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The Demand Side of Sex Trafficking in Minnesota: The Who, Where, and Why—And What We Can Do About It

Erinn B. Valine

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**THE DEMAND SIDE OF SEX TRAFFICKING IN MINNESOTA:
THE WHO, WHERE, AND WHY—AND WHAT WE CAN DO
ABOUT IT**

Erinn B. Valine[†]

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[†] J.D. Candidate, 2019, Mitchell Hamline School of Law; B.A., 2012, University of Minnesota. I would like to thank Assistant Washington County Attorney Imran Ali first and foremost for taking a chance in hiring a first-year law student to work in such an important area of law, for his tremendous help in making this article possible, and for becoming a mentor and friend. I also want to thank my husband, Adam, for his overwhelming support in every aspect of my life, as well as my parents for ensuring I had everything I needed to succeed.

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"I took only one course in business management and economics, but it seems pretty basic to me. Without customers, you don't have any business and you will fold. . . . Police have attacked prostitution with the wrong method. They've gone after the prostitutes. I think the focus should have been on the customer."

—Chief Pierce Brooks Eugene, Oregon Police Department, 1978¹

I. INTRODUCTION

When the problems of sex trafficking are examined, rarely are the customers—those who create the demand—the first consideration.² These customers, often called “johns,” are faceless and unidentified; the everyman types who are not “as interesting” to discuss and are not perceived nearly as condemnable as traffickers or the individuals being trafficked.³ Additionally, sociological research often inadequately addresses the demand side of sex trafficking because of the difficulty in collecting data.⁴ Despite this difficulty, the University

1. MICHAEL SHIVELY ET AL., A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REDUCTION EFFORTS 1 (2012), <http://prostitutionresearch.com/wp-content/uploads/2017/03/Shively-et-al-2012-Demand-Reduction.pdf> [<http://perma.cc/DG3C-LJL6>].

2. See DONNA M. HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF SEX TRAFFICKING 2 (2004), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.523.2857&rep=rep1&type=pdf> [<http://perma.cc/4XYY-JEL3>].

3. See, e.g., *id.* at 1–2 (“Each year, hundreds of thousands of women and children around the world become victims of the global sex trade. They are recruited into prostitution, often using tactics involving force, fraud, or coercion. Criminals working in organized networks treat the victims like commodities, buying and selling them for profit. This modern-day form of slavery is called sex trafficking. . . . And efforts to combat trafficking have aimed to stop trafficking on the supply side through education and prevention campaigns in sending countries to alert people about the phenomenon of trafficking. Potential victims are warned about the tactics used by recruiters and the consequences of trafficking, with the aim of reducing the supply of victims. In comparison, there have been few campaigns or efforts aimed at reducing the demand for victim.”).

4. See, e.g., LAUREN MARTIN ET AL., MAPPING THE DEMAND: SEX BUYERS IN THE STATE OF MINNESOTA 10 (2017), <https://uroc.umn.edu/sites/uroc.umn.edu/files/FULL%20REPORT%20Mapping%20the%20Demand.pdf> [<http://perma.cc/3EN9-7DHK>]

of Minnesota undertook to study the demand of sex trafficking in Minnesota, reporting the results in *Mapping the Demand: Sex Buyers in the State of Minnesota*.⁵ This note will explore the implications of that research. To lay a foundation for this discussion, Part II will include an explanation of the basics of sex trafficking, including the three main parties involved and the differing opinions regarding each party's culpability.⁶ Part II will also include a discussion of two conflicting policies: that which advocates for legalized prostitution and believe that prostitution is valid employment; and that which perceives sex trafficking as inherent victimization and advocates for some type of criminalization.⁷ Part III will discuss *Mapping the Demand*, focusing on three major findings of the study: sex buyers in Minnesota are predominantly white men from middle and upper socio-economic backgrounds;⁸ Minnesota has individual markets tied together by the online marketplace;⁹ and sex buyers look to purchase a sexual experience based on power and control.¹⁰ Part III will also discuss the implications of these findings.¹¹ Part IV will explore different types of john-targeted legislation.¹² Part V will recommend a change to laws pertaining to johns in Minnesota.¹³ Finally, Part VI will discuss whether a change in law could solve or reduce the problem in Minnesota and considers the results of johns-of-trafficking-victims-targeted approaches in other states.¹⁴ This note argues for the implementation of johns-of-trafficking-victims-targeted legislation not only for those who would purchase commercial sex from minors, but those purchasing commercial sex from adults as well. Throughout this note purchasers and facilitators

("Conducting research on sex buyers is no easy task."). It should also be noted that sex buyers on the whole are men, and the fact that men make up the demand is assumed in most articles pertaining to prostitution. See, e.g., SHIVELY ET AL., *supra* note 1, at 6 ("Both prostitution and sex trafficking (commercial sex provided by those compelled through force, fraud, or coercion) arise from a common source: men's decision to buy sex.").

5. MARTIN ET AL., *supra* note 4.

6. See *infra* Part II.

7. *Id.*

8. See *infra* Part III.A.

9. See *infra* Part III.B.

10. See *infra* Part III.C.

11. See *infra* Part III.D.

12. See *infra* Part IV.

13. See *infra* Part V.

14. See *infra* Part VI.

of commercial sex will be referred to using male pronouns and those who sell commercial sex will be referred to using female pronouns. This is because sex trafficking/prostitution purchasers and facilitators are male, and the victims are primarily female.¹⁵ However, it should be stressed that women can also be traffickers and purchasers of commercial sex, and males can be victims.¹⁶

II. SEX TRAFFICKING

The United States government defines sex trafficking as “commercial sex act[s]” induced by “force, threats of force, fraud, [or] coercion;” or in which “the person has not attained the age of 18 years.”¹⁷ Sex trafficking has existed in the United States for at least a century, but federal and state legislation addressing this issue is a recent development, with the first state trafficking law implemented in 2003.¹⁸ Minnesota did not have a statute on the books addressing sex trafficking until 2009.¹⁹ Although the Minnesota legislature enacted the sex trafficking statute relatively recently, the statute requires a lower burden of proof than the Federal Trafficking Victims Protection Act in that it does not require a trafficker to act by “force, fraud or coercion.”²⁰ Instead, the Minnesota statute provides that the

15. See PHYLLIS J. NEWTON ET AL., FINDING VICTIMS OF HUMAN TRAFFICKING 51 (2008) <https://www.ncjrs.gov/pdffiles1/nij/grants/224393.pdf> [<https://perma.cc/2RVW-5DDQ>]; see also MARTIN ET AL., *supra* note 4, at 35–36.

16. MARTIN ET AL., *supra* note 4, at 35; NEWTON, *supra* note 15, at 48.

17. 18 U.S.C. § 1591(a) (2018).

18. Heather C. Gregorio, *More than “Johns,” Less than Traffickers: In Search of Just and Proportional Sanctions for Buyers of Sex Trafficking Victims*, 90 N.Y.U. L. REV. 626, 627–28 (2015) (citing Ellen L. Buckwalter et al., *Modern Day Slavery in Our Own Backyard*, 12 WM. & MARY J. WOMEN & L. 403, 416 (2006)). While sex trafficking, as modernly defined, has existed in the United States for a century, prostitution has been present even before American independence. See Cynthia Hawkins Debose & Alicia Renee Tarrant, *Child Sex Trafficking and Adoption Re-Homing: America’s 21st Century Salacious Secret*, 7 WAKE FOREST J. L. & POL’Y 487, 489 (2017); Jessica N. Drexler, Note, *Governments’ Role in Turning Tricks: The World’s Oldest Profession in the Netherlands and the United States*, 15 DICK. J. INT’L L. 201, 204 (1996).

19. MINN. DEP’T OF PUB. SAFETY, HUMAN TRAFFICKING IN MINNESOTA: A REPORT TO THE MINNESOTA LEGISLATURE 1 (2017), <https://www.leg.state.mn.us/docs/2017/mandated/170683.pdf> [<https://perma.cc/H6W3-E8A6>].

20. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended at 22 U.S.C. § 7102 (2015)).

trafficking of an individual may occur “by any means.”²¹ Since the passing of Minnesota’s sex trafficking statute, the state’s legal and social service policies have undergone many changes with respect to this issue.²² Additionally, “[p]rosecutions of individuals for sex trafficking and the promotion of prostitution have increased, as have [the] penalties and sentences” for those crimes.²³ These increases would seem to reflect the general societal consensus that trafficking is wrong and that victims of trafficking should be protected.²⁴

In order to further explore this complex issue, it is necessary to describe those who are involved. There are three fundamental parties in sex trafficking: the distribution—those commonly referred to as pimps or traffickers; the supply—the victims of sexual exploitation; and the demand—the consumers of commercial sex.²⁵ Adding to this complexity are the varying viewpoints concerning the roles that each of these parties play, making an explanation and discussion of the parties essential.

A. *The Distribution: Traffickers and Pimps*

The distributors—or pimps, as they are commonly known—facilitate the commercial sex. In his 1931 book, *The Second Oldest Profession*, Ben Reitman described a pimp in this way:

A pimp is a man . . . who takes all or a part of the earnings of women who sell their bodies for gain. He may have inveigled her into becoming a prostitute or acquired her after she started the business. Invariably he encourages her to

21. MARTIN ET AL., *supra* note 4, at 16 (citing MINN. STAT. § 609.321, subd. 7a(1) (2011)); *see, e.g.*, Act of May 20, 2018, ch. 179, 2018 Minn. Laws 1 (requiring hotel and motel employees to receive training on recognizing sex trafficking).

22. MARTIN ET AL., *supra* note 4, at 14.

23. *Id.* at 15.

24. *See* Gregorio, *supra* note 18, at 628 (“Over the past fifteen years, federal and state authorities have made significant progress in prosecuting traffickers, and modest strides in offering victims services rather than prosecuting them for prostitution.”); *see also* Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 271 (2011) (“No one defends trafficking. There is no pro-sex-trafficking position any more than there is a public pro-slavery position for labor these days.”). Note, however, that trafficking is often distinguished from prostitution, and that there are differing viewpoints on prostitution’s place within society. *See id.*

25. SHIVELY ET AL., *supra* note 1, at 5 fig. 2.1.

continue in prostitution, and he may be either her lover or her husband, but always he is her supposed protector.²⁶

Though it was written eighty-six years ago, this characterization still holds true today. Pimps target vulnerable youth by “making promises of love, a better life, money, and luxury.”²⁷ Traffickers often use emotional, economic, and physical abuse; threats of such abuse; and isolation tactics to force, fraud, or coerce their victims into trafficking.²⁸ It is estimated that up to 80% of women and girls who are selling commercial sex were “coerced or forced to engage in prostitution by pimps or traffickers.”²⁹

Even though the majority of people believe that the actions of pimps should remain illegal, this is not entirely without dispute.³⁰

26. BEN L. REITMAN, *THE SECOND OLDEST PROFESSION* 264 (1931).

27. Marihug Cedeño, *Pimps, Johns, and Juvenile Prostitutes: Is New York Doing Enough to Combat the Commercial Sexual Exploitation of Children?*, 22 CORNELL J.L. & PUB. POL’Y 153, 160 (2012); see also POLARIS, 2016 STATISTICS FROM THE NATIONAL HUMAN TRAFFICKING HOTLINE AND BEFREE TEXTLINE 3 (2016), <http://polarisproject.org/sites/default/files/2016-Statistics.pdf> [<https://perma.cc/Y4UG-N9RE>] (listing the top five risk factors of victims who are vulnerable to sex trafficking as: recent migration or relocation; substance use; runaway or homeless youth status; mental illness; and unstable housing).

28. POLARIS, *supra* note 27, at 3; see also Cedeño, *supra* note 27, at 160 (“In order to create total dependency, pimps often subject the girls to emotional and psychological abuse by confiscating their personal identification documents, burning items of meaning, isolating the girls from their loved ones and community, re-naming them with nicknames, verbally abusing them, dictating how they can walk, talk, and dress, and forcing them to watch pornography to teach them how to have sex.”).

29. SHIVELY ET AL., *supra* note 1, at 13.

30. Compare MacKinnon, *supra* note 24, at 125–26 (“Any adequate law or policy to promote the human rights of prostituted people has three parts: decriminalizing and supporting people in prostitution, criminalizing their buyers strongly, and effectively criminalizing third-party profiteers.”), and MARTIN ET AL., *supra* note 4, at 14 (“Sex trafficking and commercial sexual exploitation of children and adults are rooted in this exploitation, violence, and brutality.”), with GLOBAL NETWORK OF SEX WORK PROJECTS, *THE DECRIMINALISATION OF THIRD PARTIES* 1 (2016), <http://www.nswp.org/resource/policy-brief-the-decriminalisation-third-parties> [<https://perma.cc/8Z44-9HFQ>] (“[T]he continuing criminalisation of third parties has a direct and harmful impact on sex workers themselves.”). The Global Network of Sex Work Projects (NSWP) is an organization that opposes all forms of criminalization of sex work, including third parties. *Who We Are*, GLOBAL NETWORK OF SEX WORK PROJECTS, <http://www.nswp.org/who-we-are> [<https://perma.cc/6HHB-VGC2>]. “The term ‘third parties’ includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.” *Id.* The NSWP states that laws against these third parties (1) force sex workers into more dangerous and harmful working conditions;

Those who consider prostitution a viable profession for women justify a pimp's role by rationalizing it as that of a manager.³¹ However, the power dynamics at play in a pimp-victim relationship do not support likening it to a manager-client relationship—the pimp defines and controls the relationship, and the victim is financially dependent on him, despite being a source of his income.³² That said, the pimp is not the only party to blame for the exploitation of women:

[T]he pimp receives cultural and institutional support for his abusive behavior. . . . Culturally supported tactics of power and control facilitate the recruitment . . . of women . . . into prostitution. . . . The tactics are economic marginalization, child sexual abuse, rape, battery, and racism, classism, and heterosexism.³³

This assertion is supported by the fact that pimps often prey upon victims who have inadequate education, are chronically unemployed, and first engaged in prostitution at a young age.³⁴

(2) are used to prosecute friends and family members of sex workers; and (3) are used by authorities to harass sex workers and limit sex workers' access to housing and services. GLOBAL NETWORK OF SEX WORK PROJECTS, *supra*, at 4–7. However, the NSWP distinguishes the term “pimp” from the term “third party,” stating, “NSWP rejects the use of the term ‘pimp’ to describe third parties, because it reinforces a stigmatising and racialised stereotype and describes one very limited form of third party working relationship.” *Id.* at 2. The NSWP, and those with similar views regarding decriminalization of third parties, do not acknowledge the innately exploitative relationships of pimps as third parties but seem to negate pimps' significant existence and consequently the problems associated with pimps' role in prostitution/sex trafficking. *See id.* However, agencies assisting female sex workers have observed that the majority of them are pimp-controlled. Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRAC. 33, 36 (2004).

31. See Evelina Giobbe, *An Analysis of Individual, Institutional, and Cultural Pimping*, 1 MICH. J. GENDER & L. 33, 38 (1993).

32. *Id.* at 45.

33. *Id.* at 51.

34. SHIVELY ET AL., *supra* note 1, at 13.

B. *The Supply: Victims, Providers, Survivors*

Though there is a general consensus that sex trafficking is wrong³⁵—especially when the victims are minors³⁶—there does exist dispute as to whether prostitution is a viable profession or inherent victimization.³⁷ Those who advocate for the former position argue “that treating all sex work as forced removes women’s agency and infantilizes them.”³⁸ Prostitution advocates also contend that prostitution is a form of sexual liberation in which individuals express their “agency,” which “appears to mean freely choosing, actively empowering, deciding among life chances, asserting oneself in a feisty fashion, fighting back against forces of femininity, [and] resisting moralistic stereotypes.”³⁹ However, those advocating for prostitution oftentimes distinguish the prostitution of children as trafficking and do not advocate for the legalization of child prostitution.⁴⁰

Those who hold that prostitution is inherent victimization, on the other hand, see prostitution as the “oldest oppression” and

35. See, e.g., Stephanie M. Berger, *No End in Sight: Why the “End Demand” Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking*, 35 HARV. J. L. & GENDER 523, 524 (2012) (“Sex trafficking . . . occurs in the United States—all one needs to do is read the local newspaper to find horrific accounts of women and children enslaved and abused in major cities across the country.”); see also MacKinnon, *supra* note 24, at 271.

36. See, e.g., MARTIN ET AL., *supra* note 4, at 14 (“[C]hildren under the age of 18 are always considered victims of a crime if they are supplying sex.”); Laura McGuire, *The Time to Act Was Yesterday: Local Reforms to Confront the Tragedy of For-Sexual Exploitation and Provide Victim Assistance*, 64 DRAKE L. REV. 225, 235 (2016) (“Congress passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003. . . . The . . . Act established enhanced penalties for sex traffickers of minors and child pornography.”).

37. Berger, *supra* note 35, at 528–34.

38. *Id.* at 531–32.

39. MacKinnon, *supra* note 24, at 272–73.

40. See, e.g., AMNESTY INT’L, POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFILL THE HUMAN RIGHTS OF SEX WORKERS 2 (2016), <https://www.amnesty.org/en/documents/pol30/4062/2016/en> [<https://perma.cc/MK5A-T4UX>] (noting that “the policy sets forth that states must . . . [r]epeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration,” and suggesting “[s]tates should . . . [apply] criminal laws to prevent . . . the involvement of children in commercial sex acts.”). *But see* GLOBAL NETWORK OF SEX WORK PROJECTS, *supra* note 30, at 1 (stating that the NSWP opposes all forms of criminalization of sex work and believes that “sex workers of all genders, class, race, ethnicity, health status, age, nationality, citizenship, language, education levels, disabilities and other status” should be protected (emphasis added)).

necessarily creating inequality.⁴¹ Prostitution opponents also argue that “[i]n order to consider prostitution a job, and in order to keep the business of sexual exploitation running smoothly, we can not know that racism and class prejudice, like sexism, are intrinsic to prostitution.”⁴² Prostitution opponents further believe that age does not make prostitution better—if it is bad for a child, it is bad for one who has reached the age of eighteen.⁴³

The dichotomy of these opinions is perfectly illustrated in *Mapping the Demand's* treatment of those selling sex.⁴⁴ The report refers to those selling commercial sex as “provider/victims.”⁴⁵ The reasoning is as follows: “We include the term ‘victim’ here to acknowledge that a large proportion of people who supply sex are victims of sex trafficking and commercial sexual exploitation, while others may not be.”⁴⁶ The report further states that “[i]n the commercial sex market, exploitation occurs when sex buyers and traffickers take advantage of provider/victims based on income inequalities, racism, sexism, homophobia, and other disadvantages to secure their engagement in the commercial sex market.”⁴⁷ It is hard to imagine someone involved in commercial sexual activities who does not fall victim to one of these disadvantages, mental health issues, or chemical addiction.⁴⁸ Furthermore, the only reasoning

41. MacKinnon, *supra* note 24, at 273.

42. Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 *YALE J.L. & FEMINISM* 109, 117 (2006) (emphasis omitted). This article also argues that we cannot know that prostitution is often extremely violent and meets or exceeds legal definitions of torture in order to consider prostitution a job. *Id.* at 112.

43. See, e.g., MacKinnon, *supra* note 24, at 297–98 (“The first fault line in this denial of intrinsic harm appears when it is conceded that children should not be prostituted. . . . If there is nothing wrong with prostitution, if this is freedom and equality and liberation, if it really can make a woman’s life more autonomous and independent, if its harms are negligible or occasional, what on earth is wrong with children doing it or seeing it being done? And if something is problematic here, how does it change suddenly when she reaches seventeen years and three hundred sixty-six days old? . . . What those seem to miss who care only about prostituted children . . . is that in the sex trade, adults and children are not two separate groups of people. They are the same group of people at two points in time.”).

44. MARTIN ET AL., *supra* note 4, at 13.

45. *Id.*

46. *Id.*

47. *Id.*

48. See, e.g., SHIVELY ET AL., *supra* note 1, at 15 (“Pre-existing conditions, subsequent trauma, and market forces converge to keep women and girls involved in

behind including the term “provider” in the report is that “not all provider/victims are under control of a sex trafficking operation,” though that does not mean the “provider/victim” is not victimized in other ways.⁴⁹ Although the report likely chose the term “provider” to avoid taking a side in the profession-victimization debate, the report leans toward the victimization opinion throughout.⁵⁰

It is obviously difficult to ascertain in a moment whether or not someone is being trafficked.⁵¹ Often, victims do not self-report being trafficked because of the potential “retaliation from a trafficker, physical harm inflicted by the trafficker, economic dependency upon the trafficker, family connections with their trafficker (children, parents, etc.), emotional manipulation, trafficker-controlled finances or legal documents, language barriers, fear of police, unawareness of their legal status as a ‘victim,’ and stigma.”⁵² For these reasons, it is

commercial sex. Those who were not initially addicted to drugs often become addicted soon after becoming involved in prostitution The trauma experienced by prostituted persons can result in greater dependence on drugs both as a means of self-medicating and to support a drug habit, sometimes through exchanging sex for drugs. Interactions among prostitution, abuse (physical, sexual, and emotional), addiction, compromised health, diminished self-sufficiency skills, and other dysfunctions can send the lives of survivors in a downward spiral from which exit becomes progressively more difficult.” (citations omitted)).

49. MARTIN ET AL., *supra* note 4, at 76.

50. *Id.* at 50 (“[E]ach of these modes of market entry are multifaceted and range in levels of built-in exploitation, predation, and harm to provider/victims.”); *id.* at 63 (“[M]any provider/victims working on street-based tracks and youth solicited are obviously homeless, chemically dependent, and/or struggling with mental health concerns.”); *id.* at 78 (“[I]t is clear that from the provider/victim’s perspective, a great deal of harm, violence, and trauma are inflicted by sex buyers.”); *id.* at 81 (“[S]ex buyers view providers/victims as less than fully human and use their purchasing power to buy experiences that are humiliating and degrading.”); *id.* at 82 (“It is not possible for us to determine the proportion of sex buyers who engage in violent and degrading behavior. However, we know that provider/victims experience it on a regular basis.”); *id.* at 101 (“[W]e identified a process of dehumanization of the provider/victim as part of the commodification process.”).

51. *See id.* at 16.

52. *Id.* *See* Jackie Bussjaeger, *Washington County Attorney Assists in Preventing Sex Trafficking at Super Bowl*, WHITE BEAR PRESS (Aug. 9, 2017),

<https://www.presspubs>

[.com/white_bear/news/washington-county-attorney-assists-in-preventing-sex-trafficking-at-super/article_add98480-7d12-11e7-9ebe-7f890aee25ee.html](https://www.presspubs.com/white_bear/news/washington-county-attorney-assists-in-preventing-sex-trafficking-at-super/article_add98480-7d12-11e7-9ebe-7f890aee25ee.html)

[<https://perma.cc/H2LX-V8W5>] (“[Sex trafficking victims] have been highly traumatized. Sometimes that victimization is prior to the commercial sexual exploitation, and sometimes it is directly from it. We are dealing with a group of people who may not want help and may not consider themselves a victim. You have

often suggested that all selling of sex should be treated in one way or the other, as it is nearly impossible to separate those being trafficked from those who are not.⁵³

It should be noted that the author of this note considers prostitution as inherently victimizing. This belief stems from the idea that “treat[ing] prostitution as if it is not sexual exploitation is to assume that sexual dehumanization is the original human condition.”⁵⁴ The dehumanization is illustrated by the intrinsic inequalities within prostitution and the inherent violence experienced by those who sell sex—regardless of age.⁵⁵ In one study,

to be patient. Prosecuting these cases is about doing what is right. The buying and selling of humans is not only unfair, it is immoral and illegal.”)

53. See, e.g., MacKinnon, *supra* note 24, at 299–300 (discussing how those who support legalization attempt to criticize trafficking, while defending prostitution, and how the two are inseparable); SHIVELY ET AL., *supra* note 1, at 4 (“It is not feasible to develop separate interventions for men buying compelled sex and for those buying sex from people who are not compelled by a third party.”). *But see* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 294-98 (2017), <https://www.state.gov/documents/or ganization/271339.pdf> [<https://perma.cc/2EXW-7WR8>] (discussing the Netherlands, which has legalized prostitution in Amsterdam but criminalizes trafficking). “[T]he Netherlands is a source, destination, and transit country for . . . sex trafficking . . .” *Id.* at 298. However, the Netherlands has not demonstrated any “efforts to reduce the demand for commercial sex.” *Id.* at 298. This dichotomy could be a result of the tourism aspect of the red-light district as destination for legal prostitution.

The perception of the commercial sex markets as safe, legal, and regulated in the Netherlands has created an expectation by the buyers that purchasing sex is merely part of the tour. This creates heightened demand Thus, the secondary market of commercial sexual services using trafficked women and children thrives in the background of the legalized system [There is a] thin veneer of legitimacy presented by the red light districts and legal brothels

SHARED HOPE INT’L, DEMAND: A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 47 (2007), <https://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf> [<https://perma.cc/4HD6-HP9P>].

54. KATHLEEN BARRY, THE PROSTITUTION OF SEXUALITY 71 (1996).

55. See, e.g., MARTIN ET AL., *supra* note 4, at 104 (“[The marketplace for commercial sex] is rooted in large-scale structural inequalities [T]he market in Minnesota overwhelmingly involves white men with financial means purchasing sexual experiences from marginalized provider/victims, many of whom lack basic needs such as food, housing, and more.”); ERIKA SCHULZE ET AL., SEXUAL EXPLOITATION AND PROSTITUTION AND ITS IMPACT ON GENDER EQUALITY 14 (2014), <http://prostitutionresearch.com/wp-content/uploads/2014/03/Sexual-Exploitation-Prostitution-Gender-Equality-2014.pdf> [<https://perma.cc/CQ3G-JVS8>] (“[R]esearch carried out in

71% of prostitutes reported being physically assaulted, 63% reported being raped, 89% wanted to escape prostitution but did not have any other options for survival, 75% had been homeless at one point in their lives, and 68% met the criteria for PTSD.⁵⁶ For this reason, unless quoting a source, this note generally refers to those who sell commercial sex as victims.

C. *The Demand: Johns, Clients, Patrons*

The demand side of prostitution is made up of those who are colloquially known as johns, “a name suggesting faceless men covered by a cloak of anonymity.”⁵⁷ Johns, or sex buyers, are defined as “people who obtain sex or sexual activity with money or a trade for something of value (e.g., food, place to stay, goods, drugs).”⁵⁸ There are two general perspectives when it comes to interpreting the identity of sex buyers: the “everyman perspective” and the “peculiar man perspective.”⁵⁹ In the “everyman perspective,” participating in prostitution is seen as inevitable behavior; and prostitution itself is characterized as “the oldest profession,” validating the belief that prostitution is an activity in which men always have and will engage.⁶⁰ As to the “peculiar man perspective,” men who purchase sex are depicted “as deviants with mental or moral deficiencies that have led

different countries all over the world evidenc[es] that persons in prostitution are exposed to high risks of suffering severe physical and psychological violence and even great risks of death. While drug use and violence were identified by US researchers in 2003 as the main reasons for death amongst prostitutes, the number of homicides among prostitutes was also considerable.”)

56. Farley et al., *supra* note 30, at 33–34 (interviewing 854 people currently or recently involved in prostitution).

57. Julie Lefler, Note, Shining the Spotlight on Johns: Moving Toward Equal Treatment of Male Customers and Female Prostitutes, 10 HASTINGS WOMEN’S L.J. 11, 11 (1999).

58. MARTIN ET AL., *supra* note 4, at 13.

59. Martin A. Monto & Christine Milrod, *Ordinary or Peculiar Men? Comparing the Customers of Prostitutes with a Nationally Representative Sample of Men*, 58 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 802, 804 (2014) (quoting Martin A. Monto & Nick McRee, *A Comparison of the Male Customers of Female Street Prostitutes with National Samples of Men*, 49 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 505 (2005)).

60. Monto & Milrod, *supra* note 59, at 804. *But see* MELISSA FARLEY ET AL., *COMPARING SEX BUYERS WITH MEN WHO DON’T BUY SEX* 4 (2011), <http://www.prostitutionresearch.com/pdfs/Farleyetal2011ComparingSexBuyers.pdf> [<https://perma.cc/U5RV-SMKJ>] (“The common myth that ‘any man’ might buy sex . . . was not supported.”).

to their behavior.”⁶¹ However, a 2014 study determined through a survey of a nationally representative sample of men that neither of these perspectives is completely correct.⁶² While “prostitution seeking is relatively uncommon in the United States, arrested customers are not particularly unique or peculiar.”⁶³ Thus, purchasing commercial sex is not a normative behavior or an “intractable problem beyond the reach of intervention.”⁶⁴ Other research has indicated that those who purchase sex are likely to commit more criminal acts, in addition to the solicitation of commercial sex, than non-sex buyers.⁶⁵ Purchasers of commercial sex are also more likely to masturbate to pornography and to believe that prostitution prevents rape.⁶⁶

Johns purchase sex from victims for a variety of reasons, including the desire to engage in sex acts in which most women are unwilling to partake; a desire for sex that requires little or no emotional involvement; the excitement of the illicit nature of prostitution; an inability to meet women conventionally; and a desire to be in control of the sexual experience.⁶⁷ An estimated one out of every five or six men admit to purchasing sex.⁶⁸ Although this statistic demonstrates that purchasing commercial sex is not rare, most men do not purchase sex. However, it is believed that the demand is what fuels sex trafficking and prostitution,⁶⁹ though it is estimated that only 1% of all research on prostitution addresses demand.⁷⁰ In Minnesota,

61. Monto & Milrod, *supra* note 59, at 804.

62. *Id.* at 806, 815–16.

63. *Id.* at 807, 815–16.

64. SHIVELY ET AL., *supra* note 1, at 7.

65. FARLEY ET AL., *supra* note 60, at 40. It is also worth noting that Minnesota recently created a law requiring the collection of information on the connection between pornography and sex trafficking. Act of 2018, ch. 144, 2018 Minn. Laws, c. 144.

66. *Id.*

67. SHIVELY ET AL., *supra* note 1, at 7; *see also* FARLEY ET AL., *supra* note 60, at 26–27.

68. SHIVELY ET AL., *supra* note 1, at 7.

69. *See, e.g., id.* at 5 (“[D]emand is the key (but not the only) driving force, and the other components follow.”). *But see* Berger, *supra* note 37, at 526 (“[E]fforts to target johns are not only ineffective in reducing sex work and trafficking, but also actually harm women in sex work because these efforts push sex workers’ activities further underground, where the potential for safe sex decreases and for violence increases.”).

70. FARLEY ET AL., *supra* note 60, at 7.

there was a particular lack of information regarding johns, which led to the *Mapping the Demand* study.⁷¹

III. MAPPING THE DEMAND

In August 2017, the University of Minnesota, through the Robert J. Jones Urban Research and Outreach-Engagement Center, with funding from the Women's Foundation of Minnesota, published a report titled *Mapping the Demand: Sex Buyers in the State of Minnesota*.⁷² The report was based on a study that sought to identify who is purchasing commercial sex in Minnesota, where these individuals live, how they approach the marketplace for sex, and what they are seeking to purchase.⁷³ Gathering this information was not an easy task, as “[c]ommercial sex is hidden, illegal, often dangerous, and stigmatized.”⁷⁴ Because of these challenges, the researchers gathered information from a variety of resources, including expert interviews, statewide court data, prostitution and sex trafficking media coverage, and analyses of online advertisements for commercial sex.⁷⁵ The study uncovered five major findings—the three of which that follow are particularly relevant to this note.⁷⁶

A. *Who: Sex Buyers in Minnesota are Predominantly White Men from Middle and Upper Socio-Economic Backgrounds*⁷⁷

Who purchases sex—that is, who fuels the demand—is the least understood aspect of the commercial sex market.⁷⁸ This lack of

71. See generally MARTIN ET AL., *supra* note 4, at 9 (establishing the study's goal as closing a significant gap in research).

72. *Id.* at 2.

73. *Id.* at 3.

74. *Id.* at 10.

75. *Id.* (explaining that the resources included “[q]ualitative and semi-structured interviews with 157 experts across the state of Minnesota (including law enforcement, prosecutors, advocates, social service providers, and others)”; statewide court data from the Minnesota Court Information System (MNCIS) on all cases from 2010 to 2015 charged under Minnesota statute section 609.324 (the prostitution statute); media coverage of prostitution and sex trafficking from 1995 to 2014; and online advertisements for commercial sex).

76. *Id.* at 31.

77. *Id.*

78. *Id.*; see also RUTH ROSENBERG, U.S. AGENCY FOR INT'L DEV., TACKLING THE DEMAND THAT FOSTERS HUMAN TRAFFICKING, at iv (2011), http://pdf.usaid.gov/pdf_docs/pnadz753.pdf [<https://perma.cc/E3H7-SCM7>] (“Despite the importance of reducing

understanding is likely because there is no complete “method to systematically identify sex buyers and all the different market segments in which they participate.”⁷⁹ However, an estimated 14% of men in the United States purchase sex, with 1% having purchased sex in the past year.⁸⁰ With respect to Minnesota, this means that approximately 380,000 men within the state have purchased sex in their lifetime, and 26,000 in the past year alone.⁸¹ With this background, the *Mapping the Demand* study sought to uncover more about who purchases commercial sex in Minnesota.⁸²

Mapping the Demand found that sex buyers in Minnesota are predominantly white.⁸³ The demographics of sex buyers tend to match the broader racial and ethnic demographics of the general population in which they reside, and 85% of Minnesotans identify as white or Caucasian.⁸⁴ The majority of sex buyers have at least some disposable income to spend on commercial sex.⁸⁵ This is particularly evidenced by the fact that of those men charged with prostitution between 2010–2015, only approximately 18% had a public defender.⁸⁶ Moreover, those interviewed as part of the study described most sex buyers as “‘normal’ or average men . . . [who] could be ‘anyone.’”⁸⁷ With these findings, the study concluded that men who purchase sex “are represented across the whole state and they are part of mainstream society.”⁸⁸ The study additionally concluded that those who participate in this illicit activity seek to hide

demand to combat trafficking in persons (TIP), there is a dearth of information about good practices in demand reduction . . .”).

79. MARTIN ET AL., *supra* note 4.

80. Monto & Milrod, *supra* note 59, at 802.

81. MARTIN ET AL., *supra* note 4.

82. *Id.*

83. *Id.* at 31.

84. *Id.* at 32; see also *QuickFacts: Minnesota*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/MN> [<https://perma.cc/P8MP-PRR9>] (listing the population of Minnesota as 85% white as of July 1, 2016); SHIVELY ET AL., *supra* note 1, at 7 (“Studies of male consumers of commercial sex find that buyers are similar to the general population in most regards, and quite unlike most populations of criminal offenders, although the population of johns also contains some dangerous criminals and sociopaths.”).

85. MARTIN ET AL., *supra* note 4, at 33.

86. *Id.* (“In the MNCIS data set, nineteen out of 103 men arrested for a prostitution-related offense had a public defender, which means eighty-four did not.”).

87. *Id.* at 32.

88. *Id.* at 40.

their involvement for obvious reasons, including prostitution's illegality and social stigma.⁸⁹ To illustrate, while an estimated 26,000 men participate in prostitution yearly in Minnesota, less than 200 men were charged with prostitution under Minnesota law between 2010 and 2015—approximately .15% of those who purchased commercial sex during those years.⁹⁰

B. *Where: Minnesota Has Individual Markets Tied Together by the Online Marketplace*⁹¹

Mapping the Demand identified six regions in Minnesota with differentiated market conditions for commercial sex: the Twin Cities metropolitan area, Northeast Minnesota, North and Northwest Minnesota, Central Minnesota, Southwest Minnesota, and Southeast Minnesota.⁹² However, sex buyers are not necessarily purchasing commercial sex in the region in which they live and often do not purchase sex in their hometown.⁹³ In fact, the study found that most sex buyers travel to purchase sex, including short distances as part of their workday and longer travel specifically intended for purchasing sex.⁹⁴ Travel is an essential component of sex buying in Minnesota, with the main reasons being as follows: it prevents discovery by friends and family; it provides a convenient way to work the purchase of sex into regular routines; and it is often associated with employment activities, such as commuting, lunch hours, and business trips.⁹⁵ The average distance of travel for commercial sex is thirty to sixty miles.⁹⁶

89. *Id.*

90. *See id.* at 10, 23 (citing MINN. STAT. § 609.324 (2017)). If 26,000 men purchase sex every year, 130,000 men would purchase sex in a five-year span. However, only 170 men were charged with prostitution in Minnesota from the years 2010 to 2015. *Id.* at 23. This does not include the “Null” category of the MNCIS cases, which could include males. *Id.* Further, it is possible that some of the males charged with prostitution were those selling commercial sex rather than purchasing. Rounding up to approximately 200, with assumption that all those who are in the “Null” category are male purchasers, 200 of 130,000, is .15%. This is an estimation based on statistical approximations.

91. *Id.* at 3.

92. *Id.* at 105.

93. *Id.* at 41–43.

94. *Id.* at 41.

95. *Id.* at 44–46. The last of these reasons particularly indicates that the majority of sex buyers have some disposable income. *Id.* at 33.

96. *Id.* at 49.

Mapping the Demand found that the six regional markets are primarily connected through the online marketplace.⁹⁷ Though prostitution previously occurred on a street corner, “the vast majority of prostitution today takes place online.”⁹⁸ According to the study, the most commonly described location for online sex advertisements in Minnesota was Backpage.com.⁹⁹ This website had “a series of localized webpages organized by city,” with seven Minnesota city sites: Bemidji, Brainerd, Duluth, Mankato, Minneapolis/St. Paul, Rochester, and St. Cloud.¹⁰⁰ Between January and July of 2016, more than 20,000 escort ads appeared on the Minneapolis/St. Paul webpage alone.¹⁰¹ These sites “provide[d] an anchor for sex ads in the smaller communities that surround Minnesota cities,” and “[s]ex buyers use[d] the Backpage site from the closest city to enter the marketplace.”¹⁰²

On April 6, 2018, Backpage was shut down by U.S. law enforcement agencies. This shutdown was a result of a new law enacted on April 11, 2018, commonly referred to as “FOSTA,” or Fight Online Sex Trafficking Act of 2017.¹⁰³ Because *Mapping the Demand* was published before this major change, the study was not able to address how the marketplace has changed, but some have opined that the shutdown has or will push trafficking to the dark web or elsewhere outside of law enforcement’s reach.¹⁰⁴

97. *Id.* at 3.

98. Melissa Farley et al., *Online Prostitution and Trafficking*, 77 ALBANY L. REV. 1039, 1042–43 (2014).

99. MARTIN ET AL., *supra* note 4, at 52; see Sarah N. Lynch & Lisa Lambert, *Sex Ads Website Backpage Shut Down by U.S. Authorities*, REUTERS (Apr. 6, 2018, 3:55 PM), <https://www.reuters.com/article/us-usa-backpage-justice/sex-ads-website-backpage-shut-down-by-u-s-authorities-idUSKCN1HD2QP> [<https://perma.cc/3Q3K-K7S5>].

100. *Id.*

101. John D. McKinnon, *Is Backpage.com a Champion of Web Freedoms or a Dystopian Hell?*, WALL ST. J. (July 11, 2016, 12:58 PM), <https://www.wsj.com/articles/is-backpage-com-a-champion-of-web-freedoms-or-a-dystopian-hell-1468256330> [<https://perma.cc/E9AQ-G2QA>].

102. MARTIN ET AL., *supra* note 4, at 55.

103. Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018).

104. See, e.g., Megan Hadley, *With Backpage Closed, Where Will the Sex Slave Trade Go?*, CRIME REP. (April 9, 2018), <https://thecrimereport.org/2018/04/09/with-backpage-com-closed-where-will-the-sex-slave-trade-go> [<https://perma.cc/5K3P-XSTA>] (“Now the sex slave trade, an already clandestine crime, will move to even more remote corners of the internet and social media, making it more difficult for

C. *Why: Sex Buyers Look to Purchase a Sexual Experience Based on Power and Control*¹⁰⁵

Mapping the Demand found that sex buyers “purchase a sexual experience that is structured by the ability of sex buyers to use money (purchasing power) to control the details of the experience (e.g., length of time and specific sex acts).”¹⁰⁶ Although the study did not identify specific motivations¹⁰⁷ as to why men in Minnesota are looking to purchase such a sexual experience, another study has found that men purchase sex for five main reasons:

- (1) [S]eeking intimacy (i.e., a way to approximate intimate relations they are unable or unwilling to develop);
- (2) seeking sex without intimacy (a way to get sex without the investment and compromises needed for intimate relationships);
- (3) seeking variety (fulfilling a desire for sex with women of various “types,” based on ethnicity, size, age, hair color, etc.);
- (4) thrill-seeking (being drawn by the “thrill of the hunt” and the illicit nature of prostitution); and
- (5) pathology (drawn by compulsion, addiction, or by forms of sociopathy, psychology, or misogyny where the intent is to control and harm).¹⁰⁸

Mapping the Demand further found that whether or not the individual they purchase sex from was trafficked was not significant to sex buyers.¹⁰⁹ Further, there is an inherent cost structure within the market based on racism, sexism, heterosexism, and ageism that produces hierarchies of value for specific traits and demographics of victims.¹¹⁰ This cost structure indicates “how racial and ethnic

authorities to find and prosecute traffickers.”); see also Susan Du, *How Congress’ Attempt to Rescue Sex Workers Threatens Their Safety Instead*, CITY PAGES (May 16, 2018), <http://www.citypages.com/news/how-congress-attempt-to-rescue-sex-workers-threatens-their-safety-instead/482720031> [https://perma.cc/3LSF-XXPF] (“‘Backpage is shut down, but the demand is never going to go away,’ predicts Woodbury Police Detective Paul Kroshus. ‘There’s going to be a state of discombobulation where the buyers are trying to find the sellers and the sellers are trying to find the buyers, but something’s going to replace it. Unfortunately, it’s probably going to be somewhere out of the country, and it’s not going to comply with our subpoenas.’”).

105. *Id.* at 3.

106. *Id.* at 77 (emphasis omitted).

107. *Id.* at 108.

108. SHIVELY ET AL., *supra* note 1, at 7.

109. MARTIN ET AL., *supra* note 4, at 3.

110. *Id.* at 77.

groups, and women of different ages and body types, are quite literally valued and devalued as humans.”¹¹¹ The market is entirely based on substantial inequity, especially in light of the comparison between the demographic background of those purchasing sex and those being purchased.¹¹²

D. *Findings & Implications*

Mapping the Demand found three major findings concerning the Minnesota commercial sex market: (1) the statewide marketplace is connected to a national market; (2) it is complex and multifaceted; and (3) it is rooted in large-scale structural inequalities.¹¹³ In light of these findings, *Mapping the Demand* detailed some implications and made a variety of recommendations with the following disclaimer: “This research did not seek to evaluate criminal justice or civil society approaches to demand reduction.”¹¹⁴

The study recommended that Minnesota adopt “primary prevention to reduce demand []or eliminate the most harmful elements of sex buying.”¹¹⁵ This could include comprehensive sex education that focuses on “dismantling rape culture and toxic masculinity, and developing healthy gender roles,” as well as increasing public awareness about sex trafficking.¹¹⁶ The study also called for more empirical data in terms of sex buying to understand what primary prevention tactics may work.¹¹⁷ Finally, the study surmised that demand reduction strategies need to be paired with “an approach to reducing victim vulnerabilities,” as many of these victims depend on the income they earn in selling commercial sex.¹¹⁸ These strategies include working to reduce racism and the deep structural inequities the study exposed.¹¹⁹

111. *Id.* at 92.

112. *Id.* at 109 (“[T]he main aspects of the Minnesota marketplace for sex are geared toward middle- and upper-class white men purchasing sexual experiences from young women, predominantly young women of color, and other marginalized people.”).

113. *Id.* at 103–04.

114. *Id.* at 110.

115. *Id.* at 111.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

IV. CURRENT APPROACHES TO DEMAND AND POTENTIAL CHANGES TO MINNESOTA LAW

There have been few efforts to reduce the demand for victims,¹²⁰ likely because there is no consensus regarding the treatment of johns.¹²¹ This lack of consensus is to be expected due to the variety of beliefs on how to deal with commercial sex.¹²² Whether one believes prostitution is inherently victimizing or is a legitimate profession influences one's belief about a john's role therein.¹²³

There are three main opinions as to how to deal with commercial sex in the United States: (1) complete criminalization of all aspects of commercial sex, including purchasing, selling, and facilitating; (2) complete decriminalization of all aspects, but perhaps some regulation; and (3) partial decriminalization, which advocates for the decriminalization of the selling of sex, but also for the continued criminalization of the activities of johns and traffickers.¹²⁴ In other words, johns' actions are criminalized under complete or partial criminalization, whereas under the complete decriminalization approach, johns' actions are legal. Behind these two approaches are two polar opposite beliefs— either “prostitution is inherently harmful,” or it is a “victimless crime.”¹²⁵ Often, those who support these opposing beliefs use the same evidence to advocate for their conflicting positions.¹²⁶

120. HUGHES, *supra* note 2, at 2; *see also* MARTIN ET AL., *supra* note 4, at 3.

121. Katie Beran, Note, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 L. & INEQ. 19, 21–23 (2012).

122. *See, e.g., id.* at 22 (“Some . . . argue that the choice to engage in prostitution is like any other employment decision. . . . [Others] argue that prostitution reflects larger systems of gender inequality and oppression, and as a result, women do not choose prostitution, but are coerced into becoming prostitutes.”).

123. *Compare* GLOBAL NETWORK OF SEX WORK PROJECTS, CRIMINALISATION OF CLIENTS 6 (2011),

<http://www.nswp.org/sites/nswp.org/files/Criminalisation%20of%20Clients-c.pdf> [<https://perma.cc/MPX6-BZFK>] (“[T]here is no conclusive evidence to suggest that legal measures criminalising clients . . . eliminate[s] or significantly reduce[s] sex work. . . . The criminalisation of clients is not a human rights-based response to sex work.”), *with* HUGHES, *supra* note 2, at 6 (“The new focus on the demand requires that we consider men’s responsibility for the existence and continuation of prostitution, and how they create the demand for women and children to be used in prostitution.”).

124. Berger, *supra* note 35, at 528.

125. SHIVELY ET AL., *supra* note 1, at 9.

126. *See id.* (“For example, prostitution opponents point to drug abuse, community deterioration, and ancillary crime that invariably accompany street prostitution as evidence supporting criminalization. Those supporting legalization

In addition to the disagreement on whether or not johns' actions should be criminalized, there is also disagreement within the pro-criminalization side as to how johns should be charged and prosecuted.¹²⁷ There are four general approaches to the prosecution of johns: (1) the john-targeted approach; (2) the treatment of johns-as-traffickers approach; (3) the noncommercial-sex-offender approach; and (4) the johns-of-trafficking-victims approach of legislation to prosecute johns who purchase known trafficking victims more severely than those who do not. These four approaches will be described below.

A. *John-Targeted Approach*¹²⁸

The philosophy behind the john-targeted approach is that, by targeting johns, the demand for prostitution will decrease and trafficking will therefore lessen.¹²⁹ Beginning in 2012, demand-focused tactics became increasingly popular.¹³⁰ This approach generally involves light sanctions, shaming, and education, which assumes that both johns who have and those who would otherwise purchase commercial sex would be deterred from doing so.¹³¹

The john-targeted approach treats all johns the same, which could be considered a benefit, as many johns do not know (or care) whether they are purchasing sex from a trafficking victim.¹³² There is evidence that these methods are effective in deterring johns, as “[e]ighty-three percent of johns reported that having their photo and name on a billboard would deter them” and that “jail time would deter them.”¹³³ However, the penalties this approach imposes may not be proportional to the damage caused.¹³⁴

In Minnesota, the laws reflect a john-targeted approach.¹³⁵ Johns are currently prosecuted under the prostitution statute—Minnesota

argue that these same dysfunctions are driven not by prostitution itself, but by the criminal status of the enterprise . . .”).

127. Gregorio, *supra* note 18, at 630.

128. *Id.* at 641.

129. *Id.*

130. *Id.* at 642.

131. *Id.* at 641.

132. *Id.* at 643.

133. *Id.*

134. *Id.*

135. See, e.g., MINN. STAT. §§ 609.322 & 609.324 (2017) (establishing criminalization of johns, prostitutes, and traffickers); see also Gregorio, *supra* note 18,

statute section 609.324—the same statute used to prosecute those who sell sex.¹³⁶ Prior to 2011, there were no separate subdivisions within the statute for charging johns and “prostitutes”; they were both charged under the same subdivisions.¹³⁷ Sentencing enhancements are applicable to johns who purchase sex with a minor under age eighteen; however, there are no “sentencing enhancements for knowingly purchasing sex from a trafficking victim.”¹³⁸

The most common john-targeted approach in Minnesota is the use of sting operations, known as Operation Guardian Angel.¹³⁹ Guardian Angel operations involve law enforcement officials posting commercial sex advertisements on websites much like the now-shutdown Backpage.com.¹⁴⁰ Often, law enforcement officers pose as underage girls to specifically target johns who are purchasing juveniles.¹⁴¹ This tactic, along with the increased attention from law enforcement and prosecutors to sex trafficking and related offenses, has more than doubled—and in some cases increased nine-fold—convictions in sex trafficking and prostitution-related offenses in recent years.¹⁴²

at 641 (“[B]y targeting all johns with light sanctions, shaming, and education, demand for prostitution will go down, and the incidence of sex trafficking as well.”).

136. See MINN. STAT. § 609.324, subdivs. 1–3 (2017) for john prosecution statutes. Notice that they are referred to as “patrons.” According to *Black’s Law Dictionary*, “patron” is defined as both “[a] customer or client of a business, esp. a regular one;” and “[s]omeone who protects, supports, or champions some person or thing, such as an institution, social function, or cause[;] a benefactor.” *Patron*, BLACK’S LAW DICTIONARY (10th ed. 2014); see also MINN. STAT. § 609.324, subdivs. 6–7 (2017) (prostitute prosecution statutes). Use of the term “patron” normalizes the behavior, as do other similar terms like “customers,” “clients,” and “consumers.” HUGHES, *supra* note 2, at 2.

137. MARTIN ET AL., *supra* note 4, at 15.

138. *Id.* at 16.

139. See, e.g., Stephen Montemayor, *Stings to Fight Sex Trafficking Lead to Charges Across the Metro*, STAR TRIB. (Sep. 30, 2015, 2:53 PM), <http://www.startribune.com/stings-to-fight-sex-trafficking-lead-to-charges-across-the-metro/329959861> [https://perma.cc/MP6R-X7Q7]; see also Rilyn Eischens, *More Than 100 Arrested in Super Bowl Stings*, STAR TRIB. (Feb. 20, 2018, 11:26 PM), <http://www.startribune.com/94-arrested-in-super-bowl-sex-trafficking-sting/474604593> [http://perma.cc/EL25-D24V] (describing Minnesota’s use of Guardian Angel operations during Super Bowl LII, which was held in Minneapolis).

140. See Montemayor, *supra* note 139.

141. *Id.*

142. See generally MINN. DEP’T OF PUB. SAFETY, *supra* note 19, at 6; MARTIN ET AL., *supra* note 4, at 14. In 2007, there were only twenty convictions under Minnesota statute section 609.352, Solicitation of a Child, whereas in 2016, there were forty-five.

B. *Johns-as-Traffickers*¹⁴³

It has also been suggested that johns be prosecuted as traffickers, particularly if they purchase sex from a trafficking victim.¹⁴⁴ In some states, there are verbs included in the sex trafficking statute that apply to johns, such as “solicits,” “purchases,” or “maintain the use of.”¹⁴⁵ The federal law concerning sex trafficking of children has added the terms “patronizes” and “solicits” to solidify johns as potential traffickers.¹⁴⁶ Prosecuting johns as traffickers is appealing in that johns are not “categorically less culpable than traffickers” and often

MINN. DEP’T OF PUB. SAFETY, *supra* note 19, at 6. It should be noted that section 609.352 is not necessarily related to prostitution, as it can apply to any adult soliciting a child for sex. See MINN. STAT. § 609.352 (2017). Under Minnesota statute section 609.322—the promotion of prostitution statute and, as of 2009, the sex trafficking statute—there were only five convictions in 2007, and forty-five in 2016; a nine-fold increase. MINN. DEP’T OF PUB. SAFETY, *supra* note 19, at 6. As for Minnesota Statute section 609.324, the prostitution statute, there were eighty-three convictions in 2007 and 255 in 2016. *Id.* It should be reiterated, however, that both prostitutes and johns are convicted under that statute, but considering popular attitudes towards prostitution and sex trafficking in recent years, it is likely the majority of convictions in 2016 were for johns. See MINN. STAT. § 609.324 (2017); MARTIN ET AL., *supra* note 4, at 14; Gregorio, *supra* note 18, at 628.

143. Gregorio, *supra* note 18, at 645.

144. *Id.*; Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 104 (2008).

145. Gregorio, *supra* note 18, at 645 (citing various states’ statutes); see, e.g., ARK. CODE ANN. § 5-18-103(a)(4) (West, Westlaw through July 1, 2018); TENN. CODE ANN. § 39-13-309(a)(2) (West, Westlaw through 2018 Second Reg. Sess.); WASH. REV. CODE ANN. § 9A.40.100(1)(a)(i) (West, Westlaw through 2018 Reg. Sess.); OKLA. STAT. ANN. tit. 21, § 748(A)(6)(b) (West, Westlaw through October 1, 2018); LA. STAT. ANN. § 14:46.3(A)(1) (West, Westlaw through 2018 1st Extraordinary Sess.). It should be noted that Minnesota Statute section 609.322 includes the term “solicits.” See MINN. STAT. § 609.322 (2017). However, the context of the term suggests that the legislature intended to mean “[t]he criminal offense of urging, advising, commanding, or otherwise inciting another to commit a crime,” rather than “[a]n offer to pay or accept money in exchange for sex.” *Solicitation*, Black’s Law Dictionary (10th ed. 2014); see *State v. Washington-Davis*, 881 N.W.2d 531, 538 (Minn. 2016) (citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)) (discussing Minnesota Statute section 609.322, subdivision 1a(1), (2) and stating that “speech in soliciting women to be prostitutes and promoting the prostitution of them has no lawful purpose, but rather is aimed at furthering the commission of a crime”).

146. 18 U.S.C. § 1591 (2015); see Gregorio, *supra* note 18, at 648 (discussing the prior ambiguity of the statute before the codification of the word “obtains” in the federal statute, primarily in terms of *United States v. Jungers*, 702 F.3d 1066, 1072–73 (8th Cir. 2013), which determined previously that johns could be convicted under section 1591).

cause the most harm to victims by raping, sexually and physically abusing, demeaning, or objectifying them.¹⁴⁷ Even so, the johns-as-traffickers approach is disproportionate when compared to punishment for traffickers, especially in light of minor victims, given that traffickers have a greater opportunity than johns to learn victims' ages.¹⁴⁸ The johns-as-traffickers approach is also problematic in that it weakens the term "human trafficking" to include behavior "that many would find to be less culpable than trafficking."¹⁴⁹ By grouping johns with traffickers, imposing serious sanctions against traffickers may be more difficult, as those who view johns as less culpable will likely object.¹⁵⁰ This "could ultimately backfire and lead to reduced penalties for those who commit the acts that are more conventionally viewed as sex trafficking."¹⁵¹

C. *Noncommercial-Sex-Offenders Approach*

Another method to prosecute johns is to use noncommercial sex offenses.¹⁵² In fact, the un-enacted End Demand for Sex Trafficking Act of 2005 recommended using state statutory rape and sexual assault statutes to deter johns.¹⁵³ In Minnesota, that would mean prosecuting johns under Criminal Sexual Conduct statutes.¹⁵⁴ Though this could be effective in some instances—particularly when minors are involved and strict liability is at issue¹⁵⁵—difficulties with the "he

147. Gregorio, *supra* note 18, at 649 (citing Norma Hotaling & Leslie Levitas-Martin, *Increased Demand Resulting in the Flourishing Recruitment and Trafficking of Women and Girls: Related Child Sexual Abuse and Violence Against Women*, 13 HASTINGS WOMEN'S L.J. 117, 123 (2002)).

148. *Id.* at 652–53 (discussing U.S. Sentencing Guidelines recommendations—sentences of fifty-one to sixty-three months are recommended for crossing state lines to engage in prostitution with a minor, whereas sentences of 97 to 121 months are recommended for trafficking a minor between the ages of fourteen to eighteen—suggesting that policymakers view traffickers as more culpable than johns, even of minors).

149. *Id.* at 653.

150. *Id.* at 654.

151. *Id.*

152. *Id.*

153. *Id.* (citing End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. § 4(b)(1)(A) (2005)).

154. See MINN. STAT. §§ 609.342–3451 (2017).

155. See *id.* (making it a crime for an adult to have sexual relations with a minor fifteen years old or younger, while having sexual relations with a sixteen or seventeen-year-old is only a crime if the perpetrator is in a "position of authority").

said, she said” in rape cases will be amplified when the “she said” is a prostitute.¹⁵⁶ These statutes can act as a stopgap for prosecutors who want to bring more than a misdemeanor charge against johns but may not have the evidence or resources to pursue a trafficking charge.¹⁵⁷

One benefit of charging with statutory rape a john of a minor under fifteen years old is the flexibility in punishment, as most statutory rape statutes “impose serious sentences but generally lack substantial mandatory minimums.”¹⁵⁸ For example, in Minnesota, for those with a criminal history score of zero, soliciting a minor under the age of thirteen to engage in prostitution carries a prison sentence with a range of 74 to 103 months, and soliciting a minor under the age of sixteen but over the age of thirteen to engage in prostitution has a presumptive stayed sentence of eighteen months.¹⁵⁹ In comparison, statutory rape charges have a wide range of minimums depending on the circumstances; from mandatory stayed sentences of fifteen months to a range of 144 to 172 months in prison for an individual with a criminal history score of zero.¹⁶⁰

Charging a john with statutory rape also sends a powerful message to society, as rape is considered a far more serious offense than prostitution.¹⁶¹ Some argue that johns should not be prosecuted under statutory rape statutes because the “minor has chosen to make

156. Gregorio, *supra* note 18, at 658 n.163 (citing David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1195–97 (1997)); *id.* at 666–67 (“Such cases are difficult to prove in the context of rape; it will be even more difficult to convince a jury to believe someone engaging in prostitution.”); see Bennett Capers, *Rape, Truth and Hearsay*, 40 HARV. J.L. & GENDER 183, 184 (2017) (“We are still, for the most part, stuck at ‘he said, she said’ for the typical acquaintance rape.”).

157. Gregorio, *supra* note 18, at 654.

158. *Id.* at 655.

159. MINN. STAT. § 609.324, subdiv. 1(a)–(b) (2017); MINN. SENTENCING GUIDELINES COMM’N, MINNESOTA SENTENCING GUIDELINES AND COMMENTARY, 79, 85, 88 (2018). It should be noted that the sentences provided are for individuals with criminal history scores of zero, and that sentences go up depending on criminal history. *Id.*

160. MINN. STAT. §§ 609.341–345 (2017); MINN. SENTENCING GUIDELINES COMM’N, *supra* note 159, at 81.

161. Gregorio, *supra* note 18, at 655–56. (quoting Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523, 575 (2000)) (“Statutory rape prosecutions . . . could send a powerful message. Rape, or even statutory rape, is a far more serious charge than patronizing a prostitute. It carries a higher penalty and greater stigma. In addition, it seems that prosecution of statutory rape would be relatively easy [because] the girl’s consent or the man’s belief that she was older, even if she lied about her age, are not valid defenses.”).

a living out of selling sex.”¹⁶² However, money can be a coercive element for these minors, undermining the idea of choice.¹⁶³ Further, one of the purposes of early statutory rape legislation was to protect young women from prostitution.¹⁶⁴ While utilizing statutory rape statutes may be appropriate in some instances, “statutory rape does not acknowledge the commercial nature” of a john’s crime which, unlike statutory rape, contributes to victims being exploited on a regular basis by different men, which has a uniquely serious impact on those victims.¹⁶⁵

D. *Targeted Legislation for Johns of Trafficking Victims*

Around the country, there are a few statutes that apply specifically to johns of trafficking victims.¹⁶⁶ Most of these statutes target johns purchasing sex from minors, but a handful of state laws are aimed at johns of trafficking victims generally.¹⁶⁷ In fact, Delaware, Indiana, Mississippi, Vermont, and Wyoming prohibit soliciting or patronizing a trafficking victim regardless of the victim’s age.¹⁶⁸ These statutes are carefully crafted and most impose some sort of knowledge requirement.¹⁶⁹ The sentence length of these statutes are generally set between the sentences for prostitution and sex trafficking, reflecting the viewpoint that johns who purchase sex from trafficked victims are more culpable than those of consenting adults but less culpable than traffickers.¹⁷⁰ Another compromise within these statutes is that they carry significant penalties without

162. *Id.* at 656 (citing Lewis Bossing, Note, *Now Sixteen Could Get You Life: Statutory Rape, Meaningful Consent, and the Implications for Federal Sentencing Enhancement*, 73 N.Y.U. L. REV. 1205, 1240 (1998)) (listing protection from prostitution as a primary state interest underlying statutory rape laws).

163. *Id.*

164. *Id.*

165. *Id.* at 657–58.

166. *Id.* at 658.

167. *Id.* at 659.

168. Gregorio, *supra* note 18, at 661 (citing various states’ statutes); see DEL. CODE ANN. tit. 11, §§ 787(b)(4), 4205(b)(3)–(4) (West, Westlaw through ch. 377 of 2018 Reg. Sess.); IND. CODE ANN § 35-42-3.5-1 (West, Westlaw through 2018 Second Reg. Sess. and First Spec. Sess.); MISS. CODE ANN. § 97-3-54.1 (1)(b) (West, Westlaw through 2018 Reg. Sess.); VT. STAT. ANN. tit. 13, § 2655 (West, Westlaw through 2018 First Spec. Sess.); WYO. STAT. ANN. § 6-2-707 (West, Westlaw through 2018 Budget Sess.).

169. Gregorio, *supra* note 18, at 662.

170. *Id.*

mandatory minimum sentences, allowing judges more discretion in sentencing.¹⁷¹

A significant problem with these targeted statutes, however, is the *mens rea* requirements.¹⁷² Up to an estimated 41% of sex buyers knew that the victim they used was controlled by a pimp.¹⁷³ However, this knowledge is incredibly difficult to prove in court, particularly since it is typically the victim's word against the john's.¹⁷⁴ Nevertheless, most states with these laws maintain a knowledge standard.¹⁷⁵ Another downside associated with the knowledge standard is that the statutes are often redundant, as rape statutes typically apply as well.¹⁷⁶ For example, in Minnesota, the Fifth Degree Criminal Sexual Conduct statute would likely apply to buyers of sex trafficking victims, as it governs those who engage "in nonconsensual contact."¹⁷⁷

A proposed alternative *mens rea* requirement is reckless disregard.¹⁷⁸ Reckless disregard is defined as "conscious indifference to the consequences of an act," or

[T]he intentional commission of a harmful act or failure to do a required act when the actor knows or has reason to know of facts that would lead a reasonable person to realize that the actor's conduct both creates an unreasonable risk of harm to someone and involves a high degree of probability that substantial harm will result.¹⁷⁹

This *mens rea* requirement seems particularly appropriate for johns of trafficking victims due to the inherent harm victims face by being trafficked¹⁸⁰ and the typical indifference of johns as to whether the person from whom they are purchasing sex is a trafficking victim.¹⁸¹

171. *Id.*

172. *Id.* at 663.

173. FARLEY ET AL., *supra* note 60, at 40.

174. Gregorio, *supra* note 18, at 666.

175. *Id.*

176. *Id.*

177. MINN. STAT. § 609.3451, subdiv. 1(1) (2017).

178. Gregorio, *supra* note 18, at 665.

179. *Disregard*, BLACK'S LAW DICTIONARY (10th ed. 2014).

180. *See, e.g.*, MARTIN ET AL., *supra* note 4, at 50 ("Data shows that trafficking, exploitation, and violence are interwoven throughout the marketplace . . .").

181. *See, e.g., id.* at 75 ("Our data suggests that some sex buyers may believe that they are not complicit in sex trafficking or purchasing sex from a juvenile, while others may choose to ignore potential signs of sex trafficking.").

Another option comes from New Jersey's second-degree human trafficking law.¹⁸² Although this statute does not explicitly state that the legislature intended it to be used for johns of trafficking victims, it appears to apply to that situation.¹⁸³ Instead of "knowledge" being the *mens rea* requirement, the New Jersey statute requires negligence, which is "knowing . . . or under circumstances in which a reasonable person would conclude that there was a substantial likelihood that the person was a victim of human trafficking."¹⁸⁴ The statute also provides for multiple rebuttable presumptions, including "that the defendant knew, and that a reasonable person would conclude there was a substantial likelihood, that a person was a victim of human trafficking," on the basis of a variety of factors.¹⁸⁵ Though the rebuttable presumptions' prerequisite facts may be hard to prove, the statute does lower the burden of proof from knowledge so that a john cannot claim ignorance if faced with evidence of trafficking.¹⁸⁶

V. WHAT SHOULD MINNESOTA DO?

It is clear that Minnesota is making great strides in fighting sex trafficking within the state.¹⁸⁷ The 2011 Safe Harbor legislation particularly evidences these strides, because it "[a]dded the definition of sexually exploited youth in Minnesota's child protection codes; [i]ncreased the penalties against commercial sex abusers or purchasers; and [d]irected the Commissioner of Public Safety to work with stakeholders to create a victim-centered, statewide response for sexually exploited youth."¹⁸⁸ Even with the implementation of Safe Harbor, the Operation Guardian Angel crackdown on johns, the increased prosecution of sex traffickers, and the general consensus that those being sold are victims, a remarkably large problem still

182. Gregorio, *supra* note 18, at 667.

183. *Id.*

184. *Id.* (citing N.J. STAT. ANN. § 2C:13-9a(2) (West, Westlaw through L.2018)).

185. *Id.* (citing N.J. STAT. ANN. § 2C:13-9a(2)(a)-(b) (West, Westlaw through L.2018)).

186. *Id.*

187. *See, e.g.,* McKinnon, *supra* note 101 (discussing efforts of the Washington County, Minnesota, Attorney's Office in rescuing minor trafficking victims).

188. *Safe Harbor Minnesota*, MINN. DEP'T OF HEALTH, <http://www.health.state.mn.us/injury/topic/safeharbor> [<https://perma.cc/RXG7-FNTC>].

exists.¹⁸⁹ Today, any john in Minnesota who purchases an adult victim, trafficked or not, could be convicted of a misdemeanor crime.¹⁹⁰ It is important to recall that only an estimated .15% of johns who purchase victims are charged in Minnesota.¹⁹¹ This percentage includes both johns who purchase children and those who purchase adults. Although there has been success in targeting johns who purchase children,¹⁹² there has not been the same deterrent effect for johns who purchase trafficked adults.

Minnesota is already implementing the john-targeted approach and should continue to do so. However, it may be time for the Minnesota legislature to create a particular statute to target johns of all trafficking victims—adults and minors.¹⁹³ Although there are complications with the *mens rea* for this type of offense, “practical difficulties should not deter legislatures from seeking a just and proportional approach to holding [johns of trafficking victims] accountable for their crimes.”¹⁹⁴ This author advocates for the addition of a subdivision, either under the prostitution or sex trafficking statute, targeted at johns of trafficking victims and would require a *mens rea* of reckless disregard, negligence with a rebuttable presumption, or strict liability—eliminating as a defense a john’s lack of knowledge of a victim’s trafficking. In terms of ranking of this offense, this author would advocate that it be similar to subdivision 1(c) of Minnesota Statute section 609.324, which is a level-three offense and has a minimum presumptive stayed sentence of twelve months for those with a criminal history score of zero.¹⁹⁵ The offense

189. See *id.*; see also MARTIN ET AL., *supra* note 4, at 11; Montemayor, *supra* note 139; *supra* text accompanying note 142.

190. See MINN. STAT. § 609.324 (2017). It should be noted that johns can be charged with a gross misdemeanor if the commercial sex act occurs in a public place. *Id.* § 609.324, subdiv. 2; see also *id.* § 609.321, subdiv. 12 (defining “public place”).

191. See *supra* text accompanying note 90 (approximating the number of johns criminally charged for purchasing victims).

192. See Montemayor, *supra* note 139. It should be noted that johns are charged with a felony when they solicit a minor for sex. MINN. STAT. § 609.324; see also Montemayor, *supra* note 139 (“The men charged in Operation Guardian Angel face a variety of felony charges related to soliciting minors for sex and prostitution.”).

193. The Minnesota House of Representatives has proposed a bill that increases penalties for johns who purchase commercial sex from a victim of sex trafficking. H.F. 4230, 90th Leg. (Minn. 2018). As of this writing, it has not been passed.

194. Gregorio, *supra* note 18, at 670.

195. MINN. STAT. § 609.324 subdiv. 1(c); MINN. SENTENCING GUIDELINES COMM’N, *supra* note 159, at 81.

would be a felony and would be comparable to soliciting a minor over the age of sixteen and under the age of eighteen.¹⁹⁶

The addition of this offense would presumably be more of a deterrence to those purchasing commercial sex due to the felony ranking.¹⁹⁷ As noted, most of the buyers in Minnesota are white men from middle and upper socio-economic backgrounds.¹⁹⁸ A felony conviction can have many detrimental effects, such as the inability to purchase or possess firearms, the inability to vote, the prevention of employment, possible licensing implications, and other potential consequences.¹⁹⁹ These consequences may make johns think twice before purchasing commercial sex.

VI. WILL A CHANGE IN LAW FIX THE PROBLEM?

To predict how this potential change in legislation could affect sex trafficking in Minnesota, looking at states that have implemented john-targeted legislation to date is informative.

A. *Delaware*

The state of Delaware implemented john-targeted legislation in 2014.²⁰⁰ The statute provides:

A person is guilty of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude.²⁰¹

Despite Delaware's enactment of this legislation, as of April 2016, only one case has gone to the Department of Justice.²⁰² The amount of

196. MINN. SENTENCING GUIDELINES COMM'N, *supra* note 159, at 81.

197. See generally *Collateral Consequences of Felony Conviction*, MINN. ST. L. LIBR., <https://mn.gov/law-library/legal-topics/collateral-consequences-of-felony-conviction.jsp> [<https://perma.cc/TY87-A7U4>] (listing resources for the consequences of felony convictions) [hereinafter *Collateral Consequences*].

198. See *supra* Part II.A.

199. See *Collateral Consequences*, *supra* note 197.

200. DEL. CODE ANN. tit. 11, § 787(b)(4) (2014) (West, Westlaw through ch. 425 of 2018 Reg. Sess.).

201. *Id.*

202. Craig Anderson, *Delaware Takes Aim at Human Trafficking*, DEL. ST. NEWS (Apr. 2, 2016), <http://delawarestatenews.net/police/delaware-takes-aim-human-trafficking> [<https://perma.cc/X56D-6MJS>]; see also Margie Fishman and Esteban

trafficking occurring in Delaware “remains lightly quantified and somewhat unknown.”²⁰³ According to the Polaris Project in 2014, however, Delaware had a perfect rating based on ten “categories of laws that are critical to a basic legal framework that combats human trafficking, punishes traffickers, and supports survivors.”²⁰⁴ Delaware was determined to be the most improved state since 2013, having increased its rating by eight points.²⁰⁵ However, due to the lack of data collected on sex trafficking, it is nearly impossible to determine whether or not the implementation of these new provisions has made an impact on trafficking and prostitution within the state.

B. *Indiana*

Indiana’s john-targeted legislation provides: “A person who knowingly or intentionally pays, offers to pay, [or] agrees to pay money or other property to . . . another person for a human trafficking victim . . . commits human trafficking.”²⁰⁶ The Indiana legislature implemented this statute in 2006.²⁰⁷ One of the criticisms of this

Parra, *Despite Good Intentions, Delaware Slow to Address Human Trafficking*, DEL. ONLINE (May 5, 2018, 3:11 PM), <https://www.delawareonline.com/story/news/2018/05/05/despite-good-intentions-delaware-slow-address-human-trafficking/570902002> [<http://perma.cc/KU58-776U>] (“Four years after Delaware enacted sweeping legislation to crack down on the people who buy and sell prostitutes while shielding victims from further harm, the state still has no shelter for human trafficking victims, no reliable data on the scope of the problem and no comprehensive strategy to tackle it, a News Journal investigation has found.”).

203. *Id.* It should also be noted that this author was unable to find any sort of data concerning sex trafficking in Delaware from either before the implementation of the new sex trafficking laws in 2014 or after.

204. POLARIS PROJECT, 2014 STATE RATINGS ON HUMAN TRAFFICKING LAWS (2014), <https://polarisproject.org/sites/default/files/2014-State-Ratings.pdf> [<https://perma.cc/2LYN-9Q4R>]. The ten sections established by Polaris to quantify a state’s rating on human trafficking are as follows: (1) a sex trafficking provision within its laws; (2) a labor trafficking provision within its laws; (3) asset forfeiture and/or investigative tools; (4) training and/or a human trafficking task force; (5) a lower burden of proof for sex trafficking of minors; (6) posting of the human trafficking hotline; (7) Safe Harbor protecting minors; (8) victim assistance provided; (9) access to civil damages for victims; and (10) vacating convictions for sex trafficking victims. *Id.* It should be noted that Minnesota received a ten out of twelve, as it does not have a program for vacating convictions for sex trafficking victims. *Id.*

205. *Id.*

206. IND. CODE § 35-42-3.5-1.4 (2017) (West, Westlaw through 2017 First Spec. Sess. of the 120th Gen. Assemb.).

207. *Id.* § 35-42-3.5-1.4 (the original statute was implemented in 2006 and was amended in 2017 to include “juvenile prostitution”).

statute is it “does not distinguish between or provide heightened penalties for buyers of prostitution with a minor as opposed to buyers of prostitution with an adult.”²⁰⁸ Also, the statute has a high burden of proof with its requirement for specific knowledge, and it does not allow for the conviction of an individual who should have known nor require a rebuttable presumption.²⁰⁹

In terms of the amount of sex trafficking occurring in Indiana, the Indiana Protection for Abused and Trafficked Humans Task Force (IPATH) received 520 tips of suspected human trafficking in 2016, as opposed to 130 tips in 2014 and 275 in 2015.²¹⁰ This increase, which may also be attributed to an increase of incidents, reflects a recognition of potential trafficking scenarios.²¹¹ Indiana prosecutors filed approximately eighty-eight charges of promotion of human trafficking and sexual trafficking of a minor.²¹² However, there is no specific data on how many of those charges were under the subdivision targeted at johns. Indiana still has a long way to go. To illustrate, the state estimated there were approximately 380,000 ads for commercial sex placed on Backpage.com for the state of Indiana during the year 2016 alone.²¹³ To combat and raise awareness of the tremendous problem their state, IPATH members trained approximately 40,000 individuals on human trafficking awareness.²¹⁴ The training targeted law enforcement and first responders, judges and lawyers, healthcare professionals, hospitality workers, individuals who had encountered victims, and those that were likely to encounter victims.²¹⁵ In addition to increasing awareness, Indiana is starting to collect data on trafficking trends.²¹⁶ Despite these

208. SHARED HOPE INTERNATIONAL, 2013 ANALYSIS AND RECOMMENDATIONS INDIANA 12, https://sharedhope.org/PICframe3/analysis/PIC_AR_2013_IN.pdf [<https://perma.cc/46UR-EYY6>].

209. *Id.*; see also § 35-42-3.5-1.4 (2017) (Westlaw).

210. OFFICE OF THE IND. ATTORNEY GEN., THE 2016 INDIANA STATE REPORT ON HUMAN TRAFFICKING (2016) 7, <https://www.in.gov/attorneygeneral/files/ht%20report%202016.pdf> [<https://perma.cc/9JWE-6SA8>].

211. *Id.* at 7–8.

212. *Id.* at 18. It should also be noted that it is unclear as to whether this number was for the entire time the statute had been in existence or only from 2016.

213. *Id.* at 29.

214. *Id.* at 21.

215. *Id.*

216. *Id.* at 47. At this point, data collection is in the beginning stages, so there is little data on of arresting and prosecution of johns available. See *id.*; see also David Williams, *Indiana Lawmakers to Study Human Trafficking*, WANE.COM (May 22, 2018,

positive steps to decrease sex trafficking, there remains little data on any john-targeted approaches, yet there is abundant information on victim recovery and trafficker targeting.²¹⁷ This general lack of data, combined with the infrequent use of john-targeted legislation, makes the effectiveness of such legislation difficult to evaluate.

C. *Mississippi*

Mississippi's john-targeted legislation went into effect in 2013.²¹⁸ This statute provides:

A person who knowingly purchases the forced labor or services of a trafficked person or who otherwise knowingly subjects, or attempts to subject, another person to forced labor or services or who benefits, whether financially or by receiving anything of value from participating in an enterprise that he knows or reasonably should have known has engaged in such acts, shall be guilty of the crime of procuring involuntary servitude.²¹⁹

While this is progressive john-targeted legislation, there is little information showing that johns or sex traffickers, in general, have been targeted.²²⁰ In 2015, a human trafficking task force was created under the Governor's order, but it "was not operational in nature and was more of study group."²²¹ According to the group's report, "[i]t is abundantly clear that Mississippi has no strategic plan or competent service delivery for victims of labor and sex trafficking."²²² The report

7:29 PM), <https://www.wane.com/news/indiana/indiana-lawmakers-to-study-human-trafficking/1193179766> [<https://perma.cc/U2NM-4A55>].

217. See, e.g., Tribune-Star Staff Report, *Human Traffickers Arrested in Three-Day Sting in Indiana*, TRIB. STAR (Oct. 18, 2017), http://www.tribstar.com/news/update-human-traffickers-arrested-in-three-day-sting-in-indiana/article_55e0049c-b41d-11e7-a5b7-0f17bd9f14eb.html [<https://perma.cc/5K2L-JTBG>] (describing the recovery of eighty-four minors and arrests of 120 traffickers (with no mention of arrests of johns)).

218. See MISS. CODE ANN. § 97-3-54.1(b) (West, Westlaw through 2018 Reg. Sess.).

219. *Id.* § 97-3-54.1(b).

220. Arielle Dreher, *Human Trafficking: Unseen and Unaddressed*, JACKSON FREE PRESS (Jun. 1, 2016, 10:13 AM) (discussing Mississippi's lack of process for sex trafficking cases), <http://www.jacksonfreepress.com/news/2016/jun/01/human-trafficking-unseen-and-unaddressed> [<https://perma.cc/KS65-5QWY>].

221. *Id.*

222. GOVERNOR'S TASK FORCE ON HUMAN TRAFFICKING, 2015 REPORT AND RECOMMENDATIONS 24 (2015), <http://www.jacksonfreepress.com/documents/2016/jun/01/human-trafficking-taskforce-report-july-2015> [<https://perma.cc/9Z52-7R59>].

further revealed that the task force was assigned very basic research projects—such as “[r]esearch national and state hotlines and consider one hotline for the state for recommendations in victim protocol,”²²³ and “[r]esearch effective awareness campaigns throughout the United States.”²²⁴ The report also made remarkably basic recommendations, such as “[l]aw enforcement must understand the benefits of technology and how it can be used as a tool in efforts to combat Human Trafficking.”²²⁵

Aside from implementing the human trafficking laws and creating the human trafficking task force report in 2015, there is little evidence of meaningful efforts made by Mississippi to limit human trafficking.²²⁶ Furthermore, Mississippi continues to charge adult prostitutes who are likely trafficking victims.²²⁷ In one instance, during an FBI sting, agents made 28 arrests: 5 pimps, 21 victims, 1 john, and 1 person charged with narcotics possession.²²⁸ A Jackson FBI special agent stated that a sting operation “could technically yield human trafficking cases if those charged with prostitution disclosed that they were there against their will or someone forced them to be there.”²²⁹ Therefore, the burden was on the victims “who are deemed prostitutes when they are charged, to admit to being trafficked or coerced into prostitution.”²³⁰ This is not a progressive view, given that victims of trafficking often do not report being trafficked because of the potential “retaliation from a trafficker, physical harm inflicted by the trafficker, economic dependency upon the trafficker, family connections with their trafficker (children, parents, etc.), emotional manipulation, trafficker-controlled finances or legal documents,

223. *Id.* at 4.

224. *Id.* at 8.

225. *Id.* at 16.

226. Jimmie E. Gates, *Mississippi Receives B for Human Trafficking Laws*, CLARION LEDGER (Jan. 18, 2018, 2:49 PM), <https://www.clarionledger.com/story/news/politics/2018/01/18/mississippi-receives-b--human-trafficking-laws/1043786001> [http://perma.cc/XD7S-P6AG] (“Mississippi improves to a B on the latest report on states’ human trafficking laws, but some on the frontline to stop human trafficking say more needs to be done when it comes to helping victims on the street level.”).

227. Arielle Dreher, *Minor Sex Trafficking Sting Nets 28 Arrests, But No Children*, JACKSON FREE PRESS (Oct. 21, 2016, 12:24 PM), <http://www.jacksonfreepress.com/news/2016/oct/21/minor-sex-trafficking-sting-nets-28-arrests-no-chi> [https://perma.cc/K82H-2PYD].

228. *Id.*

229. *Id.*

230. *Id.*

language barriers, fear of police, unawareness of their legal status as a ‘victim,’ and stigma.”²³¹ So long as Mississippi continues its trend of maintaining sparse data on its approaches to sex trafficking, even speculating as to the effectiveness of its john-targeted legislation will be nearly impossible.

D. *Vermont*

In 2011, Vermont implemented the following john-targeted legislation: “No person shall knowingly solicit a commercial sex act from a victim of human trafficking.”²³² However, as of 2015, Vermont had not prosecuted a single sex trafficking case.²³³ Vermont seems to utilize the john-targeted approach in some scenarios.²³⁴

E. *Wyoming*

Finally, Wyoming also enacted a john-targeted statute that reads as follows:

A person is guilty of patronizing a victim of sexual servitude when the person pays, agrees to pay or offers to pay anything of value so that the person or another may engage in sexual activity with an individual when the person knows that the individual is a victim of sexual servitude²³⁵

231. MARTIN ET AL., *supra* note 4, at 16.

232. VT. STAT. ANN. tit. 13, § 2655 & note (West, Westlaw through 2018 First Spec. Sess.).

233. Cindy Ellen Hill, *Human Trafficking: Sex Slavery in Vermont*, VT. WOMAN (2015), <https://www.vermontwoman.com/articles/2015/0215/03-sextraff/sextraffarticle.html> [<https://perma.cc/R67D-ZPXJ>]. *But see* Press Release, U.S. Attorney’s Office, District of Vermont, Vermont’s Multidisciplinary Human Trafficking Task Force Partnerships Formalized (June 12, 2018), <https://www.justice.gov/usao-vt/pr/vermont-s-multidisciplinary-human-trafficking-task-force-partnerships-formalized> [<http://perma.cc/UT6B-HQHX>] (announcing collaboration between the Office of the United States Attorney for the District of Vermont and the Office of the Attorney General for the State of Vermont in fighting human trafficking crimes).

234. *See, e.g.*, Morgan True, *Nine Arrested in Sex Crime Sting Operation*, VTDIGGER (Sept. 14, 2017), https://vtdigger.org/2017/09/14/nine-arrested-sex-crime-sting-operation/#.Wf_dkyZNE4 [<https://perma.cc/9FJT-HLQP>].

235. WYO. STAT. ANN. § 6-2-707(a) (West, Westlaw through 2018 Bud. Sess. of the Wyo. Leg.).

The Wyoming legislature implemented this statute in 2013.²³⁶ Wyoming was the last of the fifty states to outlaw sex trafficking.²³⁷ Despite being the last state to make sex trafficking illegal, its legislation is progressive in terms of prosecuting johns of sex trafficking victims.²³⁸ Yet, Wyoming, like many other states that have implemented this sort of legislation, does not actively seek out these johns, as there were only two commercial sex act offenses cleared by arrest or exceptional means in the entire state for the year of 2016.²³⁹ The state's inadequacy of pursuing this crime makes it impossible to determine whether Wyoming's john-targeted statute would be effective.

F. *Summary of Other States' Johns-of-Trafficking-Victims-Targeted Legislation*

Based on johns-of-trafficking-victims targeted legislation in Delaware, Indiana, Mississippi, Vermont, and Wyoming, it is inconclusive whether implementing such legislation in Minnesota will be effective. None of the states have applied john-targeted approaches to the extent that Minnesota has, so it is difficult to determine how a johns-of-trafficking-victims statute would play out for Minnesota when used for prosecution. Furthermore, of all the above states, only Indiana seems to actively pursue and make a priority of human trafficking cases.²⁴⁰ However, because Minnesota has the highest number of cleared commercial sex trafficking cases in the United States, use of a johns-of-trafficking-victims-targeted approach could have a great impact, particularly for deterring johns.²⁴¹ In enacting

236. *Id.* § 6-2-707(a) note (noting in the credits that the statute's effective date is July 1, 2013).

237. Press Release, Polaris Project, Wyo. Becomes 50th State to Outlaw Human Trafficking (Feb. 27, 2013), <https://polarisproject.org/news/press-releases/wyoming-becomes-50th-state-outlaw-human-trafficking> [<https://perma.cc/49K7-M8RJ>].

238. *See id.* § 6-2-707(a).

239. WYO. DIV. OF CRIM. INVESTIGATION, CRIME IN WYOMING 44 (2016), <https://docs.google.com/a/wyo.gov/viewer?a=v&pid=sites&srcid=d3lvLmdvdxkY2ktLS1wdWJsaWN8Z3g6NGY3ZDJjMGRkMmRjMWMYnQ> [<https://perma.cc/QT45-4JB3>]; *see* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 1-2 (2017), <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/clearances.pdf> [<https://perma.cc/N6EJ-C6SU>] (explaining the terms "cleared by arrest" and "exceptional means").

240. *See supra* Part VI (A)-(E).

241. FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: HUMAN TRAFFICKING 3 (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.->

this type focused sex trafficking legislation, Minnesota could lead the way in the prosecution of johns of trafficking victims.

VII. CONCLUSION

Minnesota has made amazing strides in combatting the sexual exploitation of minors.²⁴² However, the lack of prosecution of johns, combined with the uncertainty of treating adults in prostitution as victims, has allowed commercial sex to continue to flourish in Minnesota.²⁴³ Though changing the patriarchy and racism imbedded within society²⁴⁴ will require more than statutes, implementing legislation that specifically targets johns of trafficking victims—in addition to conveying that Minnesota perceives those in prostitution as victims—could potentially lessen the problem of human trafficking and prostitution in the state. Minnesota has an opportunity to become a leader in prosecuting sex trafficking and prostitution crimes, as it has proven that it takes these issues seriously and is willing to devote resources to ending the persistent sexual victimization of Minnesota women.

2015/additional-reports/human-trafficking/copy_of_humantrafficking_2015_final.pdf [https://perma.cc/C43H-ZWXZ]. Though Minnesota ranks second highest in reported offenses—119 to Nevada’s 214—it has the highest number of cleared offenses with 77, compared to Nevada’s 49. *Id.* Also, not every agency and not every state participates in the UCR program. *Id.* at 2.

242. LAUREN MARTIN ET AL., MAPPING THE MARKET FOR SEX WITH TRAFFICKED MINOR GIRLS IN MINNEAPOLIS 6 (2014), https://uroc.umn.edu/sites/uroc.umn.edu/files/MTM_Full%20Report_2014.pdf [https://perma.cc/MC9R-9HXC].

243. See MARTIN ET AL., *supra* note 4; MINN. DEP’T OF PUB. SAFETY, *supra* note 19, at 5 (“Finally, the number of victims identified in this report is most likely an underrepresentation of the extent of human trafficking in Minnesota. Trafficking is a complicated and hidden crime [O]ften victims who do come in contact with a service agency are misidentified.”).

244. See, e.g., MARTIN ET AL., *supra* note 4, at 109 (“Our findings highlight the intersections between gender, race, and class in the commercial sex market. The market is based on a substantial inequity.”).

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