

VICTIMIZED CHILDREN WHO ARE PROSTITUTED ARE
NOT CRIMINALS: A CALL FOR REFORM

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*“There can be no keener revelation of a society’s soul than the way
in which it treats its children.”*

-Nelson Mandela

INTRODUCTION

Trafficking is not a foreign issue, it affects every country in the world, including the United States.¹ In fact, the United States is “one of the top three destinations in the world” for human sex trafficking.² Internationally, it is estimated that the industry of human trafficking generates approximately thirty-two billion in profits each year.³

Child trafficking is the “recruitment, coercion, transportation, transfer, harboring or receipt of children under the age of eighteen for the purpose of exploitation. It is a violation of their rights and their well-being and denies them the opportunity to reach their full potential.”⁴ Not only are the children victimized by trafficking treated as commodities, but their traffickers trade these children to be assaulted and raped by adults.⁵ Ultimately, condemning

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¹ See *Understanding Human Trafficking*, U.S. DEP’T. ST. (July 1, 2021), <https://www.state.gov/understanding-human-trafficking/> [<https://perma.cc/T9EB-PHP>].

² Sally T. Green, *Protection for Victims of Child Sex Trafficking in the United States: Forging the Gap Between U.S. Immigration Laws and Human Trafficking Laws*, 12 U.C. DAVIS J. JUV. L. & POL’Y 309, 312 (2008). See Shelly George, *The Strong Arm of the Law is Weak: How the Trafficking Victims Protection Act Fails to Assist Effectively Victims of the Sex Trade*, 45 CREIGHTON L. REV. 563, 565 (2012).

³ Melissa L. Breger, *Healing Sex-Trafficked Children: A Domestic Family Law Approach to an International Epidemic*, 118 W. VA. L. REV. 1131, 1137 (2016).

⁴ *Child Trafficking in the U.S.*, UNICEF, <https://www.unicefusa.org/child-trafficking-us/> [<https://perma.cc/AS68-2QB6>].

⁵ See M. Alexis Kennedy et al., *Routes of Recruitment: Pimps’ Techniques &*

these children to an endless cycle of violence, abuse, and trauma.⁶ Selling sex becomes a method of survival for the children who are victims of commercial sexual exploitation. Yet, the criminal justice system continues to criminalize the acts of the child victims⁷ and disregards criminalizing the acts of people who buy sex, both from adults and children.⁸ An underage child cannot legally consent to sexual intercourse, and it has been made clear that under federal law, any child involved in a commercial sex act who is under the age of eighteen, is by definition a victim.⁹

The Federal Trafficking and Victims Prevention Act (“TVPA”) was first passed in 2000 and only provided funding for programs that helped foreign nationals.¹⁰ In 2005, the TVPA was reauthorized and expanded its support to include domestic victims.¹¹ Notwithstanding the progress at the federal level, there are still many contradictions in state law regarding the age of consent for sex and the age of criminality for prostitution.¹² Although some states continue to prosecute children and put them behind bars for crimes related to their exploitation while being trafficked, other states have passed safe harbor legislation; this issue is addressed in safe harbor legislation by providing immunity for children from prosecution for prostitution related offenses.¹³ However, many safe harbor laws are limited in their scope and have inadequate funding for victim services.

Other Circumstances that Lead to Street Prostitution, 15 J. AGGRESSION, MALTREATMENT & TRAUMA 2, 7 (2007).

⁶ See *id.* at 5.

⁷ Rebecca Carroll Sager, *An Anomaly of the Law: Insufficient State Laws Fail to Protect Minor Victims of Sex Trafficking*, 38 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 359, 360 (2012); Cynthia Godsoe, *Punishing to Protect*, 52 HOUS. L. REV. 1313, 1313 (2015).

⁸ See MICHAEL SHIVELY ET AL., NAT’L. INST. JUST., A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REPRODUCTION EFFORTS, FINAL REPORT 10 (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf> [<https://perma.cc/5JTP-R6G6>].

⁹ See Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV. 1, 31 (2011).

¹⁰ See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, secs.2 (3)–(4), 203, 119 Stat. 3558, 3558–59 (2006).

¹¹ *Id.*

¹² See Lisa Conradi, *Supporting the Mental Health of Trauma-Exposed Children in the Child Welfare System*, 34 CHILD L. PRAC. TODAY 1, 6 (2015).

¹³ *Sex Trafficking of Minors and Safe Harbor*, POLARIS, <https://polarisproject.org/wp-content/uploads/2019/09/2015-Safe-Harbor-Issue-Brief.pdf> [<https://perma.cc/2J6K-N5MG>].

Article 35 of the CRC states the government should take all measures possible to make sure that children are not abducted, sold, or trafficked.¹⁴ The CRC has made it clear that trafficking is a violation of child rights and it denies them the opportunity to reach their full potential.¹⁵ The CRC also indicates that a child has the right to receive rehabilitation services if they were ever a victim of trafficking, abuse, or exploitation.¹⁶ The CRC protects children's civil, political, economic, and cultural rights; however, the United States has not ratified the treaty.¹⁷ By not ratifying the treaty the United States is making a grave mistake and ultimately, by not doing so, undervalues the significance of having a separate instrument for the protection of children. This Note will further discuss the fact that it is necessary for the United States to ratify the CRC in order to increase the overall recognition of child rights.

To highlight this problem in the United States, in 2019, a judge in Kansas erroneously claimed that two girls, only thirteen and fourteen-years-old, were the “aggressors” in a case where a Sixty-seven-year-old man paid them to have sex.¹⁸ This appalling statement should trigger public outrage, but the fact that these victimized young children were facing prosecution to begin with, should be cause for an uproar. Affirmative action must be taken through ratification of the CRC in the United States to protect children victimized by sex trafficking and sexual exploitation.

Part I of this Note will expound upon the epidemic of child trafficking, providing definitions, and current statistics of children who are being prostituted in the United States and internationally. Part II of this Note will discuss the issue of the United States prosecuting children who are trafficked and prostituted within the country. Part III of this Note will explain the legislation in New York regarding the prostitution of minors and how the state is doing an inadequate job of protecting them. Part IV of this Note will detail current federal protections for children who are prostituted and their insufficient performance of safeguarding victims. Part V of this Note will address the CRC, laying out what

¹⁴ CRC, *supra* note 1, at art. 35.

¹⁵ *Id.* at art. 29.

¹⁶ *Id.* at art. 23(3).

¹⁷ Lida Minasyan, *The United States has not Ratified the UN Convention on the Rights of the Child*, ATLAS CORPS (Sept. 30, 2018), <https://atlascorps.org/the-united-states-has-not-ratified-the-un-convention-on-the-rights-of-the-child/> [<https://perma.cc/Q4T9-5UNF>].

¹⁸ *Why are Child Sex Trafficking Victims Being Arrested?* FREEDOM UNITED (Mar. 12, 2019), <https://www.freedomunited.org/news/why-are-child-sex-trafficking-victims-being-arrested/> [<https://perma.cc/VGL9-8W6Q>].

the CRC is, how it protects children, and the failure of the United States as the only country not to have ratified it. The following subsections will discuss applicable articles within the CRC that specifically address the issue of child prostitution and the sexual exploitation of minors. Lastly, Part VI of this Note will discuss the need for the United States to ratify the CRC in order to protect prostituted children. This Note will argue that the United States being the final country to ratify the CRC, will launch the directive that all children sexually victimized by trafficking must be given immunity from prosecution.

I. CHILDREN WHO ARE PROSTITUTED

Approximately one million children are believed to enter the illegal multibillion-dollar sex market every year, but the total number of prostituted children could be as high as ten million.¹⁹ According to the United Nations Office on Drugs and Crime, children make up nearly one-third of trafficking victims worldwide and about 71% of overall victims are women and girls.²⁰ Under international law, the prostitution of children is illegal; Article 34 of the CRC states that the States shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.²¹ According to United States law, sex trafficking is a form of modern-day slavery.²² Withstanding the illegality, the National Center for Missing and Exploited Children estimates up to 100,000–300,000 American born children are “at risk” for sex trafficking each year.²³

¹⁹ Brian M. Willis & Barry S. Levy, *Child Prostitution: Global Health Burden, Research Needs, and Interventions*, 359 LANCET: PUB. HEALTH 1417 (2002).

²⁰ *Almost a Third of Trafficking Victims are Children: UNODC Report*, U.N. OFFICE ON DRUGS AND CRIME, https://www.unodc.org/unodc/en/frontpage/2016/December/almost-a-third-of-trafficking-victims-are-children_-unodc-report.html [https://perma.cc/33BF-564G].

²¹ CRC, *supra* note 1, at art. 34.

²² *What is Modern Slavery?* U.S. DEP'T. ST. (Oct. 19, 2021), <https://www.state.gov/what-is-modern-slavery/> [https://perma.cc/4JT5-4AKX]; Amanda Kloer, *Sex Trafficking and HIV/AIDS: A Deadly Junction for Women and Girls*, A.B.A. (Apr. 1, 2010), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol37_2010/spring2010/sex_trafficking_and_hiv_aids_a_deadly_junction_for_women_and_girls/.

²³ *Missing Children, State Care, and Child Sex Trafficking*, NAT'L CTR. MISSING & EXPLOITED CHILD. (2015), <https://www.missingkids.org/content/dam/missingkids/pdfs/publications/missing-childrenstatecare.pdf> [https://perma.cc/K9P2-7DXQ].

Child prostitution entails the use of minors²⁴ for sexual activities in exchange for remuneration or retribution;²⁵ “[t]his activity is included under the umbrella term [] sexual exploitation.”²⁶ Exploitation includes “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”²⁷ Child victims of prostitution typically fall prey to their traffickers²⁸ who inveigle them in by offering clothes, food, medicine, friendship, love, attention, or a *safe* place to sleep.²⁹ After fostering a relationship with the child and engendering a false sense of trust, the trafficker will begin engaging the child in prostitution while physically, emotionally and psychologically abusing the child.³⁰ Many children are pushed into the corrupt world of prostitution as a means of survival on the streets, in order to help financially support their families, or to be able to pay for clothes and goods.³¹

There are a multitude of specific risk factors that can increase boys’ and girls’ vulnerability to sexual exploitation and sex trafficking. These factors include the following: physical abuse and other forms of maltreatment; disruptions in normative development; the experience of running away or homelessness; placement in foster care; being lesbian, gay, bisexual, or transgender (“LGBTQ”); substance use/abuse; psychogenic factors and impaired cognitive function; having a disability; earlier pubertal maturation; and the experience of early adversity.³² The dangers that child victims face when prostituted are multiple. The child’s sense of “dignity, identify and self-esteem is undermined

²⁴ CRC, *supra* note 1, at art. 1 (Under the Convention on the Rights of the Child, a minor (“child”) is defined as every human being below eighteen-years-old).

²⁵ *Child Prostitution: The Curse Affecting Every Continent*, HUMANIUM (Dec. 2011), <https://www.humanium.org/en/child-prostitution/> [<https://perma.cc/M27J-4MBE>].

²⁶ *Id.*

²⁷ CRC, *supra* note 1, art. 3(a).

²⁸ Also referred to as “sexual exploiters,” “pimps,” or “johns.”

²⁹ *Child Sex Trafficking*, U.S. DEP’T. JUST. (May 2020), <https://www.justice.gov/criminal-ceos/child-sex-trafficking/> [<https://perma.cc/XCB5-SJQB>].

³⁰ *Id.*

³¹ See *Child Prostitution*, WOMENAI D INT’L, <http://www.womenaid.org/press/info/traffick/0childprostitution.html> [<https://perma.cc/4EDP-P365>].

³² ELLEN WRIGHT CLAYTON ET AL., CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES 78–80 (2013).

and their capacity for trust dulled[;]” their emotional and psychological health “is put at risk, their rights violated and their futures jeopardized. Painful injuries, disfigurement, and disease often await those forced, lured or coerced into sexual contact with adults.”³³ In certain cases, children inevitably fall into a dependent relationship with their trafficker for emotional stability or support; the child is robbed of their natural sexual development and experiences; and violence, mistrust and shame can become their norms.³⁴ Child prostitution is not only a leading cause of death in millions of children, but also a gross violation of their human rights and dignity.³⁵ Although inadequate data exists on the health problems prostituted children face, it is understood that they are at high risk for morbidity, infectious disease, pregnancy, mental illness, substance abuse, and violence.³⁶ Prostituted children are forced to engage in sexual intercourse in hazardous environments without proper hygiene or contraceptive protection.³⁷ These children are exposed to violence and are typically raped and beaten; they “suffer a great deal of abuse, unhappiness and poor health” in general.³⁸

Withstanding the harm victimized children face and the illegal nature surrounding prostituting minors, children still go unprotected a majority of the time. Not all laws actually insulate child sex trafficking victims from a punitive response for engaging in commercial sex.³⁹ The ultimate question that this Note will address is: *why do we treat victimized children who are prostituted like criminals?*

II. PROSECUTION OF CHILD VICTIMS

There are still nineteen states in the United States that allow children to be criminally charged with prostitution.⁴⁰ In 2015, the

³³ *Child Prostitution*, *supra* note 36.

³⁴ *See id.*

³⁵ Willis & Levy, *supra* note 24.

³⁶ *Id.*

³⁷ *See* RICHARD MADSEN & TRACY B. STRONG, THE MANY AND THE ONE: RELIGIOUS AND SECULAR PERSPECTIVES ON ETHICAL PLURALISM IN THE MODERN WORLD 292–93 (2009).

³⁸ ROBIN E. CLARK ET AL., THE ENCYCLOPEDIA OF CHILD ABUSE 68 (2007).

³⁹ Sarah Bendtsen, *States’ Laws Say “Kids are Not Prostitutes.” So Why Are They Still Being Punished?* SHARED HOPE (Dec. 3, 2019), <https://sharedhope.org/2019/12/03/states-laws-say-kids-are-not-prostitutes-so-why-are-they-still-being-punished/> [<https://perma.cc/8ZWJ-F2ME>].

⁴⁰ James Pilche, *19 States Allow Children to be Charged with Prostitution*, *WJLA* (Dec. 7, 2020), <https://wjla.com/news/spotlight-on-america/19-states-allow-children-to-be-charged-with-prostitution> [<https://perma.cc/G78V-JVJT>].

FBI's Uniform Crime reports reported that 442 children, 51 of which were under the age of fifteen, were arrested for prostitution or commercialized vice.⁴¹ In 2011, numbers were even higher with 763 children, 70 of which were under the age of fifteen-years-old, arrested for the two aforementioned crimes.⁴² Numbers have decreased since, but are still alarmingly high; in 2019, it was reported that 214 children, 30 of which were under the age of fifteen, were arrested for prostitution or commercialized vice.⁴³ Above all else, even *after* the Trafficking Victims Protection Act ("TVPA") was passed and with fewer jurisdictions reporting their numbers to the FBI, numbers were still as high as 924 minors arrested for prostitution, 120 of which were under the age of fifteen.⁴⁴ Just three years after the TPVA was passed, the FBI's Uniform Crime Report data indicated that 1,400 children were arrested nationally for prostitution and commercialized vice.⁴⁵ The fact that children are still being prosecuted and found criminally liable for prostitution underlies the essential need for reform in order to ensure immunity for minors. "To hold minors criminally liable for the very action that makes them a victim —the prostitution —contradicts the principles that underlie the victim-centered approach that the federal government and states have put into their anti-trafficking efforts."⁴⁶

Another issue that exists with the criminalization of children who are prostituted is the fact that they become fearful of reporting the crimes that they fall victim to. In general, children who are prostituted are often afraid to report these crimes to the police and other similar law enforcement personnel because they are embarrassed and fearful that the charges and accusations would not be taken seriously or that they might be *arrested themselves*.⁴⁷

⁴¹ *Uniform Crime Report*, U.S. DEP'T. JUST. (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-38/> [<https://perma.cc/L5R2-4P>].

⁴² *Uniform Crime Report*, U.S. DEP'T. JUST. (2011), <https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-38/> [<https://perma.cc/3SHA-HTZ9>].

⁴³ *Uniform Crime Report*, U.S. DEP'T. JUST. (2019), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-38/> [<https://perma.cc/F2VK-NBGL>].

⁴⁴ Tessa L. Dysart, *Child, Victim, or Prostitute? Justice Through Immunity for Prostituted Children*, 21 DUKE J. GENDER L. & POL'Y 225, 266 (2014).

⁴⁵ See *How Many Juveniles are Involved in Prostitution in the U.S.?*, CRIMES AGAINST CHILD. RSCH. CTR. (2008), http://www.unh.edu/ccrc/prostitution/Juvenile_Prostitution_factsheet.pdf [<https://perma.cc/UH4L-3THN>].

⁴⁶ Dysart, *supra* note 49, at 267.

⁴⁷ EVA J. KLAIN, PROSTITUTION OF CHILDREN AND CHILD-SEX TOURISM: AN

Children who are prostituted are the victims of sexual exploitation by adults; it cannot be held as normative to treat these children as offenders or as criminals in any sense.

Although no state in the United States allows for a child to consent to engage in sexual intercourse under the age of sixteen, the majority of states still allow for the criminal prosecution of a child who is prostituted.⁴⁸ *Only* 18 states and Washington, D.C. completely protect children from being arrested for prostitution.⁴⁹

III. IS NEW YORK STATE PROTECTING VICTIMIZED CHILDREN?

In 2017, a staggering total of 2,996 children were identified as either trafficked or at-risk for trafficking;⁵⁰ this was a 21% increase from the 2016 data according to a report conducted by the New York City Safe Harbor Program.⁵¹ In 2003, the Federal Bureau of Investigation named New York City one of the thirteen “High Intensity Child Prostitution Areas” in the country.⁵² A 2013 Covenant House study of youth who were runaways or homeless in New York City, found that 12% of youth who sought shelter at the Covenant House experienced some sort of sex trafficking victimization.⁵³

ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES 7 (1999).

⁴⁸ *Safe Harbor: Does Your States Arrest Minors for Prostitution?* HUM. TRAFFICKING SEARCH (Oct. 18, 2018), <https://humantraffickingsearch.org/safe-harbor-does-your-state-arrest-minors-for-prostitution/> [<https://perma.cc/5XUL-P3MT>].

⁴⁹ *See id.*

⁵⁰ Press Release, Admin. Child.’s Servs., With Nearly 3,000 NYC Youth Identified As Trafficked Or At-Risk, Administration for Children’s Services Announces New Child Trafficking Prevention Toolkits To Help NYers Better Spot Signs Of Trafficking & Prevent At-Risk Youth From Being Exploited (Jan. 11, 2019) <https://www1.nyc.gov/assets/acs/pdf/PressReleases/2019/TraffickingToolkitsRelease.pdf> [<https://perma.cc/2M43-MSKP>].

⁵¹ *Id.*

⁵² Marihug Cedeño, *Pimps, Johns, and Juvenile Prostitutes: Is New York Doing Enough to Combat the Commercial Sexual Exploitation of Children?*, 22 CORNELL J. L. & PUB. POL’Y 153, 153 (2012).

⁵³ *See* Jayne Bigelsen & Stefanie Vuotto, *Homelessness, Survival Sex and Human Trafficking: As Experienced by the Youth of Covenant House New York*, COVENANT HOUSE (May 2013), <https://humantraffickinghotline.org/sites/default/files/Homelessness,%20Survival%20Sex,%20and%20Human%20Trafficking%20-%20Covenant%20House%20NY.pdf> [<https://perma.cc/G543-N47V>].

In an effort to curtail the issue, legislators of New York passed an anti-trafficking law and the Safe Harbour for Exploited Children Act (“Safe Harbour Act”).⁵⁴ New York has a number of laws that are intended to protect children from sexual exploitation and falling victim to sex trafficking. New York’s Penal Law applies to those who sexually exploit children and New York’s prostitution statutes separately categorize children who are sold for sex.

Under New York Penal Law, a person who is under the age of seventeen is unable to consent to sex;⁵⁵ if an adult engages in sexual intercourse with a child under the age of seventeen, they are guilty of rape.⁵⁶ Furthermore, the degree of the offense varies depending on the age of the child and the time of the rape.⁵⁷ As stated, although a child under the age of seventeen cannot consent to sexual intercourse, once money is exchanged the lack of consent presumption is no longer applicable and that same child could be charged with prostitution.⁵⁸ Domestic sex trafficking under U.S. law is the “sexual exploitation of American children within the U.S. borders [for profit] and is synonymous with child sex slavery, child sex trafficking, prostitution of children, and commercial sexual exploitation of children.”⁵⁹ In 2000, the United States passed an anti-trafficking law, the TVPA.⁶⁰ The purpose of the TVPA is to “combat . . . a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”⁶¹ Under the TVPA, one approach taken by Congress was to provide assistance and protection to victims who were trafficked in the United States.⁶² However, only victims of “severe forms of

⁵⁴ *Human Trafficking and Commercial Sexual Exploitation in NYS*, N.Y. ST., <https://ocfs.ny.gov/programs/human-trafficking/> [<https://perma.cc/XW7Y-D5XF>].

⁵⁵ N.Y. PENAL LAW § 130.05(3)(a) (McKinney 2009 & Supp. 2012).

⁵⁶ See PENAL LAW § 130.25.

⁵⁷ See PENAL LAW §§ 130.25–.35.

⁵⁸ PENAL LAW § 230.00 (noting that “A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”). *But see* Safe Harbour for Exploited Children Act, N.Y. SOC. SERV. LAW § 447-b (McKinney 2009) (effective Apr. 1, 2010) (this Act gives family court judges the discretion to defer prosecution of sexually exploited children by classifying them as “persons in need of supervision”).

⁵⁹ See generally SHARED HOPE INT’L, PROTECTED INNOCENCE CHALLENGE: STATE REPORT CARDS OF THE LEGAL FRAMEWORK OF PROTECTION FOR THE NATION’S CHILDREN (2011).

⁶⁰ Trafficking Victims Protection Act, 22 U.S.C.A. § 7101 (2000) [hereinafter TVPA].

⁶¹ 22 U.S.C.A. § 7101(a).

⁶² Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J.

trafficking” are eligible to receive services and benefits under the state and federal programs.⁶³ Moreover, New York’s trafficking laws require some form of coercion of victims, regardless of their age, in order to receive services.⁶⁴

In 2008, the Safe Harbour Act was signed into law, decriminalizing child prostitution and finally recognizing children as victims in need of special services.⁶⁵ The Safe Harbour Act requires that local social services provide for the welfare service needs of sexually exploited youth, short-term shelter, or crisis intervention programs.⁶⁶ The Safe Harbour Act also addresses the problem of inaccurate measure of the number of sexually exploited children in the United States by requiring the local commissioner of social services to determine the number in each district of New York every five years.⁶⁷ Also, the Safe Harbour Act strives to train law enforcement in recognizing and responding to the needs of child trafficking victims.⁶⁸ Lastly, the Safe Harbour Act powerfully deemed commercially sexually exploited youth are victims; this allows the child to motion the court to substitute a juvenile delinquent petition instead for a person in need of supervision⁶⁹

“The Safe Harbour Act created a mechanism whereby a youth *age 15 or younger* who was the subject of a juvenile delinquency proceeding as a result of an arrest for a prostitution-related offense could petition for the matter to be converted to a Persons in Need of Supervision [] proceeding.”⁷⁰ A person in need of supervision includes anyone under the age of eighteen who violates the prostitution law or who appears to be sexually exploited.⁷¹ Although the Safe Harbour Act defines the cut off age for minors and allows for a minor under the age of eighteen who is suspected in engaging in prostitution to be diverted to Family Court, the Penal Law still allows for the criminal prosecution of anyone

GENDER & L. 235, 253-54 (2008).

⁶³ See 22 U.S.C.A. § 7105(b)(1)(B) (2006).

⁶⁴ See N.Y. PENAL LAW § 230.34 (McKinney 2008).

⁶⁵ See Press Release, N.Y. St., Governor Paterson Signs Law to Protect Sexually Exploited Youth (Sept. 26, 2008), https://web.archive.org/web/20081224011959/http://www.state.ny.us/governor/press/press_0926082.html [<https://perma.cc/DSG4-BQMV?type=image>].

⁶⁶ N.Y. SOC. SERV. LAW § 447-b(1) (McKinney 2009).

⁶⁷ See SOC. SERV. LAW § 447-b(3).

⁶⁸ SOC. SERV. LAW § 447-b(6).

⁶⁹ N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2009).

⁷⁰ N.Y. ST. OFF. CHILD. & FAM. SERVS., *Informational Letter of Safe Harbour Act* (Aug. 2015).

⁷¹ Karen Wigle Weiss, *A Review of the New York State Safe Harbor Law*, END CHILD PROSTITUTION & TRAFFICKING (Apr. 2013).

sixteen-years-old or older to be prosecuted in criminal court.⁷² The Safe Harbour Act delineates services, such as housing, medical care, and counseling that should be provided for victimized children.⁷³

The law mandates provision of certain types of services, but in the same hand, also allows other services to be provided only as funding permits.⁷⁴ Additionally, the Safe Harbour Act does not address the issue of financial compensation for victims, but the issue of compensation is covered by other provisions of New York law.⁷⁵ In terms of protection for the child, if the child is subjected to juvenile delinquency proceedings, the law permits the court to direct that the child be housed in a short-term safe house, rather than juvenile detention.⁷⁶

There are still significant gaps regarding the protection of sexually trafficked children and the state's legislation. The Safe Harbour Act is an unfunded mandate, New York does not equally protect all commercially sexually exploited children, New York's penalties for traffickers are not as severe as federal penalties, and New York ignores the demand-driven side of the child-sex industry.⁷⁷

Overall, the efforts put forth by the state of New York do not seem to adequately protect *all* children who are victimized.

IV. FEDERAL PROTECTIONS FOR CHILDREN WHO ARE PROSTITUTED

Along with the state laws in the United States, which criminalize the prostitution of children, there are numerous federal statutes that address the sexual exploitation of children. United States federal law on child sex trafficking include, but are not limited to, the following: 18 U.S.C. § 1591: sex trafficking on children or by force, fraud, or coercion; 18 U.S.C. § 2421: transportation generally; 18 U.S.C. § 2422: coercion and enticement; 18 U.S.C. § 2423: transportation of minors; and 18 U.S.C. § 2425: use of interstate facilities to transmit information about a minor.⁷⁸ For these federal statutes to apply, the conduct

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *See id.*

⁷⁷ Cedeño, *supra* note 57.

⁷⁸ U.S. DEPT JUST., *Citizen's Guide to U.S. Federal Law on Child Sex Trafficking*, <https://www.justice.gov/criminal-ceos/child-sex-trafficking/>

must involve interstate or foreign commerce, take place in any territory or possession of the United States or the special maritime jurisdiction of the United States.⁷⁹ Although there have been efforts in federal legislation to protect children, these efforts have mainly focused on child pornography and sexual abuse rather than the prostitution of children.⁸⁰

This includes the Child Sexual Abuse and Pornography Act of 1986,⁸¹ which included a revision of the White-Slave Traffic Act of 1910, known as the Mann Act.⁸² The Mann Act made the transportation of any female, girl, or woman, across state lines for the purposes of prostitution or “any immoral practice” a federal crime.⁸³ This included “persuading, inducing, or coercing a woman to make such a trip using a ‘common carrier’ or transporting a girl who is younger than eighteen for prostitution or ‘immoral practice.’”⁸⁴ In 1986, the Mann Act was revised to be gender neutral and changed “‘immoral practice’ to ‘any sexual activity for which any person can be charged with a criminal offense.’”⁸⁵ The most vital section of the Mann Act in regard to the prostitution of minors is Section 2423, which prohibits:

(a) Transportation with intent to engage in criminal sexual activity—A person who knowingly transports 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, shall be fined under this title imprisoned not less than 10 years, or for life.

(b) Travel with intent to engage in illicit sexual conduct—A person who travels in interstate commerce or travels to the United, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, with a motivating purpose of engaging in any illicit sexual conduct with another person [who is younger than 18 years of age] shall be fined under this title or imprisoned not more than 30 years, or both.⁸⁶

[<https://perma.cc/2ZSL-XLK9>].

⁷⁹ KLAIN, *supra* note 52, at 19.

⁸⁰ Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1074 (2011).

⁸¹ 18 U.S.C. § 2251 (2006).

⁸² *See* 18 U.S.C. § 2251.

⁸³ *See* KLAIN, *supra* note 52, at 19.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 18 U.S.C. § 2423.

An action can be brought under Section 2423(a) when an individual knowingly transports a child across state lines with the intent that the child engages in prostitution.⁸⁷ An action can be brought under Section 2423(b) in order to prosecute an individual for plain travel in interstate commerce if the offender traveled for the “purpose of engaging in any sexual act” with a minor, even if no transportation of a child was involved.⁸⁸ It has also been established in case law that, under the Mann Act, engaging in prostitution or more specifically, sexual activity, does not need to “be the *dominant* purpose of interstate travel.”⁸⁹ In *United States v. Campbell*, the Court held that “many purposes for traveling may exist, but, as long as one motivating purpose is to engage in prostitution, criminal liability may be imposed under the Act. When no dominant purpose exists, it is because any such purpose was either non-existent or ‘incidental.’”⁹⁰ Further, in *United States v. Snow*, the Court held that the offender did not need to be traveling with the sole purpose of engaging in prostitution activities.⁹¹ Rather, the Court reasoned that “the Act may be violated if prostitution is a dominant or a compelling and efficient purpose.”⁹²

As previously mentioned, the TVPA was passed in 2000 and established methods to prosecute traffickers, prevent trafficking, and protect victims.⁹³ Many victim advocates criticize the TPVA indicating that the Act makes cooperation with law enforcement a requirement for accessing immigration benefits and victims’ assistance services.⁹⁴

In 2015, the Justice for Victims of Trafficking Act (“JVTA”) was passed into law.⁹⁵ The JVTA increased the funding for programs and other related services to support victims of trafficking; create heavier fines and penalties for offenders; and afford support for law enforcement and prosecutors through funding.⁹⁶ The Act also

⁸⁷ See KLAIN, *supra* note 84, at 20.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *United States v. Campbell*, 49 F.3d 1079, 1083 (5th Cir. 1995).

⁹¹ *United States v. Snow*, 507 F.2d 22, 24 (7th Cir. 1974).

⁹² *Id.*

⁹³ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (Oct. 2000).

⁹⁴ Micah N. Bump, *Treat the Children well: Shortcomings in the United States’ Effort to Protect Child Trafficking Victims*, 23 NOTRE DAME J. L. ETHICS & PUB POL’Y 73, 78 (2009).

⁹⁵ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114–22, S. 178, 129 Stat. 227 (2015).

⁹⁶ Allison Newcombe, *Child Sex Trafficking: Legal Overview*, A.B.A. (Oct. 1,

promoted all states to adopt safe harbour laws.⁹⁷ Although this bill was highly regarded, many anti-trafficking advocates voiced concern. Many advocates believed that the Act prioritized law enforcement funding rather than victims services and made victim services dependent on their cooperation with law enforcement.⁹⁸

There has been progress at the federal level. However, despite this progress, contradiction still exists in state laws regarding the age of consent and age of criminality for prostitution.⁹⁹ This leads to children not being identified as victims of prostitution and instead being thrown into the juvenile justice system for criminal acts related to their own sexual exploitation.¹⁰⁰

V. THE CONVENTION ON THE RIGHTS OF THE CHILD AND THE UNITED STATES

The United Nations Convention on the Rights of the Child is a “*legally binding* international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.”¹⁰¹ The four core principles of the CRC include the following: (1) “all children should enjoy their rights and should never be subjected to any discrimination[;]” (2) best interest of the child, especially when the child is young and vulnerable and needs support to be able to fully enjoy their rights; (3) “[t]he right to survival and development[;]” and (4) “assure to the child who is capable of forming his or her own thoughts the right to express those thoughts freely”¹⁰² The basic premise of the CRC is all children have fundamental freedoms and inherent rights.¹⁰³ The CRC also mandates that the rights embodied in the CRC are put into practice and lays out

2015),
https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/october-2015/child-sex-trafficking--legal-overview/ [<https://perma.cc/X7XS-K2RY>].

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *UN Convention on the Rights of the Child*, SAVE THE CHILD, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child/> [<https://perma.cc/PV33-2P74>].

¹⁰² *Four Principles of the Convention on the Rights of the Child*, UNITED NATIONS CHILD’S FUND (June 24, 2019), <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child/> [<https://perma.cc/6YR7-YS4G>].

¹⁰³ T. MANICHANDER, *EARLY CHILDHOOD CARE AND EDUCATION* 31 (2015).

seven possible ways to achieve that goal.¹⁰⁴ These include, but are not limited to: incorporating all legislation complying with the CRC, instilling awareness raising of the CRC through training and education, ensuring that there is systemic coordination between all levels of government and the private sector, and so on.¹⁰⁵ Additionally, all States must submit reports to the UN Committee on the Rights of the Child (“the Committee”) on how the rights of the child are being implemented.¹⁰⁶

As the most comprehensive human rights treaty on child rights, it is also the most ratified treaty; it is ratified by every country, except the United States.¹⁰⁷ Yet, the United States played a major role in creating the CRC and contributed many key provisions of the treaty.¹⁰⁸ Although the United States has not yet ratified the CRC, they have signed it thus, indicating their intent to ratify; however, the United States is still not legally bound by any principles of the treaty.¹⁰⁹ When ratification occurs, a State legally binds itself to every provision of the treaty; however, in the case of having signed but not ratified the CRC, the United States is *only* legally obligated to not violate the “object and purpose” of the CRC.¹¹⁰ While this Note argues there is no pressing or good reason as to why the United States hasn’t ratified the CRC, there are various reasons why the United States needs to – one of the reasons being: to protect children who are sexually exploited and trafficked.

Primarily, the CRC offers a guideline for the advancement of law and policy that protects children, a population that is one of the most vulnerable.¹¹¹ Put simply, it is a tool for countries to

¹⁰⁴ See CRC, *supra* note 1, at art. 40.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at art. 44.

¹⁰⁷ Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US*, ACLU (Nov. 2015), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens/> [https://perma.cc/4BDK-CG3S].

¹⁰⁸ Diego Lopez, *The Time is now to Ratify the Convention on the Rights of the Child*, 52 U.S.F. L. REV. 477, 477 (2018).

¹⁰⁹ Rebeca Rios-Kohn, *The Impact on the United Nations Convention on the Rights of the Child on UNICEF’s Mission*, 6 TRANSNAT’L L. & CONTEMP. PROBS. 287, 290 (1996).

¹¹⁰ Soo Jee Lee, *A Child’s Voice vs. a Parent’s Control: Resolving a Tension Between the Convention on the Rights of the Child and U.S. Law*, 117 COLUM. L. REV. 687, 689 n.8 (2017).

¹¹¹ See Howard Davidson, *A Model Child Protection Legal Reform Instrument: The Convention on the Rights of the Child and its Consistency with United States Law*, 5 GEO. J. FIGHTING POVERTY 185, 186 (1998).

emulate.¹¹² One of the reasons that the CRC should be adopted is that it would allow the United States to participate at an international level in the promotion of child rights.¹¹³

Historically, the United States has opposed the CRC based on concerns over “sovereignty, federalism, reproductive and family planning rights, parental rights, and juvenile justice.”¹¹⁴ If the United States ratifies the CRC, the States will be able to upsurge its status as a positive global force for children. Moreover, by the United States ratifying the CRC it would enhance their credibility as diplomats as it cannot urge other nations to embrace child rights if it has yet to do so.¹¹⁵ Aside from the United States, Somalia was the last country to ratify the CRC in 2015 as the 196th country to do so.¹¹⁶ In 2008, during the presidential campaign, former President Obama commented on the United States’ non-ratification.¹¹⁷ He stated, “[i]t’s embarrassing to find ourselves in the company of Somalia, *a lawless land*. I will review this [treaty] and other treaties to ensure that the United States resumes its [international] leadership in Human Rights.”¹¹⁸ This highlights the understanding of the significance in joining important treaties supporting human rights, especially one that support the rights of children, who are an extremely vulnerable population. Based on the Realization of Children’s Rights Index,¹¹⁹ the United States ranks 56th out of 196 countries in the world.¹²⁰ This is worse than

¹¹² *Id.*

¹¹³ *Id.* at 187.

¹¹⁴ Lopez, *supra* note 113, at 481 (citing Lainie Rutkow & Joshua T. Lozman, *Suffer the Children?: A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, 19 HARV. HUM. RTS. J. 161, 168 (2006)).

¹¹⁵ Howard Davidson, *Does the U.N. Convention on the Rights of the Child Make a Difference?*, 22 MICH. ST. INT’L. L. REV. 497, 508 (2014).

¹¹⁶ *As the fifth Anniversary of Somalia’s Ratification of the Convention on the Rights of the Child Approaches, Protection Violations Against Children Continue to Rise*, UNICEF, (Sept. 21, 2020), <https://www.unicef.org/somalia/press-releases/fifth-anniversary-somalias-ratification-convention-rights-child-approaches/> [<https://perma.cc/TE7G-JQXG>].

¹¹⁷ Patrick Geary, *United States: Is Obama’s Win Also a Victory for Children’s Rights?*, CHILD RTS. INFO. NETWORK (Nov. 2008), <https://archive.crin.org/en/library/news-archive/united-states-obamas-win-also-victory-childrens-rights.html?ID=18874&flag=news>.

¹¹⁸ *Id.*

¹¹⁹ *Realization of Children’s Rights Index*, HUMANIUM, <https://www.humanium.org/en/rcri/> [<https://perma.cc/3AEC-6NDR>] (The Realization of Children’s Rights Index (RCRI) grades countries according to the level of realization and respect of Children’s Rights).

¹²⁰ *Realization of Children’s Rights Index*, HUMANIUM, <https://www.humanium.org/en/rcri-world-ranking-by-countries/> [<https://perma.cc/ZZ54-S4VR>].

almost every other wealthy country in the ranking.¹²¹ As a country, we *must* do better to respect and protect the children within our borders.

The CRC is not a “panacea” to solve each and every problem facing children.¹²² However, the CRC does give governments and organizations, on both a local and international level, the ability to determine whether other countries and they themselves are doing enough to support children.¹²³ The convention gives every nation who ratified the treaty the ability to ask whether their government has the laws and systems in place to protect and support children.¹²⁴ There are also procedural benefits in the reporting process of the CRC.¹²⁵ The reporting process plays a significant role in progressing the efforts of countries to ensure the rights of their citizens.¹²⁶ Additionally, having a reporting process that is specifically centered on children ensures that the government is adequately protecting and focusing on the needs of every child.¹²⁷ Furthermore, there are also obvious substantive benefits of ratifying the CRC—to curtail and ultimately prevent the prosecution of trafficked children. The CRC addresses all of the issues of child sexual exploitation, prostitution, trafficking, and so on. The CRC also enshrines many corresponding rights for children on the basis of these issues. Upon ratification, if these various substantive rights enshrined in the CRC are fulfilled, it can ultimately reduce the vulnerability children face in forms of exploitation and trafficking. Through ratification the United States could take further action in decriminalizing the acts of victimized children.

The United States must ratify the CRC as it desperately needs to strengthen its legislation, on both a federal and state level, regarding child prostitution and trafficking, in order to eliminate the prosecution of victimized children.

¹²¹ *See id.*

¹²² *How does the CRC Impact Children* (2018), CHILD RTS. CAMPAIGN, <https://web.archive.org/web/20211019142622/https://www.childrightscampaign.org/the-facts/how-does-crc-impact-children/> [<https://perma.cc/F9E7-AFZK>].

¹²³ *See id.*

¹²⁴ *Id.*

¹²⁵ Jonathan Todres, *A Child Rights Framework for Addressing Trafficking of Children*, 22 MICH. ST. INT’L L. REV. 557, 574–75 (2014).

¹²⁶ *Id.*

¹²⁷ *Id.* at 575.

A. Specific Articles of the CRC that Protect Children from Criminalization for being Prostituted and Trafficked

Though the United States must adopt the CRC in its entirety, and there is no one article that is more important than another, there are certain articles which are most pertinent to the issue of child prostitution. Upon the United States ratifying the CRC, the following articles discussed below would protect children explicitly in terms of affording them immunity from persecution by the State after being victimized and exploited.

1. *Article 34. The Sexual Exploitation of Children*

By ratifying the CRC, the United States would be legally bound to every provision of the treaty.¹²⁸ This is vital to protect children that are victimized by prostitution and decriminalize their actions in the United States. One specific provision of the CRC that would aid child victims and afford them immunity from prosecution, would be Article 34 of the CRC.

Article 34 of the CRC mandates that children have the right to be protected from sexual abuse.¹²⁹ The child maintains this right regardless of their sexual preference or their gender.¹³⁰ Specifically, Article 34 lays out the following:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.¹³¹

¹²⁸ See Minasyan, *supra* note 22.

¹²⁹ CRC, *supra* note 1, at art. 34.

¹³⁰ See *id.*

¹³¹ *Id.*

Encompassed in this article is the protection that the government is ultimately responsible for protecting children from sexual exploitation and sexual abuse.¹³² This includes protection from people forcing children to have sexual intercourse for money or making any sexual pictures of films of themselves.¹³³

The United States' failure to ratify the CRC as a whole has not stopped it from ratifying various treaties that elaborate upon articles of the CRC.¹³⁴ Many of the concerns voiced in Article 34 are addressed by the United States in a number of different ratified treaties. Some of these treaties include: "the Worst Forms of Child Labour Convention . . . and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of the United Nations Convention Against Transnational Organized Crime."¹³⁵ Withstanding the partial effort of the United States, child rights still do not remain fully protected in light of sexual exploitation as victimized children continue to be arrested.

The CRC must be ratified in its entirety in order to ensure compliance. Specifically, in the case of child prostitution, compliance with Article 34 would protect youth from sexual exploitation and abuse. Sexual exploitation and abuse have long-term physical and mental health effects on children¹³⁶ and the CRC must be ratified in the United States for their protection. Upon ratification, State parties would have to make efforts to protect victimized children, especially by having all legislation comply with the CRC. Thus, likely provoking a shift from prosecuting children to focusing on the protection of children.

2. *Article 35. Prevention of Abduction, Sale and Trafficking*

As stated, upon the United States ratifying the CRC it would be legally bound to each provision of the treaty. Ratification is of utmost importance in order to protect children that are victimized by prostitution and sexual exploitation, with the overall goal of decriminalizing their actions in the United States. Another specific provision of the CRC that would help victimized children

¹³² *Id.*

¹³³ *Id.*

¹³⁴ David M. Smolin, *Overcoming Religious Objections to the Convention on the Rights of the Child*, 20 EMORY INT'L. L. REV. 81, 85 (2006).

¹³⁵ *Id.* at 87.

¹³⁶ *Article 34: Sexual Exploitation*, CHILD RTS. INT'L. NETWORK, <https://archive.crin.org/en/home/rights/convention/articles/article-34-sexual-exploitation.html/> (last visited Apr. 2021).

and afford them immunity from prosecution, would be Article 35 of the CRC.

Article 35 states that: “[s]tates Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”¹³⁷ This includes the protection and the promise to protect children and take all possible measures to ensure that children are not abducted, sold, or trafficked.¹³⁸ “It is a *positive obligation*, which means that States must take deliberate steps to prevent such crimes from occurring, rather than only reacting once such crimes have taken place.”¹³⁹ Article 35 makes it abundantly clear that the abduction, sale, or trafficking of children should absolutely never happen and all are ultimately violations of a child’s rights under the CRC.

Although the United States has not ratified the CRC as a whole, this has not stopped it from ratifying various treaties that elaborate upon Article 35, which addresses the trafficking, sale, and abduction of children.¹⁴⁰ Some of these include: the Worst Forms of Child Labour Convention; the protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of the United Nations Convention Against Transnational Organized Crime; the Hague Convention on Intercountry Adoption; and the Hague Convention on the Civil Aspects of Child Abduction.¹⁴¹ However, in order to ensure more comprehensive protection of victimized children in sale, trafficking, and abduction, the United States must ratify the CRC in its entirety.

This article of the CRC imposes a *positive obligation* on the States, mandating they take *deliberate* steps to prevent the abduction, sale, or trafficking of children.¹⁴² The End Child Prostitution and Trafficking “ECPAT”¹⁴³ network makes the argument that States must take affirmative action in adopting anti-trafficking legislation that criminalizes traffickers rather

¹³⁷ CRC, *supra* note 1, at art. 35.

¹³⁸ *See id.*

¹³⁹ *Article 35: Sale, Trafficking and Abduction* (2018), CHILD RTS. INT’L NETWORK, <https://archive.crin.org/en/home/rights/convention/articles/article-35-sale-trafficking-and-abduction.html>.

¹⁴⁰ Smolin, *supra* note 139, at 87.

¹⁴¹ *Id.*

¹⁴² *Article 35: Sale, Trafficking and Abduction*, *supra* note 144.

¹⁴³ ECPAT \ is a global network of civil society organizations that work to end the sexual exploitation of children. *Our History*, ECPAT, <https://ecpat.org/our-history/> [https://perma.cc/64XA-RSVL].

than the victims of trafficking.¹⁴⁴ Ratification of the CRC would impose a legal obligation on the United States to prevent the trafficking of children. Thus, as EPCAT argues, ratification would also lessen the priority of criminalizing children who are victimized by trafficking and prostitution.

3. *Article 39. Rehabilitation of Child Victims*

Children should not be incarcerated for being prostituted, they should be rehabilitated and cared for. Article 39 ensures rehabilitation to “promote physical and psychological recovery and social reintegration of a child victim” including those who are victimized by “exploitation, or abuse” and “inhuman or degrading treatment or punishment.”¹⁴⁵ If the United States were to ratify and thus, comply with the CRC, the outcome of identifying children who have been prostituted would be much different. Ideally, upon ratification, there would be a shift from incarcerating child victims to rehabilitating sexually exploited victims. The measures include, but are not limited to, appropriate healthcare, social services, legal assistance, and so on.¹⁴⁶ The United States should, of course, ratify the CRC but then adopt these measures to ensure an environment that promotes the health, dignity, and self-respect of victimized children.¹⁴⁷

There are massive health and psychological effects on individuals who are prostituted, especially children. Rather than prosecuting them, rehabilitation should be the priority, as Article 39 sets forth. Children who are prostituted face a lot of potential health concerns such as, pregnancy, HIV, STDs, physical assaults, abortion complications, drug abuse, etc.¹⁴⁸ Moreover, children are likely to face psychological harm after being victimized and abused.¹⁴⁹ However, aside from its personal and public health impact, child prostitution is also a *clear* violation of human rights.¹⁵⁰ As stated, this is a human right which is protected under

¹⁴⁴ See Julia O’Connell Davidson, *Moving Children? Child Trafficking, Child Migration, and Child Rights*, CRITICAL SOC. POL’Y, July 2011, at 16.

¹⁴⁵ CRC, *supra* note 1, at art. 39.

¹⁴⁶ *Article 39: Rehabilitative Care*, CHILD RTS. INT’L. NETWORK, <https://archive.crin.org/en/home/rights/convention/articles/article-39-rehabilitative-care.html/> (last visited Apr. 2021).

¹⁴⁷ *Id.*

¹⁴⁸ Willis & Levy, *supra* note 24, at 1417.

¹⁴⁹ *See id.*

¹⁵⁰ *Id.*

the CRC which is why in order to aid this issue, the United States must ratify the treaty. Though it is understood that the CRC protects children who are victims of prostitution and trafficking, it must also be assured that victimized children are rehabilitated properly after the abuse, which is what Article 39 of the CRC ensures.

4. *Additional Applicable Articles and the Optional Protocol on the Sale of Children*

Some articles that are also particularly related to the prostitution of children, include: Articles 19, 20, 32, and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (“Optional Protocol on the Sale of Children”). Upon ratification of the CRC, all of these articles would ensure *protection* rather than prosecution of children who are prostitution and trafficked.

Article 19 states that States parties must take “appropriate legislative, administrative, social and educational measures” to ensure protection of the child from “physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”¹⁵¹ Ensuring this protection while in the care of “parent(s), legal guardian(s) or *any other person* who has the care of the child.”¹⁵² State parties must protect children from all forms of maltreatment by parents and others who are responsible for the care of the child and must establish appropriate social programs for the prevention of abuse and the treatment of victims.¹⁵³ This article is applicable on a general level for protecting children from prostitution and trafficking. Article 19 promotes the elimination of all forms of child abuse, which also would, in turn, protect children who experience prostitution and trafficking.

Article 20 relates to children who are temporarily or permanently deprived of their family environment.¹⁵⁴ In this case, Article 20 states that the child “shall be entitled to special protection and assistance provided by the State.”¹⁵⁵ This is relevant as children who are prostituted and trafficked are likely

¹⁵¹ CRC, *supra* note 1, at art. 19.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ CRC, *supra* note 1, at art. 20.

¹⁵⁵ *Id.*

separated from their families and in dire need of care.¹⁵⁶ Moreover, Article 20 mandates that State parties “shall in accordance with their national laws ensure alternative care for such a child,” such as foster placement.¹⁵⁷ This article promotes an alternative for children who are in extremely violent and dangerous situations such as prostitution and trafficking.

Article 32 is also extremely pertinent to the protection of children from trafficking and prostitution. This article recognizes the right of the child to be protected from “economic exploitation” and “any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”¹⁵⁸ By ratification of the CRC this article would protect children from being economically and sexually exploited through prostitution and trafficking. Additionally, it would mandate the United States take legislative, administrative, social, and educational measures to ensure the implementation of this article.

Additionally, along with its 54 articles, the CRC has two optional protocols;¹⁵⁹ one of which is on the Optional Protocol of the Sale of Children.¹⁶⁰ “The Optional Protocol on the Sale of Children . . . supplements the [CRC] by providing States with detailed requirements to end the sexual exploitation and abuse of children.”¹⁶¹ Under the Optional Protocol on the Sale of Children, States are mandated to report to the Committee within two years after ratification and every five years thereafter.¹⁶² Implementation of the Optional Protocol on the Sale of Children would clearly protect children from falling victim to prostitution, as parties would be required to prohibit the sale of children and child prostitution. This Optional Protocol also reinforces and ensures the rights of the child as victims and witnesses, rather than criminalizing them.¹⁶³ It emphasizes that a child who has

¹⁵⁶ Willis & Levy, *supra* note 24, at 1417.

¹⁵⁷ CRC, *supra* note 1, at art. 20.

¹⁵⁸ CRC, *supra* note 1, at art. 32.

¹⁵⁹ See CRC, *supra* note 1, at Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

¹⁶⁰ *Id.*

¹⁶¹ EUR. COMMISSION, OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-United-nations/optional-protocol-convention_en/ [<https://perma.cc/5BEE-KJ6D>].

¹⁶² Todres, *supra* note 130 at 573–74.

¹⁶³ See CRC, *supra* note 1, at Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

been sexually exploited through prostitution or trafficking be treated as a victim rather than a criminal, regardless of the legal age of sexual consent.¹⁶⁴ This reflects the overarching thesis—to protect, rather than criminalize, children who are prostituted.

By ratifying the CRC, thus implementing all of the content therein, children who are sexually exploited will have greater protection by the framework of the CRC, as it would become legally binding. All of these aforementioned articles are extremely relevant to the protection of children who are prostituted, trafficked, and sexually exploited. However, what is of utmost importance is the CRC in its entirety. By the United States ratifying the CRC, the rights of children can be more adequately recognized and children who are victimized by prostitution can be protected and rehabilitated rather than put behind bars.

VI. CONCLUSION

In sum, it is imperative that the United States ratifies the CRC in order to proactively protect the rights of the child. Especially those who are victimized at an early age and sold into prostitution. Child trafficking and prostitution is nothing other than *organized rape for profit*. Children who are prostituted aren't criminals, they are victims, and it is our responsibility as a country to take care of them. A step toward this is by ratifying the CRC in order to ensure their protection against all forms of sexual abuse—it is undoubtedly a step worth walking.

¹⁶⁴ UNITED NATIONS, *Optional Protocol to the Convention on the Rights of the Child*, <https://violenceagainstchildren.un.org/content/optional-protocols-convention-rights-child/> [https://perma.cc/3DV9-ZH7V].