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PROTECTING SARAH: ADDRESSING THE SEXUAL EXPLOITATION OF MINORS IN MISSOURI

Megan Miller

Sarah woke up completely naked. Gathings, who had stolen her clothing, informed her that she could “put out or get out.” To avoid living on the streets, Sarah obeyed Gathings’ orders and began engaging in sexual activities with his associates.

When 16-year-old Sarah decided to run away from her abusive home in Columbia, Missouri, she did not anticipate the harsh realities that awaited her on the streets. Lacking the skills and funds to support herself, she soon became desperate for protection and stability. Just days after accepting the offer of a stranger, Eric Gathings, to babysit his children and work in his home, Sarah woke up completely naked. Gathings, who had stolen her clothing, informed her that she could “put out or get out.” To avoid living on the streets, Sarah obeyed Gathings’ orders and began engaging in sexual activities with his associates.

Tim Thomason, a Columbia police officer, began following Sarah’s case a year after she left home. By the time Officer Thomason met Sarah, she was no longer living with Eric Gathings but was still controlled by his prostitution ring. The officer made several

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attempts to confront Sarah about her situation, but she resisted, denying that she was being trafficked because she was afraid of the consequences of being caught. Over time Thomason was able to gain Sarah’s trust, ultimately uncovering her heartbreaking story.\textsuperscript{3}

Convinced that commercial sex activities offer their only chance of survival, minors like Sarah are exploited every day. In the United States, 54 percent of confirmed sex trafficking incidents involve victims under the age of 18.\textsuperscript{4} In Part I of this article, I argue that Missouri’s criminalization of minors engaged in commercial sex does not prevent recidivism or foster the rehabilitation of the victim. The primary focus of Missouri’s anti-trafficking and prostitution legislation needs to provide minors who have engaged in commercial sex with protection and rehabilitation through safe harbor laws and the creation of a court system tailored to victims of human trafficking.

Part II of this article defines human trafficking and explores human and sex trafficking from a global, national, and state perspective, demonstrating the magnitude and prevalence of these topics. Additionally, Part II will discuss the demand of the human trafficking industry and the sex trafficking market.

Part III of this article addresses issues caused by Missouri’s current human trafficking and prostitution laws. The purpose of this section is not to present an exhaustive list of possible solutions but rather to illustrate key initiatives that have been successful in other states.

I. MAKING SENSE OF HUMAN TRAFFICKING AND THE SEXUAL EXPLOITATION OF MINORS

In the state of Missouri, there is no official legal definition of “trafficking in persons”; for this reason, this article will use the

\textsuperscript{3} See id.

definition of the trafficking in persons used by the United Nations. The definition is as follows:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.\(^5\)

While Missouri does not have a legal definition for “trafficking in persons,” it does have a definition for “sexual exploitation” and “commercial sex act.” “Sexual exploitation” is defined as:

[when] a person knowingly recruits, entices, harbors, transports, provides, or obtains by any means, including but not limited to through the use of force, abduction, coercion, fraud, deception, blackmail, or causing or threatening to cause financial harm, another person for the use or employment of such person in sexual conduct, a sexual performance, or the production of explicit sexual material . . . without his or her consent, or benefits, financially or by receiving anything of value, from participation in such activities.\(^6\)

“Commercial sex act” is defined as “any sex act on account of which anything of value is given to, promised, or received by any person.”\(^7\)

Understanding the nuances behind the definitions of human trafficking and sexual exploitation provides an essential foundation to understand the basic concepts of this topic, which allows for a more thorough exploration and greater understanding of human trafficking. In 2012, the International Labor Organization (ILO) estimated that there are about 20.9 million men, women, and children engaged

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\(^6\) § 566.209.2(1) R.S.Mo. (2015).
\(^7\) § 566.200.1(5) R.S.Mo.
in forced labor and sexual exploitation worldwide.\textsuperscript{8} The United Nations’ annual \textit{Global Report on Trafficking in Persons} shows that the percentage of children trafficked is increasing exponentially relative to adult trafficking. For example, in 2004, 74 percent of trafficking victims were adult females and 10 percent were female children. However, in 2011, 49 percent of human trafficking victims were adult females and 21 percent were female children.\textsuperscript{9}

\section*{II. HUMAN TRAFFICKING FROM GLOBAL, NATIONAL, AND STATE PERSPECTIVES}

Human trafficking is not only increasing globally but is also an ongoing problem within the United States. Through tips from members of the community, the National Human Resource Trafficking Center (NHTRC) has identified 48,784 victims of human trafficking within the United States since 2007.\textsuperscript{10} One factor for this growth is that human trafficking in the United States is unique compared to other developed countries. Research has shown that trafficking within the U.S. resembles trafficking in developing countries rather


than developed countries. Unlike developed countries that have advanced democracies, the United States has a human trafficking problem that typically involves victims who are “young, native born, and mobile.” Like developing countries, the United States has become a major hub for sex tourism, and victims face short lifespans due to their dangerous lifestyles (i.e., street life, drug use, domestic violence, inadequate food and clothing). For example, the reason that developing countries have a significant problem with human trafficking is because traffickers exploit the impoverished. The United States human trafficking markets share these tendencies. Some researchers believe that other developed countries and regions, such as Japan, Australia, and Western Europe, do not struggle with the issue of human trafficking as much as the United States because they have stronger welfare systems that help provide resources for those struggling to provide for themselves.

One of the main forms of human trafficking within the United States is sex trafficking. Research has shown that around 100,000 youth are at risk of commercial sexual exploitation annually. The average age of children first engaged in prostitution is “eleven to fourteen years old, with some as young as nine years old.”

12 See id.
13 See id.
15 See id.
17 R. Barri Flowers, Runaway Kids and Teenage Prostitution 87 (2001). Children that are considered at risk are children that have runaway from home, children that are homeless, children that are in foster homes, and children that are in abusive homes.
Federal Bureau of Investigation has found that the average life expectancy of children after engaging in prostitution is only seven years. This short life span stems primarily from suicide, drug overdose, and homicide.

Within the state of Missouri, the NHTRC has identified 1,446 human trafficking victims since 2007 from community member tips. In addition, Kansas City is considered a national hub for human trafficking due to its central location. Sex trafficking is a predominant form of human trafficking within Kansas City. Sex trafficking mostly takes the form of street and Internet prostitution.

The statistics generated for human trafficking, and specifically sex trafficking, indicate that it is still a significant issue. One reason why sex trafficking is still a significant issue is the high demand for it. Research has been performed both nationally and internationally, specifically on males, to determine who purchases sex and why. Men from different age ranges and socioeconomic backgrounds buy sex. Additionally, studies have shown that people buy sex, in both violent and non-violent ways, for a variety of reasons. The demand for services performed by victims of human trafficking is a significant factor that contributes to the growing human trafficking industry. Human trafficking consumers’ demands include, but are not limited

21 Missouri, National Human Trafficking Resource Center, https://traffickingresourcecenter.org/state/missouri, (last visited January 28, 2016). The author would like to note that this statistic is not a true representation of all of the victims of human trafficking in Missouri. Besides the NHTRC, there is not a system in place for Missouri officials to gather a true representation of all of the victims that are currently out on the streets. The author has several email correspondences that validate this comment.
24 See id.
to, “sexual exploitation, cheap labor and domestic workers, organ removal and sale, illicit adoption and forced marriages, criminal activities or begging, and exploitation for armed goods.”

III. PROVIDING VICTIMS PROTECTION AND RESOURCES THROUGH MISSOURI’S LAWS

Missouri’s current legislation regarding sex trafficking and commercial exploitation of minors does not provide victims adequate protection from criminal charges or the resources needed to aid in the process of rehabilitation. Regarding the recidivism rate of minors, the National Colloquium has stated, “There are many who return to the life [of sex trafficking] and its emotional, material, and psychological draw.” One reason these problems arise is that Missouri’s legal system focuses on prosecuting perpetrators rather than aiding the victim. The majority of Missouri’s human trafficking laws address the penalties perpetrators face, which leads to a lack of focus on victim rehabilitation. The remainder of this article will address inconsistencies in Missouri’s human trafficking and prostitution laws, proposing solutions that have been found to be effective in other states.

A. Human Trafficking Laws—The Problem of Proof

In regards to Missouri’s human trafficking laws, there are two distinct concerns that arise for minors: (A) the requirement to prove “force, abduction, or coercion” and (B) the categorization of minors based on age.


The first significant issue in Missouri’s human trafficking laws is the need for minors to prove “force, abduction, or coercion” in order to be considered victims of human trafficking.\textsuperscript{28} Requiring minors to prove that they performed commercial sexual acts through force, abduction, or coercion contradicts Missouri’s age of consent law. Missouri code defines “consent” by stating that assent does not constitute consent if it is given by a person with a mental disability; if it is given by a person who lacks reasonable judgment (i.e., youth, intoxication, mental disease, drug-use); or if it is given by force, duress, or deception.\textsuperscript{29} Furthermore, Missouri law defines youth by asserting that a minor cannot consent to a sexual activity until he or she is seventeen years old.\textsuperscript{30} \textit{Bewley v. State} upholds and clearly demonstrates Missouri’s age of consent law in regards to the sexual abuse of a child. Tommy R. Bewley sexually abused a 14-year-old runaway from Missouri Baptist Children’s Home through kissing, touching, and sexual intercourse.\textsuperscript{31} Bewley was charged with statutory rape in the second degree based off of Section 566.034 of Missouri’s code, which defines the state’s age of consent.\textsuperscript{32} Chief Judge Robert S. Barney’s explained in his opinion that Bewley was charged with statutory rape in the second degree because Bewley engaged in sexual intercourse with someone under the age of 17.\textsuperscript{33} The Court did not ask the victim to prove that the incident occurred by force, duress, or deception because the law clearly defines that assent is not consent from someone that is a youth (i.e., under the age of 17).\textsuperscript{34}

\begin{itemize}
\item \textsuperscript{28} \textit{See id.}
\item \textsuperscript{29} § 556.061.2(5)(a)-(c) R.S.Mo. (2015).
\item \textsuperscript{30} § 566.034.02 R.S.Mo. “A person commits the offense of statutory rape in the second degree if being twenty-one years of age or older, he or she has sexual intercourse with another person who is less than seventeen years of age.”
\item \textsuperscript{31} \textit{Bewely v. State}, 68 S.W.3d 614 (Mo. Ct. App. 2002), Chief Justice Barney stressed the importance of adhering to the age of consent.
\item \textsuperscript{32} \textit{See id.}
\item \textsuperscript{33} \textit{See id.}
\item \textsuperscript{34} \textit{See id.}
\end{itemize}
Just as the 14-year-old in *Bewley v. State* did not have to prove force, duress, or deception, victims of human trafficking should not have to prove force, abduction or coercion.

Sections 566.212 and 566.213 of Missouri’s Human Trafficking code discuss the penalties of sex trafficking of youth.\(^{35}\) According to these sections of the law, a person commits the crime of sex trafficking of youth if the person “recruits, entices, harbors, transports, provides, or obtains by any means, including but not limited to through the use of *force, abduction, coercion, fraud, deception, blackmail, or causing or threatening to cause financial harm, [to] a person under the age of eighteen.* . . .”\(^{36}\) The wording of this legislation suggests that the burden of proof falls on the child to reasonably show that he or she was obtained through force, abduction, coercion, fraud, deception, blackmail, or threats of financial harm. Based on Missouri’s age of consent law, minors and parties who represent these minors should not have to distinguish how they were obtained for sexual exploitation, because they are legally unable to consent until they are seventeen years of age. Following precedent in *Bewely v. State*, children like Sarah should not have to prove that they were obtained through force, abduction, or coercion.

**B. Human Trafficking Laws—Categorization by Age**

The second issue with Missouri’s current human trafficking legislation is that severity of the offense is determined primarily by the age of the defendant. Missouri currently has two separate sections regarding the penalties for the sex trafficking of a minor. One section, Section 566.212, concerns all minors under the age of 18.\(^ {37}\) The other section, Section 566.213, concerns minors under the age of 12.\(^ {38}\) The section of Missouri’s laws relating to minors under the age of 12 places a greater charge on a perpetrator that sexually exploits a minor under the age of 12 than on a perpetrator that sexually exploits

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\(^{35}\) § 566.212-3 R.S.Mo.

\(^{36}\) § 566.212(1) R.S.Mo. Italics added for emphasis.


a minor between the ages of 12 and 18. Given that the legal age of consent is seventeen years of age, the severity of the commercial sexual exploitation of the minor should not change based on whether the child is under the age of twelve or not.  All minors should be treated with the same level of concern within the court system.

In 2000, the United States passed a law that allows minors who have gone through commercial sexual exploitation to be classified as victims and avoid criminal charges. The U.S. Congress and President Clinton passed the Victims of Trafficking and Violence Protection Act on October 28, 2000. This Act demonstrates that the legal system can successfully obviate the burden of proving force, fraud, or coercion in order to classify an individual as a victim of sex trafficking. The law states that severe forms of trafficking in persons are defined as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person is induced to perform such an act has not attained 18 years of age.” This Act provides a clear understanding that all minors, regardless of how they are obtained, are considered victims of sexual trafficking if they have been sexually exploited. Missouri should update its laws to parallel those of the federal government in order to more fully support all minors who are victims of sex trafficking.

C. Prostitution Laws—Categorization by Age

As stated earlier, not only are there issues with Missouri’s human trafficking laws, but there are also problems with Missouri’s prostitution laws. In regards to Missouri’s prostitution laws, there are two distinct concerns that arise in regards to minors:

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39 § 566.034.02 R.S.Mo. (2015). “A person commits the offense of statutory rape in the second degree if being twenty-one years of age or older, he or she has sexual intercourse with another person who is less than seventeen years of age.”

40 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386

(A) categorization of minors based on age and (B) lack of distinction between minors and adults.

Missouri’s prostitution laws classify the severity of the commercial sexual exploitation of a minor based on their age.\textsuperscript{42} The law states that if a person patronizes prostitution from an individual who is younger than eighteen but older than fourteen it is a class A misdemeanor.\textsuperscript{43} If a person patronizes prostitution from an individual who is fourteen years old or younger, it is a Class E felony.\textsuperscript{44} This differentiation in classification of commercial sexual exploitation, similar to the contradiction in the human trafficking law, violates Missouri’s age of consent law.\textsuperscript{45} Consider the following hypothetical situation: Mariah, who is 14 years old, and Jen, who is 15 years old, are solicited for sexual activities outside of the same gas station. If caught, the men that engaged in sexual activities with Mariah and Jen would be charged differently due to the girls’ age differences. The man that solicited Mariah would be charged with a class E felony, a maximum of four years in jail, while the man that solicited Jen would be charged with a class A misdemeanor, a maximum of one year in jail. Even though Mariah and Jen are both minors, their situations would not be treated as such. This issue creates a double standard that causes the state to unfairly differentiate between minors.

42 \textsuperscript{42} § 567.030 R.S.Mo. (2015).

43 \textsuperscript{43} § 567.030(3) R.S.Mo. For a class A misdemeanor, the term of imprisonment is not to exceed one year. § 558.011(5) R.S.Mo. (2015). A person who commits a class A misdemeanor may also have to pay a fine of up to \$2,000 (Beginning January 1, 2016). § 558.002(1)(2) R.S.Mo. (2015).

44 \textsuperscript{44} § 567.030(4) R.S.Mo. A Class E Felony is a max term of four years of imprisonment. § 557.021.1 R.S. Mo. (2015). A person convicted of a Class E Felony may also have fines up to \$10,000. § 558. 002.1 R.S. Mo. (2015).

45 \textsuperscript{45} § 566.034.02 R.S.Mo. “A person commits the offense of statutory rape in the second degree if being twenty-one years of age or older, he or she has sexual intercourse with another person who is less than seventeen years of age.”
D. Prostitution Laws—Minors v. Adults

The second issue that arises out of Missouri’s prostitution laws is the fact that the law does not clarify what happens to minors that are engaging in prostitution. Section 567.020 of Missouri’s code states that a person commits the crime of prostitution if they commit an act of prostitution and that this crime is considered a class B misdemeanor.46 The law uses the broad term “individual.” This language implies that individuals of all ages can be charged equally for prostitution. However, minors and adults should not be charged equally. Once again, the issue arises out of Missouri’s age of consent law. A minor cannot consent to sexual activities until they are seventeen. Therefore, a minor that is engaging in prostitution should be seen as a victim of commercial sexual exploitation.

E. Ways of Providing Hope and Protection

Human trafficking in Missouri—specifically the sexual exploitation of minors—requires urgent attention. Besides modifying the wording and formatting of Missouri’s laws, there are two additional solutions that have been implemented by other states that have proven to be successful. These solutions are (1) a Safe Harbor for Exploited Children’s Act and (2) a court system tailored to human trafficking.

Several states have enacted safe harbor laws relating to the sexual exploitation of minors that address the issue of minors engaged in commercial sex, a concept that originated in New York legislation.47

46 § 567.020(1)-(2) R.S.Mo. Beginning on January 1, 2017, the law will read, “A person commits the offense of prostitution if he or she engages in or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by a person. The offense of prostitution is a class B misdemeanor…”

On September 25, 2008, Governor David S. Paterson signed into law New York’s Safe Harbor for Exploited Children Act. The four purposes of safe harbor laws are: (1) decriminalization of prostitution for minors, (2) prevention of victim delinquency and integration into support services, (3) provision of specialized services for minor victims, and (4) reclassification of all minors as victims of sexual exploitation. To this date, 28 states have passed safe harbor laws because of New York’s success. By implementing a safe harbor law similar to New York’s Safe Harbor for Exploited Children Act, Missouri will be able to more fully protect children from sexual exploitation by one clear, distinct law rather than several laws in different sections of Missouri’s code.

The four principles of the safe harbor law will address the concerns raised by Missouri’s current laws regarding human trafficking and prostitution. The first principle, the decriminalization of prostitution for minors, will address the issue in Missouri’s law relating to the lack of distinction between minors and adults in relation to criminal charges for prostitution. An additional principle, reclassifying all minors as victims of trafficking, addresses the concern of Missouri’s human trafficking and prostitution laws, which classify minors based on their age rather than looking at all of them as equal victims. The last two principles, placing victims in social services rather than disciplinary proceedings and providing specialized


52 Safe Harbour for Exploited Children Act, N.Y. S.O.S. 8-a § 447-b (2016); § 566.212 R.S.Mo.; § 567.030 R.S.Mo.
services for minors, will relieve victims of the burden of proving that they were forced, abducted, or coerced. Also, social services will also provide necessary resources to victims to prevent recidivism and enable recovery.\(^{53}\)

Another way for the state to place emphasis on protecting victims from criminal charges and focusing on victim rehabilitation is by creating a court system tailored to human trafficking. New York provides an excellent model for a human trafficking court system. In September 2013, Chief Judge Jonathan Lippman announced that New York would be creating a new court system called the Human Trafficking Intervention Initiative.\(^{54}\) This court system was the first in the nation that focused solely on human trafficking.\(^{55}\) The primary focus of the court system is sex trafficking, specifically prostitution, because it is a growing concern for the state of New York.\(^{56}\) The court looks at eligible cases throughout the state to determine which cases would be the best fit for the human trafficking court system.\(^{57}\) This system then treats the defendant as a victim and ensures that he or she is getting necessary care and protection.\(^{58}\)

Court systems similar to this have already been created throughout Missouri for drugs.\(^{59}\) These courts are set up to provide those addicted to drugs a chance to receive the help and treatment they need to once again be productive members of society. These courts have


55 See id.

56 See id.

57 See id.

58 See id.

seen tremendous amounts of success, which will help pave the path for human trafficking courts in Missouri.

IV. Conclusion

While Missouri’s laws show that the state has taken a few steps to protect minors, there are still critical flaws, which Sarah’s story helps to demonstrate. Ultimately Officer Thomason was able to help Sarah escape the life of child prostitution on the streets of Columbia, Missouri. However, both Officer Thomason and Sarah had to jump through several hoops created by laws and endure extensive time in court in order to make this possible. Some of the difficulties they encountered included Sarah refusing to cooperate or admit to Officer Thomason that she was being trafficked because she was afraid she would face criminal charges and Officer Thomason struggling to determine if Sarah was obtained through force, abduction, or coercion. In addition, as no system existed to provide support for Sarah’s rehabilitation, Sarah faced a high risk of relapse into prostitution.60 Missouri’s criminalization of minors engaged in commercial sex does not prevent recidivism or foster the rehabilitation of the victim. The primary focus of Missouri’s anti-trafficking and prostitution legislation needs to be providing minors who have been victims of commercial sexual exploitation with protection and rehabilitation through safe harbor laws and the creation of a court system tailored to victims of human trafficking. Until changes such as these are made, Missouri cannot provide its young victims with the level of help they deserve.
