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## Justice for Victims of Sex Trafficking: Why Current Illinois Efforts Aren't Enough, 51 J. Marshall L. Rev. 715 (2018)

Rachael Derham

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# JUSTICE FOR VICTIMS OF SEX TRAFFICKING: WHY CURRENT ILLINOIS EFFORTS AREN'T ENOUGH

RACHAEL DERHAM

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## I. INTRODUCTION

These women have been victims from the first rape and the first molestation ... from the first violence, and it goes on and on and on ... No matter how long it's been since they were involved, they still carry this in their subconscious: 'I have a record.'<sup>1</sup>

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1. Annie Sweeney, *Cook County Court Clears Sex Trafficking Victim of Prostitution Record*, CHICAGO TRIBUNE (Aug. 29, 2013), [www.articles.chicagotribune.com/2013-08-23/news/ct-met-prostitution-trafficking-adoption-20130823\\_1\\_dreamcatcher-foundation-brenda-myers-powell-abusive-pimps/2](http://www.articles.chicagotribune.com/2013-08-23/news/ct-met-prostitution-trafficking-adoption-20130823_1_dreamcatcher-foundation-brenda-myers-powell-abusive-pimps/2).

Jane,<sup>2</sup> a middle-aged counselor in Chicago, has devoted her life to assisting those with addiction, trauma, and anger management issues for the past 15 years.<sup>3</sup> In her free time, she volunteers and serves on the leadership team of a local support group for recovering sex trafficking victims.<sup>4</sup> The group offers retreats, counseling, and support, and also encourages sisterhood among women recovering from prostitution and drug use.<sup>5</sup> This group is particularly important to Jane because she is a survivor of sex trafficking.<sup>6</sup>

Over the course of a decade, Jane was under the control of two traffickers<sup>7</sup> who she believed to be her boyfriends<sup>8</sup> at the beginning of both relationships.<sup>9</sup> She was beaten daily, pressured into drug addiction, and forced to sell her body.<sup>10</sup> Jane was also forced to commit other crimes for the sole economic benefit of her traffickers,<sup>11</sup> who sought money in any way that Jane could make it.<sup>12</sup> As a result of her pimps' coercion, Jane now has a criminal background that prevents her from furthering her career, adopting her grandchildren, and moving on from the extreme trauma she experienced as a result of being a victim of sex trafficking.<sup>13</sup>

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2. The name has been changed to protect the victim's safety and privacy.

3. Interview with Jane Doe, in Chi., Ill. (June 16, 2016).

4. *Id.*

5. *Id.*

6. *Id.*

7. "Trafficker" and "pimp" will be referred to interchangeably throughout this comment. See Lynne Johnson, End Demand Illinois' Litigation Guide, *Justice for Victims of Sex Trafficking Crimes Act*, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, 3 (2013) (explaining that "referring to prostitution as a profession negates the physical and emotional trauma that women experience" and that prostitution is not a victimless crime).

8. It is very common for victims to view their pimps as their boyfriends because many traffickers offer love and support to their victims in the grooming process. See *Sex Trafficking in the U.S.: A Closer Look at U.S. Citizen Victims*, THE POLARIS PROJECT, 1, 4 (May 2015), [www.polarisproject.org/sites/default/files/us-citizen-sex-trafficking.pdf](http://www.polarisproject.org/sites/default/files/us-citizen-sex-trafficking.pdf) [hereinafter *Sex Trafficking in the U.S.*] (revealing that individuals in need of support are vulnerable to becoming sex trafficking victims and that many are manipulated or forced into prostitution by people they are romantically involved with). Many traffickers target individuals in need of support because these individuals long for the love and trust that their pimp initially offers with the goal of creating victim dependency on the pimp. *Id.*

9. Interview with Jane Doe, in Chi., Ill. (June 16, 2016).

10. *Id.*

11. This is because Jane was forced to give all the money she made from any crime she committed to her traffickers. Interview with Jane Doe, in Chi., Ill. (June 16, 2016).

12. *Id.*

13. *Id.*

Unfortunately, Jane's story is not uncommon.<sup>14</sup> Pimps often groom victims of sex trafficking in a strategic way that creates complete dependence of the victim and allows for complete control by the pimp.<sup>15</sup> As a result of this control, pimps are easily able to exploit their victims, often leaving victims with a criminal background.<sup>16</sup> Not all of the charges making up a sex trafficking victim's criminal background are prostitution-related; in fact, many victims report arrests for other crimes.<sup>17</sup> Recently, there has been a change in the law to reflect the view that people who are arrested because of their victimization from sex trafficking are victims in need of assistance, and as such they should not be criminalized.<sup>18</sup> Additionally, many states and other government entities have adopted other methods with the purpose of addressing the needs and problems experienced by sex trafficking victims.<sup>19</sup>

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14. *See, e.g.*, People of the State of Illinois v. J.S., Doc. No. X, 1 (Ill. Cir. Cook Cnty. Mar. 31, 2015) (explaining that the victim was subjected to physical force by her pimp over a period of two years and committed several crimes, including prostitution, as a result); People of the State of Illinois v. B.J., Doc. No. X, 1 (Ill. Cir. Cook Cnty. June 24, 2015) (finding that the victim's pimps used physical force, drugs, and intimidation for their sole economic benefit).

15. *See* Stephen C. Parker & Jonathan T. Skrmetti, *Pimps Down: A Prosecutorial Perspective on Domestic Sex Trafficking*, U. MEM. L. REV. 1013, 1025–27 (2013) (explaining pimps' strategies in the grooming process and how it causes the victim to be extremely dependent on the pimp).

16. Kate Mogulescu, *The Public Defender as Anti-Trafficking Advocate, an Unlikely Role: How Current New York City Arrest and Prosecution Policies Systematically Criminalize Victims of Sex Trafficking*, 15 CUNY L. REV. 471, 479 (2012).

17. *See* Sex Workers Project, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, URBAN JUSTICE CTR., 38–39 (2003) [www.sexworkersproject.org/downloads/RevolvingDoor.pdf](http://www.sexworkersproject.org/downloads/RevolvingDoor.pdf) [hereinafter *Revolving Door*] (finding that many of the participants in the study had been arrested for crimes that were not prostitution-related).

18. *See Trafficking in Persons: Ten Years of Partnering to Combat Modern Slavery*, U.S. DEPT OF STATE (June 14, 2010), [www.state.gov/documents/organization/143327.pdf](http://www.state.gov/documents/organization/143327.pdf) [hereinafter *Trafficking in Persons*] (outlining the Palermo Protocol's goal of protecting victims of sex trafficking); *See also* Liz Robbins, *In a Queen's Court, Women in Prostitution Cases are Seen as Victims*, THE NEW YORK TIMES (Nov. 21, 2014), [www.nytimes.com/2014/11/23/nyregion/in-a-queens-court-women-arrested-for-prostitution-are-seen-as-victims.html?\\_r=1](http://www.nytimes.com/2014/11/23/nyregion/in-a-queens-court-women-arrested-for-prostitution-are-seen-as-victims.html?_r=1) (showcasing New York's new court system specifically made for potential trafficking victims charged with prostitution); *See also* 22 U.S.C. § 7101 (West, Westlaw through P.L.) (federal statute protecting victims of sex trafficking).

19. *See* The Polaris Project, *A Look Back: Building A Human Trafficking Legal Framework*, THE POLARIS PROJECT, 2, [www.polarisproject.org/sites/default/files/2014-Look-Back.pdf](http://www.polarisproject.org/sites/default/files/2014-Look-Back.pdf) (last visited Apr. 14, 2018) (“since 2003, a number of tools have been developed to assist states in enacting anti-human trafficking laws”).

Illinois has addressed this problem by enacting The Justice for Victims of Sex Trafficking Crimes Act (“JVST”).<sup>20</sup> This allows Illinois courts to vacate a conviction for prostitution if the Petitioner can prove that the conviction occurred as a direct result of their sex trafficking victimization.<sup>21</sup> Unfortunately, the law only allows the court to vacate a conviction for prostitution,<sup>22</sup> or a conviction so closely related that the arresting officer could have charged the victim with prostitution instead.<sup>23</sup> Since many victims have extensive criminal backgrounds that include prostitution convictions as well as non-prostitution convictions, the JVST does not give victims the justice they deserve.<sup>24</sup> Even with the use of the JVST by a victim, their other convictions remain on their record, leaving victims with a criminal background and hindering their ability to secure jobs and other opportunities.<sup>25</sup>

This comment will first give an overview of sex trafficking in the United States and how the federal government and Illinois have addressed it. Next, this comment will explain why the current interpretation of the JVST by the courts is problematic and does not adequately address the needs of victims of sex trafficking. Then, it will analyze steps that other states and government entities have taken to adjust the remedies available to victims of sex trafficking and ensure true justice for those who have been victimized by traffickers. Finally, it will propose that Illinois change its interpretation of the JVST and adopt some of the methods utilized by other states and government entities to better address the needs of victims and to conform to the intent of the legislature in adopting the JVST.

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20. 725 ILL. COMP. STAT. ANN. 5/116-2/1 (West, Westlaw through 2016 Reg. Sess.).

21. See End Demand Illinois, *PA 97-0267: Illinois’ Justice for Victims of Sex Trafficking Crimes Act*, THE POLARIS PROJECT (2010), [www.media.virbedn.com/files/6c/FileItem-147941-ILJusticeforVictimsofSexTraffickingActBillSummaryAugust82011.pdf](http://www.media.virbedn.com/files/6c/FileItem-147941-ILJusticeforVictimsofSexTraffickingActBillSummaryAugust82011.pdf) (outlining the JVST’s purpose, legislative language, and requirements).

22. To “vacate” means to nullify or to cancel. *United States v. Crowell*, 374 F.3d 790, 792 (9th Cir. 2004).

23. See *People v. J.S.*, at 3 (vacating the Petitioner’s prostitution convictions but declining to vacate her offenses for driving on a revoked or suspended license and operating an uninsured motor vehicle because they were not within the nexus of a prostitution conviction).

24. See *Revolving Door*, *supra* note 17, at 38–39 (finding that many of the participants in the study had been arrested for crimes that were not prostitution-related).

25. See Press Release, Governor’s Office, *Governor Quinn Signs Bill to Help Sex Trafficking Victims Rebuild Their Lives*, ILLINOIS GOVERNMENT NEWS NETWORK (Aug. 6, 2011), [www3.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=9606](http://www3.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=9606) (explaining that the purpose of the JVST is to rid victims of the burden of a criminal record that resulted from their victimization).

## II. BACKGROUND

### A. *Domestic Sex Trafficking in the United States*

There is a common misconception that human trafficking is predominately an international phenomenon, but domestic sex trafficking within the United States is actually very common.<sup>26</sup> In fact, 83% of confirmed sex trafficking victims in the U.S. between 2008 and 2010 were U.S. citizens.<sup>27</sup> Human trafficking involves the use of force, fraud, or coercion to recruit, harbor, transport, or compel sex or labor acts.<sup>28</sup> Sex trafficking is a specific kind of human trafficking where the victims are forced to perform commercial sex acts.<sup>29</sup>

#### 1. *Pimp Culture*

Much of domestic sex trafficking in the United States is violent, pimp-controlled prostitution.<sup>30</sup> Pimps commonly identify insecurities<sup>31</sup> and use these insecurities to manufacture love, reliance, dependency, and obedience in victims.<sup>32</sup> This process is called grooming, and it usually begins with fraud but soon escalates to violence to ensure complete control over the victim.<sup>33</sup>

“The pimp attains authoritative levels of control and obedience through a combination of intense manipulation and feigned affection, brutal violence, and verbal, psychological and/or emotional abuse. In the pimp relationship, the pimp is motivated primarily by the pursuit

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26. Parker & Skrmetti, *supra* note 15, at 1016–17. See Michele Boggiani, Comment, *When is a Trafficking Victim a Trafficking Victim: Anti-Prostitution Statutes and Victim Protection*, 64 CLEV. ST. L. REV. 915, 919–920 (2016) (explaining that the view of human trafficking as exclusively an international problem is a stereotype and many trafficking victims in the United States are American citizens).

27. Duren Banks & Tracey Kyckelhah, *Special Report: Characteristics of Suspected Human Trafficking Incidents 2008-2010*, U.S. DEPT OF JUSTICE, BUREAU OF STATISTICS (2011), [www.bjs.gov/content/pub/pdf/cshti0810.pdf](http://www.bjs.gov/content/pub/pdf/cshti0810.pdf).

28. *Trafficking in Persons Report July 2015*, U.S. DEPT OF STATE, 9 (2015), [www.state.gov/documents/organization/245365.pdf](http://www.state.gov/documents/organization/245365.pdf).

29. *Id.*

30. Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking*, 36 N.Y.U. REV. L. & SOC. CHANGE 635, 642 (2012); See also Jody Raphael & Deborah L. Shapiro, *Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago*, CENTER FOR IMPACT RESEARCH, 20 (2002) (finding that large percentages of women in a Chicago study gave the money they earned to someone else and stated that they faced violence if they kept the money).

31. Some of the top insecurities or risk factors in victims include: poverty, homelessness, substance abuse, sexual assault, domestic violence, mental health issues, child abuse or neglect, and involvement with child welfare or the juvenile justice system. *Sex Trafficking in the U.S.*, *supra* note 8.

32. Parker & Skrmetti, *supra* note 15, at 1018–19.

33. *Id.*

of money. He keeps all the money from the commercial sex acts of the women and girls he controls and prides himself on achieving higher and higher levels of blind obedience.”<sup>34</sup>

Once the pimp has control over the victim, the victim will be expected to meet quotas through whatever means necessary, including committing crimes such as forced theft.<sup>35</sup> The victim has a strong incentive to meet this quota because if it is not met, the victim is subject to severe physical retaliation, which can include torture.<sup>36</sup> Traffickers may also coerce drug addiction, and then proceed to use drugs as a tool to control the victim.<sup>37</sup> Other methods of control include physical abuse, threats, economic abuse, isolation, restriction on movement, and sexual and verbal abuse.<sup>38</sup> These methods of control are often what prevent the victim from being able to escape the trafficker.<sup>39</sup>

## 2. Problems Victims Face After Leaving Their Pimp

Once a victim is able to escape their pimp, they are often plagued with severe trauma as a result of their victimization.<sup>40</sup> Because of the negative stigma associated with prostitution, many victims report being treated differently by family and friends; specifically, victims are more likely to feel isolated and less likely to seek out necessary services.<sup>41</sup> Victims also experience many psychological issues resulting from their trauma such as Stockholm Syndrome,<sup>42</sup> depression, disassociation, anxiety, and Post Traumatic Stress Disorder.<sup>43</sup> It is also common for victims to have physical injuries or issues such as sexually transmitted diseases,

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34. *Domestic Sex Trafficking: The Criminal Operations of the American Pimp*, THE POLARIS PROJECT, 2, [hereinafter *The American Pimp*] [www.mainesten.org/uploads/4/4/3/6/44365787/sex\\_trafficking\\_handout.pdf](http://www.mainesten.org/uploads/4/4/3/6/44365787/sex_trafficking_handout.pdf).

35. *Id.* at 4.

36. *See id.* (explaining that victims are subject to extreme physical abuse and deprivation of food and water if quotas are not met).

37. *Sex Trafficking in the U.S.*, *supra* note 8.

38. *Id.*

39. *See The American Pimp*, *supra* note 34 (listing common reasons why victims are unable or unwilling to leave their traffickers).

40. *See, e.g.*, Rita Chi-Ying Chung, *Human Trafficking for Sexual Exploitation: Psychological & Cultural Impacts*, 2 GEO. MASON GLOBAL STUDIES REV. (Fall 2006), [www.globality-gmu.net/archives/960](http://www.globality-gmu.net/archives/960) (explaining that victims of trafficking suffer physical and psychological trauma as a result of trafficking); *see also* Lynne Johnson, *supra* note 7 at 2 (explaining that trauma is common in victims because of the conditions they encounter while they are trafficked).

41. Lynne Johnson, *supra* note 7, at 2.

42. Stockholm Syndrome is an emotional bond to an abuser under conditions of captivity and control. *Id.* at 3. This is very common in trafficking victims and often causes the victim to minimize the extent of the pimp's violence, perceive those trying to help the victim as enemies while viewing the pimp as their friend, and identify with the pimp's perspective. *Id.* at 3.

43. *Id.*

long-term injuries from frequent physical abuse, Pelvic Inflammatory Disease, HIV/AIDS, and substance abuse problems.<sup>44</sup>

Along with the physical and psychological trauma, victims are often saddled with criminal records, which impede their access to jobs, housing, and education, and may also affect their parental rights or their ability to adopt,<sup>45</sup> as was the case with Jane.<sup>46</sup>

### *B. Illinois' Justice for Victims of Sex Trafficking Crimes Act*

The United Nation's Palermo Protocol ("Protocol") brought human trafficking victims' needs to the world's attention for the first time in 2000.<sup>47</sup> The Protocol called for a global effort to address victims' needs and required that all parties enact legislation in their own state making human trafficking illegal.<sup>48</sup> Congress enacted the Trafficking Victims Protection Act in 2000 with the purpose of protecting victims of human trafficking and punishing perpetrators.<sup>49</sup> In response to this, several states enacted state-specific versions of the law.<sup>50</sup> Illinois' JVST was enacted in 2011 and it allows courts to vacate a conviction for prostitution if the conviction is a direct result of the Defendant's victimization from sex trafficking.<sup>51</sup>

#### *1. JVST's Statutory Language and Elements*

To qualify for vacatur, the victim must: (1) have at least one conviction for prostitution;<sup>52</sup> (2) conform to the definition of a sex trafficking victim under law;<sup>53</sup> (3) explain why details about the trafficking were not initially presented at trial;<sup>54</sup> and, (4) prove that they are no longer trafficked or are currently receiving services for

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44. Chung, *supra* note 40.

45. Press Release, *supra* note 25.

46. Interview with Jane Doe, in Chi., Ill. (June 16, 2016).

47. *See Trafficking in Persons*, *supra* note 18 (outlining the purpose and goals of the Palermo Protocol).

48. *Id.*

49. 22 U.S.C. § 7101(a) (West, Westlaw through P.L.).

50. *See, e.g.*, 725 ILL. COMP. STAT. ANN. 5/116-2.1 (West, Westlaw through 2016 Reg. Sess.) (providing for vacatur of prostitution convictions for sex trafficking victims in Illinois); N.Y. PENAL LAW § 230.34 (Consol., Lexis Advance through 2016 released chapters 1-328) (criminalizing human trafficking in New York).

51. *See End Demand Illinois*, *supra* note 21 (outlining the JVST's purpose, legislative language, and requirements).

52. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a) (West, Westlaw through 2016 Reg. Sess.).

53. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a) (West, Westlaw through 2016 Reg. Sess.).

54. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a)(1) (West, Westlaw through 2016 Reg. Sess.).



trafficking victims.<sup>55</sup>

The first element requires the victim must have at least one conviction of prostitution. Examples of this include felony prostitution, or a conviction under a similar local ordinance.<sup>56</sup> The second element requires a victim to prove that they are a “victim of a severe form of trafficking” under federal or Illinois law.<sup>57</sup>

According to the Federal Trafficking Victims Protection Act, a victim of a severe form of trafficking is anyone who is subjected to sex trafficking, which occurs when “a commercial sex act is induced by force, fraud, or coercion.”<sup>58</sup> The federal law defines coercion as: (1) threats of serious physical harm or restraint; (2) a scheme, plan, or pattern used with the intent to cause the victim to believe that failing to perform as the trafficker wishes will result in serious physical harm or restraint; or, (3) actually abusing or threatening to abuse the legal process.<sup>59</sup>

Fraud is often perpetuated when a pimp makes promises to a victim to provide food, shelter, or protection or when the pimp represents him or herself as a caretaker, lover, or significant other.<sup>60</sup> Force can include physical and sexual abuse, including rape, physical confinement, and restrictions on movement.<sup>61</sup> Under Illinois law, which uses similar language as the federal law,<sup>62</sup> a person is a victim of trafficking when they are subjected to involuntary sexual servitude as a minor, trafficking in persons,<sup>63</sup> or involuntary servitude.<sup>64</sup>

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55. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a)(1) (West, Westlaw through 2016 Reg. Sess.).

56. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a) (West, Westlaw through 2016 Reg. Sess.).

57. See Lynne Johnson, *supra* note 7, at 9.

58. 22 U.S.C. § 7102(9)(a) (West, Westlaw through Pub. L. No. 114 — 221).

59. 22 U.S.C. § 7102(3)(A), (B), (C) (West, Westlaw through Pub. L. No. 114 — 221).

60. Lynne Johnson, *supra* note 7 at 1.

61. *Id.*

62. Compare 720 ILL. COMP. STAT. ANN. 5/10-9(b) (West, Westlaw through 2016 Reg. Sess.) (defining involuntary servitude under Illinois law), with 22 U.S.C. § 7102(3), (6), (9) (West, Westlaw through Pub. L. No. 114 — 221) (defining coercion, involuntary servitude, and severe forms of trafficking in persons).

63. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a) (West, Westlaw through 2016 Reg. Sess.).

64. Involuntary servitude is defined by Illinois law as such:

A person commits involuntary servitude when he or she knowingly subjects, attempts to subject, or engages in a conspiracy to subject another person to labor or services obtained or maintained through any of the following means, or any combination of these means: (1) causes or threatens to cause physical harm to any person; (2) physically restrains or threatens to physically restrain another person; (3) abuses or threatens to abuse the law or legal process; (4) knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or

The third element requires a victim to explain why facts about his or her trafficking were not presented at the time of their conviction.<sup>65</sup> Finally, the victim must prove that he or she is no longer a victim of trafficking, or that he or she is receiving services for victims of trafficking.<sup>66</sup> The petition must also be filed with due diligence.

The victim's testimony alone can be sufficient to prove that he or she is a victim of trafficking.<sup>67</sup> However, other forms of evidence that support the victim's testimony are encouraged.<sup>68</sup> If the petitioner meets all of these requirements, they may file a motion to vacate, so long as the petition was filed with due diligence.<sup>69</sup> The court may grant the petition if the conviction was a result of the petitioner's victimization.<sup>70</sup> The statute also provides that "if the court grants a motion under this Section, it must vacate the conviction and *may take such additional action as is appropriate under the circumstances.*"<sup>71</sup>

## 2. Intent of the Legislature

For over a decade, there has been a growing trend in Illinois to shift law enforcement's focus and efforts away from criminalizing sex trafficking victims and, instead, towards the increased criminalization of the victims' traffickers and pimps.<sup>72</sup> Vacatur is

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purported government identification document, of another person; (5) uses intimidation, or exerts financial control over any person; or 6) uses any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform the labor or services, that person or another person would suffer serious harm or physical restraint.

720 ILL. COMP. STAT. ANN. 5/10-9(b) (West, Westlaw through 2016 Reg. Sess.).

65. 725 ILL. COMP. STAT. ANN. 5/116-2.1(a)(1) (West, Westlaw through 2016 Reg. Sess.).

66. *Id.*

67. *See* Lynne Johnson, *supra* note 7, at 9 (citing *People of the State of New York v. Gonzalez*, 927 N.Y.S.2d 567, 570 (Crim. Ct. 2011)).

68. *See id.* at 9–10 (listing other possible sources of evidence such as sworn statements from those that the victim has sought services from, police reports, hospital records, financial records, and testimony from those with first-hand knowledge of the trafficking).

69. *Id.*

70. *See* 725 ILL. COMP. STAT. ANN. 5/116-2.1(b) (West, Westlaw through 2016 Reg. Sess.) ("the court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking").

71. 725 ILL. COMP. STAT. ANN. 5/116-2.1(c) (West, Westlaw through 2016 Reg. Sess.) (emphasis added).

72. *See* Press Release, *supra* note 25 (explaining that Illinois has taken action to address human trafficking since 2006 by passing laws that protect victims of trafficking). *See also* Lynne Johnson, *supra* note 7, at iii (noting that the JVST is a victory for End Demand Illinois, which is a campaign working to focus law enforcement's attention on traffickers rather than victims).

the judicial system's formal acknowledgment of innocence.<sup>73</sup> The JVST acknowledges that victims of trafficking are often forced to commit crimes against their own free will and, thus, seeks to clear the criminal records of victims who have transgressions that directly result from their victimization.<sup>74</sup> Senator Hutchinson, one of the Illinois Senators who advocated for the JVST, said:

The most important thing about Senate Bill 1037 is that it makes sure that the judicial system has a mechanism to ensure that a person who has been the victim of a crime is not automatically considered a criminal . . . It is good public policy to protect women and children who have been taken advantage of in this most heinous way. They can take the necessary steps to rebuild their lives and become functional members of society after suffering trauma of that magnitude.<sup>75</sup>

When the JVST was passed, Governor Pat Quinn also noted that a criminal background hinders a victim's ability to find employment and housing, and can also limit their parental rights.<sup>76</sup>

### 3. *The Court's Interpretation of the JVST*

Two prominent JVST cases stand out and provide a useful basis for understanding the JVST's interpretation. The first of which is *People v. J.S.* In that case, J.S. was a victim of sex trafficking for two years.<sup>77</sup> During that time, her trafficker, Montel Williams ("Williams"), forced J.S. to perform acts of prostitution, promoted her as a prostitute, and monitored her sex work.<sup>78</sup> In order to control J.S., Williams used physical violence and threats of violence aimed at both J.S. and her children, confiscated J.S. and her children's social security cards, and threatened to call law enforcement to report her acts of prostitution if she left him.<sup>79</sup>

J.S. was convicted five times: twice for prostitution, once for keeping a place of prostitution, once for driving on a revoked or suspended license, and once for driving an uninsured vehicle.<sup>80</sup> J.S. sought to have all of her convictions vacated,<sup>81</sup> as they were the direct result of her victimization.<sup>82</sup> The court vacated her

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73. U.S. DEPT OF STATE, *Trafficking in Persons Report June 2016*, 29 (2016), [www.state.gov/documents/organization/258876.pdf](http://www.state.gov/documents/organization/258876.pdf).

74. See Press Release, *supra* note 25 (mentioning that "[v]ictims of human trafficking are often forced into prostitution and other crimes against their own will, and too many of them are being prosecuted as criminals").

75. *Id.*

76. *Id.*

77. *People of the State of Illinois v. J.S.*, Doc. No. X, at 1 (Ill. Cir. Cook Cnty. Mar. 31, 2015)

78. *Id.*

79. *Id.*

80. *Id.* at 2–3.

81. *Id.*

82. J.S. alleged that her driving convictions were the direct result of her

convictions for prostitution, but declined to vacate her driving convictions and her conviction for keeping a place of prostitution.<sup>83</sup> The court examined the statutory language of the JVST and concluded that it did not have the statutory authority to vacate non-prostitution convictions, because only prostitution convictions are specifically listed in the statute.<sup>84</sup>

In the second primary case, *People v. B.J.*, B.J., over the course of 6 years, was a victim of sex trafficking and under the control of several pimps.<sup>85</sup> She was kidnapped, abused, manipulated, threatened, and coercively addicted to drugs during that time.<sup>86</sup> B.J. sought to vacate all of her convictions, which included three convictions for prostitution and one for public indecency.<sup>87</sup> The court admitted that it did not have the express statutory authority to vacate the public indecency charge, but the court relied on the intent of the legislature to vacate that conviction anyway.<sup>88</sup> In doing so, the court distinguished between B.J.'s case and *People v. J.S.*<sup>89</sup> The court said that in B.J.'s case, "the charge and the conviction are unequivocally prostitution-related."<sup>90</sup>

When B.J. was arrested for public indecency, the arrest report said that the police arrested her because they saw her performing oral sex on a John<sup>91</sup> in a vehicle.<sup>92</sup> The court said that it was clear that B.J. was performing an act of prostitution, and the arresting officers could have charged her with prostitution instead.<sup>93</sup> The court again looked to the statutory language to interpret the legislative intent. In doing so, the court determined that because B.J. could have been arrested for prostitution instead, her public indecency charge should be vacated because the legislature intended to permit the vacatur of prostitution convictions for sex trafficking victims.<sup>94</sup> According to the court, "the nexus between

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victimization because she was forced to drive a vehicle by her pimp to perform acts of prostitution and to get him alcohol. *People of the State of Illinois v. B.J.*, Doc. No. X at 3 (Cir. Cook Cnty, June 24, 2015).

83. *People of the State of Illinois v. J.S.*, Doc. No. X, 3–4 (Ill. Cir. Cook Cnty. Mar. 31, 2015)

84. *Id.* at 4.

85. *People of the State of Illinois v. B.J.*, Doc. No. X at 1 (Cir. Cook Cnty, June 24, 2015).

86. *Id.*

87. *Id.*

88. *Id.* at 3.

89. *Id.*

90. *People of the State of Illinois v. B.J.*, Doc. No. X at 3 (Cir. Cook Cnty, June 24, 2015).

91. "John" is the common term for a buyer of commercial sex. End Demand Illinois, *What Is Demand?*, THE CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, [www.caase.org/end-demand-illinois](http://www.caase.org/end-demand-illinois). (last visited May 12, 2018).

92. *People of the State of Illinois v. B.J.*, Doc. No. X at 4 (Cir. Cook Cnty, June 24, 2015).

93. *Id.* at 4.

94. *Id.*

B.J.'s sex trafficking and her conviction and arrest for public indecency in this case is remarkably strong.<sup>95</sup>

Since 2000, the federal and state governments have enacted laws and policies reflecting the importance of treating victims as victims, rather than criminals.<sup>96</sup> Legislators, activists, and policy makers have differing opinions and approaches as to the best methods of addressing the needs of victims while strengthening efforts to criminalize traffickers.<sup>97</sup> Illinois has attempted to address the needs of victims through passing the JVST.<sup>98</sup> However, this has only been used to allow vacatur of victims' convictions for prostitution or very similar charges.<sup>99</sup> Other states have enacted laws and policies differing from the JVST with the purpose of addressing victims' needs.<sup>100</sup>

### III. ANALYSIS

The current interpretation of the JVST by Illinois courts does not meet the needs of sex trafficking victims; nor does it conform to the intent of the legislature as it does not address the full spectrum of crimes that result from sex trafficking.<sup>101</sup> Many other states, governmental bodies, and advocacy groups have suggested and adopted a variety of methods and laws to better address the problem of trafficking; specifically enacted with the purpose of helping the victims of trafficking escape their traffickers and rebuild their

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95. *Id.*

96. *See, e.g.*, Press Release, *supra* note 25 (stating that “[v]ictims of human trafficking are often forced into prostitution and other crimes against their own will, and too many of them are being prosecuted as criminals”); *see also* Press Release, New York State Unified Court System, *NY Judiciary Launches Nation's First Statewide Human Trafficking Intervention Initiative*, NYCOURTS.GOV (Sept. 25, 2013), [www.nycourts.gov/press/PR13\\_11.pdf](http://www.nycourts.gov/press/PR13_11.pdf) (describing a new court system in New York with the purpose of identifying victims of trafficking and offering them services in the place of convictions for prostitution); *see also* Mogulescu, *supra* note 16, at 473–74 (noting that human trafficking has become an important issue among federal and state legislators who have recently taken action to further criminalize traffickers).

97. *See* The Polaris Project, *supra* note 19 (rating the different approaches of the states to eliminate human trafficking).

98. *See* Press Release, *supra* note 25 (describing the JVST as a much-needed tool to help victims of trafficking); *see also* *People v. B.J.*, at 4 (mentioning that “[t]he legislature intended to permit victims of sex trafficking to vacate convictions for prostitution in order to provide some legal closure”).

99. *See* *People v. J.S.*, at 6 (holding that the court does not have the express statutory authority to vacate convictions that do not have a strong nexus to the victim's trafficking).

100. *See* The Polaris Project, *supra* note 19 (discussing and rating different state approaches to human trafficking and analyzing, specifically, states' differing approaches to addressing the needs of victims).

101. *See id.* (holding that only prostitution convictions, or convictions with a strong nexus to prostitution, will be vacated under the JVST).

lives.<sup>102</sup> This section will first examine the JVST and its weaknesses in regards to adequately addressing the needs of victims. This section will go on to examine the strengths and weaknesses of methods taken by other states and governmental bodies that have attempted to prevent or rectify the problem of criminalizing trafficking victims.

### A. *Why the current use of the JVST is Problematic*

According to *People v. B.J.* and *People v. J.S.*, an Illinois court will only grant vacatur to sex trafficking victims for convictions that are so strongly related to prostitution that the victim could have been charged with prostitution instead.<sup>103</sup>

In *People v. B.J.*, the court reasoned that vacatur of B.J.'s public indecency conviction was appropriate because she was arrested for performing an act of prostitution.<sup>104</sup> However, in *People v. J.S.*, the court declined to vacate J.S.'s driving convictions; this was despite the fact that both convictions were the result of her pimp forcing her to drive to get him alcohol and to engage in acts of prostitution, because those convictions were not explicitly outlined in the JVST.<sup>105</sup> Because the JVST was a new law, and no court of review had addressed a JVST controversy, the court looked to the statutory language of the JVST to determine the intent of the legislature.<sup>106</sup> The court looked to the words in the statute and interpreted the language's plain and ordinary meaning.<sup>107</sup>

In doing so, the court reasoned that because the statute explicitly used the words "the violation," that the violation the JVST referred to was prostitution because that is the only violation

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102. See N.Y. CRIM. PROC. LAW § 440.10(1)(i) (West, Westlaw current through L.2016) (New York's law for vacating convictions of prostitution for trafficking victims). See also Press Release, Cook County Sheriff's Office, *Chicago Prostitution and Trafficking Intervention Court*, COOK COUNTY COURT, [www.cookcountycourt.org/Portals/0/Chief%20Judge/Prostitution%20Court/prostitution%20court%20fact%20sheet.press.pdf](http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Prostitution%20Court/prostitution%20court%20fact%20sheet.press.pdf) (describing Chicago's new court system designed to address the needs of trafficking victims). See also N.Y. Soc. Serv. § 483-ee (West, Westlaw current through L.2016) (establishing a task force in New York to address the needs of victims of trafficking, educate the public, and prosecute traffickers).

103. Compare *People of the State of Illinois v. B.J.*, Doc. No. X at 4 (Cir. Cook Cnty, June 24, 2015) (holding "[t]he conviction, which directly follows from an act of prostitution, and could have just as easily been charged as prostitution by the arresting officer, is precisely within the contemplation of the legislature in enacting the JVST"), with *People of the State of Illinois v. J.S.*, Doc. No. X at 1,5 (Ill. Cir. Cook Cnty. Mar. 31, 2015) (acknowledging that J.S. was a victim of trafficking but refusing to vacate her driving convictions that resulted from her victimization).

104. *People of the State of Illinois v. B.J.*, Doc. No. X at 4 (Cir. Cook Cnty, June 24, 2015).

105. *Id.* at 3.

106. *Id.* at 4.

107. *Id.* at 4 (citing *Krautsack v. Anderson*, 223 Ill. 2d 541, 552-53 (2006)).

explicitly mentioned in the statute.<sup>108</sup> J.S. argued that the court had the discretion to vacate other convictions based on Section (c) of the JVST, which allows the court to consider the circumstances of the case and take additional appropriate action after vacating a conviction for prostitution.<sup>109</sup> However, the court rejected J.S.'s argument on the grounds that her interpretation was too broad and allowing it would lead to the "extreme result" of vacatur of more serious crimes.<sup>110</sup>

1. *The Important Difference Between Vacating and Expunging Convictions*

The JVST specifically provides for vacatur of convictions for prostitution<sup>111</sup> rather than expungement.<sup>112</sup> The differences between vacatur and expungement are significant because of the purposes and effects of each.<sup>113</sup> When a conviction is expunged, it essentially destroys the history of the conviction without signifying that the defendant was innocent of the crime.<sup>114</sup> Vacatur, on the other hand, signifies that the Defendant was not guilty, and has the effect of canceling the conviction.<sup>115</sup> The purpose of vacatur is to ensure that people are not punished for crimes they either did not commit, or they committed under coercion.<sup>116</sup>

Drafters of the JVST have emphasized that the purpose of the JVST is to allow victims to move on from a traumatic past free from the burden of a criminal record.<sup>117</sup> Many victims are forced to commit crimes outside the coverage of the JVST,<sup>118</sup> so even with the

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108. *People of the State of Illinois v. J.S.*, Doc. No. X at 5 (Ill. Cir. Cook Cnty. Mar. 31, 2015).

109. *Id.* (citing 725 ILL. COMP. STAT. ANN. 5/116-2.1(c)).

110. *Id.* at 5.

111. *See* 725 ILL. COMP. STAT. ANN. 5/116-2.1 (West, Westlaw through 2016 Reg. Sess.) (providing for a motion to vacate a judgment of prostitution).

112. Some states have taken this approach and adopted statutes that allow for expungement and vacatur of convictions resulting for prostitution. Nicholas R. Larche, Comment, *Victimized by the State: How Legislative Inaction has Led to the Revictimization and Stigmatization of Victims of Sex Trafficking*, 38 SETON HALL LEGIS. J. 281, 303–305 (2014).

113. *Id.* at 303–304.

114. *Id.*

115. *Id.*

116. Alyssa M. Barnard, Comment, *The Second Chance They Deserve: Vacating Convictions of Sex Trafficking Victims*, 114 COLUM. L. REV. 1463, 1486 (2014).

117. *See* Press Release, *supra* note 25 (stating "[s]ex trafficking is a truly reprehensible crime that preys on the most vulnerable. Victims deserve a chance to clear their records and rebuild their lives." Governor Quinn said.).

118. *See* *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 425 (Crim. Ct. 2013) (noting "[i]ndeed, human trafficking victims are frequently arrested and charged for a variety of offenses based on actions which the victims were unwillingly coerced into committing by their traffickers"); *see also* Francisco Zornosa, Comment, *Protecting Human Trafficking Victims From*

relief of the JVST, victims still may be saddled with a criminal background.<sup>119</sup> Many have argued that laws similar to the JVST, which only permit vacatur of prostitution convictions, are not sufficient to give victims the relief, closure, and services they deserve.<sup>120</sup> The next section will explore and examine alternatives and solutions that may serve victims of trafficking better than the current interpretation of the JVST.

## B. *What Other States and Governing Bodies Have Done to Aid Sex Trafficking Victims*

### 1. *Use Court Discretion to Broaden the Scope of the Law*

New York is an example of a state that has been very progressive in adopting laws and policies aimed at serving the needs of victims of trafficking.<sup>121</sup> New York's vacatur law<sup>122</sup> is very similar to the JVST in that it only explicitly allows for vacatur of prostitution and related convictions.<sup>123</sup> It also contains a section stating that the court may "take such additional action as is appropriate in the circumstances."<sup>124</sup>

In *People v. L.G.*, L.G. was a trafficking victim in New York who sought to have her convictions vacated, one of which was a conviction for possession of a weapon that resulted from her

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*Punishment and Promoting Their Rehabilitation: The Need for an Affirmative Defense*, 22 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 177, 185 (2016) (arguing that it is illogical to preclude trafficking victims from relief for crimes outside of prostitution because human trafficking victims are so often forced to commit crimes at the coercive direction of their traffickers).

119. See *People of the State of Illinois v. J.S.*, Doc. No. X at 5 (Ill. Cir. Cook Cnty. Mar. 31, 2015) (finding that the victim's driving convictions would not be vacated and thus, leaving her with a criminal record).

120. See *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 425 (Crim. Ct. 2013) (reasoning that an interpretation of the New York law, similar to the JVST, that only allowed vacatur of prostitution offenses would be far too narrow and would be against the intent of the legislature to provide relief and justice to victims); see also Melissa Broudo, Executive Summary, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators*, SEX WORKER'S PROJECT, Urban Justice Center (April 2012) (urging legislators to expand vacatur laws to include non-prostitution related convictions).

121. See Mogulescu, *supra* note 16, at 475–476 (detailing New York's efforts to address the needs of trafficking victims and stating that it was the first state to allow vacatur for trafficking victims).

122. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (West, 2016).

123. See *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 425 (Crim. Ct. 2013) (finding that although the New York statute only explicitly allowed for vacatur of prostitution charges, vacatur was not limited to prostitution convictions only); see also 725 ILL. COMP. STAT. ANN. 5/116-2.1 (West, through 2016 Reg. Sess.) (providing for vacatur for only the specific offenses of prostitution, felony prostitution, or a similar local ordinance).

124. *Id.*



carrying a knife while working for her pimp.<sup>125</sup> The court acknowledged that the statute only explicitly mentions convictions of prostitution, but still vacated L.G.'s convictions because her non-prostitution related offenses were the direct result of her victimization.<sup>126</sup>

The New York court first reasoned that the statute gives the court broad discretion to apply the law narrowly or broadly because: (1) the statute contains the subsection giving the court authority to "take such additional action as is appropriate in the circumstances;" and, (2) the statute uses the word "may" in granting the court power to vacate convictions.<sup>127</sup> The intent of the legislature is also important in the court's reasoning. The court points out that a narrow reading of the statute would not comport with the legislature's intent to free trafficking victims from being saddled with a criminal background, especially given the modern understanding of the coercive nature of traffickers and the power they have over their victims.<sup>128</sup> According to the court, it is apparent that the legislature expected that the statute would be applied to other convictions that resulted from trafficking.<sup>129</sup>

The New York court also demonstrated liberal application of the vacatur law in *People v. G.M.* In this case, the court vacated G.M.'s convictions for drug possession, criminal trespass, and prostitution simply upon her demonstration that she was a trafficking victim and her convictions were a result of her victimization.<sup>130</sup> The court easily came to the conclusion that vacatur of all G.M.'s convictions was appropriate because G.M. was able to provide a "compelling narrative" regarding the circumstances of her victimization; furthermore, the People did not object to the motion.<sup>131</sup>

The approach of the New York court has its strengths and weaknesses, of course. The court's use of broad discretion to vacate non-prostitution related convictions that directly result from trafficking aligns with the basic principle that people should not be punished for crimes they commit under coercion.<sup>132</sup> The *L.G.* court determined that a more effective method in trafficking victims cases is to look at the facts of each conviction and determine the

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125. *Id.* at 420–422.

126. *Id.* at 424–425.

127. *Id.* at 426.

128. *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 424–425 (Crim. Ct. 2013).

129. *Id.* at 427.

130. *People of the State of New York v. G.M.*, 912 N.Y.S. 2d 761, 765 (Crim. Ct. 2011).

131. *Id.*

132. See Barnard, *supra* note 116, at 1486 (stating that victims seeking vacatur of a conviction resulting from trafficking take the position that they should not be culpable for the conviction given the modern understanding of sex trafficking as coercion).

appropriate remedy, based on the statute, on a case-by-case basis.<sup>133</sup> By exercising broad discretion, the court has more flexibility to tailor each victim's relief in a manner that is proportional and appropriate.

In *People v. L.G.*, the People of New York objected to the vacatur of L.G.'s weapon charge, arguing that it was against public policy to allow vacatur of such a charge for safety reasons.<sup>134</sup> The Illinois court in *People v. J.S.* had similar concerns when it declined to broaden the scope of the JVST to vacate J.S.'s driving convictions.<sup>135</sup> There, the court reasoned that allowing vacatur of non-prostitution related convictions would lead to vacatur of more serious, and potentially violent, crimes.<sup>136</sup> Others have argued that allowing vacatur of non-prostitution convictions would "open the flood gates" to allow all people with prior prostitution convictions to claim they were trafficking victim.<sup>137</sup> However, a New York court struck down this argument as "dogmatic and unpersuasive."<sup>138</sup> The court points out that even if the "flood gates" do open, the court will continue to use its discretion in granting motions and can easily deny frivolous claims.<sup>139</sup> Finally, the court emphasized the importance of the victim's ability to move on from her traumatic past and argued that this interest outweighs any increase in the amount of motions filed.<sup>140</sup> The New York Court's case-by-case evaluation of the facts of each conviction to vacate convictions other than prostitution better suits the needs of trafficking victims. This is because an appropriate remedy can be individually crafted for each victim, allowing victims to rebuild their life free from the burden of a criminal record.<sup>141</sup>

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133. See *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 427 (Crim. Ct. 2013) (stating that the court must examine the factual circumstances of each conviction to properly use its discretion in determining if vacatur is appropriate).

134. *Id.* at 429.

135. See *People of the State of Illinois v. J.S.*, Doc. No. X at 5 (Ill. Cir. Cook Cnty. Mar. 31, 2015) (stating that if the court adopts a broad view of the JVST, it would lead to more serious convictions being vacated).

136. *Id.*

137. See *People of the State of New York v. Silvia Gonzalez*, 937 N.Y.S.2d 567, 570 (2011) (examining the People's claim that granting Defendant's motion will "open the flood gates" to defendants who can come into court and have their convictions for prostitution vacated without any further corroboration).

138. *Id.*

139. *Id.*

140. *Id.*

141. See *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 427 (Crim. Ct. 2013) (finding that the legislature intended to avoid punishing victims with criminal records and that vacatur is not limited to convictions for prostitution). See also *People of the State of New York v. Silvia Gonzalez*, 937 N.Y.S.2d 567, 570 (2011) (reasoning that the legislature did not include "bright-line rules and formulaic determinations" in the vacating statute, which gave the courts broad discretion to vacate convictions). See also Mogulescu, *supra* note 16, at 482–483 (arguing that traffickers tell victims that they will not be

## 2. Training Law Enforcement or Creating a Task Force

### a. Training Law Enforcement

It has been suggested that police officers are inadequately trained in human trafficking screening.<sup>142</sup> Since law enforcement officers often encounter victims in their day-to-day operations, police and law enforcement officers may be in the best position to intervene and rescue trafficking victims.<sup>143</sup> Law enforcement can be trained to proactively identify victims and provide them services as an alternative to arrest and prosecution.<sup>144</sup> Since police officers are required to patrol the neighborhoods they work in, and victims are forced to be out in the public to find Johns, there is presumably frequent interactions between police and victims. Police should use this opportunity to identify victims.<sup>145</sup>

In fact, most human trafficking cases prosecuted by the Department of Justice were products of arrests by police officers in the field.<sup>146</sup> To counteract this, California, for example, adopted a statute requiring that law enforcement officers with field or investigative duties complete at least two hours of human trafficking training.<sup>147</sup> Indiana also adopted a similar law, requiring law enforcement to take a course on human trafficking that would cover topics such as: identification of trafficking, communicating with traumatized people, and victims' rights.<sup>148</sup>

However, several weaknesses exist within this argument. The first is that law enforcement officers are subject to the same misunderstandings and biases as other people.<sup>149</sup> A police officer may encounter a victim of sex trafficking and fail to understand that the person is a victim because the officer generally misunderstands

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able to find legal employment because they have a criminal background, and this notion is reinforced by victims' experience in the criminal justice system).

142. Larche, *supra* note 112, at 947–948.

143. Robert Moosy, *Sex Trafficking: Identifying Cases and Victims*, 262 NAT'L INST. OF JUST. J. 2, 7 (2009) [www.ncjrs.gov/pdffiles1/nij/225759.pdf](http://www.ncjrs.gov/pdffiles1/nij/225759.pdf).

144. See Allison L. Cross, Comment, *Slipping Through the Cracks: The Dual Victimization of Human-Trafficking Survivors*, 44 MCGEORGE L. REV. 395, 404, (2013) (emphasizing the importance of police training to allow law enforcement to proactively search for and intervene in human trafficking situations).

145. Moosy, *supra* note 143, at 2.

146. *Id.*

147. CAL. PEN. CODE § 13519.14(e) (West, Westlaw through 2016 Reg. Sess.)

148. BURNS IND. CODE ANN. § 5-2-1-9(a)(10) (LEXIS, LexisNexis current through P.L. 1 215 2016).

149. See Cross, *supra* note 144, at 402 (explaining that law enforcement may misunderstand trafficking as requiring physical restraint and therefore fail to recognize it). See also Moosy, *supra* note 143, at 5 (describing how law enforcement was suspicious of victims' stories upon initially encountering the victims).

trafficking.<sup>150</sup> An officer may also be suspicious or insensitive to a victim's story and fail to investigate it properly.<sup>151</sup> Other problems are that victims often do not trust law enforcement and are unlikely to seek help on their own.<sup>152</sup>

Law enforcement agencies with human trafficking initiatives or task forces are more likely to be aware of trafficking and are more likely to be trained to identify it.<sup>153</sup> These law enforcement agencies are also more likely to have units devoted to investigating and prosecuting human trafficking cases.<sup>154</sup> Effective law enforcement training would allow police to intervene and rescue victims, thereby avoiding the negative impacts of arrest and conviction.<sup>155</sup> This is referred to as dual victimization.<sup>156</sup> Proper training of local law enforcement would allow for early intervention in trafficking, allowing the victim to heal from the trauma of being trafficked without the consequences and trauma stemming from the arrest and conviction itself.<sup>157</sup>

#### b. Creating a Task Force

Task forces created for the purpose of combatting human trafficking combine a variety of professionals with expertise in different subjects and the goal of creating a more well-rounded approach to human trafficking.<sup>158</sup> Typically, various agencies combine efforts and resources, as well as coordinate strategies, in order to increase investigations and prosecutions as well as provide services and assistance to victims.<sup>159</sup>

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150. *Id.*

151. *Id.*

152. See Lynne Johnson, *supra* note 7, at 12 (explaining that many victims may not report trafficking to the court when charged with prostitution because they see themselves as criminals). See also Raphael & Shapiro, *supra* note 30, at 19-20 (finding that some women across all forms of prostitution had experienced violence by a police officer). See also Moosy, *supra* note 143, at 5 (pointing out that many victims are told by their traffickers that police officers will not help them).

153. Cross, *supra* note 144, at 404.

154. *Id.*

155. *Id.* at 406. See also Moosy, *supra* note 143, at 2 (describing the goal of law enforcement training as identifying and helping victims while punishing traffickers).

156. Dual victimization in this context refers to the situation where a trafficking victim has already been subjected to victimization by his or her trafficker, and the victim is re-victimized when arrested for prostitution. Larche, *supra* note 112, at 947.

157. See Larche, *supra* note 112, at 951-952 (describing the difficulty experienced by victims by dual victimization resulting from trauma from trafficking and criminalization).

158. *Human Trafficking Issue Brief: Task Forces*, THE POLARIS PROJECT, 1, (Fall 2015), [www.polarisproject.org/sites/default/files/2015%20Task%20Forces%20Issue%20Brief%20Final.pdf](http://www.polarisproject.org/sites/default/files/2015%20Task%20Forces%20Issue%20Brief%20Final.pdf).

159. *Id.*

States have taken a variety of approaches in establishing task forces. Arkansas, for example, adopted a statute allowing the Attorney General to establish a task force, but not requiring it.<sup>160</sup> The statute also calls for various government agencies to combine efforts to facilitate investigation,<sup>161</sup> create a state plan to combat human trafficking,<sup>162</sup> and train law enforcement.<sup>163</sup> The Arkansas task force allows for a more well-rounded approach to combatting human trafficking because it addresses multiple areas such as law enforcement training, human trafficking investigation and prosecution, and victims assistance.<sup>164</sup> However, the creation of a task force is not mandated, meaning the Attorney General is free to decide whether to create a task force at all.<sup>165</sup>

Another approach taken by states is to legislatively mandate the creation of a task force that researches various areas of human trafficking and makes recommendations to the Governor or the state legislature.<sup>166</sup> New Jersey and Colorado have taken this approach.<sup>167</sup> Both the New Jersey and the Colorado statutes create a task force and set out various members to be involved and the goals and duties of the task force.<sup>168</sup> The New Jersey and Colorado task forces are both required to make recommendations to the government regarding the current law or policies relating to human trafficking.<sup>169</sup> One weakness to this method is that the statute only

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160. A.C.A. § 12-19-101(a)(1) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.) (stating that “[t]he Attorney General may establish a state task force...”).

161. A.C.A. § 12-19-101(d)(3), (4), (5) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.).

162. A.C.A. § 12-19-101(d)(1) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.).

163. A.C.A. § 12-19-101(d)(8) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.).

164. *See* A.C.A. § 12-19-101(d) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.) (providing the duties of the State Task Force for the Prevention of Human Trafficking).

165. *See* A.C.A. § 12-19-101(a)(1) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.) (stating that “[t]he Attorney General *may* establish a state task force. . .”) (emphasis added).

166. *See* N.J. STAT. § 52:17B-237(a),(g) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (creating a task force made up of various members that reports to the Governor annually); *see also* C.R.S. 18-3-505(1)(a), (4)(g) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.) (creating the Colorado Human Trafficking Council and describing its purpose and requiring it to report to the judiciary committees of the House of Representatives and the Senate).

167. *Id.*

168. *See* N.J. STAT. § 52:17B-237(a),(f) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (detailing the members and duties of the task force); *see also* C.R.S. 18-3-505(1)(a), (b) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.) (describing the purpose of the council and outlining the membership requirements).

169. N.J. STAT. § 52:17B-237(g) (West, Westlaw through L.2016, c.69, and J.R. No. 7). C.R.S. 18-3-505(4)(a) (LEXIS, LexisNexis current through 2016).

requires recommendations, not affirmative changes to the law.<sup>170</sup> However, the state benefits from receiving these recommendations and proposals from experts who have experience or training in various areas of human trafficking.<sup>171</sup> Therefore, the government is better suited to adopt legislation or policies that are created by experts.

### 3. *Legalization and Decriminalization of Prostitution*

Proponents of legalization or decriminalization of prostitution have argued that prostitution is a choice and a form of work,<sup>172</sup> and that criminalization is due to sexism and misogyny.<sup>173</sup> They further argue that decriminalization would allow consensual participants to have access to the benefits of legitimate work such as health care, worker's compensation, and unionization.<sup>174</sup> There is a distinction between legalization and decriminalization, and it is helpful to discuss them separately.

#### a. Legalization

Legalization involves criminalizing some forms of prostitution while decriminalizing and regulating others.<sup>175</sup> Nevada has adopted this form of legalization in some counties and allows for licensed brothels and sex workers.<sup>176</sup> Government regulation in the area of prostitution reduces violence against the workers, but the women still have no right to choose their customers, when they work, or

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170. See N.J. STAT. § 52:17B-237(a),(f) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (mandating “[t]he commission shall report annually to the Governor and to the Legislature ... its activities, as well as its *findings and recommendations* for any needed new services or resources for victims of human trafficking, and any *proposed changes* to the current law concerning human trafficking”) (emphasis added); see also C.R.S. 18-3-505(4)(a) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.) (requiring the council to make recommendations to the judiciary committee of the House of Representatives and the Senate).

171. See N.J. STAT. § 52:17B-237(a) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (requiring task force members to have experience or specialized knowledge in some specific aspect of human trafficking); see also C.R.S. 18-3-505(1)(b) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.) (requiring task force members who are representatives from various specific governmental organizations relating to human trafficking as well as two former victims of trafficking).

172. Ann M. Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10 BERKELEY WOMEN'S L. J. 47, 48 (1995).

173. Belkys Garcia, Comment, *Reimagining The Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161, 166 (2005).

174. *Id.* at 166–167.

175. Susan E. Thompson, Comment, *Prostitution: A Choice Ignored*, 21 WOMEN'S RTS. L. REP. 217, 241–242 (2000).

176. *Id.* at 242.

how much they charge.<sup>177</sup> The sex workers' movements are also very restricted, as they are only permitted to leave the brothel for mandatory health screenings and beauty appointments.<sup>178</sup>

Therefore, this system of legalization is hardly different from sex trafficking because both involve the restriction of movement and assertion of control over workers.<sup>179</sup> Additionally, studies have found that in countries such as the Netherlands where prostitution is legalized, the majority of sex for purchase still occurs illegally.<sup>180</sup> Thus, legalization would not prevent the harms associated with trafficking, since sex is still purchased illegally in countries that have adopted legalization.<sup>181</sup>

In fact, the legalization of prostitution has resulted in an increase in human trafficking in some countries.<sup>182</sup> This is caused by an increase in demand, which results in traffickers and pimps coercing more victims into prostitution to meet this demand.<sup>183</sup> The most popular destinations for sex trafficking victims are countries where prostitution is legalized.<sup>184</sup> Therefore, legalization would be contrary to the goals of the JVST and other similar statutes seeking to reduce trafficking and victimization.<sup>185</sup> For this reason, it is an unacceptable solution to the problem of trafficking.

#### b. Decriminalization

Decriminalization is similar to legalization, but it involves the removal of all laws relating to prostitution.<sup>186</sup> Proponents of decriminalization argue that the decision to participate in prostitution is a woman's choice, and the government should not interfere with this choice.<sup>187</sup> In following the structure of this argument, prostitution should be a legitimate business, and making

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177. *Id.* at 243.

178. *Id.*

179. *See The American Pimp, supra* note 34, at 1 (listing methods of control by pimps including confinement, controlling daily life skills, and threats of restraint).

180. *See* SHARED HOPE INTERNATIONAL, *Demand: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, The Netherlands, and the United States*, 75 (July 2007), [www.sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf](http://www.sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf) (explaining that police in the Netherlands only regulate the legal brothels, leaving the majority of the sector unregulated).

181. *See id.* (explaining that the illegal sex market is "rife with sex slavery").

182. CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, *Addressing Misconceptions: Legalization*, 2, [www.media.virbcdn.com/files/e1/FileItem-150147-AM\\_Legalization.pdf](http://www.media.virbcdn.com/files/e1/FileItem-150147-AM_Legalization.pdf).

183. *Id.*

184. *Id.*

185. *See* Press Release, *supra* note 25 (describing the goals of the JVST); *see also Trafficking in Persons, supra* note 18 (describing the Palermo Protocol's goal of reducing human trafficking and protecting the victims of sex trafficking).

186. Thompson, *supra* note 175, at 244.

187. *Id.* at 245.

it so would give prostitutes access to benefits awarded to other legitimate jobs such as health care and vacation benefits, disability, and workmen's compensation.<sup>188</sup> Finally, proponents of decriminalization argue that the government money spent to enforce laws against prostitution would be redirected to more pressing concerns and would lower taxes.<sup>189</sup>

None of the decriminalization arguments are persuasive. First, studies have shown that the majority of women do not enter the sex industry willingly.<sup>190</sup> Also, sex workers in countries where prostitution is decriminalized or legalized reported forgoing all work benefits associated with registering as a legal prostitute, such as vacation time and health care, in order to remain anonymous.<sup>191</sup> Sex workers in these countries also report wanting to leave the sex industry as soon as possible.<sup>192</sup>

Women in prostitution are exposed to violence regardless of their work being legal or illegal.<sup>193</sup> Decriminalization is, therefore, an inappropriate solution to the problem of human trafficking.

### c. End Demand Approach

An alternative approach to legalization and decriminalization involves a shift in who is criminalized. Specifically, it involves decriminalizing the act of selling sex, and thus decriminalizing sex workers, while criminalizing the act of buying sex, and criminalizing johns, in an effort to decrease the demand for prostitution.<sup>194</sup> This approach focuses on market forces; like any other market, there would not be supply if there was no demand, and the prostitution market would not exist without this demand for sexual services.<sup>195</sup> Two of the main approaches to ending demand include John's School and reverse stings.<sup>196</sup> John's Schools are educational classes that serve as diversion programs or

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188. *Id.*

189. *Id.* at 246.

190. See Lynne Johnson, *supra* note 7, at 3 (explaining that prostitution is never a choice).

191. See *Addressing Misconceptions: Legalization*, *supra* note 182, at 1.

192. *Id.*

193. See Raphael & Shapiro, *supra* note 30, at 16 (finding that high percentages of women in a Chicago study of prostitutes experienced violence in all areas and forms of prostitution); see also *Addressing Misconceptions: Legalization*, *supra* note 182, at 1 (stating that the majority of women involved in the sex trade in countries where prostitution is legal still experience various forms of violence).

194. Abt. Associates Inc., *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts*, THE NATIONAL INSTITUTE FOR JUSTICE, 3–4, (Apr. 30, 2012) [www.demandforum.net/wp-content/uploads/2012/01/abt-national-assessment-final-report-4-30-2012.pdf](http://www.demandforum.net/wp-content/uploads/2012/01/abt-national-assessment-final-report-4-30-2012.pdf) (arguing that targeting buyers of sex and decreasing demand will end prostitution).

195. *Id.* at iv.

196. *Id.* at 22–23.



sentences for people who are convicted of buying sex.<sup>197</sup> The focus of the John's School is to deter those who purchase sex from doing it again by educating them on the health and legal consequences of purchasing sex, as well as the impact commercial sex has on survivors and communities.<sup>198</sup> John's Schools have been effective; for example, the San Francisco Police Department implemented a John's School that reduced recidivism by 40%.<sup>199</sup>

Another reduction method used by law enforcement is reverse stings. Reverse stings can be web-based, in brothels, or online and usually involve female police officers posing as sex workers.<sup>200</sup> Reverse stings have been effective as well; for example, reverse stings resulted in a 75% reduction of prostitution in a study conducted in New Jersey.<sup>201</sup>

Some have argued that this End Demand approach will actually hurt victims because it does not address victims' needs or their reasoning for entering the sex trade.<sup>202</sup> However, proponents of the End Demand approach do not suggest that decriminalizing victims alone is sufficient to fix the problem of human trafficking.<sup>203</sup> End Demand supporters argue for a comprehensive approach, including enforcement and widespread education of law enforcement, Johns, and the community.<sup>204</sup> This comprehensive approach, aimed at ending demand, has been effective in reducing prostitution in areas such as Ipswich, England, where prostitution decreased by a rate of 40-80%, and Sweden, where prostitution was reduced by a rate of 50-75%.<sup>205</sup>

#### 4. *Creating an Affirmative Defense for Trafficking Victimization*

Another solution that many states have adopted is to create an affirmative defense available for trafficking victims based on their victimization.<sup>206</sup> A victim could present this defense at trial, and would admit to the conduct but deny personal culpability because the conduct resulted from their victimization.<sup>207</sup> This defense would allow the victim to have minimal interaction with the criminal justice system, which would avoid dual victimization and leave the

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197. *Id.* at 23.

198. *Id.*

199. *Id.* at vi.

200. Abt Associates, Inc., *supra* note 194, at 22.

201. *Id.* at vi.

202. Noy Thrupkaew, *A Misguided Moral Crusade*, THE NEW YORK TIMES, (Sept. 22, 2012) [www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html](http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html).

203. Abt Associates, Inc., *supra* note 194, at 20.

204. *Id.* at 20, 80–83.

205. *Id.* at vi.

206. Boggiani, *supra* note 26, at 955.

207. Zornosa, *supra* note 118, at 186–187.

victim with a clean criminal record.<sup>208</sup> This kind of defense may also change the way victims view the criminal justice system, and they may begin to see law enforcement as an ally instead of an enemy.<sup>209</sup> Finally, proving that the victim is in fact a victim of human trafficking may be easier when they assert an affirmative defense than if the victim waits to try to vacate the conviction months or years later.<sup>210</sup>

States have taken several different approaches to creating affirmative defenses, but they can be separated into three categories: (1) states that limit the defense to situations involving duress; (2) states which restrict the defense to prostitution or related offenses; and, (3) states that extend the defense broadly.<sup>211</sup> Limiting the defense to situations involving duress is problematic given our understanding of the controlling nature and methods employed by pimps.<sup>212</sup> Affirmative defenses requiring duress, or situations where the Defendant faces imminent death or serious bodily injury, are too narrow because the methods employed by pimps are often outside of that scope.<sup>213</sup> Traffickers effectively control victims through methods such as threatening the abuse of the legal process, emotional abuse, and manipulation,<sup>214</sup> so this limitation hinders the victim's ability to successfully assert the defense.

The second category involves a limitation excluding charges not related to prostitution. This category is similar to the current interpretation of the JVST in that it limits the use of the affirmative defense to charges of prostitution and closely related crimes only.<sup>215</sup> Illinois adopted this narrow approach in 2015.<sup>216</sup> As is the case with the JVST, this is problematic since victims are often forced to commit crimes outside of that scope.<sup>217</sup>

The states that extend the defense broadly do so in a variety of

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208. *See id.* at 190–191 (arguing that a benefit of an affirmative defense for human trafficking victims is that they can bypass the criminal justice system).

209. *Id.* at 191.

210. *Id.* at 190.

211. *See Zornosa, supra* note 118, at 194–196 (describing the different approaches taken by States in adopting affirmative defenses for human trafficking victims).

212. *Id.* at 188.

213. *Id.*

214. *The American Pimp, supra* note 34, at 1.

215. *See* DEL. CODE ANN. TIT. 11 § 787(h) (West, Westlaw current through 2016 Reg. Sess.) (allowing use of an affirmative defense for human trafficking to be used when the individual is charged with either prostitution or loitering); *see also* G.A. CODE ANN. § 16-3-6(a)(3) (West, Westlaw current through 2016 Reg. Sess.) (allowing the use of an affirmative defense for human trafficking victims for the charges of prostitution, solicitation of sodomy, sodomy, and masturbation for hire).

216. 720 ILL. COMP. STAT. ANN. 5/114(c-5) (West, Westlaw through 2016 Reg. Sess.).

217. *Zornosa, supra* note 118, at 198.

ways. Wisconsin and Wyoming provide affirmative defenses broadly to any crime, as long as it is the direct result of the Defendant's victimization.<sup>218</sup> Kentucky provides an affirmative defense to any non-violent crime resulting from victimization.<sup>219</sup> Finally, Oklahoma provides the broadest defense, allowing a victim to assert the defense to any crime committed during the time they were a victim, even if it does not directly relate to their victimization.<sup>220</sup>

Some argue that it is important for affirmative defenses for trafficking victims to be as broad as possible, in order to prevent dual victimization.<sup>221</sup> However, there must be some limit to the defense, as allowing a trafficking victim to walk free after committing murder would be against the interests of justice and combating crime.<sup>222</sup> Therefore, an affirmative defense for human trafficking victims that is broad, but not so broad as to allow for a defense against violent crimes, meets the needs of both the victim, as well as the criminal justice system. Of course, traditional defenses, such as self-defense, should be available to victims who commit violent crimes against their pimps.

There are several problems with an affirmative defense of human trafficking. The first is that it may not be practical because victims tend to distrust law enforcement and the criminal justice system, and therefore may not be willing to assert the defense.<sup>223</sup> Additionally, many victims do not self-identify as victims.<sup>224</sup> Victims may also still be under the control of their trafficker.<sup>225</sup> These factors make it unlikely that victims of sex trafficking will actually assert an affirmative defense even if it is available to them.

However, Illinois addressed these problems by adopting an affirmative defense for trafficking victims in 2015.<sup>226</sup> The Illinois law created a safety measure which allows a defendant with reason to believe that presenting evidence of his or her victimization will endanger him or herself or others to file a motion under seal to the court.<sup>227</sup> The court is then required to hold an *in camera* hearing to

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218. *Id.*

219. *Id.*

220. *Id.*

221. Boggiani, *supra* note 25, at 957.

222. Zornosa, *supra* note 118, at 198.

223. *See* Cross, *supra* note 144, at 402 (explaining why victims often lack trust for law enforcement officers).

224. *See* Lynne Johnson, *supra* note 7, at 3 (describing that victims often minimize their trauma and experiences as well as exhibit self-blaming attitudes).

225. *See Sex Trafficking in the U.S.*, *supra* note 8 (stating that victims' relationships with their traffickers are based on power and control that prevent the victim from seeking assistance).

226. 725 ILL. COMP. STAT. ANN. 5/115-6.1 (West, Westlaw through 2016 Reg. Sess.).

227. PA 99-0109: Creation of Affirmative Defense to Prostitution Charge, END DEMAND ILLINOIS, 1, [www.media.virbcndn.com/files/96/ea70fbcf4d900af-PA99-0109BillSummary.pdf](http://www.media.virbcndn.com/files/96/ea70fbcf4d900af-PA99-0109BillSummary.pdf) (last visited May 12, 2018).

determine if, by a preponderance of the evidence, an assertion of the defense in open court would likely present legitimate safety concerns.<sup>228</sup> If the court finds that the assertion of the defense is likely to endanger the safety of the defendant or anyone else, the court may choose to enhance safety by a variety of methods, including ordering additional *in camera* hearings and clearing the courtroom during the defendant's proceedings.<sup>229</sup> The court may also take any other steps appropriate to enhance safety and allow for a fair opportunity for the defendant to assert the defense.<sup>230</sup>

Safety procedures such as Illinois' allow defendants to assert evidence of their victimization without the fear of retaliation or embarrassment that a victim may experience if forced to present evidence of victimization in open court.<sup>231</sup> Additionally, an affirmative defense that is limited to exclude violent crime could serve the needs of the victim while preserving the interests of the criminal justice system.<sup>232</sup> Therefore, the most appropriate affirmative defense would be coupled with a safety measure and would apply to any non-violent crime stemming from victimization from human trafficking.

#### IV. PROPOSAL

In order to best address the problem of victimization of sex trafficking survivors, the state will need to correct the gaps in the JVST and its interpretation as well as adopt laws and policies that better address the needs of trafficking victims. The JVST's interpretation creates a cycle of dual-victimization by failing to address the full spectrum of convictions that sex trafficking victims face.<sup>233</sup> Additionally, Illinois should adopt a more well-rounded approach to combating human trafficking that addresses victims' services, cooperation of law enforcement in investigating and prosecuting trafficking cases, and training communities who may encounter victims. There is also a need for a mechanism that would prevent dual victimization from occurring, as well as an effective method to clear the criminal records of victims so they are able to rebuild their lives without the burden of a criminal record.<sup>234</sup>

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228. *Id.*

229. *Id.* at 2.

230. *Id.* at 2.

231. See *Sex Trafficking in the U.S.*, *supra* note 8 (explaining that the relationship between the victim and his or her trafficker prevents the victim from seeking assistance).

232. Zornosa, *supra* note 118, at 199–200.

233. See Larche, *supra* note 112, at 947 (explaining dual-victimization and its negative effects on sex trafficking victims).

234. See Press Release, *supra* note 25 (detailing the reasoning for passing the JVST and explaining that trafficking victims deserve a chance to rebuild their lives with a clear record).

The best approach to addressing the gaps in Illinois' current laws and policies will come from a combination of several methods that have proven successful in other states and government entities.<sup>235</sup> This comment suggests that Illinois courts adopt a broad approach to interpreting and applying the JVST. It also suggests that there should also be a statewide task force that is legislatively mandated and tasked with several duties, including finding the best training for law enforcement. Finally, this comment suggests that Illinois expand its current affirmative defense for trafficking victims to include any non-violent crime that directly results from victimization from human trafficking.

### A. *Adopting A Broad Interpretation Of The JVST*

In order to give victims the justice they deserve, Illinois courts should use their discretion to broaden the scope of the JVST to non-violent crimes that directly result from human trafficking victimization. Illinois courts, thus far, have only allowed vacatur of convictions for prostitution, or convictions so closely related that the arresting officer could have arrested the victim with prostitution instead.<sup>236</sup> By adopting a broader approach, Illinois courts could better address the needs of victims because many victims of sex trafficking are forced to commit crimes other than prostitution.<sup>237</sup> The Illinois courts would better serve trafficking victims by taking an approach similar to that of New York courts, which look to the facts of each conviction to vacate convictions that directly result from the victim's involvement in trafficking, even if that conviction is not for prostitution.<sup>238</sup>

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235. See *Human Trafficking Issue Brief: Task Forces*, *supra* note 158, at 1 (describing why task forces are effective: "coordinated strategies result in more investigations and prosecutions, as well as better assistance for survivors and greater awareness amongst the general public"); see also *Abt. Associates Inc.*, *supra* note 194, at 20 (stating that the End Demand effort is most effective when done in conjunction with other methods that address victims' needs).

236. See *People of the State of Illinois v. B.J.*, Doc. No. X at 4 (Cir. Cook Cnty, June 24, 2015) (holding that if the arresting officer could have charged the defendant with prostitution, and the conviction is the result of an act of prostitution, that conviction is within the contemplation of the JVST).

237. See *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 425 (Crim. Ct. 2013) (stating that an interpretation of a vacating-convictions law, that only allowed for vacatur of prostitution, is far too narrow since many victims have convictions other than prostitution).

238. See *id.* at 427 (holding that "in order for the court to exercise its discretion to consider vacatur of each of defendant's judgments of conviction, the court must examine the unique factual circumstances pertaining to each conviction").

Based on the language of section (c) of the JVST,<sup>239</sup> Illinois courts have great discretion in vacating convictions.<sup>240</sup> Illinois courts should use the discretion granted to them in section (c) to adopt a broader approach that would utilize a conviction-by-conviction fact analysis and allow vacatur of non-violent convictions that are the direct result of victimization from human trafficking. This approach would conform to the intent of the Illinois legislature in adopting the JVST, which sought to remove the barriers that many victims face due to criminal convictions for crimes they were forced to commit.<sup>241</sup> Broadening the scope of the interpretation of the JVST would not necessarily lead to “an opening of the flood gates” or vacatur of violent or dangerous crimes, as some have argued.<sup>242</sup> This is because the court would continue to use its discretion on a case-by-case basis and can easily deny frivolous claims.<sup>243</sup>

### *B. Create A Statewide Task Force*

Requiring law enforcement to be trained to better identify trafficking and communicate more efficiently with victims is essential because it would start to repair the relationship between law enforcement and trafficking victims.<sup>244</sup> Training of law enforcement would also allow earlier intervention to stop traffickers and rescue victims.<sup>245</sup> However, the better approach is to create a legislatively-mandated, state-wide task force that is tasked with, among other duties, dictating training standards and topics for law enforcement agencies. Task forces can address multiple concerns and often result in a well-informed and well-rounded approach to addressing the many concerns and aspects of human trafficking and human trafficking victims.<sup>246</sup>

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239. 725 ILL. COMP. STAT. ANN. 5/116-2.1(c) (West, Westlaw through 2016 Reg. Sess.)

240. *People of the State of Illinois v. J.S.*, Doc. No. X at 5 (Ill. Cir. Cook Cnty. Mar. 31, 2015) (citing 725 ILL. COMP. STAT. ANN. 5/116-2.1(c)).

241. See Press Release, *supra* note 25 (stating that “[v]ictims of human trafficking are often forced into prostitution and other crimes against their own will, and too many of them are being prosecuted as criminals”).

242. See *The People of the State of New York v. Silvia Gonzalez*, 937 N.Y.S.2d 567, 570 (2011) (defeating the People’s arguments that granting Defendant’s motion will “open the flood gates” to defendants who can come into court and have their convictions for prostitution vacated without any further corroboration).

243. *Id.*

244. See Raphael & Shapiro, *supra* note 30, at 19-20 (finding that a percentage of women across all forms of prostitution had experienced violence by a police officer); see also Moossy, *supra* note 143, at 5 (explaining that many victims do not trust police because they are told by their traffickers that police officers will not help them).

245. Cross, *supra* note 144, at 406.

246. See *Human Trafficking Issue Brief: Task Forces*, *supra* note 158, at 1

The most effective task force would be legislatively-mandated, unlike the Arkansas task force,<sup>247</sup> and comprised of a combination of representatives from various state government organizations, and public members who are experts, or who have specialized knowledge in the area of human trafficking. This approach, similar to that of New Jersey's Commission on Human Trafficking,<sup>248</sup> would ensure a well-informed recommendation that can best address the needs of victims. The combined efforts of government officials and experts in the field will not only ensure that the task force's recommendations are well-informed and practical, but will also build a valuable relationship between government and victim advocacy and non-profit organizations. Additionally, the Illinois task force should include members who are survivors of human trafficking, which is a requirement of New Jersey's task force.<sup>249</sup> Including a survivor of human trafficking is important because it would allow the task force to make recommendations that are informed by the complexities associated with victimization.<sup>250</sup>

The duties of the task force should include, but not be limited to: evaluating the existing law, creating victims' services and programs, developing training for law enforcement, promoting public awareness and prevention practices, and collecting data about state-wide efforts to combat human trafficking. These duties mirror duties of the New Jersey<sup>251</sup> and Colorado task forces.<sup>252</sup> Similar to those task forces, the Illinois task force should also make recommendations to the legislature or the Governor.<sup>253</sup> The

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(explaining that task forces are often effective because members with a variety of expertise participate and coordinate efforts to synthesize the best methods).

247. A.C.A. § 12-19-101(a)(1) (West, Westlaw current through the 2016 Third Extraordinary Sess. Of the 90<sup>th</sup> Ark. Gen. Assemb.) (providing “[t]he Attorney General may establish a state task force...”).

248. See N.J. STAT. § 52:17B-237(a) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (listing the members to be involved in the Commission on Human Trafficking and requiring that all public members to be appointed have some experience or expertise in human trafficking).

249. See *id.* (“...four public members appointed by the Governor ... one of whom shall be a human trafficking survivor”).

250. See Audacia Ray & Emma Caterine, *Criminal, Victim, or Worker?: The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses*, THE RED UMBRELLA PROJECT, 25, (October 2014), [www.redumbrellaproject.org/wp-content/uploads/2014/09/redup-nyhtic-finalweb.pdf](http://www.redumbrellaproject.org/wp-content/uploads/2014/09/redup-nyhtic-finalweb.pdf) (stating “[h]owever collaborating with, organizing by, and listening to people in the sex trades is an essential part of discovering and implementing policies and services that can support people in the sex trades in getting what we need”).

251. N.J. STAT. § 52:17B-237(f)(1), (2) (West, Westlaw through L.2016, c.69, and J.R. No. 7).

252. C.R.S. 18-3-505(4)(d), (e), (f), (g) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.).

253. See N.J. STAT. § 52:17B-237(g) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (requiring the task force to report to the Governor and the

legislature or the Governor could then adopt laws or policies based on the recommendations of the task force.<sup>254</sup>

The task force should also continue the efforts of End Demand Illinois. While legalization and decriminalization are not effective strategies for meeting the needs of victims,<sup>255</sup> the End Demand approach can be effective in refocusing the efforts of law enforcement away from victims and towards the buyers of commercial sex.<sup>256</sup> Illinois' End Demand Campaign has been very successful; in fact, its policy committee was instrumental in passing six laws in Illinois within the past six years aimed at helping victims of human trafficking.<sup>257</sup> The Illinois task force could work in conjunction with End Demand Illinois to further address the needs of victims and continue to arrest johns.

Finally, the task force should continue to exist until its services are no longer necessary. Some states include an expiration date and provide that the statute creating the task force will only remain in effect until the date listed.<sup>258</sup> There should be no date of repeal listed in the Illinois statute to ensure that the task force continued to exist as long as human trafficking, and the treatment of human trafficking victims, continued to remain a problem. The task force should adjust over time to continue to address the ever-evolving problems associated with human trafficking.

The creation of a state-wide task force could, and should, combine and coordinate the efforts of government and human trafficking experts in Illinois to prevent human trafficking, increase investigation and prosecution of traffickers, and provide much-needed services to victims. A task force is the best option for Illinois because it can be created to address multiple aspects of human trafficking including law enforcement training, victims' services organizations, and public awareness. Illinois should therefore create a state-wide, legislatively-mandated task force in order to

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Legislature annually); *see also* C.R.S. 18-3-505(4)(g) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.) (requiring the task force to report to the judiciary committees of the House of Representatives and the Senate).

254. *See* N.J. STAT. § 52:17B-237(g) (West, Westlaw through L.2016, c.69, and J.R. No. 7) (mandating “[t]he commission shall report to the Governor and to the Legislature . . . its activities, as well as its findings and recommendations for any needed new services or resources for victims of human trafficking, and any proposed changes to the current law concerning human trafficking”).

255. *See supra* Section III.B.3. (discussing legalization and decriminalization of prostitution).

256. *See supra* Section III.B.3.c. (discussing the End Demand Approach).

257. End Demand Illinois, *Six Laws in Six Years*, THE CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, [www.caase.org/six-laws-in-six-years](http://www.caase.org/six-laws-in-six-years) (last visited May 12, 2018).

258. *See* C.R.S. 18-3-505(6) (West, Westlaw through 2016 2<sup>nd</sup> Reg. Sess.) (“this section is repealed, effective September 1, 2019”). *See also* N.M. STAT. ANN. § 30-52-3(f) (West, Westlaw through 2016 Reg. Sess.) (repealed 2016) (stating “[t]he task force to combat human trafficking is terminated on July 1, 2016”).



better understand and combat human trafficking and meet the needs of victims.

### C. *Expand The Affirmative Defense*

In 2015, Illinois amended its law to create an affirmative defense of human trafficking for victims of trafficking charged with prostitution.<sup>259</sup> While this is a step in the right direction, since Illinois already lagged behind many other states in adopting such an affirmative defense,<sup>260</sup> the scope of the defense is far too narrow to give adequate relief to victims of trafficking.<sup>261</sup> A defense that is limited to charges of prostitution is problematic for the same reasons previously mentioned and for the same reasons that the current interpretation of the JVST is problematic: trafficking victims are often saddled with convictions other than prostitution that are the direct result of their victimization.<sup>262</sup>

To address this issue, Illinois should amend the current defense to expand its scope to cover any non-violent offense that directly resulted from their victimization. Illinois could model the affirmative defense after Kentucky's affirmative defense of being a victim of human trafficking, which allows assertion of the defense for any non-violent crime resulting from victimization.<sup>263</sup> The expansion of Illinois' current affirmative defense for victims of human trafficking, combined with its safety procedure,<sup>264</sup> would best address the needs of trafficking victims as well as the government's general interest in combatting crime.<sup>265</sup>

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259. PA 99-0109: *Creation of Affirmative Defense to Prostitution Charge*, *supra* note 227, at 1.

260. *Id.* at 1.

261. Zornosa, *supra* note 118, at 98.

262. See *People of the State of New York v. L.G.*, 972 N.Y.S. 2d 418, 425 (Crim. Ct. 2013) (noting “[i]ndeed, human trafficking victims are frequently arrested and charged for a variety of offenses based on actions which the victims were unwillingly coerced into committing by their traffickers”).

263. KY. REV. STAT. ANN. §529.170 (West, Westlaw through 2016 Reg. Sess.).

264. See *Human Trafficking Issue Brief: Task Forces*, *supra* note 158, at 1–2 (describing Illinois' safety procedure that allows victims who want to assert an affirmative defense but have a legitimate safety concern to file a petition under seal and receive an in camera hearing where the judge determines if a safety concern exists and can take steps to ensure that the victim's safety is protected).

265. See Zornosa, *supra* note 118, at 199 (explaining that state legislatures must balance the interest of ensure that trafficking victims are entitled to an adequate amount of relief against the interest of the government in combating crime).

## V. CONCLUSION

States, and the Federal government, continue to adopt legislation and policies with the goal of combatting domestic human trafficking and assisting the victims of trafficking.<sup>266</sup> Illinois, too, has adopted legislation geared towards combatting human trafficking and assisting victims.<sup>267</sup> But, like many other states, there is still much more that can be done in Illinois to adequately assist the victims of human trafficking.<sup>268</sup> Illinois should look to the methods of other states and governing bodies who sought to address similar issues for guidance in developing the best methods to correct the current gaps in Illinois human trafficking law and policy.<sup>269</sup>

The Illinois courts' current interpretation of the JVST is too narrow to adequately provide relief to victims of sex trafficking who are convicted of crimes other than prostitution.<sup>270</sup> In order to give victims the relief they deserve and that the legislature intended, the court should use the broad discretion given to it by the JVST to broaden the scope of convictions that can be vacated under the law to any non-violent conviction that directly results from victimization.<sup>271</sup> Additionally, Illinois should adopt a task force that combines the efforts of multiple representatives from both government and non-governmental groups to address multiple issues of concern within the area of human trafficking, and particularly the training of law enforcement.<sup>272</sup> The task force

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266. See *A Look Back: Building a Human Trafficking Legal Framework*, THE POLARIS PROJECT, 1–3, [www.polarisproject.org/sites/default/files/2014-Look-Back.pdf](http://www.polarisproject.org/sites/default/files/2014-Look-Back.pdf) (noting the improvements in both federal and state legislation but pointing out that there is still much work to be done in the area of human trafficking).

267. See 725 ILL. COMP. STAT. ANN. 5/116-2.1(a) (West, Westlaw through 2016 Reg. Sess.) (adopting the JVST, which allows victims of trafficking to petition the court to have their convictions of prostitution vacated); see also 720 ILL. COMP. STAT. ANN. 5/114(c-5) (West, Westlaw through 2016 Reg. Sess.) (providing an affirmative defense to victims of human trafficking who are charged with prostitution); see also End Demand Illinois, *P.A. 98-0538: Elimination of Felony Prostitution*, THE CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, (2014) [www.media.virbcdn.com/files/2b/2eeca2cf41d0170-PA98-0538BillSummary.pdf](http://www.media.virbcdn.com/files/2b/2eeca2cf41d0170-PA98-0538BillSummary.pdf) (explaining that felony prostitution was eliminated in Illinois in 2013 and now all violations of prostitution are misdemeanors).

268. See *A Look Back: Building a Human Trafficking Legal Framework*, *supra* note 254 (taking the position that while the states have increased their efforts to combat human trafficking, there is still room for improvement).

269. See *supra* Section III.B (analyzing the methods other states and governing bodies have adopted to address victims of human trafficking).

270. See *supra* Section III.A (discussing the problems with Illinois' current interpretation and application of the JVST).

271. See *supra* Section IV.A (proposing that Illinois courts broadly adopt the JVST).

272. See *supra* Section IV.B (proposing that Illinois adopt a state-wide task force).

should also continue the efforts of the End Demand Illinois campaign but should take the position that general legalization and decriminalization are not effective in combatting human trafficking.<sup>273</sup> Finally, Illinois' current affirmative defense for victims of human trafficking is far too narrow, as it can only be asserted for the crime of prostitution.<sup>274</sup> Illinois' affirmative defense for victims of human trafficking should be expanded to non-violent crimes that directly result from victimization in order to prevent dual-victimization and to better meet the needs of trafficking victims.<sup>275</sup> With these changes, Illinois could adequately assist victims of human trafficking by freeing them from the burden of a criminal record due to their victimization.

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273. *See supra* Section III.B.3.c (discussing the End Demand Approach and its benefits).

274. *See supra* Section III.B.4 (discussing Illinois' current affirmative defense for victims of sex trafficking).

275. *See supra* Section IV.C (suggesting that Illinois expand its affirmative defense for victims of sex trafficking).