended to address trafficking as a social problem and help a vulnerable population, also serves to exclude unlawful commercial sex acts and the potential victimization of those who sell sex. This Article also explores the potential impacts such exclusions have for trafficking victims who turn eighteen and the institutional considerations that contribute to the ongoing victimization and vulnerabilities of this single population throughout the life course.

I. THE TRAFFICKING AND VIOLENCE PROTECTION ACT AND ITS REAUTHORIZATIONS

In 2000, the 106th Congress enacted the Victims of Trafficking and Violence Protection Act (VTVPA) with the intent to “combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain federal programs to prevent violence against women, and for other purposes.”⁵ This Act was divided into three provisions: the Trafficking Victims Protections Act (TVPA), the Violence Against Women Act (VAWA), and Miscellaneous Provisions.⁶ The VTVPA specifically describes trafficking as:

3. *Id.* at 1.

4. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended in scattered sections of 22 U.S.C.).

5. *Id.* § 102, 114 Stat. 1464 (codified as 22 U.S.C. § 7101).

6. *Id.*

§ 1591. *Sex trafficking of children or by force, fraud or coercion*

(a) Whoever knowingly—

(1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).⁷

Much of the Act is framed around assistance for combating trafficking abroad or for those not born in the United States, including access to temporary citizenship through “T” visas.⁸ Within this definition, assistance and eligibility for benefits and services for victims *within* the United States is only granted to those who meet the criteria for “severe form of trafficking,”⁹ which is defined as: “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”¹⁰

The law and its following reauthorizations (in 2003,¹¹ 2005,¹² 2008,¹³ and 2013¹⁴) primarily focus on foreign-born individuals being trafficked into the United States and abroad. Beginning in 2005, some provisions were added to include additional resources for domestic sex trafficking, recognizing that this issue is not solely a problem of people being trafficked across national borders but one

7. *Id.* § 1591, 114 Stat. 1487 (codified as 22 U.S.C. § 7109).

8. *Id.* § 107(e)(4), 114 Stat. 1479 (codified as 22 U.S.C. § 7105).

9. *Id.* § 107(b)(1)(A), 114 Stat. § 1475 (codified 22 U.S.C. § 7105).

10. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103(8)(a), 114 Stat. 1464, 1470 (codified as 22 U.S.C. 7102) (2000).

11. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, §§ 2–3, 117 Stat. 2875–76 (2003).

12. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 2, 119 Stat. 3558–59 (2006).

13. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 103, 122 Stat. 5044, 5046 (2008).

14. H.R. 898, 113th Cong. § 104(a) (2013).

that greatly affects U.S. citizens as well.¹⁵ The Trafficking Victims Protection Reauthorization Act of 2005, for example, includes a provision to authorize specific programs for U.S. citizens or legal permanent residents of domestic human trafficking.¹⁶ Similar assistance is mandated in the Trafficking Victims Protection Reauthorization Act of 2008, specifically for United States citizens and lawful permanent residents, but only if they also meet the definition of “*severe forms of trafficking*.”¹⁷

II. EXCLUDED BY DEFINITION

By drawing parameters around who is included in this definition of a severe trafficking victim, the TVPA also serves to draw distinct margins designed to exclude certain groups as well. This is problematic, because when a group is excluded from this definition of victim entirely, it is also excluded from the resources and funds that are designated for helping victims. Consideration for trafficking victim status comes with it funds for public awareness campaigns (2000),¹⁸ creation of a federal task force (2000),¹⁹ the right to sue others involved (2003),²⁰ programming and shelters (2005),²¹ and other services for survivors (2008).²²

Therefore, who is not considered a victim of trafficking is just as important as who is considered a victim. Along with the allocation of resources, other benefits such as government-supported research initiatives and societal recognition of hardship, come with the federally recognized status of victim. Specifically, the inclusion of “force, fraud, or coercion” disqualifies anyone of TVPA victim status if that person is in the commercial sex trade without being “force[d]” to do so.²³ This is the line that we have drawn as a society between sex trafficking and prostitution. One is considered a horrific act over which the person affected needs special protections and government

15. Trafficking Victims Protection Reauthorization Act of 2005 § 201.

16. *Id.*

17. Trafficking Victims Protection Reauthorization Act of 2008 § 213(f)(1).

18. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 106(b), 114 Stat. 1474 (codified at 22 U.S.C. § 7104).

19. *Id.* § 105(a) (codified at 22 U.S.C. § 7103).

20. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2878.

21. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 102(b)(2)–(3), 119 Stat. 3561.

22. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 §§ 213(f)(1)–(2).

23. Victims of Trafficking and Violence Protection Act of 2000 § 103(8)(A) (codified at 22 U.S.C. § 7102).

intervention in order to be extricated from the situation whereas the other is steeped with rhetoric of not only illegality but agency, choice, and other negative morally suggestive stigma.²⁴

This distinction in the definition is not accidental. In fact, much debate emerged in the defining of sex trafficking when the Victims of Trafficking and Violence Protection Act was established.²⁵ Multiple interest groups, competing feminist philosophies, and varying agendas created complexity and discord over who specifically would be covered under this legislation.²⁶ This debate reflects current disagreements about whether selling sex should be considered an empowered position of sex work (the liberal feminist position) or whether selling sex in any form is dehumanizing and should be considered exploitation (the radical feminist position).²⁷ Other stakeholders were more focused on providing services for exploited people and did not weigh in heavily on this debate.²⁸

In the end, the definition of sex trafficking is distinctly separated from being compounded with what is considered to be unlawful “commercial sex acts.”²⁹ This omission can be assumed to reflect the attitudes and beliefs associating prostitution with choice and agency in direct contrast with the legal definition of force, fraud, and coercion. This contrast distinguishes trafficking as a new category, separating individuals into two groups: one holds the label of victim, which warrants assistance and advocacy resources, while the other, considered “unlawful” and a result of one’s own choices, is therefore unworthy of such intervention or victim status. The inclusion of specific provisions within the reauthorizations of the TVPA that reference unlawful “commercial sex acts” demonstrates that this law and its reauthorizations were not designed to focus only on what we consider trafficking. Instead, a reinforcement of the norms that associate prostitution with agency and choice are embedded within not only the definition of severe sex trafficking but the direct reference to “unlawful commercial sex acts” as well. These norms reflect the misguided idea that if someone wanted to exit the commercial sex trade, she/he has that ability contrary to those who are trafficked and alternatively need additional assistance and relief.

24. Compare Baker, *supra* note 1, at 216–17, with Gail Pheterson, *The Whore Stigma: Female Dishonor and Male Unworthiness*, 37 SOCIAL TEXT 39, 42–43 (1993).

25. Bromfield & Capous-Desyllas, *supra* note 1, at 244.

26. *Id.* at 244–45.

27. *Id.* at 244–45, 248–54, 256–57 (discussing various feminist groups’ positions during the debate and drafting of the Trafficking in Victims Protection Act).

28. Bromfield & Capous-Desyllas, *supra* note 1, at 251.

29. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 106(2)(D), 122 Stat. 5048–49.

The only area of the VTVPA and following Reauthorizations that allows for funds to be designated to resources for those engaging in unlawful commercial sex acts exists in the Trafficking Victims Protection Reauthorization Act of 2005 allowing funds to track the number of unlawful commercial sex acts including purchasers of such acts.³⁰ No services or assistance, however, are included for this population within the VTVPA, including the division specifically deemed the Violence Against Women Act,³¹ nor do any services or assistance funds exist for exiting the sex trade in any following Reauthorizations of the TVPA. Thus, the importance of needing to prove force, fraud, and coercion becomes critical for any adults seeking to exit the commercial sex trade.

The exclusion of those who sell sex unlawfully as legally defined victims does not reflect the existing research and knowledge about this highly vulnerable group. Those involved in the commercial sex trade are at great risk of violence and victimization including physical, sexual, and emotional abuse by pimps, buyers, and even police.³² Even for those who unquestionably fall under the trafficking victim definition have faced arrest and detention due to the ambiguity and lack of training around trafficking for law enforcement officers.³³ In addition to violent victimization while in the sex trade, a history of child physical and sexual abuse is prevalent among this population.³⁴ This population also experiences poor mental health³⁵ and has a higher likelihood of substance abuse.³⁶ To say that this population

30. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No 109-164, § 201, 119 Stat. 3567.

31. Victims of Trafficking and Violence Protection Act of 2000, Publ. L. No. 106-386, § 1103(b), 114 Stat. 1495.

32. Susan J. Lea et al., *Attrition and Rape Case Characteristics: A Profile and Comparison of Female Sex Workers and Non-Sex Workers*, 31 J. OF INTERPERSONAL VIOLENCE 2175, 2176 (2016); D. Cohan et al., *Sex Worker Health: San Francisco Style*, 82 SEXUALLY TRANSMITTED INFECTIONS 418, 420 (2006); Mary A. Finn et al., *Exploring the Overlap Between Victimization and Offending Among Women in Sex Work*, 10 VICTIMS & OFFENDERS 74, 84–85 (2015). See also Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27 WOMEN & HEALTH 37, 40–41.

33. Finn et al., *supra* note 32, at 78–79. See also Amy Farrell & Shea Cronin, *Policing Prostitution in an Era of Human Trafficking Enforcement*, 64 CRIME, L. & SOC. CHANGE 211, 214–16 (2015).

34. Farley & Barkan, *supra* note 32, at 214. See also Cathy Spatz Widom & Joseph B. Kuhns, *Childhood Victimization and Subsequent Risk for Promiscuity, Prostitution, and Teenage Pregnancy: A Prospective Study*, 86 AM. J. OF PUB. HEALTH 1607, 1611 (1996).

35. See Farley & Barkan, *supra* note 32, at 42. See also Jennifer Butters & Patricia Erickson, *Meeting the Health Care Needs of Female Crack Users: A Canadian Example*, 37 WOMEN & HEALTH 1, 8 (2003).

36. Butters & Erickson, *supra* note 35. See also Vicky Bungay, *Health Care Among Street-Involved Women: The Perpetuation of Health Inequality*, 1 QUALITATIVE HEALTH RESEARCH 1, 2, 5 (2013).

as a whole does not meet the criteria of victim, which is what their exclusion from any part of the VTVPA accomplishes, only serves to further marginalize and stigmatize this already vulnerable group.

III. CONSEQUENCES OF EXCLUSION

What specifically are the consequences for excluding adults who sell sex who cannot, for one reason or another, prove force, fraud, or coercion, and why should we be concerned about this group as a society? Adults who sell sex, no matter their age of entry into the sex trade and regardless of past abuse or family dysfunction and irrespective of current experiences of violence by buyers or pimps, are excluded from this definition if they cannot prove force, fraud, or coercion. Not only are they not considered to be victims of trafficking, but selling sex remains a criminal act in all states but Nevada.³⁷ The criminality of selling sex in this context puts individuals at a higher risk of facing additional barriers to exiting the sex trade such as a criminal record and difficulty obtaining housing and seeking other modes of supporting oneself financially.³⁸ The barriers do not end there. The high likelihood of family dysfunction, poverty, and gaps in education not only contribute to the likelihood of entering the sex trade but also make getting out of the sex trade extremely difficult. Despite these known difficulties, society associates adult commercial sex with personal choice and agency. Much literature has focused on the benefits versus consequences of decriminalizing sex work, however, raising questions of labels, the meaning we attach to certain groups, and the consequences that those labels have on both an individual and societal level is a more comprehensive approach to this issue.³⁹

The problem with focusing on individual choice and agency in order to determine whether a person is indeed worthy of resources, services, and a legally constructed notion of “victim” is that this kind of discussion shrouds the institutional factors that contribute to the entrance into and sustained involvement in the sex trade. The dangers that exist for someone who is in pimp-controlled prostitution make openness about reporting force or coercion by a pimp difficult and unsafe.⁴⁰ The very nature of a victim needing to prove

37. NEV. REV. STAT. ANN. § 201.354 (West 2015).

38. See Jacquelyn Monroe, *Women in Street Prostitution: The Result of Poverty and the Brunt of Inequality*, 9 J. OF POVERTY 69, 83–84 (2005).

39. See Elizabeth Bernstein, *Sex Work for the Middle Classes*, 10 SEXUALITIES 473, 485 (2007).

40. Jody Raphael et al., *Pimp Control and Violence: Domestic Sex Trafficking of Chicago Women and Girls*, 20 WOMEN & CRIM. JUST. 89, 90 (2010).

that a third party is at fault is a problematic and unrealistic approach to address trafficking at a policy level. In those instances in which one person or a group forces another person or persons to engage in commercial sex, putting measures in place to sanction and criminalize those actions is a success of this type of legislation. However, greater questions still remain that affect both trafficked persons and individuals who cannot prove force, fraud, or coercion. The breakdowns of social institutions such as the family, education, work, and involvement in the criminal justice system contribute greatly to both those who are considered to be trafficked and also those who would fall under the definition of engaging in unlawful commercial sex acts.

IV. TURNING EIGHTEEN AND THE TRANSITION TO ADULTHOOD

It is critical to examine how individual lives are impacted to best focus on how these constructs and definitions of trafficking versus prostitution influence individual life trajectories. The VTVPA treats trafficking victims and those engaging in unlawful commercial sex acts as two separate groups. The inherent flaws in this thinking can best be seen with the age component of the trafficking definition: "*or in which the person induced to perform such act has not attained 18 years of age.*"⁴¹ The inclusion of this part of the definition serves, supposedly, to add another vulnerable group to the definition. It is to say that those who are under eighteen do not need to specify force, fraud, or coercion because they are minors and that group should be protected, regardless. The added obstacle of proving force, fraud, or coercion should not be included for this group because the force, fraud, or coercion is already assumed. What happens, then, when a seventeen-year-old who sells sex and is considered a victim of trafficking, has resources and assistance available through the VTVPA, turns eighteen? That person is no longer considered a victim in the eyes of society or the law. Quite literally, on one's eighteenth birthday, she/he goes from being a victim of trafficking to a prostitute and a criminal. The significance of turning eighteen or being considered an adult under the eyes of the law is not a new concept. The transition from being considered a juvenile offender versus an adult offender is embedded into the way we structure our criminal justice system. What is unique about selling sex from other crimes is that for someone who is charged with, for example, robbery

41. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (emphasis added).

or assault, their sentencing may be different based on the consideration of age but their actions are still considered criminal. For those who sell sex, a significant difference exists in that a person transitions from being considered a *victim* of a crime (trafficking) to a *perpetrator* of crime (prostitution), a considerable transition that is unique to this scenario and population.

Research has yet to explore what the transition to adulthood is like for individuals who sell sex or have been sold for sex (that is the intention of the author's upcoming dissertation work) as existing literature follows suit with the legal definition of trafficking and studies adolescents as a separate group from adults. However, other vulnerable populations and their transition to adulthood have been studied. Those studies suggest that the transition to adulthood itself can be particularly difficult for vulnerable populations such as runaway youth, those involved in the juvenile justice system, and youth who are aging out of foster care. These populations experience the removal of a safety net once they are considered adults and face new challenges that non-vulnerable populations do not.⁴² What we know about minors who sell sex is that they are likely to be facing similar vulnerabilities like homelessness, foster care, and juvenile justice involvement in addition to the specific violence, exposure, and subjection experienced from selling sex.⁴³ These layered vulnerabilities and challenges make the transition to adulthood that much more of a critical time for young adults who sell sex.

The transition to adulthood and turning eighteen are two separate concepts in the Life Course Perspective,⁴⁴ as turning eighteen does not always mean that one is automatically participating in typical events that scholars note as milestones of adulthood such as moving out of a parent's house, starting a family, entering into the job market, and so forth.⁴⁵ In fact, research suggests that the transition to adulthood is being pushed to a later age in recent years with many people living with their parents for longer periods of time, going to college and delaying entrance into a career, and starting a family well into their early to mid-twenties or later.⁴⁶ This elongating of the transition to adulthood process has been called

42. ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS 18, 20 (D. Wayne Osgood et al. eds., 2005).

43. *Id.* at 134, 182–83.

44. ELIZABETH HUTCHISON, DIMENSIONS OF HUMAN BEHAVIOR: THE CHANGING LIFE COURSE 30, 30 (2011).

45. Jeffrey J. Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCHOLOGIST 469, 469 (2000).

46. *Id.*

emerging adulthood.⁴⁷ Alternatively, for certain vulnerable populations, the transition to adulthood markers occur even before one turns eighteen, when one actually transitions into living on their own before turning eighteen, a newfound need emerges to support oneself financially, and he or she may even be starting parenthood during these teen years.⁴⁸ It is estimated that around ten to thirty-three percent of homeless youth trade sex for money, shelter, and food.⁴⁹ This group is also more likely to report higher rates of contact with the criminal justice system than other youth.⁵⁰ The TVPA and its Reauthorizations are structured to recognize the vulnerability and need of this group. Even though youth who sell sex or are sold for sex have likely hit many of the milestones of adulthood and have had endured trauma that most adults do not have to fare, the distinct occurrence of turning eighteen, under the law as it stands, puts this group in an even more vulnerable and precarious position. Any resources that may have been available to these individuals up until their eighteenth birthday are now revoked through the TVPA because they no longer meet the official definition of trafficking.

The number of adults who sell sex who also sold sex as minors is estimated to be around eighty percent,⁵¹ but as with most estimates about the prevalence of both minors and adults who sell sex, the actual numbers are largely unknown. Despite the fact that the definition of sex trafficking assumes that people are no longer victims when they turn eighteen, there is a problem in assuming that turning eighteen equates gaining agency, choice, and available options when research has shown that the institutional difficulties that one faces only increases with adulthood, especially when it comes to barriers exiting the sex trade.⁵² The economic pressures to sell sex once one becomes an adult are important factors to consider that eighteen-year-olds must face. The issue of primary concern here is that minors and adults are treated as two separate groups when in reality, they are all individuals of the same population, just at different points in their life course. The adolescents that warrant

47. *Id.*

48. John Hagan & Bill McCarthy, *Homeless Youth and the Perilous Passage to Adulthood*, in *ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS* 178–201, 178 (D. Wayne Osgood et al. eds., 2005).

49. *Id.* at 183.

50. *Id.*

51. Kathleen Bergquist, *Criminal, Victim, or Ally? Examining the Role of Sex Workers in Addressing Minor Sex Trafficking*, 30 *AFFILIA: J. OF WOMEN & SOC. WORK* 314, 322 (2015); Cheryl Hanna, *Somebody's Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 *WM. & MARY J. OF WOMEN & L.* 1, 12 (2002).

52. See discussion *infra* Parts V.B–D.

societal concern and legislative action and fall under the category of “severe trafficking” turn eighteen and at this point, because of the labels of sex trafficking victim versus prostitute, their ability to exit the sex trade become increasingly difficult. If we as a society focused instead on the institutional factors that perpetuate the ongoing sex trade instead of blaming the individuals that fall victim to the breakdowns within the system, we may begin to address the stigma and consequences associated with selling sex as an adult and, more importantly, address trafficking and unlawful commercial sex acts more systemically and sustainably. This is not an unreasonable jump as we afford minors this consideration that the system has worked against them in such a way that any involvement within the commercial sex trade is supposed to absolve any associations of fault or blame. The next section explains how those same institutions influence adults who sell sex.

V. INSTITUTIONAL PREDICTORS TO ENTRY AND BARRIERS TO EXITING THE SEX TRADE

A. Family

As a society, we rely on the institution of the family for many functions, primarily in raising and sheltering children in a safe environment.⁵³ For many minors who find themselves engaging in the commercial sex trade, breakdowns in the institution of the family are a high likelihood.⁵⁴ For many adolescents who sell sex or have been sold for sex, a history of family maltreatment, including physical and sexual abuse as well as other forms of family dysfunction is prevalent.⁵⁵ The undeniable connection between childhood abuse and adolescents selling sex has also been well-documented.⁵⁶

53. See, e.g., HUTCHISON, *supra* note 44, at 37.

54. Holly Bell & Carol Todd, *Juvenile Prostitution in a Midsize City*, 27 J. OF OFFENDER REHABILITATION 93, 95–96 (1998); Kimberly Mitchell et al., *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18, 18 (2010); N. Eugene Walls & Stephanie Bell, *Correlates of Engaging in Survival Sex among Homeless Youth and Young Adults*, 48 J. OF SEX RES. 423, 425 (2011).

55. Bell & Todd, *supra* note 54, at 94; Mitchell et al., *supra* note 54, at 19. See also Walls & Bell, *supra* note 54, at 426 (describing how youth in families that abuse drugs and alcohol are more likely to engage in “survival sex”).

56. Ross J. Clarke et al., *Age at Entry into Prostitution: Relationship to Drug Use, Race, Suicide, Education Level, Childhood Abuse, and Family Experiences*, 22 J. OF HUM. BEHAV. IN THE SOC. ENV'T 270, 271 (2012); Lisa Kramer & Ellen Berg, *A Survival Analysis of Timing of Entry into Prostitution: The Differential Impact of Race, Educational Level, and Childhood/Adolescent Risk Factors*, 73 SOC. INQUIRY 511, 512 (2003) (attributing prostitution to failing familial units); Mimi H. Silbert & Ayala M. Pines, *Early Exploitation as an Influence in Prostitution*, 28 SOC. WORK 285, 286 (1983).

Adolescents who sell sex are more likely to run away from negative family situations such as abuse, domestic violence, and substance use in the home or to live in foster care or on their own.⁵⁷ Involvement in foster care or child protective services is common for minors who sell sex⁵⁸ and the system is set up to try to protect children and adolescents from these dangerous situations.⁵⁹ How successful the system is at that protection can be debated and is not the focus here, but the intention of protection, nonetheless, is present in the current law. As children and adolescents, those who sell sex are seen as sex trafficking victims and as adults they are stigmatized as prostitutes.

To support the idea that adults who sell sex are simply the same group as those we view as underage sex trafficking victims, a similar history emerges in the research for those eighteen and over. For adults who sell sex, many (forty-nine percent) experienced physical abuse by a family member as a child and an estimated forty-seven percent experienced sexual abuse by at least one family member.⁶⁰ These early childhood abuse experiences put U.S.-born children on a trajectory of vulnerability to sell sex both as children and as adults.

For many in this population, transitioning into adulthood means the removal of protection status from state agencies against family breakdowns like abuse and dysfunction. When looking at adults, many of the same factors that influenced minors selling sex also influence adults who sell sex, such as a history of child abuse and general family dysfunction.⁶¹ Many of the adults who sell sex have the history of the family breakdowns that minors face, but with added barriers that come with adulthood. Family members can blame adults who sell sex for choosing to remain in the trade, hearing similar arguments as victims of domestic violence face that question the severity of violence, manipulation, and abuse if the individual remains involved.⁶² The shame and stigma of selling sex as an adult lead many to keep their status a secret from family

57. Lara Gerassi, *From Exploitation to Industry: Definitions, Risks, and Consequences of Domestic Sexual Exploitation and Sex Work Among Women and Girls*, 25 J. OF HUM. BEHAV. IN THE SOC. ENV'T 591, 598 (2015). See also Bell & Todd, *supra* note 54, at 94–95.

58. Kimberly Kotrla, *Domestic Minor Sex Trafficking in the United States*, 55 SOC. WORK 181, 183 (2010).

59. See POLARIS PROJECT, HUMAN TRAFFICKING ISSUE BRIEF: SAFE HARBOR (2015), <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.

60. Kramer & Berg, *supra* note 56, at 519. See also Susan F. McClanahan et al., *Pathways into Prostitution Among Female Jail Detainees and Their Implications for Mental Health Services*, 50 PSYCHIATRIC SERVICES 1606 (1999) (“[N]early 70 percent of women prostitutes reported that childhood sexual victimization influenced their decision to engage in prostitution.”) (citation omitted).

61. Gerassi, *supra* note 57, at 595, 598.

62. See Christine Stark & Carol Hodgson, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, 2 J. OF TRAUMA PRACTICE 17, 18 (2004).

members, thus cutting off potential avenues of support.⁶³ In adulthood, intimate partner violence becomes a serious factor when women who sell sex consider a pimp their partner or boyfriend and makes exiting that much more complicated and difficult.⁶⁴ Finally, as adults, there is a higher likelihood of the need to support one's own family and research has shown that financially providing for their children is a reason some women have reported staying in the sex trade.⁶⁵ As we can see, breakdowns in the institution of the family influences transitions to adulthood for this population and these institutional variables factor into the perpetuation of the commercial sex trade and reduce opportunities for exiting once a person is considered an adult.

B. Education

The educational system is also responsible for the socialization of children but additionally serves to train and teach our future workforce. Minors and adults selling sex often report limited engagement with school and a history of dropping out is common.⁶⁶ Irregular school attendance and a lower likelihood of going to college⁶⁷ can greatly influence a person's trajectory and institutional opportunities. The negative implications of not attending school regularly and dropping out before obtaining a high school diploma are predicted to have an impact on the economic options and positive social development the education system is meant to facilitate. The higher level of education one achieves, the less likely that individual is to sell sex as a minor or adult.⁶⁸ The more education at-risk youth and adults have, the higher the likelihood that those individuals will delay or not even begin selling sex.⁶⁹ Adults without a college education have more limited economic opportunities than those with a college education and even more limitations if lacking a high school diploma.⁷⁰ These factors contribute to the financial incentive of seeking alternative forms of earning money than the traditional workforce. A focus on lowering dropout rates and increasing school attendance for at-risk youth as well as employing policy that makes college an affordable and realistic option may have a positive and

63. Ronald Weitzer, *Sociology of Sex Work*, 35 ANN. REV. OF SOC. 213, 221–22 (2009).

64. Gerassi, *supra* note 57, at 595, 599. *See also* Raphael et al., *supra* note 40, at 92.

65. Gerassi, *supra* note 57, at 595, 598.

66. Clarke et al., *supra* note 56, at 272. *See also* Kramer & Berg, *supra* note 56, at 518.

67. *See* Bell & Todd, *supra* note 54, at 96; Clarke et al., *supra* note 56, at 272.

68. *See* Kramer & Berg, *supra* note 56, at 518.

69. Clarke et al., *supra* note 56, at 279; Kramer & Berg, *supra* note 56, at 518.

70. Clarke et al., *supra* note 56, at 284.

longstanding impact on a person's trajectory into the sex trade as a minor or adult.

C. *Economy/Work*

The incentive to work and overall economic position is a major concern for individuals who sell sex.⁷¹ Income inequality has been increasing in the United States and this results in a disparity of resources, social capital, and actual capital.⁷² Upward class mobility within one's lifetime is particularly difficult,⁷³ and even upward mobility between generations has shown little to no improvement in the United States.⁷⁴ With the existing status of the United States economy and high costs of living, selling sex is a means to get by financially for those in poverty⁷⁵ and even some middle class groups.⁷⁶ The economic drive to sell sex ranges from survival to a means of seeking financial independence⁷⁷ and are intricately connected to the greater economic system and cycles of poverty. Though homeless and runaway youth are particularly vulnerable to partaking in "survival sex" to get by,⁷⁸ the financial incentive to support oneself only increases when one turns eighteen. The additional economic benefit of selling sex and engaging in riskier sex—without a condom, for example—for a higher price means putting one's own health at risk in order to make money.⁷⁹ Those who are pimp-controlled are forced to give most if not all revenue from selling sex to the pimp and in addition to fearing violence and repercussions for leaving, are

71. Monroe, *supra* note 38, at 70; Bernstein, *supra* note 39, at 475.

72. Natalie Holmes & Alan Berube, CITY AND METROPOLITAN INEQUALITY ON THE RISE, DRIVEN BY DECLINING INCOMES, THE BROOKINGS INST. (Jan. 14, 2016), <https://www.brookings.edu/research/city-and-metropolitan-inequality-on-the-rise-driven-by-declining-incomes> [<https://perma.cc/QBG5NEBU>].

73. Marco van Leeuwen & Ineke Maas, *Historical Studies of Social Mobility and Stratification*, 36 ANN. REV. OF SOC. 429, 440 (2010).

74. See Raj Chetty et al., *Is the United States Still the Land of Opportunity? Recent Trends in Intergenerational Mobility* 141–47, 145 (Nat'l Bureau of Econ. Research, Working Paper No. 104(5), 2014), <http://www.nber.org/papers/w19844.pdf>.

75. Monroe, *supra* note 38, at 70. See also Katherine Edin & Laura Lein, *Work, Welfare, and Single Mothers' Economic Survival Strategies*, 61 AM. SOC. REV. 253, 258 (1997) (stating that 2–19% of welfare recipients sold sex, drugs, or stolen goods to generate income).

76. Bernstein, *supra* note 39, at 475.

77. Weitzer, *supra* note 63, at 217–18.

78. Walls & Bell, *supra* note 54, at 424.

79. Stef Adriaenssens & Jef Hendrickx, *Sex, Price and Preferences: Accounting for Unsafe Sexual Practices in Prostitution Markets*, 34 SOC. OF HEALTH & ILLNESS 665, 673 (2012); Kathleen N. Deering et al., *Client Demands for Unsafe Sex: The Socio-Economic Risk Environment for HIV Among Street and Off-Street Sex Workers*, 63 J. OF ACQUIRED IMMUNE DEFICIENCY SYNDROMES 522, 526 (2013).

financially dependent on the exploiter or pimp.⁸⁰ Factors of financial dependency should also be considered when putting the onus on the victim to prove force, fraud, or coercion. One does not need to prove abuse of a spouse to access government-sponsored services for domestic violence;⁸¹ such reasoning would put the victim and family members at an increased risk. The same rationale can be applied to victims of trafficking and those who might fall in the “grey zone” of whether force, fraud, or coercion exists.

D. Criminal Justice

Some discord exists in society about whether adolescents who sell sex should be considered victims or juvenile delinquents;⁸² however, recent social science literature primarily frames minors selling sex as victims instead of perpetrators.⁸³ This framing corresponds with the existing TVPA definition. Therefore, the distinction that exists in the TVPA between trafficking victim and a non-victim leaves the criminal justice system, and especially law enforcement, with the task of determining whether trafficking or prostitution is the offense.⁸⁴ The way an interaction is defined by police will determine whether an adult is considered a victim or offender by other areas of the criminal justice system. In addition to the increased likelihood of arrest and sentencing once someone turns eighteen because their actions are considered unlawful, other obstacles exist within the criminal justice system such as potential victimization by police or being coerced into having sex by police officers.⁸⁵ Feelings of discouragement to report victimization and violence to police is also a considerable barrier, as many who partake in unlawful commercial sex acts have reported non-responsiveness and even being treated as invisible by law enforcement when they do report being victims.⁸⁶

80. Raphael et al., *supra* note 40, at 97.

81. Stark & Hodgson, *supra* note 62, at 28–29.

82. Nikki Hasselbarth, *Emerging Victimhood: Moving Towards the Protection of Domestic Juveniles Involved in Prostitution*, 21 DUKE J. GENDER L. & POLY 401, 401 (2013). See also Anthony Marcus et al., *Is Child to Adult as Victim is to Criminal?: Social Policy and Street-Based Sex Work in the USA*, 9 SEXUALITY RES. AND SOC. POLY 153, 154 (2012); Tasha Menaker & Audrey K. Miller, *Culpability Attributions Towards Juvenile Female Prostitutes*, 22 CHILD ABUSE REV. 169, 170–71; Mitchell et al., *supra* note 54, at 18.

83. *Id.*

84. Farrell & Cronin, *supra* note 33, at 214.

85. Kendra Nixon et al., *The Everyday Occurrence: Violence in the Lives of Girls Exploited Through Prostitution*, 8 VIOLENCE AGAINST WOMEN 1016, 1030–31 (2002); Celia Williamson et al., *Police-Prostitute Interactions*, 18 J. OF PROGRESSIVE HUM. SERVICES 15, 18–19 (2007).

86. Williamson et al., *supra* note 85, at 24–25. See also Finn et al., *supra* note 32, at

Police are more likely to associate trafficking with someone from a different country or someone who is underage, even if clear force, fraud, or coercion exists.⁸⁷ In addition to arrests and individual experiences with police officers, once a criminal record is formed, the ability to get a job, go to school, and obtain housing, among other things, is even more difficult and greatly impacts one's access to other social institutions.⁸⁸ Even for those officers who recognize the hardships that this population faces, options are limited as to how they are able to help. Some officers will make an arrest of loitering as a form of support to provide women a place to rest and eat, even if that place is jail.⁸⁹ If the only way a police officer can "help" is by actually arresting an adult selling sex to offer a meal and respite, then we have some serious work to do as a society to offer more viable and practical solutions.

VI. ADDITIONAL CONSIDERATIONS

The problem lies not in the omission of prostitution from the TVPA but in the consequence of framing victimhood around constructed groups that do not exist exclusive to one another. A person who sells sex or is sold for sex as a minor has a high chance of being in the commercial sex trade as an adult whether she or he falls under the Trafficking Victim Protections Act or falls under the definition of prostitution.⁹⁰ One's economic, educational, legal, and familial situation makes exiting the commercial sex trade extremely difficult, especially if that situation is one that is not designated with victim status. The label of victim may not be ideal, but with it comes visibility and recognition that larger structural factors are at play that may not simply be a result of personal choice and agency. The same logic is applied to survivors of domestic violence and rape, both of which are offenses that have transitioned—or have made great strides in transitioning—in society from conjuring a victim-blaming attitude to one of compassion, empathy, and resources. Labels and the meaning we attach to those labels matter. When a person shifts from being considered a victim in society to a criminal simply by

79 (describing law enforcement's limited engagement with victims of, and training programs that concern, human trafficking).

87. Finn et al., *supra* note 32, at 78–79; Deborah Grubb & Katherine Bennett, *The Readiness of Local Law Enforcement to Engage in US Anti-Trafficking Efforts: An Assessment of Human Trafficking Training and Awareness of Local, County, and State Law Enforcement Agencies in the State of Georgia*, 13 POLICE PRAC. AND RES. 487, 489 (2012).

88. ALISON BASS, GETTING SCREWED: SEX WORKERS AND THE LAW 156 (2015).

89. Williamson et al., *supra* note 85, at 23.

90. Marcus et al., *supra* note 82, at 164–65.

having a birthday, we need to reevaluate those labels and consider additional policy that does not exclude this marginalized group but provides access to resources, a reevaluation of selling sex as a crime (while still holding controllers and buyers legally accountable) and the revictimization that occurs for individuals through the criminal justice system that create additional hurdles with a criminal record and additional stigma.

Another factor that has not been directly addressed but must be considered are other embedded systems of oppression, specifically around class, race, and gender. With the topic of prostitution specifically, the ongoing objectification of women, especially women of color, should not be ignored. Longstanding perceptions of women (and even men) as commodities to be bought and sold is an issue that results from the existing white patriarchal system of power and it is that system of power that has created the institutions with which we all interact in society. The focus of this analysis is meant to bring to light the impact institutional factors can have on cisgendered women, cisgendered men, transgendered individuals, and other gender identities; however a larger patriarchal system cannot be completely ignored as a contributing force. The question then becomes how those beliefs and forms of discrimination make their way into the institutions of the family, education, work, the economy, and the criminal justice system. The many ways in which sexism, transphobia, racism, and other forms of discrimination are embedded into the institutions that affect individuals who sell sex or are sold for sex is an area of much needed future research and should be included in all original research about this marginalized population and others.

Finally, there is mobilization and activism around sex worker rights emerging not only here in the United States but around the world.⁹¹ These efforts are also often coupled with arguments for legalization and decriminalization to address the stigma and institutional barriers that sex workers, and specifically female sex workers, face.⁹² This position rejects the notion of sex workers as victims, providing a more empowered approach. Unfortunately, we as a society tend to provide resources, assistance, and visibility to those groups that we name as victims. Transitions to positions of empowerment and greater social change are possible once basic access to the institutions and resources are established. Total legalization of

91. See, e.g., MELINDA CHATEAUVERT, *SEX WORKERS UNITE: A HISTORY OF THE MOVEMENT FROM STONEWALL TO SLUTWALK* 19–20 (2013); BASS, *supra* note 88, at xi.

92. CHATEAUVERT, *supra* note 91, at 4–5. See also BASS, *supra* note 88, xii–xiv (arguing for the decriminalization and regulation of “sex work”).

buying and selling sex does not guarantee safety from violence and stigma.⁹³ Some countries like Sweden, Norway, and France have taken the position of only criminalizing buyers and pimps while decriminalizing the act of an individual selling sex (an approach deemed the “Nordic Model”).⁹⁴ International organizations like the Coalition Against Trafficking Women take a strong stance on destigmatizing and decriminalizing those who are bought and sold while taking a strong stance against the full legalization of prostitution.⁹⁵ Despite the differing views of many over decriminalization and legalization, the central common thread that exists but is rarely illuminated is the role of institutional failures in contributing to entrance into the sex trade, whether it be trafficking or prostitution, and the prohibitive barriers that block options and the availability of exiting. Whether one is arguing for decriminalization of any kind or inclusion as a victim, the overall problem of institutional obstacles and societal stigma remains the critical issue.

CONCLUSION

In an ideal world, we would all have the same chances, resources, and ability to make or break our individual successes. There is an understanding, however, that some groups experience victimization and vulnerabilities within the system early on in life and continually throughout their life course. The benefit of having a policy like the VTVPA that includes the TVPA and the VAWA is a step towards acknowledging the barriers and obstacles that certain groups face, whether it is an immigrant being trafficked for sex into the United States, a wife who is being physically abused by her husband, or a runaway teen who sells sex on the street to survive. As a collective society, we recognize these social ills as problems that we must address as a whole, through policy, the criminal justice system, non-governmental agencies, health care professionals, and other institutional roles. In order to more fully address the problem of victimization and marginalization of those who sell sex, we need to reframe this population as victims as well, whether that be by individual

93. Melissa Farley, “*Bad for the Body, Bad for the Heart*”: *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087, 1092 (2004).

94. Alexandra Topping, *UK Urged to Follow Nordic Model of Criminalising Prostitution Clients*, THE GUARDIAN (Dec. 11, 2013, 11:00 EST), <https://www.theguardian.com/global-development/2013/dec/11/uk-nordic-model-prostitution-clients-buyer-sex> [http://perma.cc/C8M82FS7].

95. Janice G. Raymond, COAL. AGAINST TRAFFICKING WOMEN, *Ten Reasons for NOT Legalizing Prostitution* (Feb. 11, 2003), <http://www.catwinternational.org/Home/Article/41-ten-reasons-for-not-legalizing-prostitution> [http://perma.cc/M7THWDUC].

traffickers or by an economic and social system that restricts choice and offers limited options. The City of Boston is one example of a local government taking this progressive approach. The City of Boston considers all acts of prostitution as “trafficking,” stating that individuals are coerced or recruited into prostitution whether by traffickers *or* by an economic system that limits choice and offers few alternatives with more focus being put on going after the demand of purchasing sex by targeting johns,⁹⁶ and putting more emphasis on capturing pimps and traffickers instead of focusing on those who are selling sex or being sold for sex.⁹⁷ We, as a society, can hold individuals accountable while still not using the system to further victimize an already marginalized group that faces many barriers. Until the United States government and society as a whole considers adults who sell sex to be a specifically vulnerable population and address the institutional factors that result in associating the label of prostitute with agency and choice, this group will continue to face violence, stigma, and discrimination.

96. Lawrence Harmon, *Targeting Johns, Not Prostitutes*, THE BOSTON GLOBE (May 31, 2014), <https://www.bostonglobe.com/opinion/2014/05/30/curb-prostitution-concentrate-johns/MZcgXTN3INN1jEg4A2Ow8K/story.html> [http://perma.cc/WPS5HP67]. *See also* Zachary Sampson, *Program in Boston Targets Men Who Buy Sex*, THE BOSTON GLOBE (June 4, 2014), <https://www.bostonglobe.com/metro/2014/06/03/city-aims-reduce-prostitution-targeting-those-who-pay-for-sex/3RR2RtPPkF4Y2P7Ain0APO/story.html> [http://perma.cc/Z3RAJ96X].

97. Donna Gavin, *“Pretty Woman” Normalizes Something That Destroys Lives*, THE BOSTON GLOBE (Mar. 23, 2015), <https://www.bostonglobe.com/opinion/2015/03/23/pretty-woman-normalizes-something-that-destroys-lives/0IOwKGZd89JsgBEaY0RDP/story.html> [http://perma.cc/S5VPF5WP].