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### Prosecuting Human Trafficking in the Wake of Epstein: A Proposal for the Implementation of Aggravated Human Trafficking Statutes

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# PROSECUTING HUMAN TRAFFICKING IN THE WAKE OF EPSTEIN: A PROPOSAL FOR THE IMPLEMENTATION OF AGGRAVATED HUMAN TRAFFICKING STATUTES

Lynette A. Dalley<sup>1</sup> and Katherine F. Erickson<sup>2</sup>

In June of 2008, Jeffrey Epstein plead guilty in a Florida court on two counts of felony prostitution for nonconsensual sex acts against two girls under eighteen. Evidence showed, however, that the true scope of his crime encompassed dozens of underage girls.<sup>3</sup> <sup>4</sup> He was sentenced to eighteen months in jail but ended up only serving thirteen.<sup>5</sup> Because of the terms of his prison sentence, Epstein was allowed to leave the jail during the day for work release. During these releases, he allegedly continued to abuse and traffic other

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  - 3 Althea Legaspi, *Jeffrey Epstein Accused of Sexual Abuse By Nine More Women in New LawsUIT*, ROLLING STONES, (Dec. 3, 2019), <https://www.rollingstone.com/culture/culture-news/jeffrey-epstein-sexual-abuse-nine-more-women-new-lawsuit-921789/>.
  - 4 Julie K. Brown, *For years, Jeffrey Epstein abused teen girls, police say. A timeline of his case*, MIAMI HERALD, (Nov. 28, 2018), <https://www.miamiherald.com/news/local/article221404845.html>.
  - 5 Julie K. Brown, *Cops worked to put serial sex abuser in prison. Prosecutors worked to cut him a break*, MIAMI HERALD, (Nov. 28, 2018), <https://www.miamiherald.com/news/local/article214210674.html>.

young women throughout his shortened sentence.<sup>6</sup> Nearly a decade later, the case was resurrected and turned into a federal sex trafficking investigation.<sup>7</sup>

Allegations against Epstein began in 1985,<sup>8</sup> continuing until the month of his arrest in 2019.<sup>9</sup> To date, over one hundred Jane Does have come forward to testify of Epstein's crimes against them.<sup>10</sup> There is evidence to suggest that there are hundreds of victims who have not yet been identified.<sup>11</sup> The ineffective human trafficking laws in Florida at the time allowed Epstein to roam free for decades, facilitating the perpetuation and aggravation of his crimes.

In a case similar to Epstein's but with a very different outcome, the state of Texas convicted Steven Sumlin of continuous human trafficking in 2018 and sentenced him to fifty-five years in prison. Much like the Epstein case, Sumlin was accused of abusing and trafficking a sixteen-year-old girl and a twenty-two-year-old

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6 Adam K. Raymond, *Lawyer: Epstein's Abuse Continued While He Was on Work Release From Jail*, NEW YORK MAGAZINE, (July 16, 2019), <https://nymag.com/intelligencer/2019/07/lawyer-epsteins-abuse-continued-while-on-work-release.html>.

7 Press Release, U.S. Dep't of Just., U.S. Att'y's Off., Southern Dist. of N.Y., Jeffrey Epstein Charged in Manhattan Federal Court With Sex Trafficking of Minors: Alleged Conduct Occurred in both New York and Florida over Multiple Years, Involving Dozens of Victims (Jul. 8, 2019), <https://www.justice.gov/usao-sdny/pr/jeffrey-epstein-charged-manhattan-federal-court-sex-trafficking-minors>.

8 Jonathan Stempel, *Jeffrey Epstein's sexual abuses began by 1985, targeted 13-year-old, lawsuit claims*, REUTERS, (Dec. 3, 2019), <https://www.reuters.com/article/us-people-jeffrey-epstein-lawsuit/jeffrey-epsteins-sexual-abuses-began-by-1985-targeted-13-year-old-lawsuit-claims-idUSKBN1Y72K5>.

9 Benjamin Weiser, *Before Arrest, Jeffrey Epstein Was Seen With Girls Exiting His Jet*, THE NEW YORK TIMES, (Sep. 16, 2019), <https://www.nytimes.com/2019/09/16/nyregion/jeffrey-epstein-investigation.html>.

10 Legaspi, *supra* note 3.

11 Erica Schwiegershausen, *Will We Ever Know How Many Girls Jeffrey Epstein Abused?*, NEW YORK MAGAZINE, (July 19, 2019), <https://www.thecut.com/2019/07/how-many-jeffrey-epstein-victims-are-there.html>.

woman.<sup>12</sup> Unlike the Epstein case and due to Texas's aggravated human trafficking statute, Sumlin will be off the streets for the rest of his foreseeable life, unable to traffic any other people.<sup>13</sup> The leniency displayed in the Epstein case cannot be allowed to continue.

This paper will argue that an aggravated human trafficking statute is an effective legislative response to human trafficking on a state level, and as such, should be adopted by all states. Such a statute would include a heightened penalty range with a maximum of life in prison with delayed parole eligibility. This sentence would be comparable to many states' sentencing ranges for homicide. An aggravated human trafficking statute would be applicable for cases such as the trafficking of a minor, trafficking involving severe bodily injury, or trafficking involving multiple victims.

Section I of this paper defines human trafficking and provides context for the argument. Section II examines the current status of state-level human trafficking laws in the United States. Section III highlights efficient human trafficking laws in action through a 2018 federal human trafficking case, and extrapolates on that case to consider how state laws impact human trafficking victims and perpetrators. Finally, Section V lays out a proposal for changes to human trafficking laws at the state level, and Section VI addresses possible counterarguments.

## I. BACKGROUND

For the purposes of this article, we will use the definition of "human trafficking" contained in the majority of state and local statutes. This refers to the act of knowingly subjecting persons to involuntary

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12 Gerald Tracy, *Converse man sentenced to more than 50 years in sex trafficking case*, FOX SAN ANTONIO, (Dec. 6, 2018), <https://foxsanantonio.com/news/local/converse-man-sentenced-to-more-than-50-years-in-sex-trafficking-case>.

13 Texas Attorney General, *AG Paxton's Office Obtains Conviction, 55-Year Prison Sentence in Sex Trafficking Case Involving Underage and Adult Victims*, (Dec. 6, 2018), <https://www.texasattorneygeneral.gov/news/releases/ag-paxtons-office-obtains-conviction-55-year-prison-sentence-sex-trafficking-case-involving-underage>.

labor servitude or nonconsensual sexual servitude.<sup>14</sup> We will refer to human trafficking as “trafficking” from this point on. Thus, we will refer to the affected persons as “trafficking victims.” Although we do acknowledge that there is much debate regarding which term for affected persons is preferable, we have chosen “victims” to avoid the implication of racially-motivated crimes associated with the term “slave,” and to avoid the questions about consent often associated with the term “prostitute” or “prostituted person.”

Since 2002, the Counter-Trafficking Data Collaborative has identified nearly 25,000 cases of human trafficking in the United States;<sup>15</sup> however, this is not representative of the true scope of this criminal industry. In 2018 alone, the National Human Trafficking Hotline recorded over 10,000 human trafficking cases.<sup>16</sup> For context, it is estimated that forty million people are trafficked worldwide;<sup>17</sup> however, only 91,416 individual cases have been identified and investigated since 2002.<sup>18</sup> Further, there is high financial incentive for traffickers. Victims are frequently required to meet quotas ranging from \$300 to \$2,000 per night before they can return home.<sup>19</sup> An Urban Institute study of eight major cities in the U.S. found that

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14 ALA. CODE § 13A-6-152 (2012)

15 THE COUNTER-TRAFFICKING DATA COLLABORATIVE, <https://www.ctdatacollaborative.org/map?type=us-states> (last visited Jan. 21<sup>st</sup>, 2020).

16 *National Human Trafficking Hotline*, POLARIS PROJECT, <https://polarisproject.org/2018-us-national-human-trafficking-hotline-statistics/> (last visited Jan. 21<sup>st</sup>, 2020).

17 GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE (The International Labor Office, Geneva ed. 2017) at 5. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf).

18 THE COUNTER-TRAFFICKING DATA COLLABORATIVE, see 13.

19 See, e.g., Linda Smith & Cindy Coloma, *Trafficking Terms*, SHARED HOPE INTERNATIONAL (Nov. 1<sup>st</sup>, 2013), <https://sharedhope.org/the-problem/trafficking-terms/>.

traffickers earned \$6,000–\$50,000 a week.<sup>20</sup> With the combination of high financial reward and low risk of being caught, it comes as no surprise that government and non-governmental agencies alike believe human trafficking to be the fastest growing criminal enterprise in the world.<sup>21</sup>

Nationally, human trafficking victims significantly outnumber homicide victims. In 2018, there were 23,078 identified trafficking victims<sup>22</sup> and 16,214 homicides in the United States.<sup>23</sup> This means that for every murder victim the public heard about, there was at least one identified human trafficking victim that the public did not hear about. Due to the underground nature of human trafficking, even this is probably a low estimate of the actual number of victims in the nation.

In 2018, 65.2% of identified human trafficking victims in America were women, and 71.8% of human trafficking cases involved sexual exploitation.<sup>24</sup> Victims are forced every day to perform countless nonconsensual commercial sexual acts. The age breakdown is equally horrendous: 22.43% of victims are minors, most between the ages of twelve and seventeen; 46.5% of them are adults, most

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- 20 MEREDITH DANK, ET AL., ESTIMATING THE SIZE AND STRUCTURE OF THE UNDERGROUND COMMERCIAL SEX ECONOMY IN EIGHT MAJOR US CITIES 30 (2014). [https://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view/full\\_report](https://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view/full_report).
- 21 See, e.g., U.S. DEP'T OF JUST., U.S. ATT'Y'S OFF., DIST. OF R.I., HUMAN TRAFFICKING, <https://www.justice.gov/usao-ri/human-trafficking> (last visited: Jan 21<sup>st</sup>, 2020). See generally, *World Day Against Trafficking in Persons 2019*, EQUALITY NOW: A JUST WORLD FOR WOMEN AND GIRLS, (Jul. 30, 2019), [https://www.equalitynow.org/wdatp\\_2019](https://www.equalitynow.org/wdatp_2019).
- 22 *2018 Statistics from the National Human Trafficking Hotline*, POLARIS PROJECT, <https://polarisproject.org/2018-us-national-human-trafficking-hotline-statistics/> (last visited Jan. 21<sup>st</sup>, 2020).
- 23 U.S. DEP'T OF JUST., F.B.I., UNIFORM CRIME REPORT, CRIME IN THE UNITED STATES: MURDER (2018), <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/murder> (last visited Jan. 24<sup>th</sup>, 2020).
- 24 *2018 Statistics from the National Human Trafficking Hotline*, see 20.

between the ages of eighteen and twenty-nine; while the ages of the other 32.1% of victims are unknown.<sup>25</sup>

## II. THE CURRENT STATUS OF HUMAN TRAFFICKING LAWS IN THE UNITED STATES

The “tough on crime” initiative and mentality of many state legislatures illustrates the commonly held belief that one of the most effective methods of crime prevention and deterrence is a strictly-enforced set of penalties for criminal action.<sup>26</sup> However, in many states, this toughness evaporates when dealing with human trafficking. The statistical mean sentence a defendant can receive when convicted of trafficking an adult has a maximum of 27.03 years in prison and a minimum of 3.08 years in prison, with a maximum standard deviation of 27.98 and a minimum of 4.33.<sup>27</sup> Human traffickers are believed by some authorities to be among the most violent of criminal offenders in the United States,<sup>28</sup> taking away the life and liberty of other human beings every day, and yet, in many states, a jury doesn’t have the tools to legally sentence them to more than a relatively few years in prison. Within two decades of their conviction, a trafficker will be back on the streets, with the potential to return to their prior illegal activities. Studies have found that 60.1% of prisoners released in 2005, who had been convicted of similar offenses, such as rape or sexual assault, were arrested again within five years.<sup>29</sup>

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25 *2018 Statistics from the National Human Trafficking Hotline*, see 20.

26 *Criminal Justice Facts*, THE SENTENCING PROJECT, <https://www.sentencing-project.org/criminal-justice-facts/> (last visited Jan. 25<sup>th</sup>, 2020).

27 Data was collected from the 2017 and 2018 criminal codes of the 50 U.S. States, Washington D.C., and Puerto Rico, on file at the Howard W. Hunter Law Library at the J. Reuben Clark Law School.

28 *Human Trafficking*, KEN PAXTON, ATTORNEY GENERAL OF TEXAS, <https://www.texasattorneygeneral.gov/initiatives/human-trafficking> (last visited Jan. 25<sup>th</sup>, 2020).

29 *Offender Recidivism: Do Violent Offenders Recidivate More? Table 8*, CRIME IN AMERICA, (MAR. 28, 2017), <https://www.crimeinamerica.net/offender-recidivism-do-violent-offenders-recidivate-more/>.

In 2003, Washington was the first state to pass legislation criminalizing human trafficking.<sup>30</sup> In 2016, Hawaii became the last state to pass some form of counter-trafficking legislation.<sup>31</sup> Some, however, like Kansas, have not adequately defined human trafficking. While having technically criminalized human trafficking, Kansas narrowly defines it only as involuntary labor servitude and does not include nonconsensual commercial sexual servitude in their definition, thus only covering a small percentage of human trafficking cases as we have defined the term.<sup>32</sup> In such states, attorneys attempting to prosecute traffickers are forced to use less applicable statutes, such as promoting prostitution.<sup>33</sup> However, according to the codes, prostitution can be consensual, whereas human trafficking never is. It harms victims of human trafficking when states refuse to acknowledge trafficking for what it is—a heinous crime that takes away an individual’s freedom and ability to choose. As will be shown in the next section through a true story, the states that do acknowledge this and evidence it in their legislation can more effectively protect their citizens.

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30 *Human Trafficking State Laws*, NATIONAL CONFERENCE ON STATE LEGISLATURES, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx>

31 Associated Press, *Hawaii becomes last state to ban sex trafficking*, STAR ADVERTISER, <https://www.staradvertiser.com/2016/07/05/breaking-news/gov-david-ige-signed-the-bill-into-law-tuesday-it-makes-sex-trafficking-a-violent-crime-and-class-a-felony-expands-the-statewide-witness-protection-program-to-include-sex-trafficking-and-provides-v/> (last visited Jan. 25<sup>th</sup>, 2020).

32 KAN. STAT. ANN. § 21-5426 (2018).

33 *See, e.g.*, Jordan Hensley, *Former constable Banta pleads guilty to promoting prostitution; kidnapping charge reduced to misdemeanor*, THE STATE JOURNAL, (Oct 25, 2019), [https://www.state-journal.com/crime/former-constable-banta-pleads-guilty-to-promoting-prostitution-kidnapping-charge/article\\_f516f712-f757-11e9-858a-33aadfbb3bc1.html](https://www.state-journal.com/crime/former-constable-banta-pleads-guilty-to-promoting-prostitution-kidnapping-charge/article_f516f712-f757-11e9-858a-33aadfbb3bc1.html).

### III. EFFICIENT HUMAN TRAFFICKING LAWS IN ACTION

Lauren (name changed) was seventeen years old and living in Seattle when she logged on to an Internet dating site.<sup>34</sup> There she met Marsya, a movie producer, and they began to build a friendship. Marsya introduced Lauren to David, Marsya's partner, who was also a movie producer and was seeking more young female actors. What Lauren wouldn't learn until it was too late was that the only movies David produced were illegal child pornography films and that he and Marsya only cared about Lauren as a source of income. After growing to trust the couple and forming a close bond with them, Lauren moved in with them.

At first, David and Marsya showered Lauren with gifts and money at every turn. Slowly, they introduced her to the world of commercial sex. David coerced her into signing a contract stating that she would work for him as a prostitute under the guise of recording interviews for his documentary. Lauren was trafficked all over the country and was not allowed to keep any of the money she received. When she wanted out, David would threaten to sue her for breach of contract and would blackmail her with the explicit photos of her that he had.<sup>35</sup> Then, he would continue to shower her with love and gifts, forming what is known as a "trauma bond."<sup>36</sup> Finally, after six months of this treatment, Lauren was able to escape. However, Lauren was not David and Marsya's only victim. The FBI is still actively searching for more of David's victims and requesting that

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34 *Seattle Sex Trafficking Survivor Shares Her Story*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/video-repository/seattle-trafficking-survivor062618.mp4/view>.

35 *Seattle Detective Describes Sex Trafficker David Delay's Methods*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/video-repository/seattle-trafficking-detective062618.mp4/view>.

36 *What is trauma bonding?* PARENTS AGAINST CHILD EXPLOITATION, <https://paceuk.info/about-cse/what-is-trauma-bonding/> (last visited Jan. 29, 2020).

they come forward.<sup>37</sup> In 2018, a U.S. District Court convicted David of seventeen charges of sex trafficking and child pornography, and he was sentenced to thirty-three years in jail. Marsya was sentenced to three years.<sup>38</sup>

Stories like this one unfold across America every day, but Lauren is more fortunate than most trafficking victims. The UN estimates that only 1% of human trafficking victims are rescued.<sup>39</sup> Further, many traffickers beat, rape, and threaten to kill their victims if they don't comply. Traffickers often force victims to take drugs. Drug addiction makes victims even more dependent on their traffickers, who double as their dealers. Victims are taken all over the country, never staying in one place long enough to raise suspicions or ask for help. Their families may be threatened or told that they must pay off a supposed "debt" to the trafficker before the victim will be released. No matter how a victim's story starts, nearly all of them end the same way: abuse, enslavement, rape, threats, and trauma.

Lauren, living in Washington—a state that has historically led the nation in counter-trafficking law—and having been trafficked across state borders, saw her trafficker receive a relatively high federal sentence of thirty-three years. However, what if the crimes against Lauren had not been federal? What if they had been restricted to a single state's jurisdiction?

If Lauren's story had taken place in a state that didn't have such stringent protection of victims<sup>40</sup>—take Minnesota, for example—the outcome of her case would have been much different. There, David

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37 *Seeking Victims of David Delay: Seattle-Area Sex Trafficker Duped Victims With Promise of Fame and Riches*, Federal Bureau of Investigation, (August 29, 2018), <https://www.fbi.gov/news/stories/seeking-victims-of-sex-trafficker-david-delay-082918>.

38 *Seattle Area Man Sentenced to 33 Years in Prison for Sex Trafficking Teens and Young Women*, THE UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF PUBLIC AFFAIRS, <https://www.justice.gov/opa/pr/seattle-area-man-sentenced-33-years-prison-sex-trafficking-teens-and-young-women>.

39 "Only one out of 100 people are rescued" from human trafficking, UN NEWS, (July 29, 2016), <https://news.un.org/en/audio/2016/07/615462>.

40 *Services*, WASHINGTON TRAFFICKING HELP, <https://www.watrafickinghelp.org/gethelp> (last visited Jan. 28, 2019).

would have been charged with and likely convicted of sex trafficking, since he compelled Lauren to stay in the industry against her will. He could have been sentenced to a maximum of fifteen years in prison. However, in the state of Minnesota, Lauren likely would have also been charged with prostitution because she “intentionally” signed the contract with David and willingly consented to entering prostitution.<sup>41</sup>

But what if these crimes had taken place in a stricter state than Minnesota, such as Utah? Utah already has an aggravated human trafficking statute that likely would have applied in Lauren’s situation.<sup>42</sup> If the trafficking offense involved rape or Lauren being held against her will for more than thirty days, then this statute would have applied, and David could have been sentenced to fifteen years to life. If not for this statute, then David’s maximum sentence would have been one to fifteen years, with a parole board determining how much of that he would actually serve in prison.

This was not a one-time criminal offense for David; he is believed to have victimized many people over a prolonged period, showing a consistent pattern of trafficking in persons. If he were only held in prison for fifteen years or less, as would be common in states without aggravated human trafficking statutes, nothing about his sentence would stop him from going right back to trafficking within a decade or two of the original offense.

#### IV. PROPOSAL

As has been shown through comparing outcomes of previously discussed cases, legislation regarding human trafficking is instrumental in protecting victims, stopping traffickers, and preventing repeat offenses. Thus, it is imperative that lawmakers strictly examine the status of state human trafficking legislation. Although all states now have some form of counter-trafficking legislation in place, the addition of an aggravated trafficking statute would make existing legislation stronger and more effective.

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41 MINN. STAT. § 609.324 (2019).

42 UTAH CODE ANN. § 76-5-310 (West, 2018).

Many states have already enacted valuable, effective legislation to combat human trafficking. For example, a notable few, such as Oklahoma, have already introduced higher sentencing ranges.<sup>43</sup> These states are legislatively acknowledging human trafficking to be one of the worst crimes, judicially on par with homicide in many cases. There are five key pieces of legislation that these states have adopted that help derail the trafficking industry:

1. a human trafficking provision, preferably with specific mention of both sex and labor trafficking;<sup>44</sup>
2. a clause allowing for the vacation of sentences for trafficking victims;<sup>45</sup>
3. a state-wide counter-trafficking task force;<sup>46</sup>
4. higher sentencing ranges on par with crimes such as homicide; and,<sup>47</sup>
5. a maximum sentence of life with delayed parole eligibility for cases involving trafficking of minors, aggravated trafficking, or continuous trafficking.<sup>48</sup>

These five pieces of legislation are valuable because they raise awareness, protect victims, and decrease repeat offenses. A state that does not prioritize these five points is likely not as effective as it could be in combatting human trafficking. Many states already have items 1 through 3. Items 4 and 5 are much less common, and arguably have the potential to make human trafficking laws much more effective. This is what we have been referring to as an aggravated human trafficking statute, and which we propose all states enact immediately.

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43 OKLA. STAT. tit. 21 § 21-748.

44 *E.g.*, VT. STAT. ANN. TIT. 13, § 2652 (2017).

45 *E.g.*, MON. CODE. ANN. § 46-18-608 (2019).

46 *E.g.*, S.B. 5884, 64<sup>th</sup> Leg., Reg. Sess. (Wash. 2015).

47 *E.g.*, N.J. REV. STAT. § 2C:13-8, *compare*, N.J. REV. STAT. § 2C:11-3

48 *E.g.*, TEX. CONTINUOUS TRAFFICKING OF PERSONS CODE ANN. § 20A.03 (West 2018), *see also*, UTAH CODE ANN. § 76-5-310 (West, 2018)

The changes to counter-trafficking legislation that we have proposed would elevate the crime of human trafficking to a level judicially similar or equivalent to intentional homicide in many states. There are many benefits to the higher sentences available under the aggravated trafficking statute, but it will most significantly contribute to the fight against human trafficking while it is acting as a deterrent, a preventative measure, and a societal statement.

There is very little conclusive evidence to indicate whether higher sentencing ranges will deter people from committing crimes. Do criminals actually calculate the exact number of years they could spend in prison if they committed a specific crime? Almost certainly not. However, there is some evidence to indicate that longer sentences will deter persons from committing a crime more than if the penalties aren't very high; additionally, it will also lower recidivism in convicted criminals.<sup>49</sup>

This statute will be most influential on the preventative front: if someone has created a business and livelihood out of the trafficking of persons for commercial sex, the surest way to stop them is to take them off the streets. Minor punishments like small fines or a few years in prison are likely to result only in the traffickers being more careful about concealing their crimes. The most effective way to truly prevent trafficking is to keep the perpetrators off the streets, which is only possible through higher sentencing ranges for those who have shown a pattern of continuous trafficking.

Further, an aggravated human trafficking statute will help stop trafficking by changing the way society views the buying and selling of human beings, as previously mentioned. This legislative action will become a catalyst for change in our society and will help to stop the demand for commercial sex.

Again, as lawmakers, law enforcers, and law interpreters, we must ask ourselves if we are truly doing all we can legislatively

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49 David R. Francis, *Sentence Enhancements Reduce Crime*, THE NATIONAL BUREAU OF ECONOMIC RESEARCH, <https://www.nber.org/digest/oct98/w6484.html> (last visited Jan. 29, 2020). *See also*, S.K., *Longer jail sentences do deter crime, but only up to a point*, THE ECONOMIST (Mar. 29, 2016), <https://www.economist.com/free-exchange/2016/03/29/longer-jail-sentences-do-deter-crime-but-only-up-to-a-point>

to deter, prevent, and prosecute human trafficking in our society. If Lauren lived in your state, would she be appropriately protected by the law, and would her trafficker be prevented from committing further crimes against her and other people? If not, then perhaps we need to reevaluate our legislation.

## V. COUNTERARGUMENTS

Critics may argue that human trafficking is not morally equivalent to homicide and should therefore not have the same high degree of punishments. However, in many ways, human trafficking *is* morally equivalent to homicide. Though, fortunately, not all human trafficking cases end in death, *all* instances of human trafficking involve the involuntary relinquishment of a person's capacity to make decisions for themselves. Human trafficking victims *do* lose their lives, in the sense that they are prevented from living freely. They are forced to submit to the will of other people on a daily basis. A victim of homicide is not given the right to choose to continue living, just as a victim of human trafficking is not given the right to choose *how* they will live. And, as many trafficking victims would testify, a life of being trafficked is not much of a life at all. Because of the extraordinarily high degree to which traffickers control and dominate their victims, it is both appropriate and necessary to elevate the crime of human trafficking to a higher moral standard.

Some may argue that the changes we have proposed—and even the prosecution of human trafficking as a whole—are not worth pursuing because of the difficulty in discerning between voluntary prostitution and nonconsensual prostitution. Some may even argue that the best way to combat nonconsensual prostitution is to legalize sex work so that it is more accessible and regulated. First, it is important to note here that legalizing prostitution would come with several negative side effects. For example, where prostitution is legal in Nevada, the Lyon County Sheriff's Office found that one out of every three legal brothel workers exhibited symptoms of potential

human trafficking.<sup>50</sup> This is evidence that human trafficking exists even in places and in industries that allow for commercial sex. Thus, legalizing prostitution would not eliminate human trafficking, and perhaps would even make it worse. Furthermore, there will *always* be a need to prosecute human trafficking, and to do so distinctly from prosecuting prostitution. With the rise of the movement to legalize prostitution, we find ourselves at a dangerous tipping point in the war against human trafficking. Instances of human trafficking can be difficult to identify. Law enforcement officers often discover trafficking cases by investigating reports of prostitution. Therefore, if anti-prostitution laws are removed from state legislation, we lose an important safeguard against trafficking. It is vitally important, now more than ever, that we strengthen our counter-trafficking legislation so that it can stand on its own to protect trafficking victims, whether they are hidden under the guise of legalized sex work or not.

From 2014 to 2017, Hawaii dealt with this exact issue, in part because the state did not have a trafficking statute separate from its prostitution statute. In 2014, a video surfaced of Justin McKinley abusing a young woman. This woman testified that McKinley had kidnapped, abused, and trafficked her for months.<sup>51</sup> Originally, a jury indicted McKinley on one count of first-degree promoting prostitution, two counts of first-degree sexual assault, and one count of kidnapping.<sup>52</sup> However, the case was thrown out in 2016 on grounds that the Supreme Court of Hawaii overruled in 2017 when they reinstated the case and sentenced McKinley to fifteen years in prison.<sup>53</sup>

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50 LYON COUNTY SHERIFF'S OFFICE, LCSO INTERNAL AUDIT REPORT ON BROTHEL COMPLIANCE REQUIREMENTS (2018).

51 State of Hawai'i, v. Lawrence L. Bruce & Justin McKinley, 411 P.3d 300 (Haw. 2017)

52 *2 indicted on charges or raping, forcing woman into prostitution*, STAR ADVERTISER (Jun. 17, 2014), <https://www.staradvertiser.com/2014/06/17/breaking-news/2-indicted-on-charges-of-raping-forcing-woman-into-prostitution/>

53 *Convictions of 2 accused pimps reinstated after case is thrown out*, HAWAII NEWS NOW (Oct. 10, 2017), <https://www.hawaiinewsnow.com/story/36558031/convictions-of-2-accused-pimps-reinstated-after-case-is-thrown-out/>

If Hawaii had an aggravated human trafficking law, he likely would be serving more time and the case would have proceeded more smoothly.

Some may argue that this is a social issue, not a legislative one. Although it is certainly true that significant social change is necessary if we are to truly eradicate human trafficking, the legislative change must lead the way. Approximately 20.6% of all men enter the sex buying market at least once in their lives.<sup>54</sup> In 2014, it was estimated that 64% of all men had consumed pornography in the last month,<sup>55</sup> with female consumers rising to comparable numbers as well.<sup>56</sup> This normalization of the buying and selling of people desensitizes individuals and the society at large to the sexual exploitation of men, women, and children. If we are to stop trafficking, we need to stop normalizing abuse. This social change is only possible if the laws change first. If human trafficking is legislatively regarded as the heinous crime it is, the minds of the people will follow suit.

## VI. CONCLUSION

As has been shown, the states are not united regarding how to prosecute human trafficking. But in order to fight this criminal enterprise, prosecutors and judges across the country must have the proper tools. It is essential that each state have a statute specifically criminalizing human trafficking, giving these crimes their own legal category. Then, in order to effectively prevent, deter, and punish these crimes, all states that already have such a statute must enact an aggravated human trafficking statute, allowing for penalty ranges up to life in prison in the more severe human trafficking cases, such as those

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54 DEMAND ABOLITION, WHO BUYS SEX? UNDERSTANDING AND DISRUPTING IL-LICIT MARKET DEMAND 9 (Nov. 2018).

55 *Proven Men Porn Survey on Porn Use and Addiction: Frequency of Pornography Viewing by Men*, 2003 BARNABY GROUP,

56 Amanda de Cadenet, *The Marie Claire Porn Project: Part 1 on How often do women watch porn?*, MARIE CLAIRE (Oct. 19, 2015), <https://www.marieclaire.com/sex-love/a16474/women-porn-habits-study/>

that involve children, severe bodily injury, death, or multiple victims over a prolonged period.

When legislative bodies treat human trafficking as the serious crime that it is, law enforcement and community members will take it more seriously and be more aware of the signs they should be looking for. The higher penalty range may act as a deterrent as well, and will prevent serial traffickers from reentering the business as soon as they complete their sentence. It is for these reasons that we invite lawmakers to reevaluate their counter-trafficking statutes, and to strengthen or implement an aggravated human trafficking statute.