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**RED LIGHT, GREEN LIGHT: THE EVIL YET EVER-EXISTING
INTERSECTION OF DOMESTIC MINOR SEX TRAFFICKING AND
THE FOSTER CARE SYSTEM**

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NEKKETTA ARCHIE

INTRODUCTION

*“If slavery is not wrong, nothing is wrong.”*¹

The institution of slavery has long been abolished in the United States with the enactment of the Thirteenth Amendment of the U.S. Constitution.² Yet an evil deeply rooted in the core of slavery continues to plague our nation, erode away our morals and values, and deprive our children of a life that springs forth with youthful innocence. Here we are today, and the wrong still exists in the form of modern day slavery. The term has changed, but the injustice still remains.

The definition of human trafficking is just as diverse as the innocent, exploited victims who find themselves captive in this modern day slavery - definitions such as it “involves the exploitation of individuals for forced labor or commercial sex;”³ “it is defined as the recruitment, harboring, transportation, providing or obtaining of a person by means of force, fraud or coercion for the purpose of a commercial sex act⁴ or labor services.”⁵ Most often, labor trafficking comes to mind when the word human trafficking is mentioned. “The two types of human trafficking that are known by society are domestic and international.”⁶ While this modern day form of slavery is widely associated with international involvement, there exists a prevalent, growing demand for domestic human trafficking, especially that of minors. Domestic Minor Sex Trafficking (DMST)⁷ is “the commercial sexual abuse of children through buying, selling or trading their sexual

¹ Letter from President Abraham Lincoln to Albert G. Hodges, AMERICAN TREASURES OF THE LIBRARY OF CONGRESS (April 4, 1864), <https://www.loc.gov/exhibits/treasures/trt027.html>. (JPG file of original handwritten letter <http://www.loc.gov/exhibits/treasures/images/ltohl.jpg>).

² U.S. CONST. amend. XIII, § 1.

³ KRISTIN FINKLEA, CONG. RESEARCH SERV., R43677, JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING: JUVENILE JUSTICE ISSUES (2014).

⁴ See *infra* Part I.B(ii) for further discussion of “commercial sex act.”

⁵ *The State of Human Trafficking in Texas*, CHILDREN AT RISK, http://childrenatrisk.org/wp-content/uploads/2013/05/02_The-State-of-Human-Trafficking-in-Texas.pdf.

⁶ *Id.*

⁷ Although research suggests that the term DMST wasn’t widely used until 2005, I will commonly refer to it throughout the article. After my thorough research and reading on the controversial topic, I have become sensitive to the different labels given to child victims of DMST. Therefore, I have chosen to select my word choice very carefully and will avoid use of the word “prostitute” when referring to victims of DMST.

services.”⁸ The National Center for Missing and Exploited Children (NCMEC) received reports in 2015 of one in five endangered runaways that were likely to be victimized by sex trafficking, an increase from one in six in 2014.⁹ Data provided by the NCMEC further shows that of these, seventy-four percent (74%) likely fled from foster care or social services.¹⁰ Yet and still, “unknown” is the term used to quantify the inexact number of child victims of DMST in the United States, due to calculations and definitions, which are themselves inexact and estimates.¹¹ Even more alarming, somewhere in the shuffle and rubric cube of life, these children have been cloaked with the label of prostitute, perpetrators, delinquents, and throwaways, just to name a few.¹²

According to the 2014 Trafficking in Persons (TIP) Report,¹³ “136 males and 443 females under 18 years of age¹⁴ were reported to the federal government as having been arrested for prostitution or commercialized vice by state and local authorities” in 2012.¹⁵ Of note, the 2015 TIP Report suggests the urgency to provide adequate training and guidance for states and service providers in addressing the issue of child trafficking, “particularly as it intersects with the child

⁸ *Domestic Minor Human Sex Trafficking (Child Prostitution)*, NDAA (Mar. 2015), <http://www.ndaa.org/pdf/Human%20Trafficking%203-3-2015.pdf> (citation omitted).

⁹ National Center for Missing and Exploited Children, <http://www.missingkids.com/home>. See also CHILD WELFARE INFO. GATEWAY, *Child Welfare and Human Trafficking*, <https://www.childwelfare.gov/pubpdfs/trafficking.pdf>.

¹⁰ *Id.*

¹¹ KRISTIN FINKLEA ET. AL., CONG. RESEARCH SERV., R41878, SEX TRAFFICKING OF CHILDREN IN THE UNITED STATES: OVERVIEW AND ISSUES FOR CONGRESS (2015).

¹² See *infra* Part IV for a discussion of the labels and definitions society has adorned on children victims of DMST.

¹³ U.S. DEPT. OF STATE, www.state.gov/j/tip/rls/tiprpt/index.htm. The Trafficking in Persons (TIP) Report is “the U.S. Government’s principal diplomatic tool to engage foreign governments on human trafficking. It is also the world’s most comprehensive resource of governmental anti-human trafficking efforts and reflects the U.S. Government’s commitment to global leadership on this key human rights and law enforcement issue. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it.” *Id.*

¹⁴ Although there is a federal level of protection at the age of 18, it varies among states, for instance, in Texas where the legal age of consent is 17. See *infra* Part II.A(i) as it relates to how this variation impacts prosecution of minors at the age of 17 and its effect on the consent element of the Texas Penal Code/Prostitution Statute.

¹⁵ U.S. Dept. of State, *Trafficking In Persons Report*, June 2014, p. 401, <http://www.state.gov/j/tip/rls/tiprpt/2014/>.

welfare system and runaway homeless youth programs.”¹⁶ It is here at this intersection that this article will attempt to expose how the treatment continues to be worse than the harm.

This evil has taken many forms, recruited many foot soldiers, and waged a vicious war nationally and abroad. From the service industry, labor exploitation to massage parlors, strip clubs, and the likes, human trafficking has grown into a grossly profitable industry that infests our culture and society. In particular, sex trafficking of minors has become America’s worst nightmare, and human trafficking, as an agent of this evil, has found its place in the ranks as one of the largest criminal enterprises in the world, second only to weapon and drug trades.¹⁷ Unfortunately, sex trafficking often finds its start and finish within the foster care system.

Where did we go wrong? Why do we continue to disappoint our children? How can we as a people of compassion rally behind efforts to support the cause for victims and survivors? Why has society turned its back on these children? Must the system tirelessly labor in a tug of war with various agencies and law enforcement over how the care these exploited, vulnerable children so desperately need will be provided? What does the law do to protect the innocent children who are often handled as criminals from the actual criminals who continue to perpetrate this evil in our society? What about the male child victims of sex trafficking – shouldn’t they count too?¹⁸ Does the criminal justice system criminalize sexual behavior of minor girls more than adults? These are just a few questions that come to mind with conviction at the thought of a travesty such as sex-trafficking manifesting itself in the fabric of our youth.

¹⁶ *Trafficking In Persons Report*, U.S. DEPT. OF STATE (July 2015) 355, <http://www.state.gov/documents/organization/243562.pdf>.

¹⁷ *The State of Human Trafficking in Texas*, CHILDREN AT RISK 7 (2009), http://childrenatrisk.org/wp-content/uploads/2013/05/02_The-State-of-Human-Trafficking-in-Texas.pdf (citation omitted).

¹⁸ Although female children are the most common DMST victims, there is a small population of DMST male victims who are overlooked. Regrettably, this article will not unpack this injustice to our male victim children but they too deserve the protection from those that prey on their innocence and vulnerabilities. For more information, see *Invisible Men: Male Victims of Sex Trafficking*, <http://humantraffickingcenter.org/posts-by-htc-associates/men-boys/>.

This article endeavors to explore the issue of DMST as it intersects with the foster care system, with a close examination of where Houston, Harris County, Texas, stands in the fight to combat this modern day slavery. Part I examines the evolution of human trafficking legislation on federal and state levels and the development of protection afforded to its victims. In Part II, I will take a closer look at Texas Human Trafficking Legislation and where it stands in aligning with the Trafficking Victims Protection Act (TVPA) to protect victims of DMST. Part III places the foster care system under the microscope and argues that the very professionals who are charged to protect the children haphazardly inflict more pain on the situation with stereotypes and a consistent use of labels and inconsistent terminologies. In conclusion, Part IV makes an appeal for communication and community collaboration in addressing the issue of DMST and the foster care system.

I. FEDERAL HUMAN TRAFFICKING LEGISLATION AT A GLANCE

A. Federal Human Trafficking Legislation

Federal efforts aimed at human trafficking have been valiant in recent years and continue to produce numbers that evidence these efforts. Various law enforcement efforts have had a primary focus of combating buyers and traffickers of commercial sex.¹⁹ For instance, the 2015 TIP Report indicates that the Department of Justice saw an increase in prosecutions and convictions for federal human trafficking in fiscal year 2014 than from the previous year.²⁰ Specifically, of the 208 federal human trafficking prosecutions brought, 190 were predominantly connected with sex trafficking.²¹ Further, 184 human trafficking convictions were secured, with

¹⁹ FINKLEA, *supra* note 3, at 1.

²⁰ *Supra* note 16 at 353.

²¹ *Id.*

157 predominately associated with sex trafficking.²² Silent in these numbers, however, is the total of successful convictions for child sex trafficking cases prosecuted under non-trafficking statutes.²³

The Mann Act of 1910

The Mann Act of 1910²⁴ was initially enacted to “fight against prostitution and other forms of sexual misconduct.”²⁵ While the general subject of this article is human trafficking and in particular argues against the criminalization of minor girls as “prostitutes” for offenses involving sexual misconduct, the Mann Act introduced into federal legislation the taboo issue of “sexual misconduct.” Today, however, the Act is written in such a way that makes it a felony to “knowingly transport an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense.”²⁶

B. Reauthorizations, Protection & Conceptualizations: The Trafficking Victims Protection Act, Its Reauthorizations & Minors as Victims of Sex Trafficking

i. The TVPA & Its Reauthorizations

As opposed to “prostitution,” “human trafficking” is the focus and thrust of the TVPA. In response to growing concerns domestically as well as internationally, Congress passed The Victims of Trafficking and Violence Protection Act of 2000²⁷ “to combat trafficking in persons,

²² *Id.* Of note, the report admittedly reveals that the figures reported for both prosecutions and convictions of sex trafficking may overlap with labor trafficking figures. “Some” prosecutions may involve both, and “several” convictions involve both. Hence it is fair to deduce this is a contributing factor to the lack of comprehensive data available for prosecutions and convictions of the exploiters in this war on society.

²³ *Id.* Prostitution and solicitation are examples of non-trafficking statutes.

²⁴ The Mann Act of 1910, 18 U.S.C. § 2421 et seq.

²⁵ FINKLEA, *supra* note 3, at note 10.

²⁶ Transportation of Minors, 18 U.S.C. § 2423(a) (2016).

²⁷ Trafficking Victims Protection Act (TVPA) of 2000, P.L. 106-386 [hereinafter TVPA of 2000]. This act is also commonly referred to as The Victims of Trafficking and Violence Protection Act. It is codified under 18 U.S.C. § 1597 et seq. (criminal statute pertaining to sex trafficking of children), 22 U.S.C. § 7101 et seq., and 42 U.S.C. § 14044 et seq.

especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.”²⁸

The TVPA has seen four reauthorizations since its enactment in 2000: the TVPA Reauthorization of 2003; the TVPA Reauthorization of 2006; the TVPA Reauthorization of 2008; and the TVPA Reauthorization of 2013.²⁹ Historically, services authorized under the TVPA were tailored for the needs of “noncitizens” within the United States – meaning services for domestic victims, in particular child victims, were lacking.³⁰ By way of example, the TVPA of 2000 provided, among other things, a means for *noncitizen* victims of human trafficking, as well as their families, to establish temporary U.S. residency by granting a T-visa and eligibility to establish permanent residency after three years.³¹ Along with establishing a “federal, civil right of action for trafficking victims to sue traffickers,”³² the Reauthorization of 2003 included additional provisions affording protection to victims, as well as their families, in jeopardy of deportation.³³ It was not until the reauthorizations of 2006, 2008 and 2013 did Congress increase focus on U.S. citizens, including authorizing services specifically for addressing DMST within the U.S.³⁴

Why so little attention to domestic victims of human trafficking, and in particular children? Although it seems that little attention is given to correcting the issue of adequate services to all victims, which are provided by the Department of Justice and Health and Human Services, the issue itself is very much alive. Notably, international efforts seem to overshadow domestic efforts

²⁸ TVPA of 2000, 22 U.S.C. § 7101 et seq.

²⁹ For a very precise summary of each federal law and its effect on human trafficking, visit <https://polarisproject.org/current-federal-laws>.

³⁰ KRISTIN FINKLEA ET. AL., *supra* note 11, at 3.

³¹ See TVPA of 2000, 22 U.S.C. § 7101 et seq.

³² *Id.*

³³ *Id.*

³⁴ KRISTIN FINKLEA ET. AL., *supra* note 11, at 4.

in clearly identifying and serving victims.³⁵ Conclusions have been drawn that suggest the reason for such disproportionate availability of services is the fact that citizen victims are expected to have access to services that are extended to non-citizen victims, i.e., access to healthcare, education, etc. In addition, the handling, or lack thereof, of appropriations by Congress for services provided to trafficking victims within the United States, both citizens and non-citizens, has remained stable since the TVPA was passed, although Congress expanded authorized funding for victims.³⁶ Until a recent policy change, appropriations had not specified which services should be funded - again, leaving U.S. citizen trafficking victims with little to no access to services.³⁷ While human trafficking is indeed a global issue, domestic victims are just as much in need of adequate services that provide protection and aim at prevention, if we are to at least scratch the surface of this thorn in our side.

ii. Protection and Conceptualization of Minors as Victims

The TVPA is the cornerstone of the fight against human trafficking and serves as the primary law in prevention of DMST by raising awareness and educating professionals as well as the community to better recognize and serve victims; prosecution and punishment of those who continue to perpetrate this criminal enterprise, namely traffickers and buyers; and protection by way of identifying with the immense needs of our children as victims and survivors instead of labeling them as perpetrators and criminals.³⁸ Prevention. Prosecution. Protection: these are the

³⁵ Angelo P. Giardino & Robert D. Sanborn, *Human Trafficking: Awareness, Data and Policy*, *Journal of Applied Research on Children: Informing Policy for Children* (2011), available at <http://digitalcommons.library.tmc.edu/childrenatrisk/vol2/iss1/2>.

³⁶ KRISTIN FINKLEA ET. AL., *supra* note 11, at 4.

³⁷ *Id.* at note 26 (citing U.S. Dept. of State, *Trafficking In Persons Report*, June 2013, p. 381, <http://www.state.gov/j/tip/rls/tiprpt/2013/>).

³⁸ SHARED HOPE INT'L, *Rapid Field Assessment of Domestic Minor Sex Trafficking in Harris and Galveston Counties, Texas*, (August 2011), p. 10, <http://sharedhope.org/wp-content/uploads/2012/09/Domestic-Minor-Sex-Trafficking-Field-Assessment-Harris-and-Galveston-Cty.pdf>.

three primary focus areas of the TVPA in combating DMST.³⁹ Specifically, the purpose of the TVPA is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”⁴⁰

The TVPA defines “severe forms of trafficking in persons” as:

“(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
(B) 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.”⁴¹

As it concerns sex trafficking, federal law specifically eliminates the need for fraud, force, or coercion when the commercial sexual activity involves a minor.⁴² Here, “commercial sex act” is defined as “any sex act, on account of which anything of value is given to or received by any person.”⁴³ Anything of value in this context, includes but is not limited to, shelter, food and money – all of the bare necessities of life that these perpetrators prey on the vulnerabilities of victims. What this ultimately means is that a minor is considered a victim of sex trafficking when prosecuting traffickers.⁴⁴ Albeit, this level of protected status is at the federal level, and the prosecution of child prostitution is primarily a state matter.⁴⁵ Child prostitution is, nonetheless, outlawed in all 50 states,⁴⁶ but it is known that prosecutions of human trafficking cases on state

³⁹ *Id.* A fourth “P” was added in 2009 by then-Secretary of State Hilary Rodham Clinton – “partnership.” See <http://www.state.gov./j/tip/4p/partner/> for more information.

⁴⁰ *Id.* at 10 (citation omitted).

⁴¹ TVPA of 2000, 22 U.S.C. § 7102(9).

⁴² FINKLEA, *supra* note 3, at 2 (discussing elements of federal law when a minor is considered a victim of sex trafficking).

⁴³ TVPA of 2000, 22 U.S.C. § 7102(4).

⁴⁴ FINKLEA, *supra* note 3, at 2.

⁴⁵ *Id.*

⁴⁶ *Id.* at 3 (citation omitted).

court levels tend to be low.⁴⁷ Where the federal level protects sex trafficking victims under 18, the threshold age of consent varies among states,⁴⁸ and this is where the protection for minor victims is at a crossroad.

iii. Preventing Sex Trafficking and Strengthening Families Act (2014)⁴⁹

The fight to combat sex trafficking on the federal level, particularly at the intersection of the foster care system, gained steam in the last few years. In September 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act into law. The purpose of this Act is “to prevent and address sex trafficking of children in foster care, to extend and improve adoption incentives, and to improve international child support recovery.”⁵⁰ The new legislation gives special attention to sex trafficking of children at risk and youth in foster care; requires state action in data reporting and collection to better protect and identify DMST; as well as created the National Advisory Committee on the Sex Trafficking of Children and Youth in the U.S. to improve response to and coordination among the professional, law enforcement, and service communities in improving such response.⁵¹ The fight against human trafficking has gained steam, and maybe our children can move beyond the evil yet ever-existing intersection.

Another piece of legislation which confronts DMST was recently signed by President Obama in 2015: the Justice for Victims of Trafficking Act of 2015.⁵² With the passing of this newest piece of legislation, Justice for Victims of Trafficking Act 2015 offers a glimmer of hope that “survivors of child sex trafficking in the United States will finally receive the vital services

⁴⁷ See *supra* note 17, at 6.

⁴⁸ See *infra*, Part III.A(i) for discussion of Texas’ threshold age of consent, which is 17.

⁴⁹ Preventing Sex Trafficking and Strengthening Families Act of 2014, 42 U.S.C. § 1305, P.L. 113-183. HR 4980.

⁵⁰ *Id.*

⁵¹ Giardino & Sanborn, *supra* note 35.

⁵² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 227 Stat. 129.

and protections they deserve.”⁵³ It is considered to be “the first comprehensive anti-trafficking bill that addresses all aspects of human trafficking, including law enforcement training, to better identify and apprehend traffickers, as well as all aspects of victims’ services and restitution.”⁵⁴ Additionally, the Act “specifically addresses domestic human trafficking and prioritizes the need to confront the demand for child sex.”⁵⁵ Priorities such as additional funding for law enforcement training, and harsher penalties for traffickers⁵⁶ have been elevated to a level of concern for action by Congress with the Act receiving full bi-partisan support.⁵⁷ A Domestic Trafficking Victims’ Fund was created to assist in rebuilding victims’ lives, and resources from the harsher penalties will go towards this fund.⁵⁸ Alas, the attention and focus shifts to our own backyard.

II. A CLOSER LOOK: STATE HUMAN TRAFFICKING LEGISLATION

A. State Human Trafficking Legislation: Where Does It Stand At the Intersection?

A study conducted⁵⁹ by Shared Hope International,⁶⁰ in conjunction with 10 human trafficking task forces funded by the Department of Justice,⁶¹ produced the following findings which identified the number of potential DMST victims in select locations.⁶² Again, the purpose of the study was to identify DMST victims, with a special focus on child prostitution, although it

⁵³ Cheryl Wetzstein, *Obama Signs Human Trafficking Law*, WASH. TIMES (June 1, 2015), <http://www.washingtontimes.com/news/2015/jun/1/obama-signs-human-trafficking-law/> (quoting Yasmin Vafa of the Human Rights Project 4 Girls. For information on this human rights organization, visit <http://rights4girls.org/>).

⁵⁴ Letter from the Nat’l Conf. of State Legislatures to Speaker Boehner and Leader Pelosi (May 15, 2015) http://www.ncsl.org/documents/statefed/HumanTraffickingLtr_May15_2015.pdf.

⁵⁵ See *supra* note 53.

⁵⁶ *Id.* A “special assessment” of \$5000 to people who are “proven to have sold or bought a trafficked person, engaged in sexual abuse, child pornography, child sexual exploitation, interstate transportation for illegal sexual activity or commercial human smuggling.” *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ FINKLEA ET. AL., *supra* note 11, at 41.

⁶⁰ Shared Hope International is a non-profit organization dedicated to the fight against human trafficking which “strives to prevent the conditions that foster sex trafficking, restore victims of sex slavery, and bring justice to vulnerable women and children.” For more information on the organization’s cause and efforts, visit <http://sharedhope.org/about-us/our-mission-and-values/>.

⁶¹ FINKLEA ET. AL., *supra* note 11, at 41 n.182.

⁶² *Id.* at 41.

is reported “an accurate account of the number of victims was not available due to many factors, including a lack of protocols to track victims and misidentification of victims.”⁶³ Tellingly, Texas had an active role in participating in this study, and the numbers beg attention. The next section will explore where Texas legislation stands in this fight to protect victims and punish the real offenders.

Number of Suspected DMST Victims in Locations Where Study Conducted

Research Site	State/Territory	Number of Suspected DMST* Victims	Time Period
Dallas	Texas	150	2007
San Antonio/Bexar County	Texas	3-4	2005-2008
Fort Worth/Tarrant County	Texas	29	2000-2008
Las Vegas	Nevada	5,122	1994-2007
Independence/Kansas City area	Missouri	227	2000-2008
Baton Rouge/New Orleans area	Louisiana	105	2000-2007
Saipan/Rota/Tinian	Northern Mariana Islands	1	2008
Salt Lake City	Utah	83	1996-2008
Buffalo/Erie County	New York	74-84	2000-2008
Clearwater/Tampa Bay area	Florida	36	2000-2008

i. Protection of Minors as Victims

Human trafficking, especially DMST, not only deserves confronting on the federal level, but states must continue to take an active role in boldly confronting this pervasive evil. A Report issued by the Congressional Research Service shed light on the importance of this unified front on the federal as well as state level:

How to categorize the juveniles involved in commercial sexual activities has become one of the perennial issues for law enforcement and policy makers. A central question is whether these youth should be characterized as victims or perpetrators. The federal government and some states have conceptualized these children differently, and this variability has contributed to the implementation of differing policies throughout the country. In short, while the federal government considers these minors as

⁶³ *Id.* See also *infra* Part III.B which addresses “misidentification of victims.”

victims and thus eligible for specialized services, some states may still treat these minors as perpetrators engaged in prostitution and related crimes.⁶⁴

Federal law clearly draws the distinction that an individual under the age of 18 is considered a victim of sex trafficking when prosecuting traffickers,⁶⁵ thereby making them eligible for specialized services for victims.⁶⁶ This “safe harbor”⁶⁷ approach “prevents minor victims of trafficking from being prosecuted for prostitution,⁶⁸ and states are urged to align their human trafficking legislation to reflect such approach.⁶⁹ Although a substantial number of states have human trafficking laws, there are some that do not address DMST due to coverage variations in different statutory schemes.⁷⁰ States are incentivized to do so by the federal government through grant funding,⁷¹ provision or withholding thereof.⁷² After all, state law enforcement and local agencies are most likely the first to encounter a DMST situation, and are therefore in a better position to confront the issue head-on by immediately meeting the dire needs of victims.⁷³ States such as Texas,⁷⁴ which have specific legislation to criminalize human trafficking, can better prosecute traffickers and, in turn, provide assistance to identify more victims.⁷⁵ Together with

⁶⁴ FINKLEA, *supra* note 3, at 1.

⁶⁵ *Supra* Part I.B(ii).

⁶⁶ FINKLEA, *supra* note 3, at 9 (citation omitted).

⁶⁷ *Id.* at 9-10. Of note, Texas human trafficking legislation does not contain a safe harbor statute; however, in 2010 a Texas Supreme Court held that children under the age of 14 cannot be prosecuted for prostitution because they cannot legally consent to sex. *In the Matter of B.W.*, 313 S.W.3d 818 (Tex. 2010). *See infra* Part III.B(iii).

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* “Researchers, victim advocates, and some policy makers have recommended that states adopt policies that are in line with the federal stance on child victims of sex trafficking.” *Id.* See also Tessa L. Dysart, *Child, Victim, or Prostitute? Justice through Immunity for Prostituted Children*. 21 DUKE J. GENDER L. & POL’Y 255 (2014), for a discussion on state immunity from prosecution for prostitution of minor sex trafficking victims.

⁷⁰ SHARED HOPE INT’L, *2015 Protected Innocence Challenge: A Legal Framework of Protection for the Nation’s Children*, Note, p. 23, <http://sharedhope.org/wp-content/uploads/2015/11/PIC2015REPORT2.pdf>.

⁷¹ FINKLEA, *supra* note 3, at 15 (detailing programs offered by the federal government to incentivize states in the form of juvenile justice grants and improving training for law enforcement response to DMST, just to name a few).

⁷² *Id.* at 14.

⁷³ *See supra* note 5, at 22.

⁷⁴ TEX. PENAL CODE § 20A.02(a); TEX. PENAL CODE § 20A.03.

⁷⁵ *See supra* note 5, at 22.

federal efforts, there is much to be done on the state level to afford the same protections to DMST victims.

B. Texas Human Trafficking Legislation

i. Conceptualization and Variation of Minors as Victims

Leading efforts to confront DMST, Texas as a state has recently seen many accomplishments to fine-tune the Texas Human Trafficking Law with the TVPA.⁷⁶ The state took a bold move in this effort, and in 2003 became the first state to enact legislation to criminalize human trafficking.⁷⁷ Texas Human Trafficking Law is encompassed in the Texas Penal Code Chapter 20A,⁷⁸ and the Code pointedly addresses minors as victims of human trafficking. Shared Hope International⁷⁹ reported the following analysis of legal components of the Texas Human Trafficking Act regarding criminalization of DMST in its 2015 Analysis and Recommendations:⁸⁰

- The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.⁸¹
- Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.⁸²

⁷⁶ *Supra* note 38, at 10.

⁷⁷ *Id.*; *see also* TEX. PENAL CODE § 20A.02(a).

⁷⁸ *Id.*

⁷⁹ *Supra* note 60.

⁸⁰ SHARED HOPE INT'L, *Protected Innocence Challenge: 2015 Analysis and Recommendations Texas*, http://sharedhope.org/PICframe5/analysis/PIC_AR_2015_TX.pdf.

⁸¹ TEX. PENAL CODE § 20A.01(7), (8).

⁸² TEX. PENAL CODE § 43.05(a)(2) (“COMPELLING PROSTITUTION. (a) A person commits an offense if the person knowingly: (1) causes another by force, threat, or fraud to commit prostitution; or (2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense.”); Tex. Penal Code Ann. § 43.03 (“PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly: (1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or (2) solicits another to engage in sexual conduct with another person for compensation. (b) An offense under this section is a Class A misdemeanor, except that the offense is:.....(2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the

- Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.⁸³
- The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.⁸⁴

As of 2011, the Texas Human Trafficking Act was officially in line with the TVPA,⁸⁵ and notably, overall the State has received a passing grade of “A.”⁸⁶ The same passing grade, however, was assigned with scrutiny concerning the State’s continued prosecution of minors for prostitution: “Texas has a full range of criminal laws against domestic minor sex trafficking; however, minors are subject to prosecution for prostitution, and may face barriers to treatment and victims’ compensation to fund their recovery.”⁸⁷ What this speaks to is the fact that a minor under the age of 18 can still be charged for prostitution.⁸⁸ Although they have the affirmative defense of sex

person at the time the actor commits the offense.”); Tex. Penal Code Ann. § 43.04(a) (“AGGRAVATED PROMOTION OF PROSTITUTION. (a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes. (b) An offense under this section is a felony of the third degree, except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time the actor commits the offense.”)

⁸³ TEX. PENAL CODE § 43.02(d). (“PROSTITUTION. (d) It is a defense to prosecution for an offense under Subsection (a) that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 or 43.05.”) The prostitution statute refers to § 20A.2, the human trafficking law in that it specifically provides an affirmative defense for minor victims of DMST.

⁸⁴ TEX. PENAL CODE § 71.02(a) (“ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following: (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor...;(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;...(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same; (7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;...(12) any offense under Chapter 20A (Trafficking in Persons); ... (18) any offense classified as a felony under the Tax Code.

⁸⁵ *Supra* note 39, at 10 (explaining that the element to prove “forced labor or services” when it involves victims of DMST was removed during the 82nd Legislative session.).

⁸⁶ SHARED HOPE INT’L, *Protected Innocence Challenge: Texas Report Card 2015*, http://sharedhope.org/PICframe5/reportcards/PIC_RC_2015_TX.pdf.

⁸⁷ *Id.*

⁸⁸ *Id.*

trafficking available to them,⁸⁹ a minor still runs the risk of being criminalized depending on how she is charged, i.e., whether as a sex trafficking victim or as a CSEC victim.⁹⁰ Either result strips the child victim of their protected status and forces them into the system, whether the victim is a delinquent in need of rehabilitation or a trafficking victim receiving the limited services and placement available.⁹¹ To boot, the “services that are available may be inaccessible due to eligibility requirements such as family involvement or cost.”⁹² Indeed, the treatment continues to be worse than the harm.

ii. TX Two-Step: Texas Supreme Court Takes Action on Child Prostitution & Age of Consent (*In re B.W.*)

“Groundbreaking” is the term reserved to describe a 2010 Texas Supreme Court decision which set precedent for future cases where DMST and prostitution tend to collide.⁹³ In *In re B.W.*,⁹⁴ the Texas Supreme Court overruled an Appeals court decision affirming a 13-year old female victim’s eighteen month probation sentence for a Class B misdemeanor offense of prostitution.⁹⁵ The 6-3 decision held “[i]n the absence of a clear distinction that the Legislature intended to subject children under fourteen to prosecution for prostitution when they lack the capacity to consent to sex as a matter of law, a child under the age of fourteen may not be charged with that offense.”⁹⁶ The backdrop of the victim’s story was littered with a life of abuse,

⁸⁹ TEX. PENAL CODE § 43.05(a)(2).

⁹⁰ *Supra* note 86.

⁹¹ *Id.* However, the child victim who is treated as a trafficking victim can at least avoid adjudication. *Id.*; see also KRISTIN FINKLEA ET. AL., CONG. RESEARCH SERV., R41878, SEX TRAFFICKING OF CHILDREN IN THE UNITED STATES: OVERVIEW AND ISSUES FOR CONGRESS (2015) (“Organizations in the United States that specialize in serving child victims of prostitution and other forms of sex trafficking collectively have limited housing and supportive service.” (citation omitted))

⁹² *Supra* note 38, at 20.

⁹³ *Id.*

⁹⁴ *In re B.W.*, 313 S.W.3d 818, 818 (Tex. 2010).

⁹⁵ *In re B.W.*, 274 S.W.3d 179 (Tex. App.—Houston [1st Dist.] 2008).

⁹⁶ *In re B.W.*, 313 S.W.3d at 826.

neglect, and hot pursuit of protection from the foster care pipeline into “the life.”⁹⁷ And her story begins in foster care.

At the age of eleven, B.W. entered the system in 2004 with a reputation of having “a long and sad history of delinquent behavior.”⁹⁸ In less than a year, B.W. was transferred not once, not twice, but three times among CPS placements,⁹⁹ when she finally fled a group home facility in October 2005.¹⁰⁰ Her CPS caseworker described her as “violent” and a “chronic runaway,”¹⁰¹ and for over a year, B.W. remained in the shadows of the system, missing until January 2007.¹⁰² That is, until she was arrested for criminal prostitution after offering to perform oral sex on an undercover officer for twenty dollars.¹⁰³ Misrepresenting her age at nineteen, B.W. was mistaken for an adult and taken into custody.¹⁰⁴ Upon learning her true age of thirteen, the State dismissed the prostitution charges and “re-filed in the civil, juvenile system, in which adjudications focus more on rehabilitation of delinquency rather than prosecution of crime.”¹⁰⁵ B.W. was evaluated by a psychologist after her arrest¹⁰⁶ to whom she revealed a “troubled past that included living with a thirty-two-year-old man, untreated substance abuse problems, allegations of abuse, and academic difficulties,¹⁰⁷ all at the tender age of thirteen. The report concluded by stating that B.W. was a “troubled minor who has encountered much adversity at a young age,” but also stressed that

⁹⁷ SHARED HOPE INT’L, <http://sharedhope.org/the-problem/trafficking-terms/>. “The life” is street jargon referring to the exploited lifestyle victims are subjected to in trafficking. Shared Hope International has defined it as the following: “[t]he subculture of prostitution, complete with rules, a hierarchy of authority, and language. Referring to the act of pimping as ‘the game’ gives the illusion that it can be a fun and easy way to make money, when the reality is much harsher. Women and girls will say they’ve been “in the life” if they’ve been involved in prostitution for a while.”

⁹⁸ *In re B.W.*, 313 S.W.3d at 827 (Wainwright, J., dissenting).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *In re B.W.* 313 S.W.3d 818, 828 (Tex. 2010) (Wainwright, J., dissenting).

¹⁰⁷ *Id.*

the veracity of B.W.'s report should be “viewed with caution given that numerous statements [she] made [were] inconsistent with probation records.”¹⁰⁸

The Texas Supreme Court opined:

It is difficult to reconcile the Legislature's recognition of the special vulnerability of children, and its passage of laws for their protection, with an intent to find that children under fourteen understand the nature and consequences of their conduct when they agree to commit a sex act for money, or to consider children quasi-criminal offenders guilty of an act that necessarily involves their own sexual exploitation. In the context of these laws, and given the blanket adoption of the Penal Code into the Family Code, it is far more likely that the Legislature intended to punish those who sexually exploit children rather than subject child victims under the age of fourteen to prosecution. Given the longstanding rule that children under fourteen lack the capacity to understand the significance of agreeing to sex, it is difficult to see how a child's agreement could reach the "knowingly" standard the statute requires. Because a thirteen-year-old child cannot consent to sex as a matter of law, we conclude B.W. cannot be prosecuted as a prostitute.¹⁰⁹

The case was indeed groundbreaking and set the standard for future prosecutions of minors under the age of fourteen charged with prostitution. Yet, the difficulty reconciling another equally important intersection in this sensitive subject matter still remains. The treatment of minor female victims as prostitutes with the reality that they too, just as B.W., exhibit all of the tell-tell signs of a victim in search of anything to fill a void, only to be met with confusion, distrust, and disdain by the same individuals that should protect them. “Children are the *victims*, not the perpetrators of child prostitution.”¹¹⁰ In the outcry of what is viewed by many juvenile rights advocates as a victory,¹¹¹ law enforcement officials have claimed that the decision “produced an unintended consequence that has frustrated many law enforcement officials: It became more difficult to

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 821-22.

¹¹⁰ *Id.* at 826 (Wainwright, J., dissenting) (emphasis added).

¹¹¹ Morgan Smith, *Child Sex Trafficking Victims Get More Protection*, TEX. TRIB. (Aug. 18, 2015), <http://www.texastribune.org/2015/08/18/child-sex-trafficking-victims-get-more-protection/>.

separate minors forced into sex trade from their traffickers.”¹¹² Prior to the decision, law enforcement was able to remove the potential minor victim out of the warpath on the streets and into the juvenile justice system.¹¹³ This frustration manifests itself in one of two ways: ““at best case scenario, they run away. At worst case scenario, the traffickers come and pick them back up.””¹¹⁴ Even worse, CPS has an infamous reputation among law enforcement for taking a less active role when the child is in the juvenile justice system.¹¹⁵ The issue remains, and frustrations by law enforcement, social providers, and the legal community produce a tug of war that leave the minors prey to the sex trade of traffickers.¹¹⁶

III. THE EVIL YET EVER-EXISTING INTERSECTION: FOSTER CARE & DMST

It is one of America’s most concealed, rather obvious but overlooked secrets. It leaves our children misunderstood, our system in conflict, and yet the children are the ones who ultimately suffer for it all. It corrupts the chastity of our children. It manipulates the minds of minors. It invades the innocence of our youth. And it is a billion-dollar industry fueled by evil.

DMST has invaded the foster care system on a national and state level. It has recruited children sometimes as young as nine in a life of prostitution, with an average age between eleven and fourteen that a child is first exploited in prostitution.¹¹⁷ Studies have identified risk factors such as past arrests for prostitution, past abuse, runaway or homeless status, and poverty associated

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* (“If CPS knew that a kid was in juvenile, they would refuse to have anything to do with them... They would shrug their shoulders and say, ‘Hey, the kid’s already in a safe place. You don’t need us.’”)(quoting Harris County District Judge Michael Schneider).

¹¹⁶ *See infra* Part III.B.

¹¹⁷ *See Exploiting Americans on American Soil: Domestic Trafficking Exposed: Hearing Before the Comm’n on Sec. & Cooperation in Eur.*, 109th Cong. 6 (2005) (statement of Chris Swecker, Assistant Director, FBI), <https://www.fbi.gov/news/testimony/exploiting-americans-on-american-soil-domestic-trafficking-exposed>.

with identifying DMST victims.¹¹⁸ Children who are labeled “runaways,” those that are homeless and foster care youth – running from home, running into the system only to run back out into “the life”¹¹⁹ - are considered “vulnerable populations.”¹²⁰ Astoundingly, over 70% of missing children identified as child trafficking victims fled from the care of social services or foster care.¹²¹ It is reported in 2015 that one in five endangered runaways were likely to be victimized by sex trafficking, an increase from one in six in 2014.¹²² In an address on human trafficking at a UCLA symposium, a California state official reported “59% of children arrested on prostitution-related charges in L.A. County spent time in the foster care system.”¹²³ Yet it is no secret that there is a “severe deficiency in data” on the issue as it relates to both protecting minor victims and prosecuting the offenders, traffickers, buyers, as well as facilitators.¹²⁴ Time and again, reports have suggested reasons such as inconsistent terminology, misidentification issues, lack of trust between agencies, and inadequate training are why comprehensive data is lacking regarding minors charged under prostitution offenses.¹²⁵ In the same token, prosecutions of human traffickers on the state level remain especially low, for reasons such as “limited resources, budget concerns, and lack of manpower.”¹²⁶ Where does this leave the vulnerable children who are exploited in “the life” on the streets and misunderstood within the system?

¹¹⁸ SHARED HOPE INT’L, *supra* note 39, at Appendix B. Granted, the report was conducted in Harris and Galveston Counties; however, other sources have attributed similar, if not some of the same, risk factors). *See also* Karen Countryman-Roswurm & Brien L. Bolin, *Domestic Minor Sex Trafficking: Assessing and Reducing Risk*, 31 CHILD ADOLESC. SOC. WORK J. 521, 525 (2014).

¹¹⁹ SHARED HOPE INT’L, *Supra* note 98.

¹²⁰ KRISTIN FINKLEA ET. AL., *supra* note 11, at 6.

¹²¹ *See* discussion *supra* Introduction; *see also* CHILDREN AT RISK, GROWING UP IN HOUSTON 2014-2016 43 (Robert Sanborn et al. 2014), http://issuu.com/childrenatrisk5/docs/c_r-growingup2014-spreads?e=0/11479635 (reporting figures for Harris County).

¹²² *Supra* note 9.

¹²³ Marisa Gerber, *State official links troubled foster care system to human trafficking*, L.A. TIMES (Jan. 30, 2015), <http://www.latimes.com/local/lanow/la-me-ln-foster-care-human-trafficking-20150130-story.html>.

¹²⁴ SHARED HOPE INT’L, *supra* note 39; *see also* Countryman-Roswurm & Bolin, *supra* note 118, at 524.

¹²⁵ SHARED HOPE INT’L, *supra* note 39, at 4-5; *see also* Cynthia Godsoe, *Punishment as Protection*, 52 HOUS. L. REV. 1313, 1316 n.5 (2015).

¹²⁶ SHARED HOPE INT’L, *supra* note 38, at 20; *see also* Countryman-Roswurm & Bolin, *supra* note 118, at 525.

A. TO INFINITIY & BEYOND: THE I-10 CORRIDOR & DMST

Houston is a unique city, culturally rich and steeped in diversity. Estimated as the fourth largest city in the nation and largest city in the Lone Star State with a population of 2.1 million,¹²⁷ home of professional sports teams and host city of business conventions and sporting events, with two major airports, close proximity to the border, and a melting pot of diverse races, it is this exact uniqueness that makes it a prime target and rich market for human trafficking.¹²⁸ Houston's rich diversity is steeped in culture, ethnicities and even diversity in age groups: interestingly enough, reports indicate that Houston has one of the youngest populations in the country.¹²⁹ With the main traffic artery of I-10 running through the city, together with several other major highways connecting into and through the city, human trafficking has found a life here, and I-10 has become the corridor making it both easy to recruit and deposit human trafficking victims.¹³⁰ As a matter of fact, the I-10 corridor has been designated by the Department of Justice as human trafficking's number one route in the U.S.¹³¹ It earned its place in the ranks after Houston became home to one of the largest human trafficking busts in 2008,¹³² and then, to what has been regarded as the largest domestic human sex trafficking case in the Southern District of Texas.¹³³ It is here where we will turn our focus to explore the intersection from the I-10 corridor to the pipeline of DMST and the foster care system right here in Harris County, our own backyard.

¹²⁷ SHARED HOPE INT'L, *supra* note 38, at 9 (citations omitted).

¹²⁸ *Supra* note 5, at 28.

¹²⁹ SHARED HOPE INT'L, *supra* note 39, at 11 (citations omitted).

¹³⁰ *Id.*

¹³¹ *Id.* (citations omitted).

¹³² *Supra* note 38, at 12 n.16.

¹³³ Federal Bureau of Investigation, *Six Charged in Largest Domestic Sex Trafficking Case in Houston*, <https://www.fbi.gov/houston/press-releases/2009/ho082509.htm>; *see also Houston Woman Convicted for Sex Trafficking of a Minor in Two-Day Bench Trial*, <https://www.fbi.gov/houston/press-releases/2015/houston-woman-convicted-for-sex-trafficking-of-a-minor-in-two-day-bench-trial>.

B. Harris County Field Assessment Report

As reported by the National Human Trafficking Resource Hotline, Texas ranked second in calls to the resource hotline in 2013,¹³⁴ and three years' prior, a majority of the calls received by NHTRH were from Houston.¹³⁵ Harris County and the Greater Houston area are a thriving locale for human trafficking. In its continued fight to eradicate DMST and together with funding from the DOJ, Shared Hope International conducted a Rapid Field Assessment (RFA) Report in Harris and Galveston Counties in 2011¹³⁶ "to better understand the real scope of the problem and create more open lines of communication among individuals and agencies working to address it."¹³⁷ The RFA engaged professionals within the community who encounter victims of DMST including law enforcement, prosecutors, district attorneys, juvenile court judges, Child Protective Services, and social service providers.¹³⁸

CPS plays a crucial role in the fight against DMST. As it has appeared as a recurring theme throughout this article and ample research, there is an evil correlation between the foster care system and DMST. According to the RFA, the "majority of victims rescued in the Houston area were engaged with CPS at some point in time prior to trafficking, and therefore, it can be deduced that CPS could play a critical role in helping at-risk children avoid exploitation."¹³⁹ The following are some of the important key findings made that are worth considering as we confront DMST at the intersection of foster care:

- Victims are frequently misidentified as sexual abuse victims or delinquents.
- Training and awareness about how to identify a DMST victim remains low.

¹³⁴ *National Human Trafficking Resource Center 2014 Annual Report*, http://www.traffickingresourcecenter.org/sites/default/files/2014%20NHTRC%20Annual%20Report_Final.pdf.

¹³⁵ *Supra* note 38, at 11 (citation omitted).

¹³⁶ *Id.* For details on how the assessment was conducted and its methodology, please see the section of the Report entitled "Executive Summary."

¹³⁷ *Id.*

¹³⁸ This article will give special attention to sections of the RFA that concern primarily law enforcement and CPS within the scope of the article.

¹³⁹ *Id.*

- Community awareness remains low.
- DMST victims are often treated as delinquents due to misidentification or a perceived lack of other options to help them.
- There is an extreme lack of communication within and between organizations and even a distrust of each other that leads to incomplete care for victims.
- The number of victims rescued is very low as compared to the number of at-risk victims.
- Arrests and prosecutions of traffickers and pimps remain limited and prosecutions of facilitators and johns are nonexistent.¹⁴⁰

Overall, the RFA concluded “domestic minor sex trafficking victims are not going unseen, just often mislabeled or misidentified.”¹⁴¹ So, not invisible are the children misplaced in the shadows of DMST and the foster care system, just misunderstood, mistaken, and mistreated. Sadly, much of the confusion is contributed by the inconsistency in terminology among agencies.¹⁴² Not only does society stitch a scarlet letter on DMST victims, but the agency charged with protecting these child victims further exile them from society. It is as if the problem is swept under the rug. Indeed, victims of DMST do not deserve to be labeled as child prostitutes,¹⁴³ but troubling is the fact that within the CPS data for the number/type of referrals, those children who are victims of DMST may go unnoticed with categories such as Misc. A/B Misdemeanors or CINS.¹⁴⁴ Another play on words is the fact that somehow, the law has almost carved out an exception for CPS to take a less active role in combating DMST if the perpetrator is not in the “household” or the minor’s “caretaker.”¹⁴⁵ Texas law mandates CPS to investigate all reports of “abuse” or “neglect” as defined by Texas Family Code § 261.¹⁴⁶ However, the issue of whether

¹⁴⁰ *Id.*

¹⁴¹ *Supra* note 38, at 67.

¹⁴² *Supra* note 38, at 4. *See also* Countryman-Roswurm & Bolin, *supra* note 118 at 524 (“The range of definitions, including a description of behaviors, distracts us from the human behind the acts of DMST.”).

¹⁴³ *Id.* According to the RFA “[D]MST victims that HPD had seen were labeled as prostitutes, whether directly or indirectly.... Thus, it can be concluded that there are more victims than statistics show.” *Id.* at 18.

¹⁴⁴ Harris County Protective Services for Children and Adults, *CPS in Harris County Annual Report 2014 Statistics, 2015 Program Information*, http://www.hc-ps.org/Content/Annual_Reports/HCPs_Annual_Report_2014-2015.pdf.

¹⁴⁵ *Supra* note 38, at 29.

¹⁴⁶ *Supra* note 38, at 27.

or not CPS can respond to DMST if the trafficker is not a family member or “caretaker” is yet another intersection where victims are forced in a wrong direction or left with nowhere to turn at all. Within its findings, the RFA reported that in 2010 there were 632 incidences of running away reported to Harris County law enforcement agencies and 10,613 substantiated victims of abuse.¹⁴⁷ Since history of running away and abuse are two of the greatest risk factors involving DMST victims,¹⁴⁸ it has been argued that even if this “vulnerable population” of minors is not likely to be trafficked, they are without a doubt high risk, and therefore deserving of CPS involvement in hopes of avoiding exploitation.¹⁴⁹

The confusion in terminology persists amongst law enforcement. In particular, another concern is misidentification, such as when the victim misrepresents her age and is charged as an adult for prostitution.¹⁵⁰ Where the victim is labeled with a roll of the dice, the issue is further complicated when identification issues are involved, literally. Additionally, where Texas case law has held that a minor under the age of fourteen cannot be prosecuted for prostitution,¹⁵¹ Texas Penal Code treats a seventeen-year-old as an adult for purposes of consent,¹⁵² and thus studies show that there are some federally-defined victims who are criminalized based on this statutory variation.¹⁵³ It is left to the arresting officer whether or not the minor female victim will be treated as such, and that largely depends upon their knowledge and awareness of Texas law and the TVPA protections.¹⁵⁴ It is these labels and identification issues that have distanced the child victim of DMST further from the protection of the law: a minor is considered a victim of sex trafficking

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 29. (citation omitted).

¹⁴⁹ *Id.*

¹⁵⁰ *Supra* note 38, at 18-19.

¹⁵¹ *In re B.W.*, 313 S.W.3d 818 (Tex. 2010).

¹⁵² Tex. Pen. Code § 21 Sexual Offenses.

¹⁵³ *Supra* note 38, at 18-19, Appendix B, Graph B.

¹⁵⁴ *Id.* at 19. The RFA goes on to note that many officers are actually unaware of the TVPA’s protection and treatment of minors as victims of human trafficking. *Id.*

when prosecuting traffickers. Child-prostitute, delinquent, throw-away, juvenile offender: this is what they have been called, just to name a few. But a victim is what they are and human are who they are, and it is time they are treated as such.

IV. CONCLUSION

*I believe the children are our future.
Teach them well and let them lead the way.
Show them all the beauty they possess inside.
Give them a sense of pride to make it easier.
Let the children's laughter remind us how we used to be.*¹⁵⁵

Domestic Minor Sex Trafficking has given birth to a new evil that walks with our children and lurks in a place that is not fit for darkness. In the last fifteen years, federal legislation has led the way in the fight against domestic minor sex trafficking, and states must follow suit in all respects: prevention, protection, and prosecution. The time has come to emerge from behind labels and stereotypes and truly let the children's laughter remind us of how we used to be. Uncovering the truth and confronting the reality of domestic minor sex trafficking may very well leave a bitter taste in our mouth, but our children deserve better, and we are in a position to give it to them. There is no doubt a haunting link between DMST and the foster care system, and lest we continue to confront the issue and strive to protect our children, they will be left deserted and hopeless at the evil yet ever-existing intersection.

¹⁵⁵ WHITNEY HOUSTON, GREATEST LOVE (Arista Records) (Mar. 18, 1986).

