

DECRIMINALIZING SLAVERY: WHY JURISDICTIONS SHOULD FOCUS ON CRIMINALIZING JOHNS

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INTRODUCTION

“Sex Trafficking” is modern-day slavery, with traffickers using a variety of control methods to force women and children to perform sex work for the financial gain of the traffickers. The sex trade exacts a physical and psychological toll on its victims, placing them in harm’s way and exposing them to health risks. Despite this, many sex workers face prosecution, while the johns who purchase sex commonly face no legal or career consequences. The sex trade has undergone multiple changes as traffickers utilize modern technology such as online advertising platforms and cryptocurrencies that, when properly tracked and stored, can make it easier to create a record of johns who intend to purchase sex. The changes to the sex trade present an opportunity for prosecutors and other policy makers to shift their enforcement and deterrence mechanisms from the supply to the demand side of sex trafficking.

I. SEX TRAFFICKING BACKGROUND

“Human Trafficking” is a system of slavery of women and children.¹ Although they are largely hidden from public view, women who have been forced into sex work live in communities of all types, from small rural and suburban towns to the largest cities.² Human Traffickers often target women and children who are vulnerable due to their isolation from support systems. These pimps then use various forms of physical and emotional abuse to retain control over their victims, often demanding that they make a certain amount of money per day to “earn” necessities such as room and board while the pimp retains all the profits from the performance of sex acts.

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¹ This article will repeatedly refer to sex workers being women and children and to sex buyers as being men. This is because a clear majority of sex workers are women and minors while an even larger majority of sex buyers are men. It is not meant to minimize the experiences of men who are trafficked nor to deny the existence of female sex purchasers.

² Amy Fine Collins, *Sex Trafficking of Americans: The Girls Next Door*, VANITY FAIR (May 24, 2011), <https://www.vanityfair.com/news/2011/05/sex-trafficking-201105>.

One of the most common features of women and children exploited³ by the sex trade is their vulnerability and youth at the time of their entry into sex work. While it is challenging to procure reliable data on sex workers due to the clandestine nature of the sex trade, arrest records and interviews with women who have exited the sex trade show that a significant number of women who enter into sex work do so as minors. At significant risk of exploitation are children who were emotionally and sexually abused as well as children who experience homelessness or live in foster care or group homes.⁴ However, having a supportive family and a healthy childhood is not a sure safeguard against being coerced into sex work. Many women from supportive households are manipulated into sex work by pimps who claim to be in love with them or who promise them work.⁵ Once women and children begin a relationship with a pimp, it is difficult for them to extract themselves, even if they want to.⁶

Sex workers and pimps, however, are only the supply-side of the sex trade. Without the demand of the purchasers of sex, there would be no incentive for pimps to traffic women and children. Men from all socioeconomic and geographic origins seek to purchase sex. The few studies that have been conducted on johns show that there are few indices that make one man more likely than another to purchase sex. While these johns often seek to justify their purchase of sex as a consensual sexual act that the government has no business regulating, interviews and police stings reveal that many of these men know or suspect that the women they seek sex with have been trafficked, coerced, or sexually abused in the past. Additionally, while many men insist that they do not intend to purchase sex with minors, the revelation that a sex worker is a minor often has no deterrent effect.

II. SEX TRAFFICKING IN THE UNITED STATES

The legal system in the United States largely seeks to suppress the sex trade through criminalization of sex workers.⁷ However, as legislators and

³ This article is only concerned with the victims of human trafficking who are truly being exploited by the sex trade. This paper does not deal with the community of sex workers who are voluntarily and knowingly participating in the sex trade.

⁴ National Center for Missing and Exploited Children, *Child Sex Trafficking in America: A Guide For Parents and Guardians* (June 2017), http://www.missingkids.com/content/dam/ncmec/en_us/NCMEC%20CST%20fact%20sheet_Parents_January%202018.pdf.

⁵ ABC News, *Teen Girls' Stories of Sex Trafficking in the United States* (Feb. 9, 2006), <http://abcnews.go.com/Primetime/story?id=1596778&page=1>.

⁶ *Id.* See generally, Mark Grough & Tony Goldbach, *Relationship Between Pimps and Prostitutes*, Cornell University Law School of Social Science and Law: Student Page, https://courses2.cit.cornell.edu/sociallaw/student_projects/PimpsandProstitutes.htm.

⁷ Gail M. Deady, *The Girl Next Door: A Comparative Approach to Prostitution Laws and Sex Trafficking Victim Identification Within the Prostitution Industry*, 17 WASH. & LEE J.C.R. & SOC. JUST. 515, 536-37 (2011).

policy makers have become more cognizant of the true nature of human trafficking,⁸ some states have begun to supplement laws that criminalize sex work with “safe harbor” laws. These laws do not replace the previous statutes criminalizing sex work. Rather, they limit the extent to which certain sex workers may be prosecuted.⁹ The specifics of safe harbor laws vary from state to state, but the laws generally work to exclude minors from prosecution.¹⁰ Only a minority of states have extended safe harbor laws to cover adult victims of human trafficking.¹¹

Many of the men who purchase sex have escaped criminal and career consequences for their participation in the sex trade.¹² Some jurisdictions offer a program for men who purchase sex called “john school,” typically a single-day program covering discussions about the legal consequences of purchasing sex and the negative impact the sex trade has on trafficked women and minors.¹³ These programs introduce men to the damage they are inflicting on women and children of the sex trade, however some advocates contend that john schools are too short to make a meaningful impact on the behavior of the men who attend them.¹⁴

III. THE IMPACT OF TECHNOLOGY ON THE SEX TRADE

Over the course of the last few decades, people have increasingly turned to the internet to purchase goods and services. Those looking to purchase sex are no exception, and the sex trade has largely shifted from one where pimps seek customers on the streets to one where pimps utilize

⁸ The Senate produced a comprehensive report on the facilitation of the sex trade on online platforms in which it covered the impact of human trafficking on victims. *See* STAFF OF S. COMM. ON INVESTIGATIONS, 115TH CONG., REP. ON BACKPAGE.COM’S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING, available at https://www.portman.senate.gov/public/index.cfm/files/serve?File_id=5D0C71AE-A090-4F30-A5F5-7CFFC08AFD48.

⁹ Polaris, *Human Trafficking Brief: Safe Harbor*, Fall 2015, <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² When a sting revealed that dozens of men used their company email to communicate with pimps to buy sex from trafficked women, Amazon, Microsoft, and other technology companies in the Seattle area were slow to investigate. Amazon did not request to know which of its employees’ emails had been used for illegal activity. *See*, Nina Burleigh, *Tech Bros Bought Sex Trafficking Victims by Using Amazon and Microsoft Work Emails*, NEWSWEEK (Feb. 21, 2017), <http://www.newsweek.com/metoo-microsoft-amazon-trafficking-prostitution-sex-silicon-valley-755611>; Mallory Locker, *Amazon and Microsoft Employees Caught up in Sex Trafficking*, ENGADGET (Dec. 25, 2017), <https://www.engadget.com/2017/12/25/amazon-microsoft-employees-sex-trafficking-sting/>.

¹³ DEMAND FORUM, <http://www.demandforum.net/john-school/> (last visited April 4, 2018).

¹⁴ Brooke Jarvis, *Can We “Cure” the Men who Pay For Sex?* GQ MAGAZINE (Feb 2, 2017), <https://www.gq.com/story/cure-men-who-pay-for-sex-end-prostitution>.

online platforms to advertise for johns.¹⁵ The online advertising of sex workers has made purchasing sex more convenient for johns, particularly those who work white collar jobs and live in nice neighborhoods.¹⁶ Because johns looking to buy sex now respond to online advertisements and meet at a predetermined place—most commonly a hotel room—the purchase of sex now takes place out of the common view. However, the new model of sex trafficking represents an opportunity for law enforcement officials and policy makers to focus on detecting and deterring men who seek to buy sex.

The sex trade's shift to using internet communication presents new opportunities for law enforcement to detect men looking to purchase sex. Prior to the adoption of online platforms, men gave cash to women and children they found on the street for sex, making the detection and subsequent prosecution of johns challenging. Unless police were conducting an undercover sting or were located where they could easily observe the exchange, proving a solicitation case against a john was difficult. Now, police may place advertisements on Backpage.com and other online posting boards and collect correspondence from multiple johns arranging to buy sex. This communication is all traceable and storable, providing valuable admissible evidence in criminal cases. Prosecutors and policy makers should utilize this newfound ability to track the attempts of men to purchase sex. This opportunity to study the habits and motivations of johns could lead to the formation of programs and services that are more efficient at deterring this behavior.

CONCLUSION

“Sex Trafficking” is a system of modern slavery, impacting countless women and children across the United States. The legal system should recognize this reality and cease the criminalization of sex workers. Instead, law enforcement and prosecutors across the country should focus their efforts on detecting and deterring johns. The adoption of technology in the sex trade can make it easier to create a record of the intent of johns to purchase sex. The changes to the sex trade present an opportunity for prosecutors and other policy makers to shift their enforcement and deterrence mechanisms from the supply to the demand side of sex trafficking.

¹⁵ See STAFF OF S. COMM. ON INVESTIGATIONS, *supra* note 8.

¹⁶ Pimps in metropolitan areas can use internet platforms to advertise their proximity to johns. For example, pimps advertised their proximity to the Microsoft campus in Redmond, WA. See Nina Burleigh, *Tech Bros Bought Sex Trafficking Victims by Using Amazon and Microsoft Work Emails*, *supra* note 12.