

NOTE

COMPULSORY CORPORATE SOCIAL RESPONSIBILITY: NEW YORK HOTELIERS AS MANDATED REPORTERS OF CHILD SEX TRAFFICKING

I. INTRODUCTION

The American hotel, once thought of as a place of luxurious escape,¹ is now the nation's hotspot for one of the world's modern forms of slavery²: child sex trafficking.³ End Child Prostitution and Trafficking

1. See Molly W. Berger, *The American Hotel*, 25 J. DECORATIVE & PROPAGANDA ARTS 6, 6 (2005) (describing a N.Y. hotel as a “[t]emporary home to kings, queens, and presidents, to well-heeled tourists and business travelers”).

2. U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

3. Michelle Guelbart & Robert W. Lannan, *The Hotel Industry's Role in Ending Child Sex Trafficking: Be Part of the Rescue*, ACAD. HOSPITALITY INDUSTRY ATTORNEYS, https://associationdatabase.com/aws/AHIA/asset_manager/get_file/92994 (last visited Apr. 10, 2017) (“[Forty-four percent] of sexually exploited [New York City] youth were exploited in hotels.”); see *Child Victims of Sex Trafficking Are Being Exploited in America's Hotels*, ECPAT-USA, <http://www.ecpatusa.org/2015/07/01/child-victims-sex-trafficking-exploited-americas-hotels> (last visited Apr. 10, 2017) (“Service providers and law enforcement agencies report that nearly all victims they come in contact with have been exploited in hotels.”); *Children for Sale: The Fight to End Human Trafficking* (CNN television broadcast July 21, 2015) (describing child sex trafficking as modern-day slavery).

This Note focuses exclusively on *child* sex trafficking, because of the severe violence inflicted on children in the sex industry. Rowena Fong & Jodi Berger Cardoso, *Child Human Trafficking Victims: Challenges for the Child Welfare System*, 33 EVALUATION & PROGRAM PLAN. 311, 312 (2010) (“The few children rescued by law enforcement have acute physical and sexual trauma and adverse health effects including mental illness, substance abuse, sexually transmitted diseases, HIV infection, pregnancy and abortion-related complications.”). Moreover, this Note focuses on child sex trafficking because the vulnerability of children requires it. Cf. Lin Lean Lim, *Whither the Sex Sector? Some Policy Considerations*, in *THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 206, 212 (Lin Lean Lim ed., 1998) (“Child prostitution should be treated as a much more serious problem than adult prostitution . . . [because] children are clearly much more vulnerable and helpless against the established structures and vested interests in the sex sector.”).

Although this Note does not discuss *adult* sex trafficking, for one of the many representative accounts of the cruelties imposed upon adults in this market, see Shandra

(“ECPAT”) is a non-governmental, global network of social services organizations dedicated to ending child sex trafficking.⁴ The member organization based in the United States, ECPAT-USA, is the leading anti-trafficking policy organization in the country.⁵ Its mission is to protect every child’s basic human right⁶ to grow up free from the threat of sexual exploitation and trafficking.⁷ One way that ECPAT-USA seeks

Woworuntu, *My Life as a Sex Trafficking Victim*, SAFE HORIZON (Mar. 30, 2016), <https://www.safehorizon.org/safe-horizon-in-the-news/shandra-woworuntu-my-life-as-a-sex-trafficking-victim>; and *Alma*, EQUALITY NOW, <http://www.equalitynow.org/survivorstories/alma> (last visited Apr. 10, 2017).

Lastly, for purposes of this Note, child sex trafficking is not synonymous with prostitution. Ronald Weitzer, *Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation*, 101 J. CRIM. L. & CRIMINOLOGY 1337, 1343 (2011) (“[T]here is no objective equivalence between [prostitution and trafficking]. Prostitution involves a commercial transaction and trafficking is a process whereby a third party facilitates an individual’s involvement in sexual commerce.”). *But cf.* Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 142 (2006) (conflating sex trafficking and prostitution, perhaps admirably, in order to confront the sex industry “in its totality” because “prostitution creates the demand for trafficking”).

4. See ECPAT, <http://www.ecpat.org> (last visited Apr. 10, 2017).

5. Founded in 1991, ECPAT-USA initially focused its campaign on child prostitution in Asian tourism. Press Release, ECPAT-USA, ECPAT-USA Celebrates 25 Years of Protecting Children from Sexual Exploitation (Nov. 14, 2016), <http://www.digitaljournal.com/pr/3142106>. In 1994, the organization incorporated as a nonprofit in New York State. *Overview: ECPAT-USA End Child Prostitution Child Pornography and Trafficking*, NAT’L CTR. FOR CHARITABLE STAT., <http://nccsweb.urban.org/orgs/profile.php/133755580?popup=1> (last visited Apr. 10, 2017); see *Vision and Mission*, ECPAT-USA, <http://www.ecpatusa.org/who-we-are> (last visited Apr. 10, 2017). At an event honoring National Slavery and Human Trafficking Prevention Month, former Attorney General Eric H. Holder Jr. remarked that “[w]e must continue to expand partnerships beyond the halls of government” and “strive to enlist the American people in identifying victims who are hiding in plain sight.” Eric H. Holder Jr., Att’y Gen., U.S. Dep’t of Justice, Remarks at Justice Department Event Marking National Slavery and Human Trafficking Prevention Month (Jan. 29, 2015), <http://www.justice.gov/opa/speech/attorney-general-eric-h-holder-jr-delivers-remarks-justice-department-event-marking>.

6. G.A. Res. 44/25, annex, Convention on the Rights of the Child (Nov. 20, 1989).

7. *Vision and Mission*, *supra* note 5. Estimates of sexually exploited children in the United States vary greatly due to the difficulty in reaching this group and a lack of uniform data because of confusion among law enforcement officials in responding to a given situation. Megan Anitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV. 1, 7-8 (2011); Weitzer, *supra* note 3, at 1339-42 (attributing the paucity of reliable statistics to the “oppression paradigm” of sex trafficking, which conflates all sexual commerce with institutionalized subordination of women). However, although the statistics are “susceptible to exaggeration” and “[s]cientifically credible estimates do not exist,” the need to protect such children is not reduced. Glenn Kessler, *The Bogus Claim That 300,000 U.S. Children Are ‘at Risk’ of Sexual Exploitation*, WASH. POST (May 28, 2015), <http://www.washingtonpost.com/blogs/fact-checker/wp/2015/05/28/the-bogus-claim-that-300000-u-s-children-are-at-risk-of-sexual-exploitation>. In fact, the need to refine estimates pales in comparison to the need for national collaboration in prevention. See NAT’L ACAD. OF SCIS., *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES* 46-59, 184-87 (Ellen Wright Clayton et al. eds., 2013), <https://www.ojjdp.gov/pubs/243838.pdf>.

to achieve this goal is by promoting corporate social responsibility (“CSR”), with a strong focus in the tourism sector.⁸

Traffickers conduct their business in hotels because they believe the travel industry offers both an anonymous and transient atmosphere.⁹ Victims often go unnoticed because standard training does not alert employees to the dangers of child sex trafficking.¹⁰ Thus, ECPAT-USA encourages private companies to sign *The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* (“Code”).¹¹ Signatories pledge their commitment to fighting the commercial sexual exploitation of children.¹² ECPAT-USA then creates custom training courses for the signatory, in order to enable its staff to identify possible victims and follow the proper procedure for responding to suspicious activity.¹³

Despite its noble undertakings, the Code is voluntary.¹⁴ As conscience rather than legislation has guarded our children in the travel

8. *Vision and Mission*, *supra* note 5. Corporate commitment to social responsibility implements a business approach that “considers responsibility and accountability along with profitability.” Anna Williams Shavers, *Human Trafficking, the Rule of Law, and Corporate Social Responsibility*, 9 S.C. J. INT’L L. & BUS. 39, 65-66 (2012).

9. Belinda Luscombe, *How to Spot a Sex Trafficking Victim at a Hotel*, TIME (Oct. 28, 2014), <http://time.com/3525640/sex-trafficking-victim-prostitution-hotel>; Katrease Stafford, *Video Shows FBI Raid in Teen Sex Trafficking Crackdown*, DET. FREE PRESS (Oct. 15, 2015), <http://www.freep.com/story/news/local/michigan/detroit/2015/10/15/fbi-teen-sex-trafficking/73999586> (indicating that traffickers tend to relocate their operations frequently).

10. See Michelle Guelbart, *Sex Trafficking in Hotels – Does Your Team Know the Signs?*, HER CONSULTING, <http://www.her-consulting.com/sex-trafficking-in-hotels> (last visited Apr. 10, 2017).

11. STEERING COMM. ON THE CODE OF CONDUCT, CODE OF CONDUCT FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM: BACKGROUND AND IMPLEMENTATION EXAMPLES 16 (2004), http://resources.ecpat.net/ei/publications/cst/code_of_conduct_eng.pdf; see Erika R. George & Scarlet R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. INT’L L. & POL. 55, 97 (2013) (“The Code has become the gold standard for CSR in the travel and tourism industry . . .”). The Code was created in 1996 by ECPAT-Sweden. *History*, CODE, <http://www.thecode.org/about/history> (last visited Apr. 10, 2017).

12. In 2004, Carlson was the first North American travel and hospitality company to sign the Code. CARLSON, UNITED NATIONS GLOBAL COMPACT: COMMUNICATION ON PROGRESS 2, 3 (2011), https://www.unglobalcompact.org/system/attachments/11820/original/Carlson_COP_July2011.pdf?1314909834. For a comprehensive list of the current signatories of the Code, see *Members of the Code*, CODE, <http://www.thecode.org/who-have-signed> (last visited Apr. 10, 2017).

13. CATHERINE BEAULIEU, GLOBAL STUDY ON SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM: REGIONAL REPORT: NORTH AMERICA 47-48 (2016), <http://www.ecpatusa.org/wp-content/uploads/2016/05/regional-report-north-america.pdf>; NETWORK OF GLOB. AGENDA COUNCILS, TASK FORCE ON HUMAN TRAFFICKING, HEDGING RISK BY COMBATING HUMAN TRAFFICKING: INSIGHTS FROM THE PRIVATE SECTOR 13 (2014), http://www3.weforum.org/docs/WEF_Human_Trafficking_Report_2015.pdf (“[E]ach [signatory] company works with a local [C]ode representative to implement [the training].”).

14. See Tanya Mohn, *The Travel Industry Takes on Human Trafficking*, N.Y. TIMES, Nov. 9, 2012, at F12 (describing the Code as a “voluntary set of guidelines”).

sector, over the span of more than a decade, only 433 child victims have been rescued and only 308 people have been prosecuted.¹⁵ Without legal obligation, the unique opportunity hotels possess in filling the gaps of sex trafficking legislation and law enforcement will go untapped.¹⁶ Child sex trafficking will continue to decimate our youth while an effective resource stands by idly.¹⁷ In order to guarantee CSR and utilize the training of ECPAT-USA, this Note proposes that New York State¹⁸ create a criminal provision in its penal law to address the duty of hoteliers, with respect to child sex trafficking.¹⁹ The hotel industry can no longer afford to look the other way.²⁰ Justified by the policy

15. See Allison Chawla, *The Disturbing Reality of Human Trafficking and Children*, HUFFINGTON POST: BLOG (Dec. 18, 2015), http://www.huffingtonpost.com/allison-chawla/disturbing-reality-human-trafficking_b_8831834.html. For a categorical breakdown, by scenario, of the overwhelming number of children at risk for sex trafficking, see RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO: EXECUTIVE SUMMARY 11-14* (2002), <http://www.maggiemcneill.files.wordpress.com/2011/04/estes-weiner-2001.pdf>, calculating that 77,068 children between the ages of ten and seventeen, *living in their own homes*, are at risk of sex trafficking.

16. See Jonathan Ewing, *This Hotel Is Fighting Human Trafficking Like People's Lives Are Depending on It*, U.S. GLOB. LEADERSHIP COAL. (Mar. 8, 2014), <http://www.usglc.org/2014/03/08/this-hotel-is-fighting-human-trafficking-like-peoples-lives-are-depending-on-it> (explaining that the travel industry “represent[s] a virtual army of eyes and ears when employees are trained about what to watch for and how to report it”). For a discussion of the few arrests and children rescued in comparison to the huge resources expended during the Federal Bureau of Investigation’s (“FBI”) many Operation Cross Country sweeps since 2003, see Adam Banner, *Operation Cross Country: Too Little, Too Late . . . Unless We Fix the Focus*, HUFFINGTON POST: BLOG (Aug. 1, 2013), http://www.huffingtonpost.com/adam-banner/operation-cross-country-t_b_3675977.html. Operation Cross Country is a collaborative program created by the FBI, which brings together local, state, and federal law enforcement agencies, prosecutors, and social service providers in order to recover sexually exploited children and arrest traffickers. *Operation Cross Country: Recovering Victims of Child Sex Trafficking*, FBI (July 29, 2013), <http://www.fbi.gov/news/stories/operation-cross-country-recovering-victims-of-child-sex-trafficking>.

17. *But see* George & Smith, *supra* note 11, at 90 (“[S]oon it will no longer be the norm for businesses to sit by idle while they contribute to the violation of children’s human rights.”).

18. Of all the states, this Note’s proposal would have the most impact in New York. See NYC & CO., *NEW YORK CITY TOURISM: A MODEL FOR SUCCESS 6* (2013), http://www.nycgo.com/assets/files/pdf/New_York_City_Tourism_A_Model_for_Success_NYC_and_Company_2013.pdf (“New York City is the country’s top port of entry, top overseas market, top generator in tourism spending and the top big city destination.”); Sarah Pierce, *Top 4 States for Human Trafficking*, HUMAN TRAFFICKING SEARCH: BLOG (Nov. 3, 2014), <http://www.humantraffickingsearch.net/wp1/top-4-states-for-human-trafficking> (“[New York]’s battle against [human trafficking] is one of the most progressive in the country.”).

19. *Cf.* N.Y. SOC. SERV. LAW § 413 (McKinney 2010). *But see* VIRGINIA M. KENDALL & T. MARKUS FUNK, *CHILD EXPLOITATION AND TRAFFICKING: EXAMINING THE GLOBAL CHALLENGES AND U.S. RESPONSES 144* (2012) (“[H]otel associations . . . should be urged to sign on to protocols and declarations aimed at stopping sex tourism . . .”).

20. See Holly Tuppen, *Addressing Human Trafficking in the Hospitality Industry*, GREEN HOTELIER (July 18, 2013), <http://www.greenhotelier.org/know-how-guides/addressing-human-trafficking-in-the-hospitality-industry> (outlining the risks of a company’s lack of awareness of trafficking, such as “negative publicity, business interruptions, potential law[suits], public protests,

considerations of the Child Protective Services Act (“CPSA”), the proposed legislation will deem hoteliers mandated reporters of child sex trafficking.²¹ Both abused children and child victims of sex trafficking are in need of professional reporters because of their vulnerability and tendency to conceal their ordeal.²² If a hotel could face potential criminal charges for failing to report suspicion of child sex trafficking, training its employees in accordance with ECPAT-USA’s model would no longer be an option.²³

To further strengthen this initiative, the legislation should provide that failure to appropriately train hotel staff in checking for the signs and reporting suspicion of child sex trafficking will result in a per se failure to report.²⁴ Although this law would criminalize errant facilitators, its objective is affirmatively moral, rather than exclusively punitive.²⁵ The hotel industry, a giant in hospitality and now a potential beacon of children’s human rights, will be compelled to end the scourge of child sex trafficking.²⁶

This Note begins with an examination of the current state of the law concerning child sex trafficking by analyzing the nature of its supply-and-demand market; the legislative initiatives pertaining to child sex trafficking; and the role of the hotel, as to potential liability and its unique opportunity for prevention.²⁷ Part II examines the characteristics of the exploited, the ineffective deterrence for the exploiter, and the failures of law enforcement.²⁸ It then examines the current federal and New York State anti-sex trafficking legislation.²⁹ Lastly, it presents the

and a loss of consumer trust, all of which can impact shareholder value”).

21. See SOC. SERV. LAW § 413.

22. See Robert Moosy, *Sex Trafficking: Identifying Cases and Victims*, NAT’L INST. JUST. J., Mar. 2009, at 2, 4-5 (“[Sex trafficking] victims develop survival or coping mechanisms that manifest as distrust, deceptiveness and an unwillingness to accept assistance.”); *Myths & Misconceptions*, NAT’L HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/myths-misconceptions> (last visited Apr. 10, 2017) (dispelling the myth that sex trafficking victims will self-identify as a victim of a crime); cf. *Eight Common Myths About Child Sexual Abuse*, LEADERSHIP COUNCIL, https://www.leadershipcouncil.org/1/res/csa_myths.html (last visited Apr. 10, 2017) (“[C]hildren who have been sexually assaulted often have considerable difficulty in revealing or discussing their abuse.”).

23. Cf. SOC. SERV. LAW § 420(1).

24. See Guelbart, *supra* note 10 (outlining the signs of sex trafficking).

25. See Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1680-83 (2010) (describing the anti-trafficking movement as a “moral crusade”).

26. See Linda Smith & Samantha Healy Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U. L. REV. 265, 288-91 (2011) (urging criminal liability for facilitators who profit from child sex trafficking).

27. See *infra* Part II.

28. See *infra* Part II.A.

29. See *infra* Part II.B.

unique opportunities available to hotels in fighting child sex trafficking, in juxtaposition to the rare accountability imposed upon hotels.³⁰ Part III explores the problem of the Code's voluntariness, namely that a cohesive system designed for identifying and reporting child sex trafficking is available to hotels, and yet currently nothing legally obligates hotels to take part.³¹ It then examines the CPSA, in order to demonstrate that failing to mandate the Code is unnecessary when the CPSA's justifications just as appropriately apply to hoteliers and child sex trafficking victims.³² Subsequently, Part IV proposes that New York State, as the progressive leader in sex trafficking legislation and the country's top generator in tourism spending, should adopt legislation that deems hoteliers mandated reporters of child sex trafficking, thereby obligating hotels to incorporate and implement ECPAT-USA's training.³³

II. MORASS AND THE POTENTIAL FOR HOPE: THE LEGAL LANDSCAPE OF CHILD SEX TRAFFICKING

At perhaps the most symbolic venue, the Sheraton Hotel in New York City, former President Barack Obama delivered his condemnation of human trafficking in 2012: “[I]t is a debasement of our common humanity. . . . Our fight against human trafficking is one of the great human rights causes of our time”³⁴ The devastation of child sex trafficking is allowed, in part, to continue due to traffickers' use of hotels to covertly house their victims.³⁵ Subpart A discusses the supply-and-demand market of child sex trafficking and the failures of law enforcement.³⁶ Subpart B discusses the status of federal and New York

30. See *infra* Part II.C.

31. See *infra* Part III.A.

32. See *infra* Part III.B.

33. See *infra* Part IV.

34. President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>. “Severe forms” of human trafficking are defined at the federal level as the “recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102(9)(B) (2012). This Note focuses instead on its second definition: “sex trafficking in which . . . the person induced to perform [a commercial sex] act has not attained 18 years of age.” *Id.* § 7102(9)(A).

35. See *State v. Williams*, 329 P.3d 400, 406 (Kan. 2014) (noting that a minor trafficking victim and pimp “stayed in three hotels over . . . several days,” where the pimp waited while the victim “walk[ed] the streets”); Brief for Love146 as Amicus Curiae in Support of Neither Party at 4-5, 13-17, *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015) (No. 13-1175) (arguing that hotels are the prime venue of child sex traffickers to ply their trade).

36. See *infra* Part II.A.

State anti-sex trafficking legislation.³⁷ Subpart C discusses the opportunity hotels possess in preventing child sex trafficking, against the backdrop of hotels' infrequently held accountability.³⁸

A. The Market and the Attempt to Dismantle Child Sex Trafficking

As long as the demand for, and facilitation of, the sexual exploitation of children are allowed to persist—without the intervention of the hotel industry—traffickers will continue to provide the requisite supply to meet the demand.³⁹ Globally, the estimated annual profits from sex trafficking range from seven to twelve billion dollars.⁴⁰ These illicit profits are second only to the trafficking of illegal drugs and arms.⁴¹ With abhorrent entrepreneurial spirit, the sex trafficking market is driven by high profits and low risk.⁴² First, the characteristics of the supply side

37. See *infra* Part II.B.

38. See *infra* Part II.C.

39. John Elrod, Note, *Filling the Gap: Refining Sex Trafficking Legislation to Address the Problem of Pimping*, 68 VAND. L. REV. 961, 974-75 (2015). Nevertheless, the market for sex trafficking does extend beyond the hotel sector, infiltrating both legal businesses and those backed by organized crime groups. Janice G. Raymond et al., *Sex Trafficking of Women in the United States: Coalition Against Trafficking in Women*, in INTERNATIONAL SEX TRAFFICKING OF WOMEN & CHILDREN: UNDERSTANDING THE GLOBAL EPIDEMIC 3, 4-6 (Leonard Territo & George Kirkham eds., 2010) (demonstrating the wide range of locations for the sex trafficking market, including but not limited to, restaurants, nail salons, warehouses, military bases, massage parlors, strip clubs, and go-go bars). Additionally, traffickers consider large sporting events to be the “optimal breeding ground” to acquire massive profit. Eleanor Goldberg, *Super Bowl Is Single Largest Human Trafficking Incident in U.S.: Attorney General*, HUFFINGTON POST (Feb. 3, 2013), http://www.huffingtonpost.com/2013/02/03/super-bowl-sex-trafficking_n_2607871.html. Law enforcement agencies have responded in kind. See James Queally, *National Sex Trafficking Sting Nets Nearly 600 Arrests Before Super Bowl*, L.A. TIMES (Feb. 2, 2015, 5:08 PM), <http://www.latimes.com/nation/nationnow/la-na-nn-sex-trafficking-sting-super-bowl-20150202-story.html> (reporting that, among 570 people arrested for suspicion of soliciting prostitutes, police also arrested twenty-three people on suspicion of sex trafficking and rescued fourteen juvenile victims during a sting in the lead-up to Super Bowl XLIX).

40. Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 659 (2008).

41. Susan W. Tiefenbrun, *Sex Sells but Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 T. JEFFERSON L. REV. 161, 172-73 (2002). *But cf.* *Child Trafficking Statistics: U.S. & International*, ARK OF HOPE FOR CHILDREN, <http://www.arkofhopeforchildren.org/child-trafficking/child-trafficking-statistics> (last visited Apr. 10, 2017) (explaining that “[h]uman trafficking has surpassed the illegal sale of arms,” and it “will surpass the illegal sale of drugs in the next few years”).

42. Antonio Maria Costa, *Preface* to OFFICE ON DRUGS AND CRIME, UNITED NATIONS, HUMAN TRAFFICKING: AN OVERVIEW, at v (2008), http://www.ungift.org/doc/knowledgehub/resource-centre/GIFT_Human_Trafficking_An_Overview_2008.pdf; see Tiefenbrun, *supra* note 41, at 175 (“[W]hen you commodify a human being she can be sold over and over again; thus, the potential profits in the sex trade industry are high, and the risk for the perpetrators is low.”). Traffickers are also drawn into the business by the allure of low start-up costs. Michael J. Frank &

of the market—the sexually exploited children—are discussed below.⁴³ Next, this Note examines how the demand side of the market—the exploiter-buyers—is undeterred because of lenient criminal penalties.⁴⁴ Finally, the failures of law enforcement are explored.⁴⁵

1. Supply: The Characteristics of the Vulnerable

The International Labour Organization has estimated that there are 20.9 million victims of human trafficking globally—twenty-six percent of which are children.⁴⁶ The average age of children forced into prostitution is thirteen years old.⁴⁷ The misconception that child sex trafficking is an evil only perpetrated beyond our domestic borders is now antiquated, as U.S. citizens are just as readily victims of this crime.⁴⁸ Ethnicity, age, socio-economic status, sexual orientation, and gender have the indiscriminate possibility of figuring into the supply side of this industry.⁴⁹

Certain characteristics can exacerbate a child's vulnerability, such as a dysfunctional home, prior experience with abuse, poverty, homelessness,⁵⁰ and mental or behavioral disorders.⁵¹ Furthermore, a

G. Zachary Terwilliger, *Gang-Controlled Sex Trafficking*, 3 VA. J. CRIM. L. 342, 348-61 (2015) (discussing gangs' attraction to the sex trafficking business).

43. See *infra* Part II.A.1.

44. See *infra* Part II.A.2.

45. See *infra* Part II.A.3.

46. *The Facts*, POLARIS, <http://www.polarisproject.org/facts> (last visited Apr. 10, 2017). For a discussion on the unreliability of sex trafficking statistics, see *supra* note 7 and accompanying text.

47. William Adams et al., *Effects of Federal Legislation on the Commercial Sexual Exploitation of Children*, JUV. JUST. BULL., July 2010, at 1, 3; see also *Get Informed About Human Trafficking*, DEP'T OF CHILDREN & FAMILIES, <http://www.ct.gov/DCF/cwp/view.asp?a=4127&Q=492900#3> (last visited Apr. 10, 2017) (finding that the average age of entry for girls is thirteen years old, while the average for boys and transgender youth is twelve years old).

48. HUMAN SMUGGLING & TRAFFICKING CTR., DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE 2-3 (2008), <http://www.state.gov/documents/organization/113612.pdf>. The misconception that sex trafficking is merely a foreign issue is such a thing of the past that the ease with which the crime is carried out domestically has been compared to ordering a pizza. Linda Thomas, *Child Sex Trafficking—As Easy in Seattle as Ordering a Pizza*, MYNORTHWEST.COM: NEWS CHICK BLOG, <http://www.mynorthwest.com/646/2249364/Child-sex-trafficking--as-easy-in-seattle-as-ordering-a-pizza> (last visited Apr. 10, 2017).

49. LINDA A. SMITH ET AL., THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN 31 (2009), https://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf; see also April Rieger, Note, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 235 (2007) (“Sex trafficking could not thrive if women were not systematically oppressed and marginalized.”).

50. See 42 U.S.C. § 11434a(2) (2012) (providing the situations that qualify children as “homeless”).

51. George & Smith, *supra* note 11, at 61-63; Heather J. Clawson & Nicole Dutch, *Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the Field*, U.S. DEP'T HEALTH & HUMAN SERVS. (Jan. 20, 2008), <http://www.aspe.hhs.gov/basic-report/>

child's vulnerability is exacerbated when the child's food supply and potential for livelihood are insecure.⁵² The captivity and monitoring that sex trafficking victims face are barbaric and unrelenting.⁵³ As "professional manipulators," traffickers deceive children into believing that the abuse they suffer is love.⁵⁴

identifying-victims-human-trafficking-inherent-challenges-and-promising-strategies-field. Other risk factors that traffickers exploit include language barriers, gang affiliations, immigration status, and a history of truancy, delinquency, or criminal activity. ECPAT-USA, SAMPLE EDUCATOR'S TOOLKIT 4 (2014), <https://d2jug8yyubo3yl.cloudfront.net/26999B2F-7C10-4962-918C-E964709E745D/c338e7dc-ada1-463c-a28d-d15396b3fe7d.pdf>. Once the traffickers recognize even the slightest sign of weakness in a child, they employ several methods of manipulation to maintain the child's bondage. See TEX. HUMAN TRAFFICKING PREVENTION TASK FORCE, INTRODUCTION TO HUMAN TRAFFICKING: A GUIDE FOR TEXAS EDUCATION PROFESSIONALS 20 (2014), http://www.texasattorneygeneral.gov/files/agency/HumanTraffick_RPRT2014.pdf (outlining common methods of manipulation, such as promise of love, blackmail with pornographic images, tattooing pimp's name on the child, and sexual assaults to desensitize the child).

52. JYOTI SANGHERA ET AL., TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS 9 (Kamala Kempadoo et al. eds., 2005). Runaway children are often left with no other option but the barter system of sex for necessities, such as food and housing, in order to provide for their subsistence needs. See Ian Urbina, *Recession Drives Surge in Youth Runaways*, N.Y. TIMES, Oct. 26, 2009, at A1; *The Truth About Runaway Teens*, POLLY KLAAS FOUND., <http://www.pollyklaas.org/enews-archive/2013-enews/article-web-pages/the-truth-about-runaways.html> (last visited Apr. 10, 2017) (stating that seven percent of youth in runaway and homeless youth shelters and fourteen percent of youth on the streets had traded sex for money, food, shelter, or drugs). Additionally, society's marginalization of women and the "feminization of poverty" contribute to children's vulnerability. Silvia Scarpa, *Child Trafficking: International Instruments to Protect the Most Vulnerable Victims*, 44 FAM. CT. REV. 429, 430 (2006).

53. See Mackey Torres, *Breaking the Chains of Sex Trafficking*, MATHIS NEWS, Jan. 22, 2015, at 1A (describing the captivity of three child victims, "bound tightly together by a chain, being yanked around by a man"); Kendra Conlon, *Elizabeth Smart Inspires Hope for Sex Trafficking Victims*, WTSP (Oct. 14, 2015, 10:40 PM), <http://www.wtsp.com/news/elizabeth-smart-inspires-hope-for-sex-trafficking-victims/235084278> ("At just 14 years old, she was chained up, kept naked, made to watch her kidnappers have sex, and raped daily for nine months . . ."). However, organizations combating human trafficking provide the possibility for secure channels of direct communication for sex trafficking victims held in captivity. See *Fighting Human Trafficking with a Short Code*, TWILIO.ORG, <http://www.twilio.org/story/captives-take-back-power> (last visited Apr. 10, 2017) (conveying the method whereby sex trafficking captives can send a text message rather than make a phone call, in order to avoid detection and to facilitate rescue). Moreover, in Colombia, a team of professional actors invoked the image of people in chains while conducting a social experiment in various public spaces, in order to alert its citizens to trafficking. *Colombian "Chained Trafficking Victims" Video Goes Viral*, INT'L ORG. MIGRATION (Sept. 5, 2014), <http://www.iom.int/news/colombian-chained-trafficking-victims-video-goes-viral>.

54. TEX. HUMAN TRAFFICKING PREVENTION TASK FORCE, *supra* note 51, at 19. This unfathomable phenomenon renders the potential for bondage infinite, as children will seek to return to their trafficker even after rescue. See JEAN BRUGGEMAN & ELIZABETH KEYES, MEETING THE LEGAL NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS & ADVOCATES 15 (Amanda Kloer et al. eds., 2009) (revealing that victims may be "eager to return to the trafficker as soon as possible").

Children are exploited because they are easier to coerce, manipulate, and control than adults.⁵⁵ Traffickers utilize technology to seek out vulnerable youth through the Internet, where minors can be deceived into sharing personal information or pictures that put them at an increased risk of being exploited.⁵⁶ Additionally, children are procured at sites of vulnerability beyond the scope of the digital world, such as bus stations, malls, or arcades.⁵⁷ But perhaps cruelest of all, child victims are even trafficked where they should feel most safe—at home, exploited by family and friends.⁵⁸

2. Demand: The Undeterred Exploiter-Buyer

Advocates argue that child sex trafficking would cease to exist if there were no demand.⁵⁹ However, the laws in place addressing the

55. *FAQ's*, ECPAT-USA, <http://www.ecpatusa.org/faqs> (last visited Apr. 10, 2017). Traffickers manipulate their child victims to such an extent that the victims will sometimes even recruit their own friends into commercial exploitation. See Helen Brayley et al., *The Value of Crime Scripting: Deconstructing Internal Child Sex Trafficking*, 5 POLICING J. POL'Y & PRAC. 132, 136-37 (2011).

56. Kimberly Kotrla, *Domestic Minor Sex Trafficking in the United States*, 55 SOC. WORK 181, 183 (2010). For a discussion of how traffickers utilize the Internet to facilitate the sexual exploitation of children, see Ryan Dalton, Note, *Abolishing Child Sex Trafficking on the Internet: Imposing Criminal Culpability on Digital Facilitators*, 43 U. MEM. L. REV. 1097, 1107-11 (2013). Fortunately, the Internet is also a resource for awareness and the impetus for the prevention of child sex trafficking. See @SCTNow, *End Human Trafficking: A Global Movement*, FACEBOOK, <https://www.facebook.com/SCTNow> (last visited Apr. 10, 2017) (providing an explanation of the dangers of human trafficking to more than 17,000 people who have liked the page).

57. JAY ALBANESE, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: WHAT DO WE KNOW AND WHAT DO WE DO ABOUT IT? 3 (2007).

58. See Rieger, *supra* note 49, at 236; see also Joan A. Reid, *An Exploratory Model of Girl's Vulnerability to Commercial Sexual Exploitation in Prostitution*, 16 CHILD MALTREATMENT 146, 152-54 (2011) (finding that multiple pathways to child sex trafficking exist). See generally THERESA FLORES, *THE SLAVE ACROSS THE STREET* (2013).

59. MICHAEL SHIVELY ET AL., DEVELOPING A NATIONAL ACTION PLAN FOR ELIMINATING SEX TRAFFICKING: FINAL REPORT 5-12 to 5-15 (2010), https://www.demandabolition.org/wp-content/uploads/2011/07/2000_abtnactplan.pdf ("Supply and distribution are symptoms; demand is the cause."); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 27 (2013); Farley, *supra* note 3, at 143 ("If we are to prevent the harms of prostitution, . . . we must ultimately prevent the existence of prostitution."). *But cf.* Noy Thrupkaew, Opinion, *A Misguided Moral Crusade*, N.Y. TIMES, Sept. 23, 2012, at SR14 ("End-demand strategies could also lead to more pressure on sex workers from pimps and traffickers."). The advocates who view the abolition of the demand side of sex trafficking as a panacea depend upon simplistic statements. See Stephanie M. Berger, Note, *No End in Sight: Why the "End Demand" Movement Is the Wrong Focus for Efforts to Eliminate Human Trafficking*, 35 HARV. J.L. & GENDER 523, 542-43 (2012) (prescribing a "more nuanced" view of sex trafficking, acknowledging that a "complex set of factors, not just male demand for sex, drives sex trafficking"); see also LIN LEAN LIM, TRAFFICKING, DEMAND AND THE SEX MARKET 5-6 (2007), http://www.ushrnetwork.org/sites/ushrnetwork.org/files/lin_lean_lim_trafficking-demand_sex_market_.pdf (explaining that curbing demand will not effectively end sex trafficking because of the complexities of the sex market, which is "not one homogenous market but many and increasingly varied segments of a market," and because of varying societal norms regarding

demand often serve as an ineffective deterrent for engaging in the sexual exploitation of children.⁶⁰ Exploiter-buyers would conceivably be more deterred by long prison sentences, proportional to the grave harm they inflict, than light financial sanctions.⁶¹ Without effective legal retribution, exploiter-buyers are not wary of any impending consequence; even on a micro-level, public warning hardly gives exploiter-buyers reason for pause.⁶²

Further, exploiter-buyers are undeterred because the prosecution of demand is under-utilized.⁶³ This may be due in large part to the fact that

prostitution).

60. See N.Y. PENAL LAW §§ 230.05–.06 (McKinney 2009) (classifying as a class D felony when any person patronizes a prostitute less than eleven years of age, and as a class E felony when an adult patronizes a prostitute less than fifteen years of age). Persons guilty of a class D felony may be sentenced from one to seven years in jail, at the discretion of the court. *Id.* § 70.00(2)(d), (3)(b). Whereas, persons guilty of a class E felony may be sentenced from one to four years. *Id.* § 70.00(2)(e), (3)(b). A fine for such felonies would not exceed five thousand dollars. *Id.* § 80.00(1)(a). The disproportionate leniency in relation to the severity of the crime is furthered by the defense available for such patrons. See *id.* § 230.07 (“[I]t is a defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.”). The issue of age is rife in the many cases against Backpage.com, an online classifieds forum that, in its adult entertainment section, offers the services of escorts. See, e.g., *Doe ex rel. Roe v. Backpage.com, LLC*, 104 F. Supp. 3d 149, 151-52 (D. Mass. 2015) (“Although [Backpage.com] will not accept an ad when the poster enters an age of less than 18, it will permit the poster to immediately re-enter an assumed age.”). Despite the availability of the defense afforded exploiter-buyers in New York, paradoxically, a person is deemed legally incapable of consent when he or she is less than seventeen years old. N.Y. PENAL LAW § 130.05(3)(a).

In contrast, Swedish law prohibits the purchase of sexual services and penalizes the buyers. Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1191-92 (2004). For a discussion describing the differences in punitive treatment of exploiter-buyers and sex traffickers, see *Child Prostitution: Punish Johns Fully*, LEDGER (Oct. 17, 2013, 12:01 AM), <http://www.theledger.com/article/20131017/EDIT01/131019358?p=1&tc=pg> (“[C]ustomers often face much weaker sanctions [than traffickers].”).

61. See Heather C. Gregorio, Note, *More Than “Johns,” Less than Traffickers: In Search of Just and Proportional Sanctions for Buyers of Sex with Trafficking Victims*, 90 N.Y.U. L. REV. 626, 643-45 (2015) (discussing the shortcomings of “john-focused campaigns”).

62. See SCHAPIRO GRP., MEN WHO BUY SEX WITH ADOLESCENT GIRLS: A SCIENTIFIC RESEARCH STUDY 3, 9-12 (2014), <http://prostitutionresearch.com/wp-content/uploads/2014/04/The-Schapiro-Group-Georgia-Demand-Study-1.pdf> (examining the results of a Georgia study where the tendencies of men seeking juvenile prostitutes were monitored). The experiment-controlled operator warned the calling buyer that they did not “believe [the] girl [was] actually 18, and . . . [had] no reason to believe she [was].” *Id.* at 11. Startlingly, only thirty-five percent of the men in the study discontinued pursuing the sex purchase after such warning. *Id.* at 12.

63. See Charlotte Alter, *Catching Johns: Inside the National Push to Arrest Men Who Buy Sex*, TIME, <http://www.time.com/sex-buyers-why-cops-across-the-u-s-target-men-who-buy-prostitutes> (last visited Apr. 10, 2017) (explaining that violating exploiter-buyers will only face small fines, have their cars towed, and have to watch a video about how women are exploited in the sex industry, but will not serve any jail time); see also Samantha Healy Vardaman & Christine Raino, *Prosecuting Demand as a Crime of Human Trafficking: The Eighth Circuit Decision in United States v. Jungers*, 43 U. MEM. L. REV. 917, 955-57 (2013) (“[P]unishment would be an

a majority of states allow for the mistake of age defense under buyer-applicable sex trafficking offenses.⁶⁴ The low number of prosecutions may also be attributed to the inherent difficulties in preparing for trial, such as witnesses who are reluctant to testify, the difficulty in corroborating testimony, and the multijurisdictional location of evidence.⁶⁵ Moreover, the failure to prosecute the demand can stem from an attorney incorrectly identifying the victims of sex trafficking as simply victims of prostitution.⁶⁶ Perhaps the darkest of all the factors, even moral conscience has proven unsuccessful in deterring demand.⁶⁷

3. The Failures of Law Enforcement

The most common barriers in identifying and responding to sex trafficking include victim distrust of law enforcement⁶⁸ and lack of

effective deterrent.”). Indeed, punishment is more than justifiable, as sex trafficking victims are often subject to the violent fantasies of their exploiter-buyers. Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRAC. 33, 42-44 (2003). A San Francisco study of prostitution found that eighty-two percent had been physically assaulted, eighty-three percent had been threatened with a weapon, and sixty-eight percent had been raped by exploiter-buyers. JESSICA ASHLEY, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND YOUTH IN ILLINOIS 10 (2008), <http://www.icjia.state.il.us/assets/pdf/ResearchReports/CSEC%202008%20ICJIA%20REPORT.pdf>.

64. See SHARED HOPE INT’L, STATE SURVEY LAW: MISTAKE OF AGE DEFENSE FOR BUYERS OF SEX ACTS WITH MINORS 1-5 (2014), http://sharedhope.org/wp-content/uploads/2014/06/Shared-Hope-State-law-survey_Mistake-of-Age-Defense_through-8.1.pdf. For a discussion on the failures of criminalization to effectively deter conduct in the context of human rights, see Vladislava Stoyanova, *Article 4 of the ECHR and the Obligation of Criminalising Slavery, Servitude, Forced Labour and Human Trafficking*, 3 CAMBRIDGE J. INT’L & COMP. L. 407, 412-15 (2014).

65. Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 349 (2007). Witnesses may be reluctant to assist in prosecution due to the international community’s “lax” efforts to provide witness protection. Susan Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 161-62.

66. For a comprehensive list of questions attorneys should add to their intake procedures, in order to identify victims in their offices and follow leads to other victims, see BRUGGEMAN & KEYES, *supra* note 54, at 11.

67. See Gregorio, *supra* note 61, at 637 (indicating that men will outright ignore their suspicion that they have patronized a victim of sex trafficking). The deserts of young men’s consciences are evidenced by their prioritizing of their own convenience over the safety and dignity of the victims they exploit. See Janice G. Raymond, *Prostitution on Demand: Legalizing the Buyers as Sexual Consumers*, 10 VIOLENCE AGAINST WOMEN 1156, 1168-69 (2004) (“[Y]ounger men use women in street prostitution because they are cheaper and easy to access, and the young men think they are getting away with something.”).

68. Maureen Q. McGough, *Ending Modern-Day Slavery: Using Research to Inform U.S. Anti-Human Trafficking Efforts*, NAT’L INST. JUST. J., Feb. 2013, at 26, 30. A victim of sex trafficking spoke at the Colorado State Capitol on Human Trafficking Awareness and Advocacy Day and recounted that during her exploitation she was handcuffed and raped by a police officer. *Sex Trafficking Victim Says Police Involved in Human Slave Trade Abused and Threatened Her*, COUNTER CURRENT NEWS (Mar. 29, 2015, 2:14 PM), <http://www.countercurrentnews.com/2015/03/>

training, awareness,⁶⁹ precedent, case law,⁷⁰ and interpreters.⁷¹ Eradicating sex trafficking is further thwarted by both the patience and time required for thorough investigation,⁷² as well as the transient nature of the enterprise.⁷³ As first responders, law enforcement officers are faced with a considerable task because sex trafficking can “masquerade” as other offenses⁷⁴ and take many forms—prostitution, pornography, stripping, escort services, and erotic massages.⁷⁵

In some cases, arresting traffickers requires a search warrant to be able to raid the location where victims are held captive.⁷⁶ Even when law enforcement secures a warrant and takes action, however, it does not necessarily shut down the trafficking operation at large.⁷⁷ Because of the time and financial restraints involved in proactive law enforcement that generates intelligence for its investigations,⁷⁸ as opposed to reactive

trafficking-victim-says-police-were-involved.

69. Lack of awareness in first responder law enforcement agents can potentially lead to misidentifying the child as a delinquent. George & Smith, *supra* note 11, at 76-79. Without proper training, law enforcement is forced to rely upon inapt vice investigation strategies geared toward drug and gambling crimes. McGough, *supra* note 68, at 30. Rooted in a lack of awareness, negative stereotypes create a further impediment to law enforcement responding appropriately to sex trafficking. *See id.* (reporting that an interviewed officer said, “Victims are often unreliable, often addicted to drugs. It’s probably easier to prosecute homicides because the victims are dead”).

70. Law enforcement conducts its sex trafficking investigations in accordance with the types of cases with which prosecutors are familiar, such as rape, kidnapping, pandering, or promoting prostitution. *See* AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING CASES 145-46 (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238795.pdf>.

71. HEATHER J. CLAWSON ET AL., LAW ENFORCEMENT RESPONSE TO HUMAN TRAFFICKING AND THE IMPLICATIONS FOR VICTIMS: CURRENT PRACTICES AND LESSONS LEARNED 33 (2006), <https://www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf>.

72. *Id.* at 41. For a discussion of the necessary measures to implement a safe sting operation, see Gerry Long, *How to Plan a “John” Sting*, POLICE MAG.: WOMEN L. ENFORCEMENT BLOG (Apr. 18, 2012), <http://www.policemag.com/blog/women-in-law-enforcement/story/2012/04/running-a-john-sting-operational-planning.aspx>.

73. *See* William D. Frye, *Human Sex Trafficking in Hotels Is a Major Concern for Hoteliers*, HL CONVERGE (Jan. 6, 2014, 8:59 PM), <http://www.hlconverge.com/index.php/component/k2/item/747-human-sex-trafficking-in-hotels-is-a-major-concern-for-hoteliere> (establishing that the “transient nature” of traffickers and the “privacy afforded to these temporary guests” have turned hotels into the “prime venues” of sexual exploitation).

74. *See* Bharathi A. Venkatraman, *Human Trafficking: A Guide to Detecting, Investigating, and Punishing Modern-Day Slavery*, 70 POLICE CHIEF 34, 34 (2003).

75. NAT’L CTR. FOR HOMELESS EDUC., SEX TRAFFICKING OF MINORS: WHAT SCHOOLS NEED TO KNOW TO RECOGNIZE AND RESPOND TO THE TRAFFICKING OF STUDENTS 2 (2014), <http://nche.ed.gov/downloads/briefs/trafficking.pdf>.

76. KEVIN BALES & STEVEN LIZE, TRAFFICKING IN PERSONS IN THE UNITED STATES 63 (2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>. For a fictional though wholly representative depiction of such captivity, see *Law & Order: Special Victims Unit: Merchandise* (NBC television broadcast Oct. 6, 2010).

77. BALES & LIZE, *supra* note 76, at 63.

78. For a thorough list of possible sources of evidence law enforcement can gather to aid its

victim-led investigations, law enforcement pursues the latter, least successful option.⁷⁹ Additionally, when efforts to coordinate different law enforcement agencies across jurisdictional lines are made, confusion surrounding the inconsistencies in state and federal law abounds.⁸⁰ As a final blow to the shortcomings of law enforcement in dealing with child sex trafficking, there remains a lack of innovative investigative methods that are legally or ethically at the disposal of undercover law enforcement.⁸¹

B. *The Watchtower of Sex Trafficking: Current Legislation*

In October of 2000, Congress declared human trafficking illegal in the United States when it passed the Trafficking Victims Protection Act (“TVPA”).⁸² Under the TVPA, sex trafficking is found when a commercial sex act has been induced by force, fraud, or coercion, *or* whenever the person so induced is under eighteen years of age.⁸³ However, under New York State law, prostituting a minor does not automatically qualify as sex trafficking.⁸⁴ Subpart 1 examines the federal

investigation, see NAT’L ACAD. OF SCIS., *supra* note 7, at 212-13.

79. BALES & LIZE, *supra* note 76, at 95-99.

80. See George & Smith, *supra* note 11, at 79-80 (“[T]he combination of each state’s law and federal laws create a patchwork that can be confusing to law enforcement.”); *infra* Part.II.B. Due to a lack of communication between local and federal agencies, many law enforcement agencies report that they have never pursued federal charges (which provide more stringent penalties) in child sex trafficking cases. SMITH ET AL., *supra* note 49, at 22.

81. See George & Smith, *supra* note 11, at 80-81 (stating that law enforcement “never actually catches the buyer soliciting sex from children” because of the ethical prohibition of “us[ing] a minor as bait”). However, even when officers engage in the facilitation mode of an undercover operation by attempting to encourage the illegal behavior of adults, their ethics are still challenged. Joe Peny, *Technology Ethics for Law Enforcement*, AM. INT’L J. CONTEMP. RES., Feb. 2012, at 124, 127-28. Of course, even if the investigation is maintained as ethical, an exploiter-defendant could raise the defense of entrapment. See, e.g., *State v. Bullock*, 153 S.W.3d 882, 886-87 (Mo. Ct. App. 2005) (affirming the trial court’s denial of entrapment instructions where “there [wa]s no evidence that [defendant] was not predisposed, ready and willing” to attempt to sexually exploit a child).

82. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466 (2000) (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

83. 22 U.S.C. § 7102(9)(A).

84. See N.Y. PENAL LAW § 230.34 (McKinney 2008). Nevertheless, the state legislature is addressing the deficiency, having passed such a bill in the Senate; the bill is currently pending in the committee stage of the Assembly. See S. 6894, 2015 Leg., 238th Sess. (N.Y. 2016) (proposing to amend the Penal Law to include a provision that would automatically qualify the prostitution of a minor as sex trafficking); Assemb. 9453, 2015 Leg., 238th Sess. (N.Y. 2016) (same). The bill’s justification was fortified by the Assembly’s passing a human trafficking bill in 2015 that would increase the penalties for sex trafficking. Mike Vilensky, *Human-Trafficking Bill Clears Assembly*, WALL ST. J., Mar. 17, 2015, at A17. The bill then received Senate approval on October 21, 2015. Press Release, Martin J. Golden, N.Y. Senator, Women’s Equality Agenda Signed into Law (Oct. 21, 2015) <https://www.nysenate.gov/newsroom/press-releases/martin-j-golden/womens-equality->

legislation enacted to combat sex trafficking in the United States.⁸⁵ Subpart 2 details the heralded innovations of New York State's current legislation.⁸⁶

1. Federal Legislation

As the first comprehensive federal law to address human trafficking, the TVPA had a threefold purpose of prevention, prosecution, and protection.⁸⁷ Since then, there have been several reauthorizations of the TVPA, which expand upon its original purposes.⁸⁸ When the TVPA was initially passed in 2000, its focus was international trafficking.⁸⁹ However, textually, nothing prevents its application to U.S. citizens.⁹⁰ Indeed, subsequent reauthorizations of the TVPA explicitly acknowledge that Congress considers domestic and international trafficking of equal concern.⁹¹

agenda-signed-law.

85. *See infra* Part II.B.1.

86. *See infra* Part II.B.2. For a discussion bearing on the laws impacting states that paradoxically allow children to be treated both as victims of sex abuse by adults and as perpetrators of sex crimes against adults, see Pantea Javidan, *Global Class and the Commercial-Sexual Exploitation of Children: Toward a Multidimensional Understanding*, 1 COLUM. J. RACE & L. 365, 376-79 (2012).

87. Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 36-37 (2008); Karen Moser, Note, *Prevention, Prosecution, and Protection: A Look at the United States' Trafficking Victims Protection Act*, 3 INT'L J. BUS. & SOC. SCI. 222, 225 (2012); Marisa Nack, Note, *The Next Step: The Future of New York State's Human Trafficking Law*, 18 J.L. & POL'Y 817, 826 (2010).

88. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 237, 122 Stat. 5044, 5083-84 (codified in scattered titles of the U.S.C.) (requiring an integrated database to collect human trafficking data from all federal agencies); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 201(b), 202-204, 119 Stat. 3558, 3569-71 (codified as amended at 22 U.S.C. § 7104 (2012), 42 U.S.C. § 14044a-c (2012)) (authorizing pilot program for sheltering minor victims and grant programs to assist state and local law enforcement in combating human trafficking); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a), 177 Stat. 2875, 2878 (codified as amended at 18 U.S.C. § 1595 (2012)) (creating a federal civil cause of action for victims); Trafficking Victims Protection Reauthorization Act of 2013, H.R. 898, 113th Cong. §§ 222-223 (enhancing efforts to focus on the trafficking of children).

89. *See* Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1077-78 (2011) (describing the international focus of the TVPA as reflecting a disconnect between treatment of foreign-born and domestic trafficking victims); Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2989-91 (2006) (suggesting that Congress's initial lack of attention to domestic trafficking is indicative of a broader tendency to ignore the role of the United States in perpetuating trafficking).

90. *See* 106 CONG. REC. 16,705 (2000) (statement of Sen. Paul Wellstone) (explaining that the TVPA was designed in part to enhance domestic anti-trafficking efforts).

91. Susan Crile, Comment, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors*, 61 AM. U. L. REV. 1783, 1795 (2012) (explaining that the TVPA applies with "equal force" to both foreign and U.S.

While Congress requires proof of compulsion to establish sex trafficking of an adult, no such proof is required when the victim is a minor.⁹² Thus, despite the glamorization of pimping in pop culture, federal law is intolerant and “equat[es] a pimp [of children] . . . with a trafficker.”⁹³ In fact, the definitions of federal law render children “victims,” incapable of the consent and criminality that prostitution suggests.⁹⁴ The TVPA is certainly unyielding; mere proof of the age of minority deems such trafficking punishable by life imprisonment.⁹⁵

2. New York State Legislation

In 2007, New York enacted its own sex trafficking statute,⁹⁶ which attempted to mirror the concerns of federal law.⁹⁷ New York continued to implement progressive legislation in the following years.⁹⁸ In pursuit of victim-based protection, New York deemed an individual under eighteen arrested for prostitution a “sexually exploited child,” who was entitled to rehabilitation.⁹⁹

Next, in an effort to sabotage the vehicle of sex trafficking, New York criminalized travel-related businesses that knew its services were

victims).

92. Pamela Chen & Monica Ryan, *Federal Prosecution of Human Traffickers*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 271, 272-73 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2013), <http://www.nycourts.gov/ip/womeninthecourts/publications.shtml>. Although the law seems to favor children in this respect, the offered services of the TVPA’s reauthorizations primarily assist adults. Fong & Cardoso, *supra* note 3, at 311.

93. See Kotrla, *supra* note 56, at 181, 183.

94. Samantha Cowan, *Why Sex-Trafficked Children Can’t Be Called Prostitutes*, TAKEPART (Sept. 23, 2015), <http://www.takepart.com/article/2015/09/23/child-prostitute-no-such-thing>.

95. See Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery*, 12 MICH. J. GENDER & L. 87, 98 (2005); see also *Deuteronomy* 24:7 (King James) (“If a man be found stealing any . . . children . . . and maketh merchandise of him, or selleth him; then that thief shall die . . .”).

96. N.Y. PENAL LAW § 230.34 (McKinney 2008).

97. 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, 475 (2012).

98. See, e.g., N.Y. PENAL LAW § 230.36 (providing that a sex trafficking victim is precluded from accomplice liability); INTERAGENCY TASK FORCE, NEW YORK STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING 7-15 (2008), http://www.criminaljustice.ny.gov/pio/humantrafficking/human_trafficking_rpt_aug08.pdf (outlining the developments in N.Y. anti-trafficking law and policy at the outset of 2007).

99. Safe Harbour for Exploited Children Act, N.Y. SOC. SERV. LAW §§ 447-a(1)(c), 447-b(2)–(3) (McKinney 2010) (requiring minors arrested for prostitution-related offenses to be handled by the family courts). Although some experts view this referral role of the judicial system as a “good development,” the placement of minors in appropriate treatment programs lacks an “official protocol.” ELIZABETH G. HINES & JOAN HOCHMAN, *SEX TRAFFICKING OF MINORS IN NEW YORK: INCREASING PREVENTION AND COLLECTIVE ACTION* 11 (Derreth Duncan ed., 2012), http://nywf.org/wp-content/uploads/2012/07/NYWF_Sex-Trafficking-of-Minors.pdf.

intended to facilitate travel for the purpose of patronizing a prostitute.¹⁰⁰ Further departing from the perspective of criminalization, New York was the first state to implement statewide Human Trafficking Courts, designed to assist victims brought up on charges of prostitution.¹⁰¹ Finally, beyond the defined reach of jurisprudence, New York's newly passed legislation seeks to reconstruct societal mores, removing "prostitute" from the Penal Law, so that sex trafficking survivors can now escape the former stigmatizing and sexist terminology.¹⁰²

C. *Hotels in the Crosshairs of Child Sex Trafficking: Opportunity and Liability*

The international business community has begun to acclimate itself to its role in human rights abuses, and has made efforts to establish standards for the proper scope of private sector responsibility.¹⁰³ The hotel industry stands on the precipice of vigilance and inaction.¹⁰⁴ Subpart 1 presents the unique position of hotels in preventing child sex trafficking.¹⁰⁵ Such opportunity is addressed in conjunction with the dearth of liability imposed upon hotels in New York.¹⁰⁶

100. N.Y. PENAL LAW § 230.25(1). Even defendants convicted prior to the statute's amendment to include travel-related services were found to fall under the coverage of the new law. See *People v. Ahmed*, 898 N.Y.S.2d 134, 135-37 (App. Div. 2010) (affirming conviction of defendant who arranged for prostitutes as part of tour packages to the Dominican Republic, because "[n]othing in the pre-amended statute lends itself to a construction that would have excluded a travel-related enterprise from its coverage"). However, defendants brought up on such charges can usually plead down to a misdemeanor and fines. See, e.g., *People v. Pellegrino*, No. 50896, slip op. *1 (N.Y. App. Term June 9, 2014) (per curiam).

101. William K. Rashbaum, *With Special Courts, State Aims to Steer Women Away from Sex Trade*, N.Y. TIMES, Sept. 26, 2013, at A22; Jonathan Lippman, *Announcement of New York's Human Trafficking Intervention Initiative*, CTR. COURT INNOVATION, <http://www.courtinnovation.org/research/announcement-new-yorks-human-trafficking-intervention-initiative> (last visited Apr. 10, 2017). For a discussion on the critiques of similar specialized N.Y. criminal courts that focused on sex-trade activities, see Mae C. Quinn, *Revisiting Anna Moscovitz Kross's Critique of New York City's Women's Court: The Continued Problem of Solving the "Problem" of Prostitution with Specialized Criminal Courts*, 33 FORDHAM URB. L.J. 665, 711-26 (2006) (proposing that such courts waste limited government resources on social reform efforts that fail to produce substantive results).

102. Mara Gay, *New Penalties Eyed for Sex Trafficking*, WALL ST. J., May 13, 2014, at A19. New York not only allows sex trafficking victims to escape stigmatism but now their prostitution convictions as well, through motions to vacate, provided such application is made in due diligence and with official documentation of their victim status. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2005).

103. See George & Smith, *supra* note 11, at 86-90.

104. See Kate Rice, *The War on Human Trafficking*, TRAVEL WEEKLY (May 7, 2014), <http://www.travelweekly.com/Travel-News/Travel-Agent-Issues/The-war-on-human-trafficking>.

105. See *infra* Part II.C.1.

106. See *infra* Part II.C.2.

1. The Battleground: The Hotel as a United Front Against Child Sex Trafficking

Upholding a respect for human rights,¹⁰⁷ the hotel industry is in a unique position to combat child sex trafficking.¹⁰⁸ Through security surveillance of hotel properties,¹⁰⁹ front desk clerks with proper training, and housekeepers looking for indicators of child sex trafficking,¹¹⁰ the hotel represents a formidable sentinel against this cruel enterprise.¹¹¹ Hotel employees are in the best position to observe potential indicators because their duties give them exclusive access to all areas of the property.¹¹²

Such resources, to be collectively effective, ideally become part of a human rights policy included in a company's corporate governance.¹¹³ In the United Kingdom, companies or partnerships that carry on business with an annual turnover of more than £36 million are now required by law to publish an annual statement disclosing the steps taken to ensure no human trafficking exists in its business and supply chains.¹¹⁴ Therefore, profitable hotel industries fall under the law's coverage, and accordingly, hotel staff across the United Kingdom have been trained to notice suspicious signs of sex trafficking.¹¹⁵ Similarly, here, ECPAT-USA trains to prevent and identify sex trafficking in U.S. hotels in the hope that it "becomes standard with the hospitality industry."¹¹⁶

107. See *Human Rights Policy Statement*, CHOICE HOTELS INT'L INC., <http://www.choicehotels.com/about/diversity/human-rights> (last visited Apr. 10, 2017) (pledging a commitment to "conduct its business operations in a manner that is free from complicity in human rights abuses" and supporting "laws duly enacted to prevent and punish the crime of sexual exploitation of children").

108. See *Child Victims of Sex Trafficking Are Being Exploited in America's Hotels*, *supra* note 3.

109. George & Smith, *supra* note 11, at 93-94.

110. *Child Victims of Sex Trafficking Are Being Exploited in America's Hotels*, *supra* note 3.

111. See Ewing, *supra* note 16.

112. POLARIS PROJECT, HUMAN TRAFFICKING IN HOTELS AND MOTELS: VICTIM AND LOCATION INDICATORS 2 (2012), <http://www.twolittlegirls.org/ufiles/Hotel%20and%20Motel%20Indicators%20AAG.pdf>.

113. See Tuppen, *supra* note 20. For an example of a clear and concise human rights policy, see *Human Rights Policy Statement*, MARRIOTT INT'L INC., <http://www.marriott.com/Multimedia/PDF/Corporate/HumanRightsStatement.pdf> (last visited Apr. 10, 2017) (upholding laws that prevent and punish the sexual exploitation of children).

114. Modern Slavery Act 2015, c. 30, § 54(1)-(4) (Eng.), http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf; Alastair Young & Eimear Murphy, *UK's New Reporting Obligations on Modern Slavery and Human Trafficking: A "Race to the Top" to Tackle an Atrocious Global Problem*, NAT'L L. REV.: ENERGY LEGAL BLOG (Oct. 30, 2015), <http://www.natlawreview.com/article/uk-s-new-reporting-obligations-modern-slavery-and-human-trafficking>.

115. "Say Something" Campaign, KNOW & SEE SIGNS, http://www.knowandsee.co.uk/?page_id=329 (last visited Apr. 10, 2017).

116. *Child Victims of Sex Trafficking Are Being Exploited in America's Hotels*, *supra* note 3.

2. Control of Premises: New York Penal Law Sections 230.40 and 230.45

Despite its recent legislative trailblazing, New York has neglected to seriously hold accountable an owner of property, known to be used for prostitution, who permits and fails to make a reasonable effort to halt or abate such use.¹¹⁷ Moreover, section 230.40 has rarely been invoked, as New York has rather sparse and outdated case law on permitting prostitution.¹¹⁸ However, in 2015, the New York State Senate and Assembly introduced a bill to mitigate section 230.40 to the second degree, and poignantly add section 230.45 as permitting prostitution in the first degree when a child less than seventeen years of age is prostituted.¹¹⁹ This could very well alter the strategy of prosecutors in the future, as past convictions obtained under the current section 230.40 were not as debilitating to the hotel as other applicable laws.¹²⁰

Recently, the owner of Sunny 39 Hotel in Sunset Park, Brooklyn and at least two other employees were arrested after a raid, as a result of an investigation revealing that the hotel was a “front[] for prostitution and human trafficking.”¹²¹ New Farrington Hotel in Flushing was also raided and at least three employees were arrested.¹²² Investigators determined that each hotel “played a part in organizing the operation and setting up clients.”¹²³ It was alleged that the employees of both hotels directed exploiter-buyers to sex trafficking victims.¹²⁴ Both hotels were

117. N.Y. PENAL LAW § 230.40 (McKinney 2008) (criminalizing such conduct as a class B misdemeanor). The maximum sentence of imprisonment for a class B misdemeanor is only three months. N.Y. PENAL LAW § 70.15(2) (McKinney 2009).

118. See *People v. Eliopoulos*, 735 N.Y.S.2d 771, 771 (App. Div. 2002) (affirming conviction of permitting prostitution); *City of New York v. 580 Bar Corp.*, 717 N.Y.S.2d 524, 524 (App. Div. 2001) (affirming verdict whereby defendant was permanently enjoined from permitting prostitution); *People v. Behncke*, 534 N.Y.S.2d 79, 80-81 (Crim. Ct. 1988) (finding that where supposed prostitute and customer were both undercover police officers hotel registrar could not be charged with permitting prostitution due to legal and factual impossibility); *People v. Taliaferrow*, 467 N.Y.S.2d 522, 523-25 (Crim. Ct. 1983) (finding the defendant-homeowner failed to act to prevent prostitution where he allowed unidentified couples to enter and stay in his home on two known occasions).

119. S. 2808A, Assemb. 4034A, 2015 Leg., 238th Sess. (N.Y. 2015). Should the bill pass, violation of section 230.45, a class E felony, would result in a sentence between one and four years. *Id.*; see N.Y. PENAL LAW § 70.00(2)(e), (3)(b).

120. See, e.g., *People ex rel. City of New York v. Morbel Realty Corp.*, 386 N.Y.S.2d 925, 926-28 (Sup. Ct. 1976) (closing down the hotel premises for a year under nuisance law, while under section 230.40, imprisoning only one individual who was allegedly not even an employee).

121. Emma Whitford, *NYC Hotels Raided in Prostitution & Human Trafficking Bust*, GOTHAMIST (Oct. 16, 2015, 2:05 PM), http://gothamist.com/2015/10/16/prostitution_hotel_raid.php.

122. *Id.*

123. *Id.*

124. Press Release, Brooklyn Dist. Att’y’s Office, Owners and Manager of Brooklyn and

served with closure orders and the employees are being prosecuted.¹²⁵ Such developments in state vigilance seek to render the once rampant prostitution in N.Y. hotels a thing of the past.¹²⁶

III. THE OPTIONAL PLEDGE OF CORPORATE SOCIAL RESPONSIBILITY

When hotel staff are not aware of the signs of child sex trafficking, traffickers, taking advantage of the privacy and anonymity of the hotel industry, are able to operate with low risk.¹²⁷ The classical economic argument against CSR is that management has but one responsibility—to maximize the profits of its shareholders or owners.¹²⁸ However, an affirmative view for initiating CSR is that “because business has a reservoir of management talent, functional expertise and capital, and because so many others have tried and failed to solve social problems, business should be given the chance.”¹²⁹

Below, Subpart A gives an overview of the tenets and training of the Code, which will be fruitless if companies in the hotel industry are not legally obligated to comply.¹³⁰ Subpart B examines the CPSA, in order to demonstrate that failing to mandate the Code is counterintuitive when the professional relationship between hoteliers and child sex trafficking victims can be adequately addressed by the policy considerations of the CPSA.¹³¹

A. *Too Dire to Be Voluntary: ECPAT-USA, the Code, and Indicators of Child Sex Trafficking*

Without legal obligation, all of the Code’s resources that ECPAT-USA has to offer will only impact a small percentage of the many hotel properties where child sex traffickers operate.¹³² Hotel staff will ignore

Queens Hotels Charged with Promoting Prostitution and Falsifying Records (Oct. 16, 2015) (on file with author), <http://brooklynda.org/2015/10/16/owners-and-manager-of-brooklyn-and-queens-hotels-charged-with-promoting-prostitution-and-falsifying-records>.

125. *Id.*

126. See Gail Sheehy, *Cleaning Up Hell’s Bedroom*, N.Y. MAG., Nov. 13, 1972, at 50 (detailing the lookout tactics of a hotel owner who willingly received a third of the profits from prostitution on his premises).

127. POLARIS PROJECT, *supra* note 112, at 1.

128. See Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT’L J. MGMT. REVIEWS 85, 88 (2010).

129. *Id.* at 88-89.

130. See *infra* Part III.A.

131. See *infra* Part III.B.

132. See Timothy Rosner, *Stop Wyndham Hotel Staff from Supporting Child Sex Trafficking in Wyndham Hotels*, CHANGE, <https://www.change.org/p/stop-wyndham-hotel-staff-from-supporting-child-sex-trafficking-in-wyndham-hotels#petition-letter> (last visited Apr. 10, 2017) (petitioning

the signs of child sex trafficking if companies are not compelled and equipped to train accordingly.¹³³ The Code is a voluntary set of business principles travel and tour companies are free to implement if, within their business discretion,¹³⁴ they decide to join the effort to prevent child sex trafficking.¹³⁵

There are currently only twenty-two hotel signatories in the United States.¹³⁶ By endorsing the Code, the private sector and ECPAT-USA enter a joint venture.¹³⁷ Members of the Code pay a “small membership fee,” based on the size of their company, which funds ECPAT-USA’s implementation of sample policies, clauses, and staff training.¹³⁸ Unfortunately, although the Code has been successful in initially attracting businesses, there has been little follow-up on their level of (entirely optional) participation.¹³⁹ Moreover, although sexual exploitation of children can occur as well in small, independently owned

Wyndham Hotels to sign the Code after hotel staff actively participated in a child sex trafficking ring).

133. See *infra* text accompanying notes 152-63. Katrina Owens, a victim advocate, had been exploited as a prostitute in New York City at the age of sixteen, and recounted her experience of apathetic hotels: “Some of the top hotels . . . look at you and they know . . . when your eyes meet . . . [Yet] quite often, they turn their head.” *Child Victims of Sex Trafficking Are Being Exploited in America’s Hotels*, *supra* note 3.

134. But see S. Samuel Arsht, *The Business Judgment Rule Revisited*, 8 HOFSTRA L. REV. 93, 111-12 (1979) (demonstrating that the legal defensibility of business decisions is defeated where “by reason of inexcusable unawareness or inattention the directors fail[] to take . . . preventive action toward matters about which something should . . . be[] done to prevent harm,” and further explaining that “[s]uch a charge involves the failure to act”).

135. See Rice, *supra* note 104 (“In signing on to the Code, [companies] br[eak] . . . [the] ‘conspiracy of silence.’”); *The Code*, ECPAT-USA, <http://www.ecpatusa.org/code> (last visited Apr. 10, 2017).

136. *Members of the Code*, *supra* note 12.

137. *The Code*, *supra* note 135. However, only ten of the twenty-two signatories are considered “Top Members.” *Members of the Code*, *supra* note 12; see also *The Code Recognises Tourism Companies for Exceptional Efforts to Protect Children*, CODE, <http://www.thecode.org/the-code-recognises-tourism-companies-for-exceptional-efforts-to-protect-children> (last visited Apr. 10, 2017) (“The companies recognised as Top Members of The Code have successfully completed all six criteria of The Code within their own business operations, reported their efforts, and chosen to make their child protection work public on The Code’s website.”). For the six criteria of the Code, see *infra* text accompanying notes 141-46. Notwithstanding such minimal participation in the Code’s practices by hotel companies across the United States, even more staggering is the astronomical amount of rooms in independent and unaffiliated hotel chains that will potentially become the site of child sex trafficking, absent the benefit of Code-trained employees. See *Number of U.S. Hotel Rooms (Supply) by Chain Scale Segment in 2012*, STATISTA, <http://www.statista.com/statistics/245864/us-hotel-rooms-by-chain-scale-segment> (last visited Apr. 10, 2017) (maintaining that, in 2012, there were 1,525,547 rooms in America’s independent and unaffiliated hotel chains alone).

138. *The Code*, *supra* note 135.

139. INNOCENTI RESEARCH CTR., UNICEF, ASSESSING THE CODE OF CONDUCT FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM: DISCUSSION PAPER 23 (2012), https://www.unicef-irc.org/publications/pdf/ids_codeofconduct2.pdf.

hotels, large hotel chains such as Hilton and Hyatt primarily endorse the Code.¹⁴⁰

Signatories of the Code pledge, but are not bound, to (1) establish a policy and procedures against the sexual exploitation of children;¹⁴¹ (2) train employees in children's rights and how to prevent and report suspected cases of sexual exploitation;¹⁴² (3) provide such information to travelers;¹⁴³ (4) include a contractual clause repudiating the sexual exploitation of children;¹⁴⁴ (5) support, collaborate, and engage stakeholders in the prevention of the sexual exploitation of children;¹⁴⁵ and (6) report annually on their implementation of Code-related activities.¹⁴⁶ Nothing to date legally obligates hotels to implement ECPAT-USA's training or any like program.¹⁴⁷

Hotels' legal departments initially advised against highlighting any illegal activity within the hotel.¹⁴⁸ However, in remaining indifferent to child sex trafficking, businesses would be precluded from the benefits of CSR, such as customer and employee engagement, brand differentiation,

140. *Id.* at 18, 24 (revealing that Code representatives report small companies are deterred by the assumption that "becoming a signatory will require a significant amount of additional work"); *Members of the Code*, *supra* note 12.

141. *The Code*, *supra* note 135; *cf.* 22 U.S.C. § 7104a(a)(1)–(2) (2012) (requiring recipients of a contract with a head of an executive agency to implement any plan or procedures to prevent the procurement of a commercial sex act).

142. *The Code*, *supra* note 135; *cf.* S. 5563, 63rd Leg., 2013 Reg. Sess. (Wash. 2013) (requiring teachers in Washington to complete training in the identification of commercial sexual abuse of a minor and to report any suspicion of such abuse).

143. *The Code*, *supra* note 135; *cf.* GA. CODE ANN. § 16-5-47(b)(12), (c) (West 2013) (requiring hotels in Georgia to post signs with the human trafficking hotline at a conspicuous place near the public entrance); Jim Turner, *State Signs to Warn About Human Trafficking*, ORLANDO SENTINEL (Dec. 28, 2015, 1:40 PM), <http://www.orlandosentinel.com/news/politics/os-new-florida-laws-20151228-story.html> ("The [Florida] law (HB 369) aimed at raising awareness about human trafficking requires signs to be posted in a wide range of places, including rest areas, turnpike service plazas, weigh stations, welcome centers, airports and strip clubs.").

144. *The Code*, *supra* note 135. However, these clauses have been found to be vague, without normative force, and merely theoretical. EU QUALITY STANDARDS IN SUPPORT OF THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS AND SEXUAL EXPLOITATION OF CHILDREN: EXPLORATORY STUDY OF THE POTENTIAL AND FEASIBILITY OF SELF-REGULATION OR PUBLIC-PRIVATE CO-OPERATION 46 (Gert Vermeulen ed., 2007). *But see The Code*, *supra* note 135 ("Official clauses in contracts with suppliers send a zero-tolerance message . . .").

145. *The Code*, *supra* note 135; *cf.* John Ruggie (Special Representative of the Secretary-General), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, § 18(b), U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (advising business enterprises to identify potential adverse human rights impacts with which they may be involved, and to meaningfully consult with relevant stakeholders).

146. *The Code*, *supra* note 135.

147. ECPAT-USA encourages the private sector, increases awareness, and fights for new laws, but its mission is aspirational—not binding. *Cf.* 22 U.S.C. § 2304(a)(1) (2012) (compelling the United States to merely "promote and encourage" increased respect for human rights).

148. Luscombe, *supra* note 9.

and sustainability.¹⁴⁹ When employees are engaged, they display job satisfaction, organizational commitment, empowerment, and job involvement, which lead to initiative, proactively seeking to contribute, and doing more than what is expected or required.¹⁵⁰ Companies that sign the Code and proactively address child sex trafficking improve company morale and protect their brand from reputational risk.¹⁵¹

ECPAT-USA's training program considers the front desk, guest rooms, and hotel grounds as common areas for detecting activity.¹⁵² ECPAT-USA educates the front desk clerks, concierges, bellmen, and doormen to recognize certain indicators—such as when a guest pays with cash or a rechargeable credit card.¹⁵³ Another sign is when someone other than the guest rents a room, checks in without luggage, and leaves the hotel without ever physically entering the room.¹⁵⁴ Additionally, patrons who pay for extended stays but have few possessions can be indicative.¹⁵⁵ At check-in, the child may appear helpless, ashamed, nervous, or disoriented; may show signs of abuse, such as bruising; and may have tattoos, reflecting money or ownership.¹⁵⁶ The child may also lack identification documents.¹⁵⁷ Other signs include patrons not forthcoming about full names, rentals of pornography when children are staying in the room, or patrons appearing with a minor with whom they did not come originally.¹⁵⁸ The child may also be made-up to appear

149. James Epstein-Reeves, *Six Reasons Companies Should Embrace CSR*, FORBES (Feb. 21, 2012, 12:15 PM), <http://www.forbes.com/sites/csr/2012/02/21/six-reasons-companies-should-embrace-csr/#b2bf6a4c0381>.

150. Susan Tinnish, *Engaging Employees Around Corporate Social Responsibility (CSR) Programs*, HOTEL EXEC., http://www.hotelexecutive.com/business_review/4076/engaging-employees-around-corporate-social-responsibility-csr-programs (last visited Apr. 10, 2017).

151. Guelbart, *supra* note 10.

152. See Luscombe, *supra* note 9. ECPAT-USA's calling to arms of hotel staff, rallying housekeepers and front desk clerks to aid in the fight against child sex trafficking, has now been supplemented by the same request from federal agents. See Jesse Paul, *Feds in Colorado Elicit Hotel Workers' Help Battling Sex Trafficking*, DENV. POST (Jan. 11, 2016, 8:04 AM), http://www.denverpost.com/news/ci_29370932/feds-colorado-elicite-hotel-workers-help-battling-sex (“[F]ront desk clerks and housekeepers are on the fight's front lines.”).

153. POLARIS PROJECT, *supra* note 112, at 3. Prosecutors consider front desk clerks one of their most important witnesses. See Paul, *supra* note 152.

154. Katia Hetter, *Fighting Sex Trafficking in Hotels, One Room at a Time*, CNN (Mar. 1, 2012, 10:24 AM), <http://www.cnn.com/2012/02/29/travel/hotel-sex-trafficking>.

155. Paul, *supra* note 152.

156. Hetter, *supra* note 154.

157. See Meril Eugene Anthes, Jr., *Chester James Taylor 2005 Grand Prize Winner: Regarding Women & Children: Using International Trade Relations to Stem the Growing Tide of the Sexual Exploitation of Women and Children*, CURRENTS, Summer 2005, at 69, 69 (“Trafficking gangs take advantage of the victims by arranging for travel, passports, and visas for the children and . . . [then] confiscate the victims' documents.”).

158. POLARIS PROJECT, *supra* note 112, at 3. Hotel staff should be wary of hasty reporting, as older patrons accompanying children could, despite an apparent indication of sex trafficking, very

older than he or she really is or may take on adult roles, such as paying bills and requesting services.¹⁵⁹

The next bastion of the hotel is the security team because traffickers will sometimes check in first and only later smuggle in the children through a side door.¹⁶⁰ Through security camera surveillance, one would typically see numerous men coming and going if a room was harboring child sex trafficking.¹⁶¹ Finally, housekeepers while cleaning the rooms can be on the lookout for indicators of child sex trafficking, such as continually declining services, large amounts of condoms and lubricant, large numbers of computers or cell phones, and inordinate amounts of pornography purchased on the room's television.¹⁶² Sensitive to guests' privacy, suspicion of sex trafficking is triggered upon the *totality* of indicators and not any one standing on its own.¹⁶³ Nevertheless, the discretionary commitment to CSR has not proven incentive enough for statewide measures in N.Y. hotels to implement ECPAT-USA's training and broadly uproot child sex trafficking.¹⁶⁴ This missed opportunity is so devastating because ECPAT-USA's training not only educates hotel employees how to detect suspicious conduct, but also when it is appropriate to call the National Human Trafficking Hotline ("Hotline") to report their suspicions.¹⁶⁵

will be a non-offending parent. *See infra* text accompanying note 163.

159. POLARIS PROJECT, *supra* note 112, at 3; Luscombe, *supra* note 9.

160. Luscombe, *supra* note 9.

161. *Id.*

162. *Id.* For a list of more indicators, see *Human Trafficking Indicators in Lodging Establishments*, BEST ALL., <http://www.bestalliance.org/uploads/5/0/0/4/50047795/sex-trafficking-indicators-brief.pdf> (last visited Apr. 10, 2017).

163. Luscombe, *supra* note 9. Mistakenly suspecting couples as sex trafficker and victim can have repercussions for business—especially hospitality. *Cf.* Jennifer Billock, *Passenger Says American Airlines Mistakenly Accused Him of Sex Trafficking*, FLYER TALK (Jan. 8, 2016), <http://www.flyertalk.com/articles/passenger-says-american-airlines-mistakenly-accused-him-of-sex-trafficking.html> (recounting how a flight attendant trained in recognizing the signs of sex trafficking mistook a woman following her boyfriend to the bathroom as indicative of her inability "to move freely through the cabin"); *Blue Lightning*, U.S. CUSTOMS & BORDER PROT., <http://www.cbp.gov/border-security/human-trafficking/blue-lightning> (last visited Apr. 10, 2017) (describing the training of the Blue Lightning Initiative, led by the Departments of Homeland Security and Transportation, which prepares airline personnel "to identify potential traffickers and human trafficking victims, and to report their suspicions to federal law enforcement").

164. *Cf. Enforcing Rules on Motels to Prevent Human Trafficking*, CHAIRMAN BD. MARK RIDLEY-THOMAS: BLOG, <http://www.ridley-thomas.lacounty.gov/index.php/enforcement-of-motels> (last visited Apr. 10, 2017) (stating that motel owners in Los Angeles County are required to take a training session on sex trafficking). Without compulsory training, of the 247 sex trafficking cases reported in New York in 2016 via the National Human Trafficking Hotline ("Hotline"), *only twenty-seven* of those reports were made by hotels or motels. *New York*, NAT'L HUMAN TRAFFICKING HOTLINE, <http://www.traffickingresourcecenter.org/state/new-york> (last visited Apr. 10, 2017).

165. Katie Lobosco, *Days Inn, Super 8 Workers Trained to Spot Sex Trafficking*, CNN MONEY (Nov. 18, 2014, 4:45 PM), <http://money.cnn.com/2014/11/18/news/companies/days-inn-sex->

B. The Child Protective Services Act as a Model for Hotels Reporting Suspicion of Child Sex Trafficking

Where once the phenomenon of battered child syndrome in 1962 initiated the development of state central registries for child abuse, comparably the deplorable phenomenon of child sex trafficking in hotels today has launched the need for reporters in the hotel industry.¹⁶⁶ Child abuse is analogous to child sex trafficking because it too occurs when the victim is institutionally vulnerable.¹⁶⁷ Furthermore, the epidemic instances of these unspeakable evils perpetrated each year are correlative.¹⁶⁸

The response to child abuse in the United States is so widespread that today all fifty states and the District of Columbia require reporting from medical professionals, teachers or school officials, and social workers.¹⁶⁹ The expansion of the class of mandated reporters over the decades reflects the rationale that the identification of child abuse will be enhanced by mandating reports from people who are likely to be in frequent contact with children.¹⁷⁰ At the outset of mandated reporting law, the reason for excluding other professions was only because most professional groups had a history of adamant reporting without compulsory legislation.¹⁷¹ That same humanitarianism seems absent

trafficking. As of October 2014, the Hotline (1-888-373-7888) has recorded 75,000 phone calls requesting information, reporting tips about trafficking, and connecting about 3600 victims of sex trafficking to social services. Hetter, *supra* note 154; *Hotline FAQs*, NAT'L HUMAN TRAFFICKING HOTLINE, <http://www.traffickingresourcecenter.org/faqs/hotline-faqs> (last visited Apr. 10, 2017).

166. See N.Y. SOC. SERV. LAW § 422(1) (McKinney 2010); Jill D. Moore, Comment, *Charting a Course Between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process*, 73 N.C. L. REV. 2063, 2068 (1995). In 1962, the duty to report child abuse was proposed at two conferences of experts commissioned by a federal agency known as the Children's Bureau. Basyle J. Tchividjian, *Catching American Sex Offenders Overseas: A Proposal for a Federal International Mandated Reporting Law*, 83 UMKC L. REV. 687, 693 (2015). The agency then vehemently lobbied for such legislation and published a model reporting law. *Id.* at 694-95.

167. See Rino J. Path, *Violence Against Children: Physical Child Abuse in the United States*, 17 SOC. WORK 114, 115 (1972) (book review) (noting that poverty, discrimination, and other forms of institutional mistreatment factor into the causes of child abuse); *supra* Part II.A.1.

168. See *Children Who Are Subject to an Investigated Report*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/6220-children-who-are-subject-to-an-investigated-report?loc=1&loct=2#detailed/2/2-52/false/869/any/12940,12955> (last visited Apr. 10, 2017) (indicating that in 2014 there were 187,166 children in New York who were investigated upon the basis of a report of child abuse).

169. Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society's Response*, 36 OHIO N. U. L. REV. 819, 851 (2010).

170. See Brian G. Fraser, *A Glance at the Past, a Gaze at the Present, a Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes*, 54 CHI.-KENT L. REV. 641, 658 (1978).

171. See Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1, 3-4 (1967).

today, as now some states have sought to broaden their mandated reporters to include “[a]ny person.”¹⁷² The opportunity inherent in these professionals is their ability to identify the abused child at the earliest sign, before irreparable damage sets in.¹⁷³

The CPSA requires reporters in New York to “report or cause a report to be made . . . when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.”¹⁷⁴ Aside from the nationally traditional reporters—physicians, teachers, social workers, police officers, and prosecutors—and despite the rationale for early detection of abuse, New York even includes a coroner as a professional whose capacity is fit for mandating reports.¹⁷⁵ The CPSA defines abused children¹⁷⁶ in accordance with the N.Y. Family Court Act, which hones in on the actions of the child’s “parent or other person legally responsible for his [or her] care.”¹⁷⁷ However, even the most attentive and caring parent—by no fault of their own—can lose a child to sex trafficking.¹⁷⁸ As such, because the CPSA focuses on the shortcomings *of the parent* to define abuse, and construing its provisions narrowly, N.Y. mandated reporters would not necessarily be obligated to report the abuse of sex trafficking; in most cases, it is not the loving parent grief-stricken with the loss of their child, but rather the *non-parent trafficker* who knowingly advances or profits from the child’s injury.¹⁷⁹

172. See, e.g., FLA. STAT. ANN. § 39.201(1)(a) (West 2010); N.J. STAT. ANN. § 9:6-8.10 (West 2013).

173. Fraser, *supra* note 170, at 658; Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAM. L.Q. 141, 146 (1986).

174. N.Y. SOC. SERV. LAW § 413(1)(a) (McKinney 2010).

175. *Id.* Almost enigmatically, coroners—professionals whose contact with a potentially abused child would come arguably too late—are listed as a mandated reporter, despite the fact that the purpose behind such reporting is prevention and protection from *further* injury and impairment. *Id.*; see also *id.* § 411.

176. *Id.* § 412(1).

177. N.Y. FAM. CT. ACT § 1012(e) (McKinney 2010). Under the Family Court Act, a child would be considered abused if a parent or person legally responsible for the child knowingly advanced or profited from prostituting the child. *Id.* § 1012(e)(iii); N.Y. PENAL LAW §§ 230.25(2), .30(2), .32 (McKinney 2008).

178. Cf. Alexei Koseff, *Sex-Trafficking Sting Highlights Vulnerability of Foster Children*, L.A. TIMES (July 29, 2013), <http://articles.latimes.com/2013/jul/29/nation/la-na-child-sex-20130730> (“The circumstances that put minors into foster care are often what make them especially vulnerable to sex trafficking”); Brian Shilhavy, *Medical Kidnapping: A Threat to Every Child in America Today*, HEALTH IMPACT NEWS, <http://www.medicalkidnap.com/2015/03/31/medical-kidnapping-a-threat-to-every-child-in-america-today> (last visited Apr. 10, 2017) (“Medical kidnapping is defined as the State taking away children from their parents and putting them into State custody and the foster care system, simply because the parents did not agree with a doctor regarding their prescribed medical treatment for the family.”).

179. See *supra* notes 174, 176-78 and accompanying text.

Nevertheless, N.Y. Social Services Law section 413 provides guidance in setting a standard for mandating hoteliers to report when they have reasonable cause to suspect, in their professional capacity of hospitality, that a child is a victim of sex trafficking.¹⁸⁰ Much like ECPAT-USA, New York provides mandated reporters with training and education programs, so that they may competently carry out their obligation.¹⁸¹ When a mandated reporter in New York has reason to suspect child abuse, a report is to “be made immediately by telephone.”¹⁸² Once a report is made, which initiates an investigation of an allegation of child abuse, the reporter is required to comply with all records requests—even if privileged—in order to conduct a full investigation.¹⁸³

Lastly, the “professional capacity” language of the CPSA is convertible into developing a mandated reporting law for child sex trafficking, in that hoteliers’ capacity in the hospitality business causes them, as a class, to be in contact with child guests.¹⁸⁴ Their professional contact with children is almost that of a secondary caregiver, as it is the business of hotel staff to take notice of families and provide them with “genuine care.”¹⁸⁵ Due to the demands of hospitality, hoteliers’ level of professional intimacy with children can be so complete as to play the part of stand-in for the children’s parents.¹⁸⁶ Moreover, hospitality is

180. See *infra* Part IV.A (proposing legislation to deem N.Y. hoteliers mandated reporters of child sex trafficking, and relying on the structure of the CPSA).

181. N.Y. SOC. SERV. LAW §§ 411, 421(1). The New York State Office of Children and Family Services offers free 24/7 online training. *Mandated Reporter Training*, OFF. CHILD. & FAM. SERVICES, http://ocfs.ny.gov/main/cps/Mandated_Reporter_Training.asp (last visited Apr. 10, 2017).

182. SOC. SERV. LAW § 415.

183. *Id.*; see also Fraser, *supra* note 170, at 664-65 (discussing states that have abrogated the status of all or some privileged communications because of the inherent difficulty in proving child abuse in juvenile or criminal court). However, in the context of reporting child sex trafficking in hotels, requiring hoteliers to hand over non-privileged guest registries to assist in the investigation would still be subject to a warrant. See *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2452-53 (2015) (holding that a hotel owner must be afforded an opportunity to have a neutral decision-maker review an officer’s demand to search the registry before facing penalties for non-compliance).

184. See SOC. SERV. LAW § 413(1)(a); *Personalization Becoming a Reality Across the Hospitality Industry*, HOTEL MARKETING, http://www.hotelmarketing.com/index.php/content/article/personalization_becoming_a_reality_across_the_hospitality_industry (last visited Apr. 10, 2017) (noting that hotels focus their attention on children in personalizing guest experience and that staff are trained to understand “that children are guests, too, with their own needs for recognition, reassurance and respect”).

185. See Marius Vlad, *Exceeding Guest Expectations: An Overview of the Best Practices in the Hospitality Industry*, in EDUCATIONAL STRATEGIES FOR THE NEXT GENERATION LEADERS IN HOTEL MANAGEMENT 182, 190-91 (Jiuguang Feng ed., 2015) (“By noticing a family visiting the hotel for business purposes, but travelling with children, the employee took the opportunity to engage with the children.”).

186. See Catheryn Khoo-Lattimore et al., *Kids on Board: Exploring the Choice Process and*

temporally ubiquitous for hotel staff—as the doors never close, employees are essentially on-call—and so, the hourly demands and thus the opportunity for contact with children are akin to those of current mandated reporters of child abuse, such as physicians.¹⁸⁷ Despite the similarities between the CPSA and this Note’s proposal for mandated reporting of child sex trafficking, as well as the designation of professional capacity for current mandated reporters and hoteliers, without compulsory and effective legislation, ECPAT-USA’s training will not uniformly resonate throughout N.Y. hotels.¹⁸⁸

IV. NEW YORK HOTELIERS AS MANDATED REPORTERS OF CHILD SEX TRAFFICKING

ECPAT-USA encourages companies in the travel industry to implement programs that educate staff in identifying victims of child sex trafficking and in reacting appropriately.¹⁸⁹ ECPAT-USA’s efforts to bring awareness and acquire signatories to the Code have been admirable, but sex trafficking in hotels remains an indomitable force in the United States.¹⁹⁰ Specifically, New York City has one of the highest rates of sex trafficking in the country.¹⁹¹ In order to resolve the discretionary nature of the Code’s pledge, New York should adopt legislation that mandates hoteliers to report child sex trafficking, and subjects non-compliance to criminal penalty.¹⁹² Further, to help compel ECPAT-USA’s training, the legislation should provide that a per se failure to report results if a hotel fails to implement ECPAT-USA’s training or a commensurate child sex trafficking reporting program, and there is found to be child sex trafficking on the hotel grounds.¹⁹³

Vacation Needs of Asian Parents with Young Children in Resort Hotels, 24 J. HOSPITALITY MARKETING & MGMT. 511, 520-22 (2015) (demonstrating that parents expect hotel staff to greet children by name, and take care of and relate to their children).

187. SOC. SERV. LAW § 413(1)(a); see also Jeanette N. Cleveland et al., *Work and Family Issues in the Hospitality Industry: Perspectives of Entrants, Managers, and Spouses*, 31 J. HOSPITALITY & TOURISM RES. 275, 284-86 (2007) (analyzing the work hours of the hospitality industry).

188. See discussion *supra* Part III.

189. *The Code*, *supra* note 135.

190. See Guelbart, *supra* note 10.

191. Michelle Lillie, *Top 3 States for Human Trafficking*, HUMAN TRAFFICKING SEARCH: BLOG (May 4, 2013), <http://www.humantraffickingsearch.net/wp1/top-3-states-for-human-trafficking>.

192. See *infra* Part IV.A.

193. See *infra* Part IV.B.

A. Implementing Legislation: New York Will Call to Action Trained Reporting Professionals to Operate Its Hotels

New York State should adopt a criminal provision, in accordance with the CPSA, that deems hoteliers mandated reporters of child sex trafficking, in order to guarantee CSR and utilize ECPAT-USA's training.¹⁹⁴ If a hotel faces criminal charges for failure to report suspicion of child sex trafficking,¹⁹⁵ training its employees in accordance with ECPAT-USA's model would be a strict matter of compliance, and every hotel in New York would be an expert in child sex trafficking prevention.¹⁹⁶ The motivation behind both mandated reporting for child abuse and the now-proposed mandated reporting for child sex trafficking is to encourage more complete reporting of the abuses of children.¹⁹⁷ Like mandated reporters of child abuse, mandated reporters of child sex trafficking must report only a reasonable suspicion of child sex trafficking when acting within the scope of their employment¹⁹⁸ or carrying out functions as part of the duties and responsibilities of their profession in the hotel industry.¹⁹⁹

Although hotel staff, and not *inquirers* such as police officers, would be reporters of this crime, the standard of reasonable suspicion in the context of arrest is at least instructive in its framework to understand the proposed standard of reasonable suspicion for child sex

194. See N.Y. SOC. SERV. LAW §§ 413, 420(1) (McKinney 2010); Shavers, *supra* note 8, at 67-70 (outlining numerous laws that have spearheaded CSR action); *supra* Part III.B. The U.S. Senate, for instance, is not unaware of the training of ECPAT-USA. See *AccorHotels Signs the Code in the U.S. to Combat Child Abuse and Trafficking*, CODE (Feb. 1, 2016), <http://www.thecode.org/wp-content/uploads/2016/02/AccorHotels-ECPAT-US-The-Code-Signing-Event-2.1.16.pdf> (noting Minnesota Senator Amy Klobuchar's support of ECPAT-USA's efforts).

195. See Fraser, *supra* note 170, at 665-66 ("Penalty provisions . . . were drafted with the specific intent of encouraging reports [of child abuse] . . . [and] to ensure hesitant reporters that they would be held liable if they chose not to report."). *But cf.* KENNETH J. LAU ET AL., MANDATED REPORTING OF CHILD ABUSE AND NEGLECT: A PRACTICAL GUIDE FOR SOCIAL WORKERS 10 (2009) (showing more than half of mandated reporters fail to report when they have reasonable suspicion either due to a lack of certainty as to what cases are reportable, confusion about the process of reporting, doubt regarding the sufficiency of evidence, or considering themselves more fit to handle the case).

196. See ECPAT INT'L, PROTECTING CHILDREN FROM SEXUAL EXPLOITATION IN TOURISM: AN ECPAT TRAINING RESOURCE KIT 11-83 (2008), http://www.ecpat.org/wp-content/uploads/legacy/ECPAT_CST_Code_Toolkit.pdf (outlining ECPAT-USA's extensive training modules).

197. See SHELDON SILVER & DONNA A. LUPARDO, A GUIDE TO NEW YORK'S CHILD PROTECTIVE SERVICES SYSTEM 3 (rev. ed. 2014), <http://www.assembly.state.ny.us/comm/Children/20140128/index.pdf>.

198. See PROSSER AND KEETON ON THE LAW OF TORTS § 70, at 502 (W. Page Keeton et al. eds., 5th ed. 1984).

199. See *Module 2: Mandated Reporting and NYS Child Protective Services*, A TRAIN EDUC., http://www.atrainceu.com/course-module/3033459-162_ny-child-abuse-module-02 (last visited Apr. 10, 2017).

trafficking.²⁰⁰ Nevertheless, because hotel staff will only be obligated to report and not to physically intervene and inquire, the triggering burden of reasonable suspicion will be lower than the reasonable suspicion of an arresting police officer.²⁰¹ Accordingly, the proposed standard will naturally fall in line more with the reasonable suspicion that requires mandated reporters of child abuse to act.²⁰² In line with N.Y. case law interpreting the CPSA, this Note's proposed standard of reasonable suspicion is "determined by the facts and circumstances known to the [hotelier] at the time [the hotelier] learns of the [child sex trafficking]" as a result of ECPAT-USA's training.²⁰³ As the hotel staff will be required to act immediately upon their reasonable suspicion, it is not for them to assess whether the suspected trafficker would be guilty of violating section 230.34 of the penal law; that obligation would fall upon an investigative agency, such as the district attorney's office or local law enforcement.²⁰⁴ Moreover, as the purpose of this Note's proposed legislation is to encourage reporting, it provides the same degree of immunity to well-trained hotelier reporters as the CPSA does in protecting against civil lawsuits initiated because of an ultimately unfounded but reasonable suspicion.²⁰⁵

200. See *Terry v. Ohio*, 392 U.S. 1, 27 (1968) ("[I]n determining whether the officer acted reasonably . . . , due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience."); *People v. De Bour*, 352 N.E.2d 562, 571-72 (N.Y. 1976) (delineating the graded levels of inquiry for police encounters, which are proportional to the level of escalation).

201. In the context of arrest, reasonable suspicion is "a less demanding standard than probable cause," insofar as the "quantity or content" of information required can be "different" and "less reliable" than probable cause. *Alabama v. White*, 496 U.S. 325, 330 (1990); ROLANDO V. DEL CARMEN & CRAIG HEMMENS, *CRIMINAL PROCEDURE: LAW AND PRACTICE* 81 (10th ed. 2017) (quoting *Reasonable Suspicion*, BLACK'S LAW DICTIONARY (6th ed. 1990)) (defining reasonable suspicion as that "quantum of knowledge sufficient to induce [an] ordinarily prudent and cautious man under [similar] circumstances to believe criminal activity is at hand").

202. *Rine v. Chase*, 765 N.Y.S.2d 648, 650 (App. Div. 2003) (quoting *Isabelle V. ex rel. Neyes V. v. City of New York*, 541 N.Y.S.2d 809, 810 (App. Div. 1989)) ("Mandated reporters need not await conclusive evidence of abuse or maltreatment but must act on their reasonable suspicions and the law allows them a degree of latitude to err on the side of protecting children . . .").

203. *In re Kimberly S.M. ex rel. Mariann D.M. v. Bradford Cent. Sch.*, 649 N.Y.S.2d 588, 591 (App. Div. 1996).

204. *Cf. id.*

205. See N.Y. SOC. SERV. LAW § 419 (McKinney 2010) (granting the presumption of good-faith reporting and immunity from criminal and civil liability for such good faith); *Cornigans v. Mark Country Day Sch.*, No. CV 03-1414(DLI)(WDW), 2006 WL 3950335, at *15 (E.D.N.Y. July 12, 2006) ("[T]he fact that the report was unfounded is not evidence that there was bad faith, willful misconduct, negligence or gross negligence on the part of the [reporter] defendants."). Although such reporting may in some instances end in false accusations and the pain and embarrassment of parents, "[t]he right to family integrity does not include a constitutional right to be free from child [sex trafficking] investigations." See *Shapiro v. Kronfeld*, No. 00 Civ.6286(RWS), 2004 WL 2698889, at *14 (S.D.N.Y. Nov. 24, 2004).

ECPAT-USA's training is both "flexible and adaptable," and includes manuals that guide hotels through modules broken into sessions, each focusing on different aspects of combatting child sex trafficking.²⁰⁶ The modules are comprised of sample slides, session notes and notes for the trainers, handouts, group and individual exercises, and evaluation forms.²⁰⁷ The proposed legislation would compel hotels to implement this training, which in its initial sessions heightens awareness²⁰⁸ of child sex trafficking in employees.²⁰⁹ Next, employees would be given the benefit of learning reporting procedures through simulation and role-play in a safe and controlled environment.²¹⁰ The training helps balance the primary hospitality concerns of hotels with the nobler civil rights issues of children,²¹¹ by providing staff with a solution for the outraged suspected tourist: an apology and explanation of the hotel's procedures in protecting children.²¹² Even outside the context of child sex trafficking, "[h]otels with staff who make certain

206. ECPAT INT'L, *supra* note 196, at 5-6, 11-83. Accompanying training kits incorporate the understanding that some travel companies "cannot afford more than a working day or two to attend training seminars, while other organisations seek more in-depth training which may last up to a week." *Id.* at 5.

207. *Id.* at 6.

208. That awareness has further spread to hotel guests, via an organization called the Exchange Initiative, which is "asking hotel guests to upload photos of their rooms to its website, so [it] . . . can match the photos with those on escort directories based on the interior of the rooms, from the bedspread to the rug pattern to 'even the view from the window.'" E.J. Dickson, *Help Catch Sex Traffickers by Submitting a Photo of Your Hotel Room*, DAILY DOT (Mar. 12, 2014, 6:25 AM), <http://www.dailydot.com/crime/sex-trafficking-hotels-exchange-initiative>.

209. ECPAT INT'L, *supra* note 196, at 11-34. The introductory sessions then transition into a "closer examination of the problem," in which hotel employees would be instructed on the characteristic traits of child sex trafficking in order to "know who and what to report." *Id.* at 38, 48.

210. *Id.* at 49. Although the simulations can prepare an employee for the many situations they may encounter, "[t]here may be no set way to determine if a tourist is committing [child sex trafficking]," and so, careful analysis and instinct "are often the only tools that can be resorted to." *Id.* at 51.

211. *Cf.* Jessica Lynch, Note, *A Matter of Trust: Institutional Employer Liability for Acts of Child Abuse by Employees*, 33 WM. & MARY L. REV. 1295, 1317-18 (1992) ("By permitting the abuse to occur, either by commission or omission, institutions violate children's constitutional rights and expose the institutions to [section] 1983 claims.").

212. ECPAT INT'L, *supra* note 196, at 52. *But see id.* at 51 ("[O]ffenders tend to act angry once they are detected, and often demand to complain with the management."). In fact, the hotel employee is no stranger to the irate guest and is well-equipped to respond to clientele despite misidentification. *See* Len Markidan, *You Screwed Up, and You Have an Angry Customer. Now What?*, GROOVE HQ (Dec. 2, 2014), <https://www.groovehq.com/support/how-to-deal-with-an-angry-customer> ("By showing an eagerness to do right by them, you can begin to bridge the gap between your customer's dissatisfied state and where you want them to be.").

their managers know of a problem . . . tend to perform better.”²¹³ Additionally, in partnership with ECPAT-USA, the American Hotel & Lodging Educational Institute has developed an online training program, which explains the risks, signs, and behaviors of child sex trafficking, and offers hotel staff guidance on proper responses in reporting.²¹⁴

The New York State Office of Children and Family Services maintains a statewide central register of child abuse and maltreatment, receiving telephone calls twenty-four hours a day, seven days a week.²¹⁵ Likewise, Polaris operates the Hotline, receiving reports of human trafficking around the clock.²¹⁶ Under the proposed law, when hoteliers have reasonable suspicion of child sex trafficking, they will be required to report their suspicions to the Hotline.²¹⁷ Because the proposed legislation requires hotel staff as a collective unit to confer and report any reasonable suspicion of child sex trafficking as a result of ECPAT-USA’s training, hotel employees *as individuals* would not take on the same responsibilities of the “initial reporter” of child abuse.²¹⁸

Many institutions have internal policies and procedures for handling reports of child abuse, and these usually require the person who suspects abuse to notify the head of the institution that abuse has been discovered or is suspected and needs to be reported to Child Protective Services.²¹⁹ Pursuant to ECPAT-USA’s training, hotel staff will be under the same obligation to report any reasonable suspicion of child sex trafficking to management, who will then report it to the Hotline.²²⁰ Any

213. John Hogan, *Keys to Success Hospitality Tip: Is There Anything Better Than an Angry Customer?*, HOTEL ONLINE (Aug. 9, 2010), http://www.hotel-online.com/News/PR2010_3rd/Aug10_JHogan4.html.

214. *Educational Institute Launches Online Course to Increase Awareness of Human Trafficking at Hotels*, HOSPITALITY NET, <http://www.hospitalitynet.org/news/4063525.html> (last visited Apr. 10, 2017).

215. *The Statewide Central Register of Child Abuse and Maltreatment*, OFF. CHILD. & FAM. SERVICES, <http://www.ocfs.ny.gov/main/cps> (last visited Apr. 10, 2017).

216. *National Human Trafficking Hotline*, POLARIS, <https://polarisproject.org/national-human-trafficking-hotline> (last visited Apr. 10, 2017). The U.S. Department of Health and Human Services and various private donors fund the operation of the Hotline. *Hotline FAQs*, *supra* note 165.

217. *See Hotline FAQs*, *supra* note 165 (encouraging frontline professionals to contact the Hotline).

218. *See* Linda L. Hale & Julie Underwood, Comment, *Child Abuse: Helping Kids Who Are Hurting*, 74 MARQ. L. REV. 560, 563 (1991) (explaining that a teacher who confers and seeks the second opinion of another professional before reporting “must follow through . . . [as] the responsible party”).

219. *See* CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT 3 (2016), <https://childwelfare.gov/pubPDFs/manda.pdf>.

220. *Cf.* N.Y. SOC. SERV. LAW § 415 (McKinney 2010) (requiring oral reports of child abuse or maltreatment to be followed by a report in writing).

hotelier required to report a case of suspected child sex trafficking who willfully fails to do so shall be guilty under the proposed criminal provision.²²¹ The moral imperative of reporting suspicions of child sex trafficking, as a means of assisting victims and law enforcement, justifies the imposition of a legal duty.²²²

Like most child abuse reporting statutes, the proposed child sex trafficking reporting statute follows a similar formula: (1) declaring as its purpose ending modern-day slavery,²²³ (2) identifying hoteliers as the mandated professional,²²⁴ (3) establishing the standard of certainty as a reasonable cause of suspicion,²²⁵ (4) instituting criminal penalties for failure to report,²²⁶ and (5) detailing the reporting procedures.²²⁷ The spirit of this Note even took to the airways recently, as pursuant to the Federal Aviation Administration Extension, Safety, and Security Act of 2016, the Departments of Homeland Security and of Transportation spearheaded the Blue Lightning Initiative, training airline personnel in

221. *Cf. id.* § 420(1).

222. See Sandra Guerra Thompson, *The White-Collar Police Force: "Duty to Report" Statutes in Criminal Law Theory*, 11 WM. & MARY BILL RTS. J. 3, 49-51 (2002); *supra* text accompanying note 25.

223. See Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 945-46 (2007) (equating today's human trafficking with slavery because each involves "private actors [who] compel individuals to work for the benefit of another without the workers' fully informed consent").

224. See Kathryn Krase, *Making the Tough Call: Social Workers as Mandated Reporters, Part I*, NEW SOC. WORKER, http://www.socialworker.com/feature-articles/practice/Making_the_Tough_Call%3A_Social_Workers_as_Mandated_Reporters_Part_I (last visited Apr. 10, 2017) ("As a result of advocacy efforts from professional and child welfare organizations, the definition of mandated reporter has grown substantially over the past 50 years.").

225. California, for example, has expressly defined "reasonable suspicion," resolving the ambiguity with respect to the mental state required for mandatory reporting, as "objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect." Compare CAL. PENAL CODE § 11166(a)(1) (West 2011), with *La. Mun. Police Emps.' Ret. Sys. v. Hershey Co.*, C.A. No. 7996-ML, 2013 WL 6120439, at *4 (Del. Ch. Nov. 8, 2013) ("Ghana's Human Trafficking Act . . . creates a duty to inform police when a person has *knowledge* of trafficking[;] [a] person who fails to inform the police commits an offense and is liable . . . [for] a term of imprisonment of not less than twelve months . . ." (emphasis added) (quoting Human Trafficking Act § 6 (Act No. 694/2005) (Ghana))).

226. See N.Y. SOC. SERV. LAW § 420(1) (McKinney 2010) ("Any person, official or institution required . . . to report a case of suspected child abuse or maltreatment who willfully fails to do so shall be guilty of a class A misdemeanor."). *But see id.* § 420(2) (imposing civil liability for the failure to report suspected child abuse or maltreatment for damages proximately caused by such failure).

227. Christopher Park, Note, *Children and the Duty to Report: The Double Standard of Child Abuse and Anti-Bullying Laws*, 47 IND. L. REV. 843, 853 (2014).

recognizing and responding to potential human trafficking victims.²²⁸ As the airline industry represents the point of “transit” in the arc of child sex trafficking, the next logical step in enforcing the training of detection and reporting is the point of “destination”—namely, the hotel industry.²²⁹

B. Per Se Failure to Report When a Hotel Does Not Train Its Staff

New York should further provide that if a hotel operator does not train its staff, pursuant to ECPAT-USA’s training or an equivalent program of child sex trafficking identification and reporting, and thereafter child sex trafficking is found on the property, it will result in a per se failure to report.²³⁰ Therefore, criminal penalties for hoteliers would become a certainty because the already low evidentiary trigger for the reporting duty of “a reasonable cause to suspect”²³¹ would effectively drop to “even if no reasonable cause to suspect exists.”²³² Essentially, no hotel can afford the criminal and reputational sanctions²³³ attendant in obstinately providing their employees with merely standard hospitality training, depriving them of the Code and the empowering opportunity to rid the hotel industry and New York of the sexual exploitation of our children.²³⁴ Moreover, the per se provision would help mount an attack on hotels that fail to implement ECPAT-USA’s training because the hotel staff itself is participating in child sex

228. FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, § 2113(3), 130 Stat. 615, 628 (to be codified as amended at 49 U.S.C. § 44734(a)(4)) (requiring air carriers to provide initial and annual flight attendant training in recognizing and responding to potential human trafficking victims); *Blue Lightning*, *supra* note 163.

229. See Rachel N. Busick, Note, *Blurred Lines or Bright Line? Addressing the Demand for Sex Trafficking Under California Law*, 42 PEPP. L. REV. 333, 337 n.29 (2015) (noting that the United States is a “country of origin, transit, and destination” for child sex trafficking).

230. See George & Smith, *supra* note 11, at 99 (“[B]y adopting the Code, businesses are not associated with the child sex trade, but rather are actively engaged in preventing it.”).

231. In contrast, in order for reports of child abuse to be substantiated, the appropriate agency must determine there is some *credible evidence* of child abuse or neglect. Andrea E. Pelochino, *Chapter 842: Extending Provisions of the Child Abuse and Neglect Reporting Act*, 36 MCGEORGE L. REV. 831, 833 (2005) (citing CAL. PENAL CODE § 11165.12(b) (West 2011) (requiring evidence by a preponderance)).

232. See Thompson, *supra* note 222, at 44-45.

233. Cf. Meredith Somers, *Star Power Tested with Boycott of Beverly Hills Hotel*, WASH. TIMES (May 7, 2014), <http://www.washingtontimes.com/news/2014/may/7/star-power-tested-with-boycott-of-beverly-hills-ho/?page=all> (examining the community-wide boycott of a hotel and its corporate connection to the Sultan of Brunei for instituting Shariah law).

234. See Guelbart, *supra* note 10; *supra* text accompanying note 150.

trafficking.²³⁵ Even hotel owners not directly involved in child sex trafficking but who are aware of such activity would be compelled to train their staff, so as not to run afoul of the *per se* provision.²³⁶

Simply put, a hotel's failure to implement the Code or an equivalent training program would result in opening itself up to certain prosecution,²³⁷ even if the traffickers had spent only one night operating on the property—despite such circumstances leaving the hotel an unreasonable timeframe to formulate any suspicions.²³⁸ Incorporating the *per se* provision into N.Y. law would guarantee that hotels would commit to the Code.²³⁹ Child sex trafficking in hotels would be subject to expansive and well-informed omniscience.²⁴⁰

V. CONCLUSION

Seven years have passed since the first sex trafficking conviction in New York.²⁴¹ However, in that time, some of New York's trafficked children, "for whom nothing was done [and] who managed not to die yet," are tragically trafficked women today.²⁴² The story has become all

235. See, e.g., Jen Steer, *Authorities Raid Brook Park Hotel in Heroin, Human Trafficking Investigation*, FOX8 CLEV. (Feb. 10, 2016, 4:00 PM), <http://www.fox8.com/2016/02/10/authorities-raid-brook-park-hotel-in-heroin-human-trafficking-investigation> (reporting that Cuyahoga County prosecutors claimed hotel owner required johns and prostitutes to rent rooms and desk clerk warned patrons if police were present).

236. See Jacquelyn C.A. Meshelemiah, *Tourism and Prostitution in West Africa: A Glimpse of the "Roamers" in Ghana*, in 2 GLOBAL PERSPECTIVES ON PROSTITUTION AND SEX TRAFFICKING: AFRICA, ASIA, MIDDLE EAST, AND OCEANIA 31, 36 (Rochelle L. Dalla et al. eds., 2011) (positing that many hotel owners are "definitely aware" of illegal prostitution activities on their properties despite their probable contention otherwise).

237. *But see* Haynes, *supra* note 65, at 347-49 (discussing the low number of sex trafficking prosecutions).

238. *Cf.* Brad Heath, *Few Penalties for Keeping Child Abuse Secret*, USA TODAY (Dec. 16, 2011, 10:37 AM), <http://usatoday30.usatoday.com/news/nation/story/2012-01-02/unreported-child-abuse/51981108/1> ("If you're not going to make the moral choice [to report], at least you have to have a law with some teeth that makes somebody do it for the legal reason that you're afraid you're going to be charged [if you don't] . . ."). *But cf.* Jordan Steffen, *Few Punishments for Those Who Fail to Report Abuse*, DENV. POST (July 4, 2014, 3:08 PM), http://www.denverpost.com/news/ci_26092783/few-punishments-those-who-fail-report-abuse (noting the rarity of charges filed by prosecutors against mandatory reporters who fail to report child abuse).

239. See discussion *supra* Part III.A.

240. See Mike Tobias, *New Effort to Fight Sex Trafficking: Training Hotel Workers*, NET NEB. (May 28, 2015, 6:45 AM), <http://netnebraska.org/article/news/975913/new-effort-fight-sex-trafficking-training-hotel-workers> ("[E]ventually the hotels and motels that do not participate [in sex trafficking training] will become the outliers . . .").

241. 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, 639 (2012).

242. Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 298-99 (2011); Lenora C. Babb, Note, *Utah's Misguided Approach to the Problem of Sex Trafficking: A Call for Reform*, 14 J.L. & FAM. STUD. 277, 283 (2012).

too familiar: a foster child frustrated with the strife of her group home takes to the streets, where strangers lure her in with promises; soon, the child is forced to perform sexual acts for multiple adult males per day, subject to threats, disease, and violence, and afraid to escape.²⁴³ The major venue for these captive children is in hotels.²⁴⁴

Child sex traffickers rely on the apathy of hotel staff.²⁴⁵ But New York has the opportunity to continue to be a nationwide legislative leader in sex trafficking law.²⁴⁶ Some Code signatories are on board and practicing CSR.²⁴⁷ Despite the successes of ECPAT-USA, it has found no solution to the voluntariness of its pledge.²⁴⁸ Criminal legislation mandating hoteliers as reporters of child sex trafficking is not a retributive attack on the non-reporting hospitality industry.²⁴⁹ It is a collaborative course of action by which hotel corporations can be led, and in which modern slavery can see its final days.²⁵⁰ No longer must New York be witness to the “glare from the abyss,”²⁵¹ when the hotel

243. See Annitto, *supra* note 7, at 2 (telling the vignette of common cases of child sex trafficking).

244. 1 RIC CURTIS ET AL., *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY: THE CSEC POPULATION IN NEW YORK CITY: SIZE, CHARACTERISTICS, AND NEEDS* 60 (2008).

245. A reason for the evident apathy towards child sex trafficking victims may very well be the uncovered falsity of several sensationalized accounts. See Lisa Thompson, *What We Get Wrong About Sex Trafficking*, RELEVANT MAG., <http://www.relevantmagazine.com/reject-apaty/what-we-get-wrong-about-sex-trafficking> (last visited Apr. 10, 2017).

246. See *Human Trafficking Overview*, N.Y. ST. DIVISION CRIMINAL JUST. SERVICES, <http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm> (last visited Apr. 10, 2017) (revealing that New York State’s human trafficking law is “the most comprehensive of its kind in the country”).

247. *Members of the Code*, *supra* note 12.

248. See Mohn, *supra* note 14; *supra* Part III.A.

249. See Thompson, *supra* note 222, at 50 (“[C]ourts speak in the language of utilitarianism when they expansively interpret the duty to report, rather than focusing on the moral culpability of the non-reporters.”); Steven J. Singley, Comment, *Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters*, 19 J. JUV. L. 236, 267-68 (1998) (“[Reporting] statutes were passed to protect children, not to punish professionals with whom children come in contact.”); *supra* Part IV.A.

250. See Regan L. Lookadoo, *Human Trafficking and Teacher Awareness: Equipping Teachers with Knowledge and Resources to Combat Human Trafficking*, CAMPBELLSVILLE REV., 2012–2014, at 88, 96 (“When one considers the fact that abolitionists of the past stood up against and successfully ended slavery when it was legal in this country; imagine the possibilities when today’s youth are equipped and empowered to end modern slavery in a world where slavery is illegal in every country.”).

251. See HENRY WADSWORTH LONGFELLOW, *The Witnesses*, in *POEMS ON SLAVERY* 23-25 (2d ed. 1842) (personifying the “woes of Slaves”).

industry as a coalition allows children to remember “[t]here was a time when [they] were not a slave.”²⁵²

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252. MONIQUE WITTIG, *LES GUÉRILLÈRES* 53, 55 (David Le Vay trans., ubu editions reprt. ed. 2007) (1969), http://www.iaphitalia.org/wp-content/uploads/2015/07/wittig_guerilleres.pdf.

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