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**BUYER BEWARE:
WHY JOHNS SHOULD BE CHARGED WITH
STATUTORY RAPE FOR BUYING SEX FROM A
CHILD**

*Amanda Shapiro**

Despite the common conception that human trafficking is primarily a problem beyond our shores, sex trafficking is a growing epidemic within the United States. Sex traffickers are increasingly preying on children in particular in response to growing demand for paid sex with younger girls and boys. Strikingly, the criminal justice system charges and prosecutes these trafficking victims for selling sex even though they have been forced into the trade. Unlike trafficked children, the adults who buy sex from them are rarely charged and, if they are, the charge—a low-level misdemeanor or violation—fails to reflect the gravity of their crime. Take away the exchange of money, and the justice system appropriately deems these children victims and their patrons rapists for engaging in the exact same acts.

This Note argues that prosecutors should prosecute these adult patrons, also known as johns, with statutory rape. Their conduct constitutes child rape whether money is exchanged or not. The current charges of misdemeanors and violations are inadequate to reflect the severity of their crimes. By contrast, statutory rape is, in

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every state, a felony offense that imposes strict liability on an adult who has sex with a child under a certain age. Charging johns with an offense that more accurately reflects their criminality would re-inforce the notion that children trafficked into the sex industry are victims, not criminals, and that the law must similarly treat trafficked and non-trafficked children. Additionally, the heightened penalty would decrease demand for trafficked children by deterring johns from participating in and thus driving the child sex market.

INTRODUCTION

A. Statutory Rape: Two Different Outcomes

Nina¹ met her long-term high school boyfriend when they locked eyes in study hall. They became fast friends. Soon after, they fell in love. Although their relationship had an age gap—Nina was fifteen and her boyfriend was eighteen—that did not stop them from imagining a blissful future together. They talked about marriage, buying a house, and raising children together. They had sex, but sex was not what defined their relationship. The pair could wile away hours just talking. Nina's father, however, felt that Nina was spending too much time with her new boyfriend, so he reported their sexual relationship to the police in the hopes of separating them. The police charged Nina's boyfriend with statutory rape, a felony offense. As a result of his conviction, Nina's boyfriend was registered as a sex offender and is now serving ten years probation.²

¹ Names have been fabricated or changed. This narrative has been adapted from an article that ran in the Hartford Courant, "A Plan to Redefine Teen Sex Offenders." Hilda Munoz, *A Plan to Redefine Teen Sex Offenders*, HARTFORD COURANT (May 3, 2007), http://articles.courant.com/2007-05-03/news/0705030904_1_offender-statutory-sexual. See also Meredith Cohen, Note, *No Child Left Behind Bars: The Need to Combat Cruel and Unusual Punishment of State Statutory Rape Laws*, 16 J.L. & POL'Y 717, 721–22 (2008) (discussing the incident).

² See Cohen, *supra* note 1, at 722. See generally Michele Goodwin, *Law's Limits: Regulating Statutory Rape Law*, 2013 WIS. L. REV. 481, 540 (2013)

Vivian,³ on the other hand, did not have a chance to fall in love the way Nina did. When Vivian was fifteen years old, her father decided that he was tired of paying child support to her mother. In an effort to stave off the mounting debts, Vivian's father arranged for a male friend to kidnap her for use as human collateral. Her father's friend told Vivian that she had to sell her body for sex in order to pay off debts her father owed him, and beat her when she resisted. The man—now Vivian's "pimp"—scheduled the first "customer," a forty-year-old man, to buy her sexual services. This customer saw her black eye and other bruises all over her body. After noting her young features, he had sex with her anyway. The entire fee went to Vivian's pimp.

Unlike the authorities who arrested Nina's young boyfriend, the police here neither arrested nor charged the man who bought sex from Vivian.⁴ Even if the police had arrested him and the local prosecutor had pressed charges, the charge would have been either a simple violation⁵—the equivalent of failing to use one's turn signal while driving⁶—or a misdemeanor offense,⁷ neither of

(arguing that statutory rape laws, as applied now, lead to absurd criminal results for teenage, consensual sexual activity).

³ This narrative has been adapted from children's experiences recorded in an in-depth study in New York City on child victims of sex trafficking. See RIC CURTIS ET AL., NAT'L INST. OF JUST., *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY: VOL. ONE* 47–48 (2008).

⁴ See CHARLES E. TORCIA, *WHARTON'S CRIMINAL LAW* § 265 (15th ed. 2014) (indicating a "reluctance on the part of law enforcement officers to arrest patrons") (citations omitted); see also 63C AM. JUR. 2D *Prostitution* § 14 (2014) (noting that some courts interpret prostitution statutes as being inapplicable to patrons) (citations omitted).

⁵ See TORCIA, *supra* note 4, § 265 (citing the Model Penal Code, which criminalizes a patron of prostitution: "[a] person commits a *violation* if he hires a prostitute to engage in sexual activity with him . . ." MODEL PENAL CODE § 251.2(5) (2012) (emphasis added)). The offense of "prostitution" (i.e. offering or engaging in sexual activity for money) under the Model Penal Code is a "petty misdemeanor." MODEL PENAL CODE § 251.2(5) (2012).

⁶ See N.Y. VEH. & TRAF. LAW art. 28, § 1163 (McKinney 2014).

⁷ See TORCIA, *supra* note 4 (citing typical patron offenses, ranging from Class A to Class B misdemeanors, e.g. CONN. GEN. STAT. ANN. § 53a-83 (West 2013)); IDAHO CODE ANN. § 18-5614 (2013); DEL. CODE ANN. tit. 11 § 1343 (2013)).

which often leads to serving jail time.⁸ On the other hand, the authorities likely would have charged Vivian with a crime⁹—even though she was a juvenile, and even though, in the sexual crimes provisions of the penal code, she was legally incapable of consenting to any sexual activity.¹⁰

The criminalization of prostitution—specifically, the criminalization of people selling their bodies for sex—has so warped the criminal justice system that a child forced into sex would likely be convicted of prostitution, while the person who raped¹¹ her would receive a mere warning, if any criminal

⁸ First-time offenders rarely serve jail time, even for a misdemeanor, and diversion options allow johns to easily have their charges dismissed. See MICHAEL SHIVELY ET AL., NAT'L INST. OF JUST., A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REDUCTION EFFORTS, FINAL REPORT 10 (2012), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>.

⁹ See Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 18 (2011) (“[Y]oung girls are prosecuted at reportedly higher rates than even the men who exploit them.”) (citations omitted).

¹⁰ See TORCIA, *supra* note 4, § 285 (“A child of tender years is deemed incapable of consenting to sexual intercourse; therefore, the child’s apparent ‘consent’ is immaterial.”); see also KY. REV. STAT. ANN. § 510.020(3)(a) (West 2013) (“A person is deemed incapable of consent when he or she is: . . . [l]ess than sixteen (16) years old.”); UTAH CODE ANN. § 76-5-406(9) (West 2013) (“An act of sexual intercourse [or] rape . . . is without the consent of the victim . . . [if] the victim is younger than 14 years of age.”); DEL. CODE ANN. tit. 11, § 761(k) (2013) (“A child who has not yet reached that child’s sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.”).

¹¹ This note uses the term “sexual assault” here since most penal codes criminalize statutory rape as some degree of “sexual assault” or “rape.” See, e.g., ME. REV. STAT. ANN. tit. 17-A, § 253(1)(B) (2013) (“A person is guilty of *gross sexual assault* if that person engages in sexual act with another person and . . . the other person . . . has not in fact attained the age of 14 years.”) (emphasis added); N.H. REV. STAT. ANN. § 632-A:2(1)(I) (“A person is guilty of the felony of *aggravated felonious sexual assault* if such person engages in sexual penetration with another person . . . [w]hen the victim is less than 13 years of age.”) (emphasis added); VT. STAT. ANN. tit. 13, § 3252(c) (2013) (“*Sexual Assault* . . . No person shall engage in a sexual act with a child who is under the age of 16”) (emphasis added); IDAHO CODE ANN. § 18-6101(1) (2013)

sanctions. Under the sexual assault provisions of most penal codes in the United States, Vivian legally meets the definition of a victim of statutory rape, and the man who used her for sex, a felon.¹² The intent behind statutory rape legislation is to protect children from predatory, coercive adults.¹³ Nina's boyfriend, a teenager in the throes of young love, is not the menace society wants to criminalize for statutory rape. On the other hand, adults¹⁴ who buy sex from children forced into the sex trade—

(“Rape . . . is the penetration . . . of the oral, anal, or vaginal opening . . . accomplished . . . [w]here the female is under the age of sixteen (16) years and the perpetrator . . . [w]here the female is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.”) (emphasis added); KY. REV. STAT. ANN. § 510.050(1)(a) (West 2013) (“A person is guilty of *rape in the second degree* when . . . [b]eing eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old”) (emphasis added); N.Y. PENAL LAW § 130.30(1) (McKinney 2014) (“A person is guilty of *rape in the second degree* when . . . being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old”) (emphasis added); OR. REV. STAT. ANN. § 163.375(1)(b) (West 2013) (“A person who has sexual intercourse with another person commits the crime of *rape in the first degree* if . . . [t]he victim is under 12 years of age.”) (emphasis added).

¹² See, e.g., DEL. CODE ANN. tit. 11, § 771(a)(1) (2013) (“A person is guilty of rape in the third degree when the person . . . [i]ntentionally engages in sexual intercourse with another person and the victim has not reached that victim’s sixteenth birthday and the person is at least 10 years older than the victim”); GA. CODE ANN. § 16-6-3(a) (West 2013) (“A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years”); IDAHO CODE ANN. § 18-6101(1) (2013) (“Rape . . . is the penetration . . . of the oral, anal, or vaginal opening . . . [w]here the female is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.”); VT. STAT. ANN. tit. 13, § 3252(c) (2013) (“No person shall engage in a sexual act with a child who is under the age of 16”). Vivian’s experience also carries implications for a level of sexual assault even higher than statutory rape, given that the offender seemed to know he was forcing her into sex. See TORCIA, *supra* note 4, § 285 (“Although force is not an element of statutory rape, if a defendant does use force, he may be guilty of common-law (forcible) rape even with respect to a female who is under the age of consent.”) (citations omitted).

¹³ Tamar R. Birkhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1096 (2011).

¹⁴ Women and men have been perpetrators of both statutory rape and patronizing a prostitute, but the vast majority of adults who drive the prostitution industry are men; and the majority of child victims are girls. See, e.g., CURTIS ET

regardless of whether they *know* their victim is a child—are exactly the population our society would wish to criminalize through statutory rape laws.¹⁵

This Note describes how children of the commercial sex industry are victimized twice: first, by the sexual exploitation itself, and second, by a criminal justice system that criminalizes them for being exploited.¹⁶ The use of prostitution laws against minors in this country remains inequitable: children incapable of consenting to sex are charged with prostitution, while the adults who raped them are ignored or dismissed. This Note argues that a deep legal and societal misunderstanding of prostitution, which views prostitutes as reckless unchaste women, drives both the criminalization of child victims of the sex trade and the lack of criminalization of the adults who buy sex from them. This Note then argues that prosecutors should remedy this injustice and

AL., *supra* note 3, at 79 (The researchers discovered a surprising number of female johns who had bought sex from both male and female child victims. However, researchers were somewhat skeptical of the figures reported by male child victims about female johns because of the “stigma attached to homosexuality,” therefore “admitting that [their] clientele was exclusively male was difficult.”); *see also Global Sex Trafficking Fact Sheet*, EQUALITY NOW, <http://www.equalitynow.org/node/1010> (last visited September 15, 2014) (Worldwide, 98% of commercial sexual exploitation victims are female.); Congressional Research Service 7-5700, R41878, p. 7 (June 21, 2011), *available at* <https://d1qkyo3pi1c9bx.cloudfront.net/00028B1B-B0DB-4FCD-A991-219527535DAB/7ad602de-1738-4ccf-983f-7ed0b20a37fb.pdf> (“[M]ost victims of sex trafficking in the U.S. are women and children.”).

¹⁵ Cf. Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFF. L. REV. 703, 705–06 (2000) (discussing the worst of statutory rape crimes, where an adult preys on a young child for sexual gratification). Though Oberman is certainly correct that statutory rape involves greater culpability when there is specific intent, it is my proposition that policy considerations weigh in favor of a law that targets both those with intent to rape minors and those without that specific intent.

¹⁶ While addressing the need to decriminalize the child victims of this industry is one aspect of remedying this injustice, it is beyond the scope of this Note, and has already been analyzed admirably. *See generally* Annitto, *supra* note 9; Birkhead, *supra* note 13; Rebecca Carroll Sager, *An Anomaly of the Law: Insufficient State Laws Fail to Protect Minor Victims of Sex Trafficking*, 38 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 359 (2012); Cynthia Godsoe, *Punishing to Protect*, 52 HOUS. LAW REV. (forthcoming 2015).

inconsistency in the law by charging such adults with statutory rape. This solution is advantageous because it does not require enacting new legislation or dramatically altering the criminal justice system. It merely requires that prosecutors use their discretion to charge people who buy sex from children with the higher offense of statutory rape rather than the misdemeanor offense of soliciting a prostitute.

Charging these offenders with statutory rape would serve three purposes. First, it would reinforce the notion that these children are victimized youth who are incapable of consenting to sexual activity, and that the law should protect rather than punish them. Second, it would provide consistency in the law for courts that have long grappled with the dilemma of criminalizing children for their own rapes. Third, a felony charge against these perpetrators would decrease the demand for child trafficking by using the threats of both significant jail time and a felony record to deter potential buyers.

Part I of this Note frames the problem of the sexual exploitation of children as a prosecutorial failure of underusing statutory rape. It provides a definitions section, which clarifies the terms used in this Note in order to more aptly describe the experiences of child victims of sexual exploitation. Part II.A identifies the victims of commercial sexual exploitation and details the methods by which adults lure them into exploitation. Part II.B describes recent state sex trafficking statutes aimed at confronting this exploitation and discusses the gross limitations in even the most robust statutes. Part II.C lists the reasons why law enforcement continues to arrest and prosecute children for their own rapes. Part III frames these reasons within the larger context of the unjust criminalization of adults who sell sex and the lack of criminalization of the adults who buy sex. Part IV details the superiority of a statutory rape-charging mechanism over other proposals for child exploitation reform. Part IV also cites the overall lack of charges against adults who buy sex from children and instances where a statutory rape charge would have proved useful. Finally, Part V concludes with the limitations of this Note's solution and invites policymakers to remedy the other identified factors that force children into sexual exploitation.

I. THE SEXUAL EXPLOITATION OF CHILDREN: DEFINITION OF TERMS

Defining terms is not only useful for the consistency and clarity of this Note, but it is also an important step in achieving justice for victims. The road to justice often begins with public awareness. At the moment, the focus on the commercial sexual exploitation of children is on children as “prostitutes”¹⁷ and traffickers as “pimps.”¹⁸ By shifting the rhetoric from prostitute to victim, from pimp to trafficker, and from customer to perpetrator, this Note seeks to disclose the experiences of children in the commercial sex industry.

A. *Victims of the Commercial Sexual Exploitation of Children (CSEC)*

This Note will refer to minors engaged in prostitution as “victims of the commercial sexual exploitation of children (CSEC),”¹⁹ and will focus largely on domestic victims. Academics

¹⁷ See, e.g., Ian Urbina, *For Runaways, Sex Buys Survival*, N.Y. TIMES (Oct. 27, 2009), <http://www.nytimes.com/2009/10/27/us/27runaways.html?pagewanted=all> (referring to a victim of sexual exploitation as both “a petite 16-year-old girl” and “a prostitute”); see also Larry Neumeister, *Lawrence Taylor Wins Case Brought by Teen Alleging Sexual Assault in New York Hotel*, HUFFINGTON POST (Oct. 26, 2012), http://www.huffingtonpost.com/2012/10/26/lawrence-taylor-wins-case-teen-sexual-assault_n_2025289.html (using the term “underage prostitute”); Laura Italiano, *Former Sportscaster Marvell Scott Pleads Guilty in Child Prostitute Case*, N.Y. POST (Aug. 16, 2011), <http://nypost.com/2011/08/16/former-sportscaster-marvell-scott-pleads-guilty-in-child-prostitute-case/> (referring to victim as “child prostitute”).

¹⁸ See, e.g., The Associated Press, *Father and Son Pimps Are Sentenced to 3 to 9 Years in Prison*, N.Y. TIMES (July 8, 2013), http://www.nytimes.com/2013/07/09/nyregion/father-and-son-pimps-are-sentenced-to-3-to-9-years-in-prison.html?_r=0. The MTV series *Pimp My Ride* even uses the term “pimp” as a verb meaning improvement in the context of turning “clunker” cars into “masterpieces.” *Pimp My Ride: About Pimp My Ride*, MTV, http://www.mtv.com/shows/pimp_my_ride/season_5/series.jhtml (last visited Sept. 15, 2014) (follow “Read Full Summary”).

¹⁹ Commercial Sexual Exploitation of Children (CSEC) also encompasses “child pornography, online enticement, [and] child sex tourism.” Office of

and legal scholars have adopted the term CSEC to describe the exploitation of children not just by sexual traffickers, but also by adults who *purchase* sexual services, or otherwise recruit youth to participate in the sex industry.²⁰ The term “child prostitute,” though widely used in popular media,²¹ is problematic. The Department of Justice notes that the label “prostitute” perpetuates misinformed ideas: “[u]sing the term prostitution in connection with children . . . implies the idea of choice, when in fact that is not the case.”²² The real danger is that the term “child prostitute” evokes an idea that CSEC “is somehow different from other forms of rape or sexual abuse of minors”—a more acceptable one.²³ Rachel Lloyd, the founder of the non-profit Girls Educational and Mentoring Services (GEMS), which serves trafficked girls, illustrates how the “prostitute” label can serve to justify an adult’s decision to buy sex from a child: “[m]any of these men wouldn’t

Juvenile Justice and Delinquency Prevention, *Commercial Sexual Exploitation of Children*, U.S. DEP’T OF JUST. (last visited Sept. 15, 2014), http://www.ojjdp.gov/programs/csec_program.html. For the purposes of charging johns with statutory rape, this Note limits CSEC to “juveniles who perform sexual acts in exchange for money, drugs, food or shelter.” CURTIS ET AL., *supra* note 3, at 1. The forced prostitution of children has also been referred to as “minor sex trafficking.” *Domestic Minor Sex Trafficking*, FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE (last visited Sept. 15, 2014), <http://www.fcasv.org/child-sexual-abuse/domestic-minor-sex-trafficking>.

²⁰ See RICHARD J. ESTES & NEIL ALAN WEINER, U. PA. SCH. OF SOC. WORK, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA, AND MEXICO 2* (2001), available at <http://news.findlaw.com/hdocs/docs/sextrade/upennsec90701.pdf>.

²¹ The mainstream media commonly refer to the CSEC problem as child or juvenile “prostitution.” See HUMAN RIGHTS PROJECT FOR GIRLS & THE RABEN GROUP, *USE OF THE PHRASE “CHILD PROSTITUTE” IN THE MEDIA 1* (2013), available at http://media.wix.com/ugd/807686_acbe2dfa7dde42a89c716f556a1b12fe.pdf (citing over 5,000 instances in the last 5 years when reporters have used the term “child prostitute” or “child prostitution”). See generally *supra* note 17 (providing examples of the media referring to underage victims of sexual exploitation as prostitutes).

²² Child Exploitation & Obscenity Section, *The Prostitution of Children*, U.S. DEP’T OF JUST., <http://www.justice.gov/criminal/ceos/subjectareas/prostitution.html> (last visited Sept. 15, 2014).

²³ HUMAN RIGHTS PROJECT FOR GIRLS, *supra* note 21.

dream of sexually abusing their daughters, but when it comes to a ‘prostitute’ . . . they figure it doesn’t really matter.”²⁴

B. Prostituted People and Prostitution

This Note will refer to adults who sell their own sexual services as “prostituted people” and “prostituted women.” Referring to adults engaged in the sex industry as “prostituted” reflects that a large majority of women in prostitution wish to exit the commercial sex industry.²⁵ Moreover, control over their work is minimal: of the people who sell sex, 80% are under the control of a pimp or trafficker.²⁶ Although there are legitimate reasons to argue that adults who sell sex have more autonomy than children, the majority of those who sell sex experience force, coercion, and violence just as their minor counterparts do.²⁷

This Note will refer to “prostitution” as one aspect of the commercial sex industry or the sex trade.²⁸ Prostitution refers to “the act or practice of engaging in sexual activity for money or its equivalent.”²⁹

²⁴ Rachel Lloyd, *Girls Like Us: Johns – The Men Who Buy Sex*, FAIR OBSERVER (Sept. 8, 2013), <http://www.fairobserver.com/article/girls-like-is-johns-men-who-buy-sex> (reprinting an excerpt from Lloyd’s book, *GIRLS LIKE US*). “The term ‘teenage prostitution’ also overlooks the legal status of minors who have greater legal protections regarding sexual conduct because of their emotional and physical immaturity and the need to protect them from exploitative adults.” JAY ALBANESE, NAT’L INST. OF JUST., *COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: WHAT DO WE KNOW AND WHAT DO WE DO ABOUT IT?* 8 (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/215733.pdf>.

²⁵ See, e.g., SHIVELY ET AL., *supra* note 8, at 14 (citing one study’s finding that “88% of a sample of [women in] commercial sex in San Francisco reported a desire to leave prostitution”) (citations omitted).

²⁶ *Id.* at 13.

²⁷ *Id.*

²⁸ The commercial sex industry encompasses other trades that profit from sex, such as strip clubs, and pornography. See *Sex Trafficking in the U.S.*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us> (last visited Sept. 15, 2014).

²⁹ 63C AM. JUR. 2D *Prostitution* § 1 (2013); see also, e.g., IDAHO CODE ANN. § 18-5613 (2013) (“An individual is guilty of prostitution when he or she . . . engages in or offers or agrees to engage in sexual conduct, or sexual contact

C. Sex Trafficking

This Note will refer to any involuntary sale of sex, and any sale of sex by a child, as sex trafficking. Further, this Note will use the term “trafficker,” rather than “pimp,” to connote an adult who has induced a child to sell sex. Where this Note does use the term “pimp,” it relates to situations where adults are engaged in prostitution and coercion appears to be absent. “Trafficking” is a term that “seems to connote movement[,]” yet the criminal activity behind the term “trafficking” lies not in transporting victims across international borders, state boundaries, or even towns, but in the force and lack of choice involved.³⁰ The federal Trafficking Victims Protection Act (TVPA) defines sex trafficking in two forms: first, when “a commercial sex act is induced by force, fraud or coercion”; and second, when a child—someone under 18 years of age—is induced to perform a commercial sex act.³¹

D. Johns

This Note will use the term “johns” to describe people who buy sex, both from adults and from children. Both law enforcement officials and academic researchers use this term.³² Some state laws refer to johns as “patrons” and “customers” of prostitution, and “patronizing a prostitute” is the most common term to describe a person who buys sex.³³ GEMS founder Rachel Lloyd notes that

with another person in return for a fee”); UTAH CODE ANN. § 76-10-1302(1) (West 2013) (“An individual is guilty of prostitution when . . . the individual engages in sexual activity with another individual for a fee.”).

³⁰ Office to Monitor and Combat Trafficking in Pers., *What Is Modern Slavery?*, U.S. DEP’T OF STATE, <http://www.state.gov/j/tip/what/index.htm> (last visited Sept. 15, 2014) (describing forced labor, sexual exploitation, or involuntary domestic servitude as forms of trafficking); *see also* Child Exploitation & Obscenity Section, *supra* note 22 (“Under federal law, a child does not need to be moved across international or even state borders to be considered a victim of commercial sexual exploitation.”).

³¹ Trafficking Victims Protection Act, Chapt. 78, 22 U.S.C. § 7102(9)(A) (2014). A “commercial sex act” is “any sex act on account of which anything of value is given to or received by any person.” *Id.* § 7102(4).

³² *See generally* SHIVELY ET AL., *supra* note 8.

³³ 63C AM. JUR. 2D *Prostitution* § 14 (2014).

labeling men who buy sex from children as “johns” fails to capture that they are rapists and child abusers, evoking instead an “anonymous ‘everyman.’”³⁴ With a lack of superior alternatives, though, this Note uses the term “johns” to encompass all people who buy sex, including women, despite the term’s gendered association.³⁵

E. Statutory Rape

This Note uses the term “statutory rape” to refer to the crime of an adult (a person over eighteen years of age) having sex with a child (a person under eighteen years of age)³⁶—because a child is legally incapable of consenting to sexual activity.³⁷ Statutory rape is a strict liability crime; neither force nor knowledge of the victim’s age is an element of the offense.³⁸ Jurisdictions have used the terms sexual battery, sexual abuse, and rape in the second degree to connote statutory rape.³⁹ While most states strictly

³⁴ Rachel Lloyd, *Girls Like Us: Johns – The Men Who Buy Sex*, FAIR OBSERVER (Sept. 8, 2013), <http://www.fairobserver.com/article/girls-like-is-johns-men-who-buy-sex> (reprinting an excerpt from Lloyd’s book, *GIRLS LIKE US*). Girls Educational Mentoring Services (GEMS) is a non-profit started by Ms. Lloyd to get CSEC survivors out of “the life” and to rebuild their lives. See *Mission and History*, GEMS, <http://www.gems-girls.org/about/mission-history> (last visited Sept. 15, 2014).

³⁵ Indeed, a New York City study of children in CSEC found that 11% of the CSEC girls interviewed, and 40% of the CSEC boys interviewed, had sold sex to a female john. CURTIS ET AL., *supra* note 3, at 79.

³⁶ For purposes of statutory rape, though, criminal statutes typically set the age maximum of “child” at a few years below 18, such as 16 years old instead. See, e.g., IDAHO CODE ANN. § 18-6101(1) (2013) (“Rape is . . . the penetration . . . of the oral, anal, or vaginal opening . . . [w]here the female is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.”); VT. STAT. ANN. tit. 13, § 3252(c) (2013) (“No person shall engage in a sexual act with a child who is under the age of 16 . . .”).

³⁷ TORCIA, *supra* note 4, § 285 (“A child of tender years is deemed incapable of consenting to sexual intercourse; therefore, the child’s apparent ‘consent’ is immaterial.”) (citations omitted).

³⁸ See *id.* § 285 n. 23 (“It is no defense that the defendant did not know the female’s age or reasonably believed her to be of the age of consent [And] force is not an element of statutory rape.”) (citations omitted).

³⁹ See *id.* § 285 (citing FLA. STAT. ANN. § 794.011(2)(a) (West 2013)

criminalize sex with a child below a certain age—typically twelve to fourteen years old⁴⁰—a majority of states also have provisions decriminalizing consensual teenage sex (like that between Nina and her boyfriend) by requiring that the offender be a certain number of years older than the victim.⁴¹

This Note seeks to both educate readers and promote social change. Using the correct terms with which victims, practitioners, and the public can identify CSEC is the first important step in accomplishing those purposes. Moreover, correct terminology encourages an informed dialogue about the realities of children forced into the commercial sex industry and the johns who buy sex from them.

II. COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: THE LEGAL TREATMENT AND THE REALITY

Behind the prosecution of a child for prostitution often lies a history of coercion, violence, and vulnerability. Most state law enforcement agencies have failed to appreciate not only that children forced to sell sex have a history of trauma, but also that johns and traffickers continually violate these children physically, mentally, and economically in order to trap them in the commercial sex industry.⁴² Yet, the justice system continues to

(listing “sexual battery” as a capital offense on a victim less than 12 years old)) (additionally citing ME. REV. STAT. tit. 17-A, § 254(1)(A) (2014) (defining “sexual abuse of a minor” as “engag[ing] in a sexual act with another person . . . who is either 14 or 15 years of age and the actor is at least 5 years older than the other person”)); *see also, e.g.*, N.Y. PENAL LAW § 130.30(1) (McKinney 2014) (“A person is guilty of rape in the second degree when . . . being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old . . .”). These terms, however, are not exhaustive.

⁴⁰ *See, e.g.*, CONN. GEN. STAT. ANN. § 53a-70(a)(2) (West 2013) (defining sexual assault in the first degree as sexual intercourse with a victim less than 13 years old, and an actor more than two years older than the victim).

⁴¹ *See* TORCIA, *supra* note 4, § 285. For instance, in Connecticut, if the victim is between the ages of 13 and 16 years, the defendant must be more than three years older than the victim to be found guilty of sexual assault in the second degree. CONN. GEN. STAT. ANN. § 53a-71 (West 2013).

⁴² *See* Annitto, *supra* note 9, at 14; Godsoe, *supra* note 16.

criminalize the acts of child victims;⁴³ and neglects to criminalize the acts of johns.⁴⁴ If law enforcement bodies instead focused their efforts on arresting and charging johns with statutory rape, johns would likely be deterred; thus those who promote CSEC would have little reason to kidnap children and beat them into submission.

A. *Victim Characteristics and Entry into “The Life”*

CSEC victims like Vivian are manipulated, beaten, and traumatized while in the sex trade.⁴⁵ They are also significantly more likely than other children to have been physically abused, sexually abused, and neglected before their sexual exploitation.⁴⁶ Among all CSEC victims, 90% had experienced some form of abuse—physical, sexual, or a combination of both—before their exploitation.⁴⁷ The onset of sexual exploitation often begins with someone the child knows. In the United States, “it is more common for children to be sexually exploited for monetary gain by family and friends” than by strangers, and that exploitation begins with a family member or friend sexually abusing the child.⁴⁸

Poverty powerfully contributes to a child’s risk of being sexually exploited.⁴⁹ This risk increases dramatically for children from poor families that are “highly dysfunctional”—families that have suffered from parental breakup, parental or relative substance abuse, and histories of physical or sexual abuse.⁵⁰ Children from middle-class families who run away from home also often fall prey

⁴³ See Godsoe, *supra* note 16.

⁴⁴ See SHIVELY ET AL., *supra* note 8, at 10.

⁴⁵ See Annitto, *supra* note 9, at 14; Godsoe, *supra* note 16.

⁴⁶ KRISTIN M. FINKLEA ET AL., CONG. RESEARCH SERV., 7-5700, R41878, SEX TRAFFICKING OF CHILDREN IN THE UNITED STATES: OVERVIEW AND ISSUES FOR CONGRESS 7 (2011), available at http://ecpatusa.org/wp/wp-content/uploads/2013/08/CRS-Report-R41878_sex-trafficking-of-children.pdf.

⁴⁷ *Id.* Researchers have concluded that CSEC victims had experienced child sexual abuse at a disproportionate rate, ranging from 21% to 42%, while in the general population these figures are only 1% to 3%. *Id.*

⁴⁸ ALBANESE, *supra* note 24, at 1.

⁴⁹ See ESTES & WEINER, *supra* note 20, at 3.

⁵⁰ *Id.* at 3, 44.

to sexual victimization.⁵¹ Selling sex becomes a method of survival, as when payment comes in the form of food or a place to sleep.⁵² Children may have a myriad of reasons for running away from home, but CSEC victims cited sexual assault by someone they knew as the primary reason.⁵³

A breakdown of CSEC statistics demonstrates that, like poverty, race and gender are compounding factors for children's victimization. A New York City study in 2008 revealed the stark racial disparities in CSEC: children of color comprised a much larger portion of CSEC victims than that of the general population.⁵⁴ African-American youth comprised one quarter of the CSEC population; Latina/o youth another quarter; and multi-racial youth who did not identify exclusively as African-American or Latina/o the final quarter of children of color in New York City.⁵⁵ Whites also comprised only a quarter of New York City CSEC victims; but, according to the most recent census data, whites make up forty-four percent of New York City's general population.⁵⁶

Despite the perception that all child trafficking victims are girls, almost half of child trafficking victims in the United States are boys.⁵⁷ In the United States, the average age of entry into CSEC is between eleven and fourteen years old.⁵⁸ Minority boys and girls enter CSEC even earlier,⁵⁹ while transgender⁶⁰ youth are

⁵¹ See Urbina, *supra* note 17.

⁵² *Id.* See also ESTES & WEINER, *supra* note 20, at 3.

⁵³ See ESTES & WEINER, *supra* note 20, at 52.

⁵⁴ CURTIS ET AL., *supra* note 3, at 42.

⁵⁵ *Id.*

⁵⁶ *Id.* See also U.S. Census Bureau, *State & Country QuickFacts: New York (city), New York (2010)*, U.S. DEP'T OF COMMERCE, <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last visited Sept. 15, 2014).

⁵⁷ ECPAT-USA, AND BOYS TOO 4 (2013). The ECPAT study found that trafficked boys received less attention because young men often would not identify as involved with CSEC due to shame or stigma, and prostituted males are seen as having more agency and choice. *Id.* at 5.

⁵⁸ ESTES & WEINER, *supra* note 20, at 92. Boys entered CSEC, on average, one year earlier than girls. *Id.*

⁵⁹ *Id.*

⁶⁰ "Transgender" refers to a person who was born with sexual organs

the last to enter.⁶¹ However, transgender youth are more likely than any other population to engage in survival sex—exchanging sex for shelter or food—because they are also more likely to be living on the streets.⁶²

Regardless of race, gender, or other socioeconomic circumstances, many children are forced or lured into commercial sexual exploitation in one of two ways: traffickers searching for children, or johns directly propositioning youth for sex. When traffickers bring children into the sex trade, they frequent familiar haunts of desperate young boys and girls: “bus stations, malls, arcades, and on the Internet.”⁶³ Then, traffickers “ensnare” their victims by building up their self-esteem, and then shattering it—by taunting, beating, and harassing them.⁶⁴ Take Shaneiqua’s story, for example:

Shaneiqua was an A student. When she was twelve a man approached her and told her she was “mad cute.” She was flattered. He took her out to dinner, and treated her like his girlfriend, what Shaneiqua called “the honeymoon period” (two weeks). One day, he turned to her and said that he loved her. Then he revealed that he was a “pimp.” He said that he would love her a lot more if she brought in money to the relationship. After she had sex for money, her “whole body just felt dead.” So she ran away to her friend’s house. Her “pimp” was already outside. He told her her behavior in “wanting to be

opposite of their gender identification. *See* ESTES & WEINER, *supra* note 20, at 72.

⁶¹ CURTIS ET AL., *supra* note 3, at 42. However, the researchers note that since the number of transgender youth they interviewed was so small, their later age of entry could be a statistical anomaly within their sampling. *Id.*

⁶² *See id.* Further, researchers concluded that law enforcement and service personnel are indifferent or even caustic towards transgender youth—as transgender people are largely castigated and discriminated against in society overall. *See id.* at 187. Without the aid of police enforcement, or the help of social services, transgender youth remain on the streets, plunging them further into dependence on the sex industry. *See id.*

⁶³ Anitto, *supra* note 9, at 13. Boys, on the other hand, are more likely to “act alone, rather than under a pimp arranging their exploitation.” *Id.* at 11–12.

⁶⁴ *Id.* at 13.

a child,” and running away was not allowed. Then, he started anally raping her. She felt like the rapes were her fault—she shouldn’t have wanted a childhood; she shouldn’t have disobeyed him. Finally, she felt like her body belonged to him.⁶⁵

What Shaneiqua’s trafficker subjected her to is akin to both “grooming” by child sexual predators, and the control honed by domestic abusers through “isolation, economic dependence, and physical and verbal abuse.”⁶⁶ The offers of a trafficker might appeal to vulnerable children who have run away from trouble at home or have been ostracized and abused by their families, because what traffickers have to offer seems “better than what the group homes and the shelter system seem[] to offer.”⁶⁷

Children frequently become victims of CSEC when johns approach them in the street. About a quarter of children in CSEC interviewed for the 2008 New York City study noted that their entry began with a stranger’s direct proposition of sex in exchange for money, food, or shelter.⁶⁸ Many of the CSEC victims whose entry began with a john’s proposition cited “being homeless” as their reason for agreeing.⁶⁹ The frequency with which johns directly proposition youth highlights the need to criminalize those who create the demand for commercial sex, and not only the traffickers who supply it.

B. Emerging Sex Trafficking Statutes

As anti-trafficking advocates have brought to light stories like Shaneiqua’s, states have begun adopting human trafficking statutes

⁶⁵ This is a narrative adaptation of Shaneiqua’s telling of her story in the film, *Very Young Girls*, a documentary made about girls with whom Girls Educational and Mentoring Services (GEMS) has worked in New York City. *VERY YOUNG GIRLS* (Swinging T Productions 2007).

⁶⁶ Annitto, *supra* note 9, at 14.

⁶⁷ CURTIS ET AL., *supra* note 3, at 47. Traffickers lure young girls with promises of “distant places” and “employment and money.” DAVID FINKELHOR & RICHARD ORMROD, *PROSTITUTION OF JUVENILES: PATTERNS FROM NIBRS 2* (2004).

⁶⁸ See CURTIS ET AL., *supra* note 3, at 48–49.

⁶⁹ *Id.* at 49.

that mirror the language of the federal Trafficking Victims Protection Act.⁷⁰ The Polaris Project, a legal advocacy group that pushes for stronger federal and state laws to combat human trafficking and aid victims, created a compilation of human trafficking laws by state.⁷¹ The results reveal a patchwork of state laws, where penalties for traffickers and johns vary considerably, and CSEC victims may remain criminalized. The Polaris Project ranks each state into one of four tiers⁷² depending on the strength of its human trafficking laws—whether the laws both punish traffickers and support survivors effectively.⁷³

According to the study, some states fully recognize trafficked persons as victims and traffickers as criminals, while others fail to identify the crime of trafficking at all. In the top tier, New Jersey and Washington received high marks for enacting sweeping legislation to deal with human trafficking.⁷⁴ Among New Jersey's accomplishments were: lowering the burden of proof for the offense of sex trafficking of minors;⁷⁵ enacting a safe harbor law that can grant minors immunity from prosecution for prostitution offenses or initiate diversion proceedings (social services as opposed to punishment) from juvenile sentencing procedures; and

⁷⁰ 22 U.S.C. § 7102(9)(A) (West 2013). Some states have adopted language similar to the federal statute, or have even widened its reach. *See, e.g.*, N.J. STAT. ANN. § 2C:13-8 (2013) (“A person commits the crime of human trafficking if he . . . knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity . . . or to provide labor or services . . .”).

⁷¹ 2013 *State Ratings on Human Trafficking Laws*, POLARIS PROJECT (2013), <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws> [hereinafter POLARIS PROJECT, 2013 *State Ratings*].

⁷² The rankings are similar to the tiered system of the annual Trafficking in Persons Report produced by the United States Department of State. *See* U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT (2013), *available at* <http://www.state.gov/j/tip/rls/tiprpt/>.

⁷³ POLARIS PROJECT, 2013 *State Ratings*, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ The lower burden of proof entails, consistent with the federal code, that the elements of “force, fraud, and coercion” do not need to be proven when a minor has been trafficked. *See id.*

training of law enforcement in human trafficking.⁷⁶ In the bottom tier, however, South Dakota received the lowest marks for “not making minimal efforts to enact a basic legal framework to combat human trafficking.”⁷⁷ The inconsistent state treatment of victims and perpetrators of human trafficking reveals the need to criminalize the johns.

Further, even the most robust state anti-trafficking laws have serious setbacks in their application. Anti-trafficking laws *should* prevent minors from being prosecuted for prostitution and mandate specialized services—such as immediate safe housing placement, or enrollment in a mentorship program—when such children have encountered law enforcement whether by arrest or rescue.⁷⁸ Unfortunately, these laws have their limits. For example, New York’s Safe Harbor Act carries “a *presumption* that a child who is charged with a prostitution offense is a victim of a severe form of trafficking under the TVPA”—but this presumption transpires in court only after a prosecutor has already charged the child with a crime.⁷⁹ Additionally, this presumption appears to be rebuttable: courts retain discretion to continue the prosecution of a child for juvenile prostitution if the child had been previously convicted of a prostitution offense or is unwilling “to cooperate with specialized services”⁸⁰

A legislative exception to treating CSEC children as victims is but one of the many hurdles in a child’s path to recovering from “the life.”⁸¹ Certainly legislators could rectify trafficking statutes’

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Sex Trafficking of Minors and “Safe Harbor”*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/safe-harbor> (last visited Sept. 15, 2014).

⁷⁹ Marihueg Cedeño, Note, *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, 173 (2012) (emphasis added).

⁸⁰ N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2013). Despite this glaring exception, New York is still faring better than many other states—it had a Tier 1 rating from Polaris’ analysis. POLARIS PROJECT, 2013 *State Ratings*, *supra* note 71.

⁸¹ Exploited children refer to their exploitation—the abuse, the money, even the love for their exploiter—as “the life.” *See, e.g.*, VERY YOUNG GIRLS, *supra* note 65.

exceptions to prosecuting CSEC victims. Yet changing the law requires drafting, organizing, support, fundraising, advocacy, and convincing legislators that your cause is worthy.⁸² Needless to say, legislative changes are uphill battles without definite outcomes.⁸³ This Note proposes a shift in enforcement as an alternative to the long road of new legislation. Specifically, it argues that prosecutors should use the offense of statutory rape, which is already at the law's disposal, to prosecute people who buy sex from children. This change would properly treat prostituted children as victims and perpetrators as criminals.

C. *Why the Criminalization of Children Persists*

In order to comprehend why even the most well-intentioned legislative fixes have not worked, it is important to understand why police and prosecutors continue to arrest and prosecute children for juvenile prostitution. It is troubling that the criminal justice system would criminalize child victims who are not only legally incapable of consenting to sex, but who are threatened, beaten, and coerced into “the life” by predatory adults. This injustice persists for a few reasons.⁸⁴ (1) typical prostitution laws⁸⁵ do not explicitly address

⁸² See, e.g., *How a Bill Becomes a Law*, N.Y. STATE SENATE, http://www.nysenate.gov/How_a-Bill_Becomes_a_Law (last visited Sept. 15, 2014). Federal trafficking legislation was first passed over a decade ago, and states are just beginning to follow suit. Trafficking Victims Protection Act, ch. 78, (2000) (codified as amended at 22 U.S.C. §§ 7101–7113 (2014)).

⁸³ There is some indication that bill passage has become even more difficult in the federal government in recent history. See Christopher Ingraham, *Congressional Gridlock Has Doubled Since the 1950s*, WASH. POST (May 28, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/05/28/congressional-gridlock-has-doubled-since-the-1950s/>.

⁸⁴ A variety of sources indicated a host of reasons for the criminalization of CSEC victims. See generally Godsoe, *supra* note 16. What is listed are the *practical* reasons for why the criminal justice system continues to prosecute and punish children who would otherwise be considered victims under the law. One *impractical* reason worth noting is that some proponents of criminalizing juvenile prostitution believe that these children are “bad” and deserve to be punished. See, e.g., *In re B.W.*, 313 S.W.3d 818, 826–27 (Tex. 2010) (Wainwright, J., dissenting) (calling B.W.’s prostitution act “distressing conduct,” her history of troubles “delinquent conduct,” and her nature that of a “violent” and “chronic runaway”).

the age of the person selling sex, and thus permit the prosecution of minors; (2) the “prostitutes” are easier to identify and get off the streets than traffickers and johns in efforts to criminalize and deter prostitution; (3) police and prosecutors wish to secure “cooperation” (e.g., testimony or leads) from victimized children in criminal proceedings against their trafficker; and (4) law enforcement authorities believe that the prosecution of children is the only way to protect them from the harms of prostitution.⁸⁶ Each of these justifications is—on some level—unsettling, given the coercion and manipulation that CSEC victims have already suffered. However, recognizing the justifications for criminalizing CSEC victims is necessary in order to understand the challenges of criminalizing the commercial sex industry, and to understand how the significant role of johns in this criminal enterprise has been woefully overlooked.

D. Prostitution Laws Have No Minimum Age Requirement

Recall the “presumption” exception in many safe harbor laws, which leave children prosecuted for prostitution because state laws do not have age minima for prostitution offenses.⁸⁷ Judges across the country have disputed whether legislators intended for prostitution statutes to apply to children in the absence of age minima. One New York case involved a twelve year-old criminal defendant named Nicolette R., who shared many of the characteristics of typical CSEC victims, such as Vivian and Shaneiqua: she “suffered sexual abuse and abandonment by her

⁸⁵ See, e.g., OHIO REV. CODE ANN. § 2907.01(D) (2013). The Ohio law states, “‘Prostitute’ means a male or female who promiscuously engages in sexual activity for hire” *Id.* The definition of a prostitute, and attendant statutes contain no age limits or minima. See *Id.* §§ 2907.01, 2907.21–25.

⁸⁶ See generally Godsoe, *supra* note 16.

⁸⁷ See, e.g., WASH. REV. CODE § 9A.88.030(1) (2014) (“A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”); N.Y. PENAL LAW § 230.00 (McKinney 2014) (“A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”); TEX. PENAL CODE ANN. § 43.02 (West 2014) (“A person commits an offense [of prostitution] if the person knowingly . . . offers to engage, agrees to engage, or engages in sexual conduct for a fee . . .”).

parents,” and after running away from the abuse, she “came under the control of an adult male pimp and was forced into prostitution.”⁸⁸ Medical examinations revealed that she bore many “scars, burns, and other wounds.”⁸⁹ Yet, a family court judge convicted Nicolette R. of juvenile prostitution.⁹⁰ When Nicolette R. appealed her conviction, she argued that her youth rendered her incapable of consenting, and thus she could not be prosecuted for having “offered to perform oral sex on an undercover police officer for forty dollars.”⁹¹ The court rejected her argument that she could not consent to sex, deciding rather that her consent to prostitution was immaterial.⁹² The court failed to reconcile the statutory paradox, and stated:

Although appellant . . . would have been deemed . . . incapable of consenting to any sexual act rendered unlawful by Penal Law article 130 [a provision dealing with lack of consent in sex offenses], this circumstance was irrelevant to the issue of whether she was properly found to have committed an act, which if committed by an adult, would constitute the crime of prostitution.⁹³

Other courts, however, have read statutory rape laws in conjunction with prostitution offenses, finding that prosecutors have no grounds on which to charge a minor with prostitution. For example, in a Texas Supreme Court decision that examined similar facts,⁹⁴ the court could not hide its bewilderment at the state’s inclination to prosecute exploited children: “[i]t is difficult to reconcile the Legislature’s recognition of the special vulnerability of children, and its passage of laws for their protection, with an intent . . . to consider children quasi-criminal offenders guilty of an act that necessarily involves their own sexual exploitation.”⁹⁵ Unfortunately, the decision only protects children under the age of

⁸⁸ Annitto, *supra* note 9, at 34–35 (citations and quotations omitted).

⁸⁹ *Id.* at 35 (citations omitted).

⁹⁰ See *In re Nicolette R.*, 9 A.D.3d 270, 270 (N.Y. App. Div. 2004).

⁹¹ Annitto, *supra* note 9, at 34 (citing *In re Nicolette R.*, 9 A.D.3d at 270).

⁹² See *id.*

⁹³ *In re Nicolette R.*, 9 A.D.3d at 271.

⁹⁴ See Annitto, *supra* note 9, at 35–36.

⁹⁵ *In re B.W.*, 313 S.W.3d 818, 821–22 (Tex. 2010).

fourteen⁹⁶ because it applies only to the *highest* offense of statutory rape under Texas's "two-tier statutory rape" paradigm.⁹⁷ Under this paradigm, children in Texas would be immune from prosecution only if they were thirteen years old or younger at the time of the charged offense (the first-tier law), while the fate of children between fourteen and seventeen years old would be left to the whims of prosecutors and judges (the second-tier law).⁹⁸ The disparate outcomes in New York and Texas reveal the power that judicial discretion can wield over children, and the judicial system's failure when children are criminalized in a vacuum, without considering johns' culpability.

E. Arresting Prostituted Children is Easier

Second, in efforts to reduce prostitution, law enforcement officials justify arresting children for prostitution by citing the difficulty of catching and convicting johns and pimps. This justification for arresting children—that it is a way of eradicating the commercial sex industry—relies on the same theories for arresting adults: prostituted people who are prosecuted are usually convicted;⁹⁹ prostituted people working on the street are supposedly highly visible, unlike johns and pimps/traffickers;¹⁰⁰ and decoy arrests of johns are more likely to engender entrapment

⁹⁶ See Annitto, *supra* note 9, at 34.

⁹⁷ *Id.* at 37 (noting that the decision rested on Texas strictly criminalizing an adult engaging in sex with a child under the age of fourteen, but that defenses were available to offenders who had sex with children fourteen years of age or older).

⁹⁸ See *id.*

⁹⁹ See MICHAEL S. SCOTT, OFFICE OF CMTY. ORIENTED POLICING SERVS., PROBLEM-ORIENTED GUIDES FOR POLICE SERIES NO. 2: STREET PROSTITUTION 17 (2002).

¹⁰⁰ See *Sex Workers at Risk: Summary*, HUMAN RIGHTS WATCH (July 19, 2012), <http://www.hrw.org/node/108771/section/2>. For instance, the practice of using condoms as evidence to enforce prostitution laws has led to increased profiling of transgender women and women of color on the street. *Id.* "Police stops and searches for condoms are often a result of profiling, a practice of targeting individuals as suspected offenders for who they are, what they are wearing and where they are standing, rather than on the basis of any observed illegal activity." *Id.*

defenses—that the police induced the defendant to commit a crime.¹⁰¹ Due to these vulnerabilities to arrest, prostituted people have been characterized as “low hanging fruit” whose arrest and conviction can demonstrate law enforcement officials’ commitment to quash prostitution and its attendant social ills.¹⁰² The arrest disparity between prostituted children and johns is stark: “more than ten times as many minors were arrested for prostitution as were customers for solicitation of minor prostitutes over a twenty-five year period in New York City.”¹⁰³ The hope that arresting prostituted minors would reduce both their level of recidivism and prostitution in general was short-lived.¹⁰⁴ In one New York City study, for example, the average CSEC victim had been arrested 2.5 times.¹⁰⁵ Another study, a guide for state law enforcement on effectively policing prostitution, determined that arresting prostituted persons—adult or minor—was ineffective in stemming the prostitution industry, as arrests and convictions were fruitless deterrents.¹⁰⁶ The “it’s easy” justification for arresting prostituted minors is not only harmful to children, it is also unsuccessful as both a specific and general deterrence strategy to prostitution. Despite compelling evidence to the contrary, law enforcement cling to the idea that arresting children for their own exploitation somehow furthers the larger pursuit of eliminating prostitution.

F. Prosecution of Children to Induce Cooperation

Third, police officers and prosecutors hold over child victims the threat of prosecution in order to induce their cooperation in criminal proceedings against their traffickers. Opponents of the decriminalization of juvenile prostitution believe that “an exploited

¹⁰¹ SCOTT, *supra* note 99, at 17.

¹⁰² Godsoe, *supra* note 16 (“[B]ecause it is easier to prosecute prostitutes than pimps, police and prosecutors are simply focusing on the ‘low hanging fruit’ to keep their numbers up, rather than actually pursuing the most culpable offenders or changing the system.”).

¹⁰³ *Id.* (citations omitted).

¹⁰⁴ See CURTIS ET AL., *supra* note 3, at 89.

¹⁰⁵ *Id.*

¹⁰⁶ SCOTT, *supra* note 99, at 17.

youth . . . can . . . perhaps be persuaded to provide information against his or her pimp.”¹⁰⁷ Indeed, prosecutors in New York City opposed proposals to decriminalize prostitution because they believed the threat of prosecution over juveniles was necessary to secure testimony against their traffickers.¹⁰⁸ Though advancing the criminalization of traffickers is a valid objective, the ends do not justify the means. Coercing children’s cooperation by threatening a prostitution charge is akin to threatening a victim of domestic violence with a disorderly conduct charge if she refuses to testify against her attacker. Twisting the law into a tool for intimidation makes police and prosecutors complicit in a pattern of coercion all-too-familiar and haunting to CSEC victims.

G. Prosecution of Children to Protect Them

Finally, some practitioners in the criminal justice system believe that prosecuting child victims for prostitution is the only way to “protect minors from their own behavior.”¹⁰⁹ In addition, some law enforcement officials who are aware of CSEC believe that prosecuting child victims is the only adequate means of protecting victims not from themselves, but from their traffickers.¹¹⁰ Professor Cynthia Godsoe, a legal scholar on children and the law, argued that the latter concern is legitimate, and many officers “may feel that their hands are tied” since they cannot “detain [a child victim] securely . . . without a criminal charge.”¹¹¹ Officers worry that these children will be “wooded or threatened back into the life by a pimp.”¹¹²

¹⁰⁷ Annitto, *supra* note 9, at 27.

¹⁰⁸ Godsoe, *supra* note 16 (citations omitted). Godsoe indicates that New York City prosecutors legitimately believe they need threats because these “girls are flight risks” due to their history of running away, the fear of their “pimp,” or even their love for him. *Id.*

¹⁰⁹ Annitto, *supra* note 9, at 27.

¹¹⁰ Godsoe, *supra* note 16 (stating that minors are confined to ensure that they are “housed” away from their pimps).

¹¹¹ *Id.* (citations omitted).

¹¹² *Id.* (citations and quotations omitted). One police officer empathically asked, “How do you keep them safe once you find them?” *Id.* (citations omitted).

With insufficient social services available to trafficked children, many police officers feel that incarceration is their only recourse to protect children from further exploitation.¹¹³ While these concerns merit sympathy, in reality incarcerating CSEC victims only serves to further isolate and harm a population whom adults have continually abused and mistreated. Children arrested for juvenile prostitution may be *more* likely to return to “the life” once they receive a criminal record, as their criminal history leaves them ashamed to return to their families or destitute of employment opportunities outside of the commercial sex industry.¹¹⁴ The significant harms that result from criminalizing CSEC victims outweigh any proffered practical reasons. The goals of punishing these victims remain still unfulfilled, necessitating a change in enforcement and treatment.

III. (ADULT) PROSTITUTION: “THE OLDEST OPPRESSION”¹¹⁵

The market for adult prostitution creates and reinforces the market for child sex trafficking. A sweeping University of Pennsylvania study on child sex trafficking across the United States, Canada, and Mexico concluded that “the presence of pre-existing adult prostitution markets in communities where large numbers of street youth are concentrated” is the second most cited reason for the rise of CSEC.¹¹⁶ The study identified several reasons

¹¹³ *See id.*

¹¹⁴ *See id.* (quoting police and prosecutors who admit frustration about the “‘revolving door’ of arrest and incarceration” for child “prostitutes”).

¹¹⁵ Prostitution is often referred to as “the world’s oldest profession.” *See* Forrest Wickman, *Is Prostitution Really the World’s Oldest Profession?*, SLATE (Mar. 6, 2012, 5:57 PM), http://www.slate.com/articles/news_and_politics/explainer/2012/03/rush_limbaugh_calls_sandra_fluke_a_prostitute_is_prostitution_really_the_world_s_oldest_profession.html. Prostitution as “the oldest oppression” was coined by feminist, abolitionist advocates. *See, e.g.*, Julie Bindel, *Eradicate the Oldest Oppression*, THE GUARDIAN (Jan. 17, 2006), <http://www.theguardian.com/uk/2006/jan/18/ukcrime.prisonsandprobation>. *See generally, e.g.*, KATHLEEN BARRY, THE PROSTITUTION OF SEXUALITY 11 (1995) (providing an example of how the term can be used to question subjugation of sexuality).

¹¹⁶ ESTES & WEINER, *supra* note 20, at 2. Among the cited reasons for the creation of child sex trafficking, the existence of adult prostitution markets was

why the presence of an adult prostitution market would generate one for children: (1) an adult market is already well-known to “local and transient males,” enabling those interested in children to use the market for preying on children for sex; (2) adult markets occur most commonly in communities with drugs and cheap hotel rooms, which are also conducive to a child market; (3) police enforcement of prostitution is low in such poor communities; and (4) adult markets already create anonymity for exploiters, and subsequently for the children who are brought into exploitation.¹¹⁷

The intrinsically oppressive nature of the child prostitution market becomes more comprehensible when examined through the lens of the adult prostitution market, where pimps and traffickers use a host of similar tactics to induce adults to sell sex, as they would children. Further, there are few differences between johns who buy sex from children and johns who buy sex from adults.¹¹⁸ Therefore, the solution that this Note proposes—holding johns accountable for the harms they inflict on children—hinges on analyzing the commercial sex industry as a whole.

A. Characteristics of Prostitutes: Socioeconomic Circumstances and Victimization

There are important distinctions between prostituted people who control the sexual services they sell and those who are under the control of a pimp or trafficker. Unsurprisingly, prostituted people working for a pimp experience many of the same abuses as children who are forced into the commercial sex industry.¹¹⁹ Generally, prostituted people who are not involved with pimps fare better than their trafficker-controlled counterparts.¹²⁰ Those under the control of pimps “make the least money, [and] are more likely

second only to “the use of prostitution by runaway and throwaway children to provide for their subsistence needs.” *Id.*

¹¹⁷ *Id.* at 42.

¹¹⁸ There are, of course, johns who are specifically attracted to children, but most johns who buy sex from children do not have this expressive desire. *See* RACHEL LLOYD, *GIRLS LIKE US* 107 (Harper Collins, 1st ed. 2011).

¹¹⁹ *See* SHIVELY ET AL., *supra* note 8, at 10.

¹²⁰ *Id.*

to be drug addicted, [and] subjected to violence”¹²¹ The control of a pimp also means that these prostituted people “have the least control over their workload, choice of ‘clients,’ and the money earned.”¹²² Although the number of adults trafficked into the commercial sex industry is uncertain, social science studies suggest that “up to 80% of . . . women and girls serving as prostitutes had been coerced or forced to engage in prostitution by pimps or traffickers.”¹²³ This number is a conservative estimate when one accounts for the age of entry into prostitution, which is often very young.¹²⁴ On average, all prostituted people (adults and children) enter prostitution between the ages of twelve and sixteen—ages at which they would legally be considered a minor victim of sex trafficking.¹²⁵ Even for those people who are not controlled by a trafficker, their entry into prostitution mostly likely began in their childhood when they were incapable of choosing such work.

Poor education, prior abuse, and economic desperation are the factors that not only force prostituted people into the sex industry, but also “conspire to keep them there.”¹²⁶ Similar to victims of CSEC, the greatest risks for adults entering prostitution are “running away from home and homelessness.”¹²⁷ Prostituted persons are often unable to sustain themselves by any means other than selling sex given “high levels of childhood truancy, poor education, poor employment skills, and debt.”¹²⁸ Like child victims

¹²¹ *Id.* (citations omitted). Prostitutes under the control of pimps were also “more likely to have an inadequate education, to be chronically unemployed, and to have been younger when they first had intercourse, tried drugs, and engaged in prostitution.” *Id.* at 13 (citations omitted).

¹²² *Id.* at 10 (citations omitted).

¹²³ *Id.* at 13 (citations omitted).

¹²⁴ The United States Code makes it a crime for someone to use a child “to engage in a commercial sex act;” showing force, fraud, or coercion is not necessary for proving the trafficking of children. 18 U.S.C. § 1591(a) (2013).

¹²⁵ SHIVELY ET AL., *supra* note 8, at 11 (citations omitted). Under the United States Code, a child victim of sex trafficking is one who “has not attained the age of 18 years.” 18 U.S.C. § 1591(a)(2) (2013).

¹²⁶ SHIVELY ET AL., *supra* note 8, at 11..

¹²⁷ *Id.* at 12 (citations omitted). Prostitution is a method of last resort for survival. *Id.* (citations omitted).

¹²⁸ *Id.*

of CSEC, adults who are prostituted also experience a high incidence of physical abuse—up to seventy-five percent—and sexual abuse—up to eighty-two percent—before they enter prostitution.¹²⁹

Prostituted people continue to experience physical abuse, sexual abuse, and a lack of economic independence once they enter the commercial sex industry. Prostituted persons under the control of a pimp do not earn nearly as much money as the pimp.¹³⁰ Instead, the pimp retains between sixty and seventy percent of the money that the prostituted person earned.¹³¹ Even under the auspices of Nevada's legal, regulated brothels discussed in Part B below, prostituted people keep less than half of what they earn.¹³²

Inequitable pay distribution, however, is a minor injustice compared to prostituted persons' deplorable working conditions and treatment. In the United States, between seventy-three and ninety-two percent of prostituted people have been raped in the course of working in the commercial sex industry.¹³³ Johns, pimps, and traffickers commit most of these assaults.¹³⁴ But prostituted people are also much more likely than the average American to be raped by a stranger, i.e. someone not buying sex or involved in the industry, often because they must work in high-crime areas at late hours.¹³⁵

Further compounding their victimization, prostituted people

¹²⁹ See *id.* For children of CSEC, up to 90% have experienced some form of physical or sexual abuse. Finklea et al., *supra* note 46, at 7.

¹³⁰ See SHIVELY ET AL., *supra* note 8, at 14.

¹³¹ *Id.*

¹³² See Barbara G. Brents & Kathryn Hausbeck, *State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels*, 44 SOC. PERSP. 307, 326 (2001) (describing a prostituted person's pay in Nevada's brothels as a "50/50 split" with the house, from which room and board, and often tips for other staff are further subtracted). Nevada does not allow for prostituted people to work independently of a brothel; thus, it is impossible for these workers to break free of these conditions. See *id.* at 313; NEV. REV. STAT. § 201.354 (2013).

¹³³ SHIVELY ET AL., *supra* note 8, at 13 (citations omitted).

¹³⁴ See *id.*

¹³⁵ See David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1362–63 (1997).

rarely see their rapists convicted or even prosecuted.¹³⁶ This failure of the justice system is a product of prosecutors who refuse to pursue the johns' cases because of the high likelihood of acquittal; and of judges who frequently admit evidence that the victim was a prostitute in contravention of rape shield laws.¹³⁷ Rape shield laws prohibit evidence of a rape victim's prior sexual history because such evidence would often serve only to embarrass and shame the victim, rather than bear on the issue of consent.¹³⁸ Many judges, however, believe that prostitution bears not only on the issue of consent, but also on a victim's credibility.¹³⁹ Once the victim's status as a prostituted person is admissible, juries believe that it is impossible to rape a prostitute.¹⁴⁰ An in-depth study of prosecutors' charging decisions for sexual assault cases found that the realities of what would play out in the courtroom heavily informed charging decisions.¹⁴¹ Prosecutors were averse to bringing charges against an attacker who had raped a prostitute—or even someone *suspected* of being a prostitute.¹⁴² Effectively, the

¹³⁶ See *id.* at 1210–11, 1246, 1360.

¹³⁷ Karin S. Portlock, Note, *Status on Trial: The Racial Ramifications of Admitting Prostitution Evidence under State Rape Shield Legislation*, 107 COLUM. L. REV. 1404, 1407 (2007). New York, for example, explicitly exempts evidence of a victim's prostitution conviction from the traditional bar to admitting prior sexual conduct. N.Y. CRIM. PROC. LAW § 60.42(2) (McKinney 2014).

¹³⁸ See Portlock, *supra* note 137, at 1405–07.

¹³⁹ *Id.* at 1405–06 (explaining that judges believe that excepting a woman's status as a prostitute as evidence is reasonable because it “bears on [her] credibility . . . as a witness or . . . has a tendency to show [she] consented”). The belief that prostituted people lack credibility harkens back to antiquated notions of not being able to trust “loose” or “unchaste” women. See Michelle J. Anderson, *From Chastity Requirement to Sexual License: Sexual Consent and a New Rape Shield Law*, 70 GEO. WASH. L. REV. 51, 75 (2002) (“[C]ourts presumed that if a witness was unchaste, she had broken social mores already and so was significantly more likely to continue to defy those mores by lying as a witness under oath.”).

¹⁴⁰ Portlock, *supra* note 137; see also Bryden & Lengnick, *supra* note 135, at 1360.

¹⁴¹ Lisa Frohmann, *Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections*, 38 SOCIAL PROBLEMS 213, 218, 224 (1991).

¹⁴² *Id.*

American justice system treats prostituted people—regardless of their desire to be in the commercial sex industry or not—as second-class citizens. To traffickers, they are property; to law enforcement, they are criminals; and to the courts, they are not worthy of the law’s protection even if they have experienced inordinate violence. This biased view of prostituted people is so powerful that even prostituted children do not benefit from the legal protections they would routinely engender as minor victims of any other crime.

B. Characteristics of Johns: People Who Buy Sex

Unlike their minor victims and prostituted adult counterparts—who are often poor, runaway, and homeless people of color—johns reflect the broader characteristics of adult society.¹⁴³ The commonalities among johns who buy sex from minors, or johns who buy sex from adults, may end at their shared interest in paying for sex; they are virtually indistinguishable from the rest of the male¹⁴⁴ population.¹⁴⁵ A Boston psychology study on men who pay for sex found that the johns spanned income levels; the bulk of johns earned between \$20,000 and \$80,000 per year and 5% made over \$140,000 per year.¹⁴⁶ The johns studied also varied widely in

¹⁴³ See SHIVELY ET AL., *supra* note 8, at 7.

¹⁴⁴ Although johns can be both men, women, and gender non-conforming adults, this section discusses men because most research has delved into the study of male johns, rather than johns of other genders. See, e.g., CURTIS ET AL., *supra* note 3, at 79 (describing a surprising number of female johns reported by both male and female child victims).

¹⁴⁵ SHIVELY ET AL., *supra* note 8, 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.”). Despite demographic and socioeconomic diversity, johns do seem to share “certain attitudes, life experiences, and behavioral tendencies that distinguish them from their non-buying peers.” MELISSA FARLEY ET AL., PROSTITUTION RESEARCH & EDUCATION, COMPARING SEX BUYERS AND MEN WHO DON’T BUY SEX 4 (2011), available at http://prostitutionresearch.com/pub_author/melissa-farley-and-emily-schuckman-and-jacqueline-m-golding-and-kristen-houser-and-laura-jarrett-and-peter-qualliotine-and-michele-decker/.

¹⁴⁶ FARLEY ET AL., *supra* note 145, at 12 tbl.3. Note that although Farley

age, from twenty to seventy-five years old.¹⁴⁷ Their education levels were commensurate with the general population: 44% had a college or graduate degree.¹⁴⁸ Finally, their race reflected demographics in the United States: most were white.¹⁴⁹ Further studies have also revealed that over forty percent of johns are married.¹⁵⁰

While no study has focused exclusively on johns who either knowingly or unknowingly buy sex from children, many studies have concluded that most johns “are not specifically attracted to children”—or at least, they do not realize that they are.¹⁵¹ Buying sex from children is part of a larger demand for sexual experiences with younger and younger prostituted persons. One study in Chicago analyzed johns’ posts from the USA Sex Guide—an online forum where johns could post about buying sex, an activity johns named their “great hobby”—for three months in order to understand the attitudes of people who buy sex.¹⁵² The Chicago

and her fellow researchers found that many aspects of their conclusions were consistent with other studies of johns, the findings cited herein are from this study alone. *See, e.g., id.* at 47 tbl. 17 (comparing Boston johns’ reactions to deterrents to johns’ reactions in Boston, England, Chicago, and Scotland). This study of johns has a fairly small regional scope: the metropolitan area of Boston, Massachusetts, and thus its findings may not extrapolate to the entire population of johns in the United States. *See id.* at 11 (noting that interviews occurred in a “[c]entral Boston location”).

¹⁴⁷ *See id.* at 12.

¹⁴⁸ *See id.* at 13, tbl.4.

¹⁴⁹ *See id.* at tbl.5.

¹⁵⁰ *See SHIVELY ET AL., supra* note 8, at 7 (finding that 41% of johns were married).

¹⁵¹ LLOYD, *supra* note 118, at 107 (“[V]iewing men who purchase children and youth for sex as pedophiles leads to a sense that it is isolated behavior among men who are ‘sick’ and ‘perverted.’ It allows us to overlook the fact that most of the men doing the buying are what we would consider ‘normal.’”).

¹⁵² LARA JANSON ET AL., CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, “OUR GREAT HOBBY”: AN ANALYSIS OF ONLINE NETWORKS FOR BUYERS OF SEX IN ILLINOIS 2 (2013). Similar to Melissa Farley and her colleagues’ research, researchers in the Chicago study limited their findings to a discreet regional area: Illinois. *See FARLEY ET AL., supra* note 145, at 47 tbl. 17 (comparing Boston johns’ reactions to deterrents to johns’ reactions in Boston, England, Chicago, and Scotland); JANSON ET AL., *supra* note 152 (noting that the research focused on posts from johns who buy sex in Illinois). Thus, the

study found that an “overwhelming majority of [johns] . . . state a preference for ‘young’ women.”¹⁵³

Johns’ motivations for buying sex range from the desire “to engage in sex acts that few other women are willing to engage in” to the feeling “that most women find them unattractive.”¹⁵⁴ Despite this latter motivation, researchers found that all of the johns in their study chose the words “player, stud, [or] powerful” to describe men who buy sex.¹⁵⁵ In addition to these expressed motivations, probing revealed that johns’ underlying approbation for buying sex derived from their “view of sex as a commodity and their sense of entitlement to sexual access to women.”¹⁵⁶ Thirty-two percent of johns justified participating in the prostitution industry because they believed it “reduces the likelihood of rape.”¹⁵⁷

Aside from the belief that they have a right to use people for sex on demand, johns are eminently aware of the harms adults and children experience in the commercial sex industry. There are no discernible differences between johns who have bought sex from trafficked women and those who have bought sex from independent sex workers—most likely because johns either do not know or do not care how the person they are buying sex from came into the trade.¹⁵⁸ Many johns on the USA Sex Guide discussed how prostituted “women”¹⁵⁹ were not happy “when ‘performing’ for

Chicago study may suffer from the same limitations as the Boston one: regional homogeneity.

¹⁵³ *Id.* at 53.

¹⁵⁴ SHIVELY ET AL., *supra* note 8, at 8.

¹⁵⁵ FARLEY ET AL., *supra* note 145, at 26.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 27. As one john explained this theory, “[i]f a person seeks sex with a prostitute and doesn’t get it, he can go into the park and grab a girl and rape . . .”; and another, “where there is lots of prostitution, no rapes.” *Id.*

¹⁵⁸ See SHIVELY ET AL., *supra* note 8, at 4 (“The distinction between people selling sex who are versus are not compelled by a third party [e.g. a pimp or trafficker] is usually invisible to buyers—particularly since most buyers are motivated to believe that providers [prostituted women] are involved voluntarily. Market incentives and fear of reprisals from pimps and traffickers motivate providers of commercial sex who are trafficked to present themselves as if they participate voluntarily, and most johns cannot (or choose not to) see otherwise.”).

¹⁵⁹ Researchers were unable to discern the real age of the prostituted people

[them]” and that such women wished to exit the commercial sex industry.¹⁶⁰

Beyond an absence of enthusiasm, johns saw that the prostituted people from whom they bought sex exhibited glaring signs of harm: that they were children, that they were distressed, that they had been coerced, and that their work subjected them to violence.¹⁶¹ While it is impossible to tell the age of most of the prostituted people about whom the johns posted, there are posts indicating johns believe that some prostituted people are underage.¹⁶² Oftentimes, researchers found that johns used diminutive euphemisms like “petite,” “innocent,” “tiny,” or “little” to describe the individuals from whom they had purchased sex.¹⁶³

Other posts exhibited johns’ awareness of the coercive and violent relationships between prostituted people and pimps. Many johns noted that they believed pimps were dangerous.¹⁶⁴ When johns did express their belief that a certain pimp was dangerous, they were mostly concerned for their own welfare.¹⁶⁵ Johns managed to gloss over evidence of abuse by pimps in order to maintain the illusion that prostituted women and children enjoy sex with them. One john on the USA Sex Guide spoke of a girl with “scars” and a “bandaid,” but reassured his fellow johns that he managed to get past these initial “turn-offs,” and, as the researchers noted, “in the end he couldn’t resist . . . her ‘little body.’”¹⁶⁶ Another john from the Boston study spoke somewhat regretfully about a person from whom he bought sex when she had to give the entire fee over to a man waiting for her.¹⁶⁷ “I would have cancelled

that johns posted about. See JANSON ET AL., *supra* note 152, at 52 (“[C]omments on the Illinois Sex Guide about harm to women and girls relate more to these johns’ general perceptions [about age] than to tangible statistics[characteristics].”).

¹⁶⁰ *Id.*

¹⁶¹ *See id.* at 52–57.

¹⁶² *See id.* at 52–54.

¹⁶³ *See id.*

¹⁶⁴ *See id.* at 56 (“[M]en occasionally post about pimps . . . viewing them as a potential danger.”).

¹⁶⁵ *See id.* at 57.

¹⁶⁶ *Id.* at 53.

¹⁶⁷ *See FARLEY ET AL.*, *supra* note 145, at 23.

it,” the same john noted—because he knew she had been and would be physically abused—“but for my urges”¹⁶⁸ Both the online comments of johns and personal interviews with them confirm that they are aware of—if not actively seeking—sex from abused adults and from children.

The Boston study concluded that the johns had “extensive knowledge about trafficking for prostitution.”¹⁶⁹ Yet this knowledge failed to deter johns from buying sex, or even from buying sex from the specific person whom they suspected was trafficked or abused.¹⁷⁰ The Boston study attributed johns’ continued prostitution purchases to a few factors: johns not considering the consequences of their actions; the significant ease of buying sex; and the lack of law enforcement penalties that limit their access to women in the industry.¹⁷¹ Both johns’ failure to consider their actions and law enforcement’s failure to penalize them are the exact failures in the law that this Note proposes to remedy by accurately implementing statutory rape laws against johns who buy sex from trafficked children.

C. Statutory Rape Charges against Johns are Consistent with Other Prostitution Reform Efforts

Charging johns with statutory rape for buying sex from a trafficked child would be applicable notwithstanding the larger advances in prostitution reform. As discussed above, the commercial sex industry in America is rife with violence, coercion, and maltreatment of those who sell sex. The largest point of contention among advocates wishing to correct these injustices is how to go about doing so.¹⁷² The solution offered in this Note is

¹⁶⁸ *Id.* Yet another john in the Boston study spoke of one prostituted woman whom he knew was raped repeatedly by her pimp, but the rapes, he commented, were only “[e]very once and a while, not every week” *Id.* at 24.

¹⁶⁹ *Id.* at 24.

¹⁷⁰ *See id.*

¹⁷¹ *See id.*

¹⁷² *See, e.g.,* Michelle Goldberg, *Should Buying Sex Be Illegal?*, THE NATION (July 30, 2014), <http://www.thenation.com/article/180835/should-buying-sex-be-illegal?page=0,0> (describing the successes and failures of

meant to correct the debase injustices leveled against children trafficked into sex. There are, of course, larger issues in the sex industry, such as how prostituted adults are treated, whether sex work can be just that—work, and what reforms might produce the best outcomes for both prostituted persons themselves and society as a whole.¹⁷³ An adult’s act of preying on a child for sex would constitute statutory rape regardless of money changing hands. The proposal in this Note would still remedy this injustice regardless of whether the prostitution industry were legalized or further criminalized.

In order to understand proposed reforms to prostitution, it is important to examine the theoretical landscape of the United States’ prostitution policies. Today, all jurisdictions in the United States except Nevada criminalize prostitution.¹⁷⁴ Sociologists Barbara G. Brents and Kathryn Hausbeck, who study the regulation of sex in America, contend that most United States jurisdictions have prostitution policies that focus on abolitionism (punishing “third-party ‘exploiters,’ not the ‘innocent’ prostitute”¹⁷⁵) and criminalization (punishing the prostituted person and anyone else promoting or engaging in prostitution).¹⁷⁶ Criminalization policies are most common where law enforcement criminalizes all three parties in the commercial sex industry: the supply side (the prostituted adults), the distribution side (the “pimps”), and the demand side (the johns).¹⁷⁷

Those wishing to reform prostitution policies generally fall into two camps: abolition and legalization. On one side of the feminist

legalization and abolition efforts worldwide regarding prostitution).

¹⁷³ See *id.* (describing the debates between sex-work-as-work reformists, and reformists who believe prostitution can never be a choice).

¹⁷⁴ Brents & Hausbeck, *supra* note 132, at 308. See also NEV. REV. STAT. ANN. § 201.354(1) (West 2012). (“It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.”).

¹⁷⁵ Boston, Massachusetts, however has just instituted a prostitution policy resembling abolitionism. Zachary T. Sampson, *Program in Boston Targets Men Who Buy Sex*, BOS. GLOBE (June 4, 2014), <http://www.bostonglobe.com/metro/2014/06/03/city-aims-reduce-prostitution-targeting-those-who-pay-for-sex/3RR2RtPPkF4Y2P7Ain0APO/story.html>.

¹⁷⁶ See Brents & Hausbeck, *supra* note 132, at 308–09.

¹⁷⁷ See *id.* at 309.

debate, abolitionists agree that the law should continue to punish prostitution, but the law should re-frame prostitution as a crime *against* prostituted people; a crime that serves to “mainly benefit men.”¹⁷⁸ Abolitionists are often concerned both with the treatment of women and with the commodification of sex in prostitution.¹⁷⁹ The commodification of sex, like paying for adoption, raises concerns about commodification of the human body, a practice too close to slavery for comfort.¹⁸⁰

On the other side of this feminist debate,¹⁸¹ reformers support the legalization of prostitution based on emerging notions of sex work as an occupation and women’s voluntary participation therein.¹⁸² Legalization advocates note, for example, that the criminalization of voluntary sex work has led to grave human rights abuses where sex workers are denied wages, health benefits, and equal treatment under the law because of their label as “prostitutes.”¹⁸³ Legalization advocates argue that the over-criminalization of sex work has marginalized—and will further marginalize—sex workers, and that the most practical approach to eradicating violence and coercion in the industry is to implement

¹⁷⁸ See *id.*

¹⁷⁹ See *id.*

¹⁸⁰ See EDWARD W. NELSON ET AL., ETHICS COMM. OF ORGAN PROCUREMENT & TRANSPLANTATION NETWORK, FINANCIAL INCENTIVES FOR ORGAN DONATION: WHITE PAPERS (June 30, 1993), *available at* <http://optn.transplant.hrsa.gov/resources/bioethics.asp?index=4> (stating that “purely economic approaches to organ donation may start the ultimate slide down the slippery slope—i.e. the human body literally becoming a commodity to be bought, sold, and bartered” (citations and quotation marks omitted)); see also MICHAEL J. SANDEL, WHAT MONEY CAN’T BUY 9 (Farrar, Strauss and Giroux eds., 1st ed. 2012). Michael Sandel summarizes, “[s]lavery was appalling because it treated human beings as commodities, to be bought and sold at auction.” *Id.*

¹⁸¹ See, e.g., Catherine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271 (2011).

¹⁸² See Brents & Hausbeck, *supra* note 132, at 309.

¹⁸³ See, e.g., Sienna Baskin & Crystal DeBoise, Sex Workers Project, *Expert Letter to the U.N. Universal Periodic Review Concerning Sex Workers’ Rights* (Feb. 23, 2011), *available at* <http://sexworkersproject.org/downloads/2011/20110223-upr-expert-letter.pdf>.

regulations and government oversight.¹⁸⁴

Under an abolitionist model, reformers would agree that using statutory rape laws to pursue the dismantling of demand for trafficked children would effectively punish the perpetrators who create a market for underage people in sex work in the first place.¹⁸⁵ Yet, even under the legalization model, using statutory rape laws to curb buying sex from children would be effective, as traditional consent and rape laws would still be in place. Furthermore, even if legalization had the effect of improving working conditions for sex workers, failing to punish johns who buy sex from a child would perpetuate the stereotype that children in the sex industry do not deserve the same protections from predatory adults as children outside of the sex industry.

Abolitionists believe that the sex industry must be criminalized because it is impossible to disaggregate the sale of sex from the objectification of women and its attendant violence.¹⁸⁶ However, both abolitionists and proponents of legalization agree that prostitution should be free from coercion, be it physical, economic, or that which is inherent when children are involved.¹⁸⁷ Using existing statutory rape laws to punish johns who buy sex from the most marginalized and vulnerable segments of the sex industry—children—is also a politically feasible solution before the radicalization of any prostitution laws in the United States.

D. The Current Enforcement and Effects of the Criminalization of Prostitution

Despite the codification of state laws against the suppliers, distributors, and demand, the way such laws are enforced in the United States today is, at best, uneven. Prostituted adults are much more likely to be arrested for solicitation than johns are for

¹⁸⁴ See *id.*

¹⁸⁵ See END DEMAND NYC: A CAMPAIGN TO END SEX TRAFFICKING, <http://www.enddemandnyc.org/> (last visited Sept. 15, 2014).

¹⁸⁶ See, e.g., MacKinnon, *supra* note 181, at 272–74.

¹⁸⁷ See *id.* at 274–75 (explaining the facets of the “sex work” (decriminalization) approach, and the “sexual exploitation” (abolitionist) approach).

patronizing a prostitute.¹⁸⁸ The frequent arrests of prostituted people instead of johns are often a matter of police department policy or practice.¹⁸⁹ The “standard procedure” for police enforcement of prostitution laws is “for undercover officers to pose as customers, obtain a solicitation, and arrest the prostitute.”¹⁹⁰ This process fails to account for the involvement of the pimp/trafficker or john, and yet is “repeated . . . often to incarcerate as many women as possible.”¹⁹¹ The lack of enforcement against johns is not only a product of policies that almost exclusively target prostituted women, but also one of practicality. Police departments often do not have enough female officers to pose as prostitutes in order to “conduct effective solicitation enforcement campaigns” against the johns.¹⁹² A Department of Justice report on effective enforcement of street prostitution determined that “decoy arrests of clients [johns] are open to legal entrapment defenses¹⁹³ if officers are not careful.”¹⁹⁴

¹⁸⁸ See SCOTT, *supra* note 99, at 16 (“Historically, the police have arrested far more prostitutes than clients.”).

¹⁸⁹ See Steve Marcin, *Prostitution and Human Trafficking: A Paradigm Shift*, FBI.GOV (March 2013), www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2013/March/prostitution-and-human-trafficking. The Office of Community Oriented Policing Services’ (COPS) study found that enforcement was consistent with this police method, where enforcement “usually requires undercover police officers to pose as clients to gather the necessary evidence.” SCOTT, *supra* note 99, at 17.

¹⁹⁰ Marcin, *supra* note 189. This bulletin highlights one jurisdiction’s (the Anaheim Police Department’s) new tactic to police prostitution: help to remove prostituted women, and focus on enforcing laws against pimps and traffickers. *Id.* Anaheim’s findings after implementing the shift are encouraging for helping survivors rebuild their lives, and prosecuting perpetrators of severe trafficking. *Id.* However, the bulletin makes no mention of either criminalizing johns, or whether the shift has successfully reduced sex trafficking in the area (or surrounding areas).

¹⁹¹ *Id.*

¹⁹² SCOTT, *supra* note 99, at 17.

¹⁹³ An entrapment defense is applicable “when a government agent induces the defendant to commit the offense.” PAUL H. ROBINSON, 2 CRIM. L. DEF. § 209 (2014). The possibility of an entrapment defense may be especially odious to police officers contemplating arresting johns because many interpret the entrapment defense as a method “to deter police misconduct.” *Id.*

¹⁹⁴ SCOTT, *supra* note 99, at 17.

The entrapment defense appears to be unavailable to or widely under-used by prostituted people, likely because when a police officer acts as a decoy-john he waits for the prostituted person to initiate an offer for sexual services.¹⁹⁵

Criminalizing prostitution solely by fixating on the prostituted people not only re-victimizes people forced into the commercial sex industry,¹⁹⁶ but also fails to reduce prostitution. The Department of Justice report notes that arrests of prostituted people “[b]y themselves . . . are ineffective at either controlling street prostitution or protecting prostitutes from harm.”¹⁹⁷ Consistently, studies have found that targeting prostituted people merely relocates the criminal activity to another area, and only temporarily.¹⁹⁸

Efforts to police pimps and traffickers, the distribution side of the market, suffer from similar inadequacies.¹⁹⁹ One nationwide study highlights that distributors are “difficult to contain,” despite heavy criminal penalties for both pimping and trafficking.²⁰⁰ With “markets [that] are highly profitable, arrested traffickers and pimps

¹⁹⁵ It is unclear why undercover arrests would lead to more entrapment defenses for johns than for prostitutes. This may be because johns have better attorneys than prostitutes. This conclusion would not be difficult to surmise given that the economic means of johns are much more lucrative (or at least varied) than those of prostitutes. Indeed, a quick Google search with the terms, “criminal defense for a prostitute” yields a first page of law firms and other criminal defense websites, primarily representing johns. GOOGLE, <https://www.google.com/> (search “criminal defense for a prostitute” in the search bar) (last visited Sept. 26, 2014).

¹⁹⁶ MARCIN, *supra* note 189 (“The majority of prostitutes interviewed . . . believed that selling themselves was their only alternative for survival . . . [Further, pimps] use manipulation, threats, and violence to keep these women from leaving.”).

¹⁹⁷ SCOTT, *supra* note 99, at 16.

¹⁹⁸ See MARCIN, *supra* note 189; see also SCOTT, *supra* note 99, at 16 (“Increased police enforcement temporarily reduces the number of prostitutes on the street, but they usually reappear in new areas.”); SHIVELY ET AL., *supra* note 8, at iv (“Efforts to reduce prostitution and sex trafficking by constraining supply have not usually been successful, aside from temporary effects, or displacing markets to other areas.”).

¹⁹⁹ SHIVELY ET AL., *supra* note 8, at iv.

²⁰⁰ *Id.*

are soon replaced.”²⁰¹ The replacement process occurs quickly too because “[d]istribution requires relatively little skill, and supply [prostituted people] is plentiful and easily acquired, presenting few barriers to entry or startup costs”²⁰² In other words, efforts aimed at addressing the supply side and the distribution side of the commercial sex industry have failed to reduce the crime. Directly targeting the johns would reduce demand and more effectively reduce CSEC.

The commercial sex industry today is inextricably linked to the exploitation of women and children. Past efforts at criminalization of prostituted people and pimps have failed to contain such exploitation. Stronger penalties for johns, who constitute the demand for the commercial sex industry, would begin to cripple the easy profits in such a market. Charging johns with statutory rape, a felony offense, would also remove more johns from the streets, deter the johns themselves from buying sex from children, and deter the larger population of johns from seeking sex with children in general.

IV. KEEPING UP WITH THE JOHNS

A. Why Charge Johns with Statutory Rape?

Although prosecutors frequently use statutory rape laws as a tool to prevent teenage pregnancy and sexually transmitted infections,²⁰³ to regulate teenage sexuality,²⁰⁴ and to more easily

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See SHARON G. ELSTEIN & BARBARA E. SMITH, A.B.A. CTR. ON CHILDREN AND THE LAW, U.S. DEP'T OF JUSTICE, VICTIM-ORIENTED MULTIDISCIPLINARY RESPONSES TO STATUTORY RAPE: TRAINING GUIDE 3 (2000), available at <http://www.ovc.gov/publications/infores/statutoryrape/trainguide/victimoriented.pdf> (listing the “devastating consequences” of statutory rape on teenagers as “pregnancy and parenthood, as well as sexually transmitted diseases”); see also Oberman, *supra* note 15, at 705–06. Oberman discusses how interest in statutory rape was “rekindled” when studies revealed that many teenage pregnancies were the result of sexual intercourse with adult men, and the costs of teenage pregnancy, such as increased use of public assistance, were realized. *Id.* at 706.

²⁰⁴ See generally Oberman, *supra* note 15, at 706 (describing statutory

try “acquaintance rape” cases,²⁰⁵ statutory rape charges are more appropriate for the prosecution of people who buy sex from children in the commercial sex industry. Such an application is more akin to the purposes derived from English common law:²⁰⁶ prosecuting instances of rape where there is a gross difference in age between the victim and the perpetrator, or where aspects of coercion are present. Legislatures began creating statutory rape laws in recognition of the special care due to minors, who are sexually immature.²⁰⁷ Statutory rape is a crime of strict liability²⁰⁸—the defendant may not assert the other party’s consent as a defense,²⁰⁹ because a minor is not capable of giving legal consent. Unlike forcible rape, statutory rape does not require force, or threats of force, express or implied, in order for a perpetrator to be found guilty.²¹⁰

rape’s difficulty in “distinguishing between problematic adolescent sexual behavior and normal adolescent sexual exploration”).

²⁰⁵ *Id.* at 748–49 (noting that “acquaintance rape” cases pose difficulties in that defendants are more likely to raise a consent defense, and juries are more likely to believe them; whereas statutory rape prohibits a consent defense).

²⁰⁶ The *actual* purposes at English common law were fairly degrading to girls: “an effort to protect a father’s interest in his daughter’s chastity” so that she might still earn a respectable dowry upon marriage. *Id.* at 754–55. This purpose would also, unlike common law, be gender-neutral.

²⁰⁷ See TORCIA, *supra* note 4, § 285 (“[I]f any person shall unlawfully and carnally know and abuse any woman-child under the age of ten years, it shall be a felony without clergy.” (citations and quotation marks omitted)).

²⁰⁸ See *id.* § 285 n.23 (“It is no defense that the defendant did not know the female’s age or reasonably believed her to be of the age of consent. . . . [And] force is not an element of statutory rape.” (citations omitted)).

²⁰⁹ See *id.* at n.25 (“Since the lack of consent is not an element of statutory rape, it is neither necessary nor relevant to show that the female did not consent.”).

²¹⁰ In Alaska, for example, sexual assault in the first degree is sexual penetration “without consent,” which means “that a person . . . with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping” ALASKA STAT. §§ 11.41.410(a)(1), 11.41.470(8)(A) (2013). Similarly, in Montana, sexual assault is any sexual contact “without consent,” which means compulsion by force, or “the infliction, attempted infliction, or threatened infliction of bodily injury” MONT. CODE ANN. §§ 45-5-501(1)(a)(i), 501(2)(a), 502(1) (2013).

Using statutory rape law for the purpose of criminalizing sex where the perpetrator is vastly older than the victim, and where the child is coerced, appropriately uses the strict liability standard to protect a vulnerable population. By virtue of emotional and physical immaturity—and especially by virtue of trafficked children’s history of trauma—children merit special attention both from the law and from adults with whom they come into contact. Strict liability places the burden on adults to ensure that their sexual encounters are not with children and are consensual.²¹¹

Professor Michelle Oberman, a legal scholar on ethical issues and adolescence, agrees with this enforcement of statutory rape laws and identifies these cases “between young people and significantly older” perpetrators as “obviously exploitative.”²¹² Oberman asserts that these cases “seem relatively impervious to claims that the relationship was consensual or loving.”²¹³ A better use of statutory rape laws—that is, to criminalize cases with abject coercion where an older adult preys on a child or teenager—would also more appropriately use the strict liability standard against predators, rather than consensual teenagers.²¹⁴

Charging johns with statutory rape would not only be just, it would also be an effective means of reducing demand for the commercial sex market of children. Numerous social science studies and policy papers have found that tactics solely penalizing the supply—prostituted people—and the distribution—the “pimps” and traffickers—have failed to hamper the commercial sex market, and thus the market for the sexual exploitation of children.²¹⁵ One

²¹¹ See Oberman, *supra* note 15, at 765 (“To the extent that the age of consent is determined by reference to maturation and adolescents’ general [in]capacity to resist coercion, the absence of a mistake [of age] defense should not be controversial.”).

²¹² *Id.* at 744.

²¹³ *Id.*

²¹⁴ See Goodwin, *supra* note 2, at 483 (“[B]roader contemporary applications of statutory rape law [have led to] decades of absurd results and disproportionately harsh penalties against teens.”).

²¹⁵ See, e.g., SHIVELY ET AL., *supra* note 8, at 8 (“Many people who have studied the problems of sex trafficking and prostitution . . . have independently concluded that mitigating or eliminating sexual exploitation requires attacking it at its source: consumer-level demand.”).

Department of Justice study put this aptly:

Without the demand for commercial sex, there would be no market forces producing and sustaining the roles of pimps and traffickers as “distributors,” nor would there be a force driving the production of a “supply” of people to be sexually exploited. Supply and distribution are symptoms; demand is the cause.²¹⁶

The Department of Justice study also highlights that demand-reduction is “primary prevention” in that it “stop[s] events before they occur.”²¹⁷

For criminal charges to effectively deter johns, police would need to enforce these charges, and prosecutors would need to employ a charge with penalties greater than those currently imposed. A new law in Sweden shows the power that enforcement efforts can have on the commercial sex market. In 1999, Sweden banned the purchase of sex.²¹⁸ Since then, prostitution has dropped by 70%.²¹⁹ Under Sweden’s new system, prostituted people are decriminalized; police may offer them help from social services and if they decline, they are free to go as they please.²²⁰ Johns discovered buying sex must immediately pay a fine determined by their income or go to court and risk public scrutiny.²²¹ By monitoring common trafficking networks like online forums, the Swedish police noticed that traffickers explicitly decide to leave or refrain from entering Sweden because there is no profit to be made.²²² The law’s opponents, who believed that prostitution

²¹⁶ *Id.*

²¹⁷ *Id.* at 78.

²¹⁸ 6 ch. 11 § (Svensk författningssamling [Swedish Code of Statutes] [SFS] 2014:615) (Swed.), translated in Department of Justice, *Chapter 6 of the Swedish Penal Code 1962:700*, GOVERNMENT.SE (04 April 2005), <http://www.government.se/content/1/c6/04/74/55/ef2d4c50.pdf>. See generally Joan Smith, *Why the Game’s up for Sweden’s Sex Trade*, THE INDEPENDENT (Mar. 26, 2013), <http://www.independent.co.uk/life-style/health-and-families/features/why-the-games-up-for-swedens-sex-trade-8548854.html>.

²¹⁹ Smith, *supra* note 221.

²²⁰ See *id.*

²²¹ See *id.*

²²² See *id.*

would become an even more dangerous industry for women, were mistaken. Prostituted women from countries where prostitution is legal stated that they were subjected to much less violence in Sweden.²²³ Sweden's outcomes indicate that real changes in the commercial sex industry require more than a legislative commitment to criminalizing johns. Rather, Sweden's police forces consistently enforced those laws against johns, resulting in a smaller market for prostitution and thus a smaller market for the trafficking of children.

Studies of johns in America, too, suggest that imposing greater penalties on their criminal conduct would effectively deter them from buying sex. The Boston study explicitly asked johns what it would take to stop them from buying sex again.²²⁴ Eighty-eight percent of the johns agreed: the most effective way to prevent them from buying sex would be adding them to a sex offender registry and all of them agreed that facing a punishment of one month of jail time would deter their behavior.²²⁵ While a typical prostitution offense carries little to no jail time,²²⁶ statutory rape is a much more serious offense—a felony, for which jail time is mandated.²²⁷ Some states, like New York, have offenses for patronizing a child prostitute, and they often carry harsher penalties than the offenses for patronizing an adult prostitute.²²⁸ However, the penalties for patronizing minors are consistently less severe than those for

²²³ *See id.*

²²⁴ *See FARLEY ET AL., supra* note 145, at 36–37.

²²⁵ *Id.* at 37. Several other studies using in-depth interviews of johns like Farley et al. found similar responses to the penalties that would deter johns. *See id.*

²²⁶ *See, e.g.*, 18 PA. CONS. STAT. § 5902(e.1) (2013) (grading the offense of “patronizing prostitutes” as a “misdemeanor of the third degree,” which, under § 106(b)(8), carries a *maximum* sentence of one year imprisonment).

²²⁷ *See, e.g.*, 720 ILL. COMP. STAT. 5/11-1.40 (2013) (grading “predatory criminal sexual assault of a child” a Class X felony, with at least six years’ imprisonment, where an adult offender has sex with a victim under 13 years of age).

²²⁸ *Compare* N.Y. PENAL LAW § 230.04 (McKinney 2013) (criminalizing patronizing a prostitute in the third degree as a class A misdemeanor), *with* N.Y. PENAL LAW § 230.06 (McKinney 2013) (criminalizing patronizing a prostitute in the first degree as a class D felony where the “person patronized is less than eleven years of age”).

statutory rape.²²⁹ This difference in gradation sends a message to potential perpetrators: having sex with a minor *who is prostituted* is not as bad as having sex with a minor who has not been prostituted.

Lawmakers should send a message to johns that having sex with a child, regardless of whether the sex was paid for, is statutory rape. Since it is a strict liability crime, a charge of statutory rape for johns who have bought sex from children would relieve the prosecution of proving that the john *knew* or *should have known* that the person from whom he bought sex was a child, a common element in patronizing a minor prostitute offenses.²³⁰ Further, many if not most of the sexual encounters between a john and a CSEC victim are tantamount to forcible rape—where violence, force, or other aspects of coercion beyond the coercion inherent in CSEC itself are present. Men in Illinois on the USA Sex Guide described setting “the terms of their paid sexual encounter . . . and complain[ed] about [prostituted] women . . . who attempt[ed] to resist their physical groping.”²³¹ Johns withheld tips from prostituted women and girls if they did not perform exactly as they wanted them to.²³² But withholding tips is not the worst of the punishment. Many johns on the USA Sex Guide used aggressive sex, where the prostituted woman or child asked the john to stop or told him that she was in pain; or other forms of violence if the prostituted person refused to perform sexual acts without a

²²⁹ Compare CONN. GEN. STAT. ANN. § 53a-71(b) (West 2013) (criminalizing second degree sexual assault as a class B felony where the victim is below 16 years of age), with CONN. GEN. STAT. ANN. § 53a-83(c) (West 2013) (criminalizing patronizing a minor prostitute as a class C felony where the victim is below 18 years of age, and the offender reasonably should have known so).

²³⁰ See, e.g., ARIZ. REV. STAT. ANN. § 13-3212(B)(1) (2013) (“A person who is at least eighteen years of age commits child prostitution by *knowingly* . . . engaging in prostitution with a minor who is under fifteen years of age.” (emphasis added)); CONN. GEN. STAT. ANN. § 53a-83(c) (West 2013) (“Patronizing a prostitute is a class C felony if such person *knew* or *reasonably should have known* at the time of the offense that such other [prostituted] person . . . had not attained eighteen years of age.” (emphasis added)).

²³¹ JANSON ET AL., *supra* note 152, at 45.

²³² *Id.*

condom, for example.²³³ Despite the frightening aspects of force and violence that johns use to control sex with prostituted adults and children, they are difficult to prove at trial in cases of forcible rape because issues of force and coercion are subtle, and juries tend to believe that, where physical injury and threats are lacking, the victim consented.²³⁴ Statutory rape, on the other hand, requires neither proof of force, nor proof of knowledge that the victim was a child. The strict liability standard in statutory rape would make it easier to prosecute johns, and thus would serve as a real deterrent for johns contemplating buying sex from a child.

Even in the most extreme scenario of an “innocent” john, a charge of statutory rape is justified. Consider a scenario where two young men have sex with two different individuals—one of whom was eighteen years old and one of whom was fifteen years old. Each man sought to buy sex. Both young men reasonably believed that the individual from whom they bought sex was at least eighteen years old. One john had sex with an adult for a fee. The other john actually had sex with a fifteen year-old for a fee. Setting aside the criminalization, if any, of the first john, criminalizing the second john with statutory rape is merited because the attendant harms and consequences of his conduct were much greater for the fifteen year-old prostituted child, and for society. Placing the burden on adults to ensure that their adult activities, and especially their adult crimes, do not involve children ensures the protection of an incredibly vulnerable population.

Recall that most johns seek prostituted persons who are as young as possible; many johns are violent and forceful; and a shocking number of johns are aware of children forced into prostitution.²³⁵ Given these trends, it is especially important to consider why the seemingly harsh standard of strict liability is critical. If the standard of culpability for the rape of a CSEC victim were modified even to negligence, the ramifications would be devastating. A perpetrator could then claim that he *thought* the victim was older.²³⁶ Thus, victims would be “subjected to the

²³³ See *id.* at 49–52.

²³⁴ See Oberman, *supra* note 15, at 749.

²³⁵ See *supra* Section III.B.

²³⁶ See Oberman, *supra* note 15, at 765.

process of objectification inevitable in evaluating a claim that they looked older than their years.”²³⁷ Removing strict liability in statutory rape against johns would put an already-coerced victim on trial once more, inevitably devolving into a scrutiny of her appearance, her clothes, her attitude, her speech, and her behavior. The two johns in this scenario had similar culpability, but their conduct had drastically different results: because one raped a *child*, more severe sanctions are appropriate.

This scenario came to life when professional football player Lawrence Taylor had sex with a sixteen year-old victim of CSEC in a New York hotel room.²³⁸ Taylor pleaded guilty to sexual misconduct and patronizing a sixteen year-old prostitute.²³⁹ Despite his guilty plea, Taylor seemed to believe that he was innocent, citing prostitution as “‘one of those crimes’ that you never think about ‘because everybody does it.’”²⁴⁰ He further maintained his innocence by essentially advocating a mistake-of-age defense, saying that he does not “‘card prostitutes or ask for their birth certificates,’”²⁴¹ and contending that the victim said she was nineteen years old.²⁴²

Taylor’s case might evoke sympathy, like the second john from the scenario above, but the trafficked girl from whom he bought sex told a story much different from Taylor’s. In a civil suit she filed against Taylor for the rape, she first noted that Taylor should have been able to tell that she was both underage and had been beaten by a trafficker to coerce her exploitation.²⁴³ Second,

²³⁷ *Id.*

²³⁸ Lawrence Taylor Talks Prostitution: ‘It’s the Oldest Profession in the World’, HUFFINGTON POST (Mar. 23, 2011, 12:22PM), http://www.huffingtonpost.com/2011/03/23/lawrence-taylor-prostitution-interview_n_839445.html.

²³⁹ Jim Fitzgerald, Lawrence Taylor Declared Low-Risk Sex Offender, HUFFINGTON POST (Apr. 12, 2011, 12:57PM), http://www.huffingtonpost.com/2011/04/12/lawrence-taylor-sex-offender-low-risk_n_848109.html.

²⁴⁰ Lawrence Taylor Talks Prostitution, *supra* note 238.

²⁴¹ *Id.*

²⁴² Larry Neumeister, Lawrence Taylor Wins Case Brought by Teen Alleging Sexual Assault in New York Hotel, HUFFINGTON POST (Oct. 26, 2012, 3:00PM), http://www.huffingtonpost.com/2012/10/26/lawrence-taylor-wins-case-teen-sexual-assault_n_2025289.html.

²⁴³ *See id.*

Taylor's victim testified to aspects of forcible rape, wherein the "hulking Taylor failed to stop having sex with her even after she told him it hurt and tried to push him away."²⁴⁴ And yet, despite evidence even of physical force, under the current law a civil jury could not find Taylor liable for his victim's rape because he was allowed to present evidence that he "believed" her to be older than she was.²⁴⁵ Furthermore, it seems that in order to make out civil liability, Taylor's victim would have had to produce *direct* evidence that he was aware of both her youth and her coercion in the sex trade²⁴⁶—a preposterous evidentiary standard when the john who seeks out younger and younger women under control of a pimp can simply claim ignorance. The justification for the strict liability standard of statutory rape stands as a compelling alternative to the negligence standard presented, for example, in a civil suit for the rape of a trafficked child.

Bringing statutory rape charges against johns who buy sex from children will deter johns from participating in the coerced sex industry. A statutory rape charge also reaffirms that CSEC victims, like Lawrence Taylor's, are children worthy of society's protection. Some states allow a mistake of age defense for certain statutory rape offenses, most commonly where the difference in age between the adult and the child is small: "I'm not guilty because I thought she was older."²⁴⁷ But the failure to arrest, charge, and prosecute johns with statutory rape for having sex with CSEC victims shows an implicit acceptance of a mistake-of-prostitute defense: "I'm not guilty because she was a prostitute." The crime of statutory rape does not penalize discriminately based on the prostituted status of child victims;²⁴⁸ if an adult has sex with

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Cf. id.* (describing how after an hour of deliberation the jury rejected the victim's testimony in favor of Taylor's version of the account).

²⁴⁷ *See, e.g.,* OR. REV. STAT. ANN. § 163.325 (West 2013) ("When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.").

²⁴⁸ This is different from the typical statutory criminalization of patronizing, which—though proscribing the same conduct—is typically only a

a child, that child is a victim, regardless of the circumstances leading up to her rape.

However, charging johns with statutory rape without considering their participation in furthering a market that sells children would not fully capture the scope of their criminality. Johns stimulate an industry that sells children's bodies for adults' sexual pleasure. Most johns are aware of their participation in such an exploitative industry.²⁴⁹ The victim's status as a child of CSEC should not be ignored or downplayed. A victim's status as a child of CSEC should be treated as a type of "vulnerability," meriting an aggravating factor to be considered at sentencing.²⁵⁰ Trial courts have the discretion to determine vulnerability; some have held that age is a vulnerability indicator while others have not.²⁵¹ But here, a victim's status as a forced instrument for paid sexual gratification seems impervious to doubts about vulnerability.²⁵² Applying statutory rape charges to johns who buy sex from children would reduce the demand for paid sex from coerced persons, protect minor victims of trafficking, and restore humanity to the children of CSEC who, for too long, have been treated as delinquents.

B. The Statutory Rape Solution: Prosecutorial Discretion and Practical Application

Using statutory rape as a charge against johns who buy sex from children is legally tenable, but in reality the efficacy of this charge turns on its enforcement by prosecutors. As with the charging decisions in Nina's and Vivian's situations described at

misdemeanor or a felony less severe than statutory rape. Compare CONN. GEN. STAT. ANN. § 53a-71(b) (West 2013) (criminalizing second degree sexual assault as a class B felony where the victim is below 16 years of age), with CONN. GEN. STAT. ANN. § 53a-83(c) (West 2013) (criminalizing patronizing a minor prostitute as a class C felony where the victim is below 18 years of age, and the offender reasonably should have known so).

²⁴⁹ For vivid examples of johns who appear to have actual knowledge of the violence in the system, see *supra* notes 160–71 and accompanying text.

²⁵⁰ See William D. Bremer, *Vulnerability of Victim as Aggravating Factor under State Sentencing Guidelines*, 73 A.L.R. 5th 383, § 1[a] (1999).

²⁵¹ See *id.* § 2[a].

²⁵² In a number of cases, courts have held that certain relationships between the victim and the perpetrator are factors to be considered at sentencing. See *id.*

the beginning of this Note, prosecutors have wide latitude in determining whom to charge, and with what offenses to charge them.²⁵³ Despite this broad discretion,²⁵⁴ there have been virtually no recorded instances of a john being charged with statutory rape for having sex with a victim of CSEC.²⁵⁵ As outlined in this Note, there are practical and prejudiced reasons for this failure. As a practical matter, police forces lack adequate resources to, or have actively refrained from, arresting johns,²⁵⁶ pursuing instead the more visible prostituted people and traffickers in the commercial sex industry. Maybe johns *seem* like less culpable offenders when compared to the traffickers who manipulate, assault, and finally enslave vulnerable children desperate to survive. Yet the sexual exploitation of children would not survive were the johns not paying for its existence. As a matter of prejudice, though, law enforcement officials do not pursue johns because they perceive

²⁵³ See, e.g., 1 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 1.9(c) (3d ed. 2013) (“[T]he prosecutor commonly has the discretion not to charge . . . [and] will have considerable discretion in framing the scope of the charge.”).

²⁵⁴ See *id.* (“Prosecutorial discretion arguably is even broader than police discretion.”).

²⁵⁵ I have yet to find a published decision, or a whisper of a case, wherein a john was charged with and convicted of statutory rape. Cynthia Godsoe, who has studied the topic of CSEC extensively, too has not found a case of this type. See Godsoe, *supra* note 16. They may exist, and their absence could be for reasons other than prosecutorial or police neglect: usually only appellate decisions are published on commercial databases, and these cases may not be appealed; or johns may plead out when confronted with this charge. Missouri—the one state that codifies the offense of patronizing a minor prostitute as a class D felony—explicitly refers in that same statutory provision to the prosecution’s right to charge violators with statutory rape. MO. REV. STAT. § 567.030(4) (2014) (“Nothing in this section shall preclude the prosecution of an individual for the offense of: (1) Statutory rape in the first degree . . .”). Unfortunately, a search under this provision did not produce any cases that took advantage of this statutory encouragement by the Missouri legislature.

²⁵⁶ See SHIVELY ET AL., *supra* note 8, at 79 (“Frequently, police will raid brothels or conduct street operations and arrest persons engaged in selling sex, and occasionally arrest a pimp, but simply let the ‘customers’ go without any intervention, or after receiving less serious sanctions than the victims or pimps.”); see also SCOTT, *supra* note 99, at 17 (noting that police departments do not have enough female officers to catch johns).

prostituted people as the wrongdoers,²⁵⁷ a perception so powerful that it holds children forced into sexual slavery to be wrongdoers in the same stratum as their adult parallels.

Practitioners and scholars have offered many exemplary solutions to aid the problem of CSEC, such as improving state CSEC laws by making it harder for children to be prosecuted for prostitution, funding more victim services, and elevating judicial discretion in CSEC cases.²⁵⁸ But getting changes through the legislature can be frustrating, if not futile. Further, training judges to respond to CSEC victims who are charged with a crime is a step too late in the criminal process to prevent the manifestation of further exploitation. To stymie CSEC, the law must grapple with the force that creates it: the demand for underage commercial sex.

Prosecutors have the power to begin charging johns with a crime that more justly fits their conduct: the rape of a child. Moreover, prosecutors' charging decisions guide enforcement by police; prosecutors have almost unfettered discretion in such decisions.²⁵⁹ With regard to policy, prosecutors have more control than the police, who "tend to follow prosecutors in their enforcement activities, since they don't want to commit their time to investigating cases that are not carried forward to prosecution, or that result in minimal penalties."²⁶⁰ Prosecutors' commitment to charging johns with a more serious offense will motivate police to actively pursue johns through raids,²⁶¹ reverse stings,²⁶² and reports

²⁵⁷ See SHIVELY ET AL., *supra* note 8, at 80 ("[M]ost police and prosecutors did not regard women working for pimps necessarily to be sex trafficking victims.").

²⁵⁸ See discussion, *supra* Part II.B.

²⁵⁹ See ABA STANDARDS FOR CRIMINAL JUSTICE: DEFENSE AND PROSECUTION FUNCTION § 3-3.9 (3d ed. 1993) ("The prosecutor is not obliged to present all charges which the evidence might support . . ."); *id.* § 3-3.4 ("The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor" and the prosecutor "should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted."); *id.* § 3-2.7 (describing the prosecutor's relationship with the police as one that includes "provid[ing] legal advice to the police concerning police functions and duties on criminal matters . . .").

²⁶⁰ SHIVELY ET AL., *supra* note 8, at 80.

²⁶¹ A "raid" is an operation where many police officers descend on a suspected area of prostitution activity, usually a brothel, gather evidence, and

from CSEC victims of their rapists.

Although the enforcement of statutory rape charges in cases of CSEC has been woefully deficient, there is evidence of cases where the prosecution could have brought such a higher charge against johns. One New York preliminary hearing, *People v. Jackson*,²⁶³ is a glaring example of the overcriminalization of prostituted people and the undercriminalization of johns. There, the court held that there was sufficient evidence to proceed to trial against two prostituted women for solicitation.²⁶⁴ A footnote to the facts of the case indicates that the john who was to give testimony against the two female defendants had been “separately charged with patronizing a prostitute in violation of s. 230.05 of the Penal Law” in the same case.²⁶⁵ That section of the Penal Law criminalizes patronizing a prostitute who is less than fourteen years old.²⁶⁶ However, the prosecution granted this john immunity in order to secure his testimony against the two prostituted women.²⁶⁷ It is unclear from *Jackson* whether one or both of the female defendants were under fourteen years old at the time of the commission of the offense. What is clear, however, is that the prosecutor would have had enough evidence to charge this john with statutory rape, rather than patronizing a prostitute—given that he had bought sex from at least one child who was no older than thirteen years.²⁶⁸ The tragedy of *Jackson* is that the prosecutor decided to pursue charges against two prostituted people at the

arrest offenders on-site. SHIVELY ET AL., *supra* note 8, at 45. Shively et al. suggest using raids to arrest johns, and then further suggest infiltrating storefront brothels, like a massage parlor, make appointments posing as prostitutes, and continue to arrest johns who were not at the initial raid. *Id.*

²⁶² A “reverse sting” is an operation where undercover police officers pose as prostitutes in an effort to find and arrest johns; a “sting,” on the other hand, is the more common undercover operation, where undercover police officers pose as johns in order to arrest prostituted people. *Id.* at 37 (“The term ‘reverse sting’ is an artifact of the historic gender inequity in the enforcement of prostitution.”).

²⁶³ *People v. Jackson*, 33 N.Y.S.2d 216 (N.Y. Crim. Ct. 1972).

²⁶⁴ *Id.* at 221.

²⁶⁵ *Id.* at 218 n.1.

²⁶⁶ See N.Y. PENAL LAW § 230.05 (McKinney 2014).

²⁶⁷ See *Jackson*, 331 N.Y.S.2d at 218 n.1.

²⁶⁸ See *id.* What’s more disturbing is the opinion’s allusion to this john’s frequent “visits” to buy sex, likely from children. *Id.* at 218.

expense of prosecuting a john who had bought sex from a child²⁶⁹—a john who actively participated in creating the sexual market of children.

An Illinois case and a Missouri case provide further examples of the need to begin prosecuting johns for *attempted* statutory rape when they directly proposition children for sex in exchange for payment.²⁷⁰ In Illinois, the prosecution charged the defendant in *People v. Jones* with soliciting juvenile prostitution when he tried to get a child under the age of sixteen to have sex with him for money.²⁷¹ Although the *Jones* defendant made out the elements for attempted statutory rape, the prosecution gave no indication that such a charging decision was on the horizon.²⁷²

In a Missouri case with facts similar to *Jones*, the prosecution in *State v. Warren* made no distinction between a defendant's two counts of patronizing prostitution, even though one was for propositioning an adult and the other for propositioning a fifteen-year-old boy.²⁷³ Although neither of the accosted individuals had been involved in the commercial sex industry,²⁷⁴ the defendant here could have been charged with attempted statutory rape. Statutory rape is an especially effective charge for johns like the defendants in *Jones* and *Warren* who lure vulnerable children into the sex industry by directly propositioning them for paid sex.²⁷⁵ The outcome of *Warren* is especially dissatisfying given that Missouri's penal code expressly permits the prosecution to charge a john with both statutory rape and attempted statutory rape.²⁷⁶

²⁶⁹ See *id.* at 218 n.1.

²⁷⁰ See *People v. Jones*, 615 N.E.2d 391, 392 (Ill. App. Ct. 1993); *State v. Warren*, 717 S.W.2d 231, 231 (Mo. Ct. App. 1986).

²⁷¹ *Jones*, 615 N.E.2d at 392.

²⁷² *Id.* at 394. However, the court did conclude by stating that the alleged acts might constitute “an inchoate attempt or solicitation offense of a different statutory section,” despite their inapplicability to solicitation of a juvenile prostitute; the court was likely referring to a patron crime. *Id.* at 395.

²⁷³ See *Warren*, 717 S.W.2d at 231.

²⁷⁴ See *id.*

²⁷⁵ See CURTIS ET AL., *supra* note 3, at 48–49.

²⁷⁶ See MO. REV. STAT. § 567.030(4) (2014). The john's conduct in *State v. Warren* constituted a class A misdemeanor under Missouri's prostitution statutes, but would have constituted a class D felony under attempted statutory sodomy. See *id.* §§ 566.064, 567.030(3).

Despite the absence of cases in which prosecutors charged johns with statutory rape, some media accounts reflect situations where johns were charged with statutory rape but pleaded out to lesser charges. Marvell Scott, a former WABC sportscaster, was initially charged with statutory rape and patronizing a prostitute when he had sex with a fourteen year-old girl.²⁷⁷ He took her to his apartment after a trafficker “offered” her to him in Times Square in 2008.²⁷⁸ Even though court papers depicted a typical CSEC scenario, Scott accepted a deal in which he admitted to endangering the welfare of a child.²⁷⁹ The fourteen-year-old girl whom Scott raped had run away, and had run out of money, when a trafficker took advantage of her desperation.²⁸⁰ Although endangering the welfare of a child is a relatively minor charge for Scott’s purported conduct, the fact that Scott hastened into a plea deal may indicate that he genuinely feared the prosecution’s top charge of statutory rape were he to proceed to trial.²⁸¹

Prosecutors have long overlooked statutory rape as a charge against johns who have bought sex from children, despite recent opportunities in especially high-profile cases. If prosecutors used the charge of statutory rape against johns, police conduct—but

²⁷⁷ Italiano, *supra* note 17.

²⁷⁸ *Id.*

²⁷⁹ *See id.*

²⁸⁰ *See id.*

²⁸¹ However, an episode of *Law and Order Special Victims Unit*, took Scott’s case more seriously and used it to craft an episode where dozens of johns were charged with statutory rape for having sex with a victim of CSEC. *See Law & Order: Special Victims Unit: Spiraling Down* (NBC television broadcast Dec. 7, 2011). Although *Law & Order: Special Victims Unit* claims that all of its stories are fictional, many are “ripped from the headlines.” *See, e.g.,* Abby Rogers, *15 True Stories That Inspired Your Favorite ‘Law and Order’ Episodes*, BUSINESS INSIDER (Mar. 21, 2012, 5:05 PM), <http://www.businessinsider.com/real-crimes-that-inspired-law-and-order-episodes-2012-3?op=1>. Since this episode aired a few months after Scott pled guilty, and the facts are extremely similar, it would be logical to conclude that Scott’s story inspired this one. In the episode, the detectives who found the runaway girl suggested that the Assistant District Attorney (ADA) prosecute the johns for statutory rape. *Law & Order: Special Victims Unit: Spiraling Down* (NBC television broadcast Dec. 7, 2011). The Unit finally reached an agreement: to conduct a sting for the named johns, and arrest them for statutory rape. *Id.*

more importantly, johns' conduct—would dramatically change. Police would be encouraged to make arrests of johns, rather than pass out violations, or ignore the population of johns all together. Further, johns who have already raped a CSEC victim would be chilled from doing so again, and johns contemplating raping a CSEC victim would have to consider both the risk of increased enforcement by police officers against their conduct and the risk of being charged with a felony offense of strict liability.

V. CONCLUSION

Charging johns with statutory rape would serve many purposes for both victims and offenders. First, the charge would reinforce the idea that these children are victims and are incapable of consenting to the sale of sex. Second, a statutory rape charge would provide consistency in the law for courts who have struggled with the notion of punishing children like Vivian and Shaneiqua for their own exploitation. Finally, a felony charge against these perpetrators would decrease the demand for child prostitution by deterring buyers with the threat of significant jail time, a felony record, and being added to the sex offender registry. The fastest way to dismantle a market is to dissolve demand. The strict liability standard of statutory rape is an important tool for pursuing the adults who create such demand. This charge would not only include the johns who buy sex from children through traffickers, but also the ones who engage in sexual acts with children whom they have directly propositioned.²⁸²

Existing state law of statutory rape can address and reduce the demand for trafficked children. While this is a viable and necessary approach, it is not the only way to affect CSEC. Expanding social education and eradicating poverty are two other critical components in this battle. Any sustainable change must work toward preventing johns from *wanting* to buy sex in the first place. Our society might achieve such changes by increasing education on trafficking, coercion, and respect for prostituted people and sex workers in the commercial sex industry. Policymakers should envision a culture where sex is not a

²⁸² CURTIS ET AL., *supra* note 3, at 48.

commodity and women and children are not objects. Additionally, the initial circumstances that put children at risk for trafficking—such as child abuse, sexual abuse, poverty, and family dysfunction—will not disappear by charging johns with statutory rape. We must press on in efforts to support low-income families, treat children who have been abused, and infuse more services into disenfranchised communities. Low-income communities are targets for trafficking largely because of law enforcement's general neglect of and indifference to their needs. However, creating the conditions that foster education and services begins with the law, and with the just enforcement of it. For children who have been exploited, the law has the power to remedy attitudes about who is truly culpable, and who is truly innocent.