

COMMENT

REACHING SAFE HARBOR: A PATH FOR SEX-TRAFFICKING VICTIMS IN WISCONSIN

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The Wisconsin legislature is considering providing minor sex-trafficking victims specialized, residential services through Child Protective Services. This is an excellent proposal; sex-trafficking victims deserve no less. This Comment speaks to the legislative debate by proposing *how* victims can obtain access to necessary services. As the legislation recognizes, the juvenile delinquency system is an inappropriate place for minor sex-trafficking victims. Wisconsin's child welfare system is better able to provide a compassionate and nonjudgmental response to these children.

Child Protective Services currently provides services to abused and neglected children through the children in need of protection or services (CHIPS) process. Counties, however, have discretion in investigating reports of non-caregiver abuse. Many minor sex-trafficking victims thus fall outside of counties' mandates. Additionally, the CHIPS process can be an awkward fit for situations where the parent is not the primary abuser because it focuses as much on correcting parents' harmful behavior as providing the children with services.

This Comment makes three recommendations. First, the Wisconsin legislature should create a presumption that any child who commits prostitution is a child in need of protection or services. This will steer many sex-trafficking victims into Child Protective Services. Second, the legislature should add a separate ground for child trafficking victims in the Children's Code's jurisdiction and custody sections and mandate that counties investigate such reports. Third, the legislature should create an alternative to the current CHIPS process that focuses more on the child's needs than the parent's behavior. A model for this alternate process can be found in the Mental Health Act, which provides a way in which a minor can enter inpatient therapy upon her own or the parent's petition.

Introduction	1490
I. Sex-Trafficking Victims: Vulnerabilities and Responses	1494
A. Sex-Trafficking Victims, the Commercial Sex Industry, and Law Enforcement Responses	1494
1. How Minors Become Sex-Trafficking Victims	1495
2. Victim Identification	1498
3. Custody over Sex-Trafficking Victims	1499
B. Legislative Responses to Sex-Trafficking Victims	1500

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II. Reaching Safe Harbor	1504
A. Services: The Safe Harbor.....	1505
1. The Services Needed.....	1505
2. Funding	1506
B. Sex-Trafficking Victims Should Not Have to Reach Safe Harbor through the Juvenile Delinquency System	1507
1. Sex-Trafficking Victims Are Only Victims.....	1507
2. A Presumption That Minors Are Not Guilty of Prostitution	1509
C. Addressing Instances of Non-Familial Abuse under the Current Children’s Code	1511
1. Child Protective Services Jurisdiction	1511
2. The CHIPS Process Is Ill-Suited to Dealing with Instances of Non-Familial Abuse	1513
D. Recommendations for Protecting Child Trafficking Victims in the Child Welfare System	1515
1. New Jurisdictional Ground	1516
2. An Alternate Process.....	1517
Conclusion.....	1518

INTRODUCTION

Children rescued . . . are often vulnerable and have been misled with promises of food, shelter and a future, and oftentimes, love, only to be ensnared into a life of isolation, intimidation, violence and sex trafficking.

—Wisconsin Attorney General J.B. Van Hollen¹

Commercial sexual exploitation of minors happens in Wisconsin.² While most people in Wisconsin (and America) remain blissfully unaware of trafficking in their midst, teenage girls and boys are recruited by traffickers, manipulated into not escaping, and sold repeatedly for the trafficker’s profit.³ As one police commander said, “[T]he only way not

1. Joe Tarr, *Rescued from Sex Trafficking, but Then What?*, ISTMUS (Madison, Wis.), Sept. 12, 2013, <http://www.thedailyage.com/isthmus/article.php?article=40904>.

2. WIS. DEP’T OF JUSTICE, A BASELINE ASSESSMENT OF HUMAN TRAFFICKING IN THE STATE OF WISCONSIN 1 (2013) [hereinafter BASELINE ASSESSMENT], available at <http://www.doj.state.wi.us/sites/default/files/2013-news/wisconsin-human-trafficking-assesment-2013.pdf>.

3. See, e.g., *Domestic Minor Sex Trafficking: Hearing before the Subcomm. on Crime, Terrorism & Homeland Sec. of the H. Comm. on the Judiciary*, 111th Cong.

to find this problem in any community is simply not to look for it.”⁴ Or, as a social worker in Madison stated, “It is almost frightening to think about bringing this issue more into the open. It will explode.”⁵

The National Center for Missing and Exploited Children estimates that at least 100,000 youths are sex trafficked every year in America.⁶ Many of these crimes occur in Wisconsin. A recent Wisconsin Department of Justice survey found that almost 25 percent of jurisdictions reported at least one case involving a minor sex-trafficking victim in the past two years.⁷ A nationwide FBI sting in June 2013 recovered ten victims of child sex trafficking and made over one hundred arrests in Milwaukee, Madison, and the Wisconsin Dells areas.⁸ One Milwaukee detective has at least ten ongoing cases against traffickers.⁹ In a span of two years, Milwaukee police identified seventy-seven minors as victims of sex trafficking¹⁰—a number that greatly underrepresents the total population.¹¹

143–44 (2010) [hereinafter *Domestic Minor Sex Trafficking Hearing*] (statement of Ernie Allen, President & CEO, National Center for Missing and Exploited Children), available at http://judiciary.house.gov/hearings/printers/111th/111-146_58250.PDF; SHIRA ROSENTHAL PHELPS & JAN MIYASAKI, PROJECT RESPECT, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: DANE COUNTY NEEDS ASSESSMENT 13 (2011), available at http://wcadv.org/sites/default/files/resources/Commercial%20Sexual%20Exploitation%20of%20Children_Dane%20County%20Needs%20Assessment_FINAL012013.pdf; BASELINE ASSESSMENT, *supra* note 2, at 17.

4. *Domestic Minor Sex Trafficking Hearing*, *supra* note 3, at 143–44. Wisconsin Attorney General J.B. Van Hollen has made a similar statement: “Human trafficking is occurring in both urban and rural areas of Wisconsin.” WIS. DEP’T OF JUSTICE, HUMAN TRAFFICKING: A GUIDE FOR CRIMINAL JUSTICE PROFESSIONALS 3 (2012), available at <http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/doj-ht-guide-cj-professionals.pdf>.

5. PHELPS & MIYASAKI, *supra* note 3, at 13.

6. *Domestic Minor Sex Trafficking Hearing*, *supra* note 3, at 144. The National Center for Missing and Exploited Children is publically and privately funded and was organized under a Congressional mandate to serve as a national resource center for missing and exploited children. *Id.* at 142.

7. BASELINE ASSESSMENT, *supra* note 2, at 8.

8. Bruce Vielmetti, *10 Wisconsin Children Rescued, 100 Suspects Arrested in Sex Trafficking Case*, MILWAUKEE J. SENTINEL, July 29, 2013, at B1, available at <http://www.jsonline.com/news/crime/ten-wisconsin-children-rescued-100-suspects-held-in-fbi-trafficking-case-b9964083z1-217398541.html>.

9. *Id.*

10. MILWAUKEE HOMICIDE REVIEW COMM’N, ESTIMATING THE NUMBER OF SEX TRAFFICKED YOUTH USING CONTACTS WITH THE MILWAUKEE POLICE DEPARTMENT 3 (2013), available at http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/sex_trafficked_youth_mpd_april_2013.pdf.

11. See Ashley Luthern, *77 Youths Sexually Exploited in Milwaukee over Two Years, Report Says*, MILWAUKEE J. SENTINEL, Aug. 5, 2013, at A1, available at <http://www.jsonline.com/news/crime/trafficking06-b9967564z1-218438041.html>

Wisconsin service providers encounter male and female victims of sex trafficking.¹² In Madison, operators of a street outreach program estimated that 33 percent of the 150 minors they served over five years were sex-trafficking victims.¹³ A pediatrician at a juvenile detention center estimated that 90 percent of the children she treats have some history of domestic minor sex trafficking.¹⁴ A social worker at a Madison high school estimated that she sees four to five sex-trafficking victims per semester.¹⁵

Awareness of human trafficking is rapidly growing, particularly among service providers and law enforcement. A February 2013 conference on human trafficking in Waukesha, Wisconsin drew approximately five hundred people, including representatives of law enforcement departments, district attorney and public defender offices, government service providers, and non-profit organizations.¹⁶ State and federal agencies have formed human trafficking groups that bring together multi-disciplinary teams of law enforcement, government officials, service providers, advocates, and community members.¹⁷ Advocacy groups, such as Slave Free Madison, have been spreading

(quoting Claudine O’Leary, of Rethink Resources, as stating that the number represents “just a fraction” of the total number of minors who have been sex-trafficked).

12. PHELPS & MIYASAKI, *supra* note 3, at 11. Despite the assumption that sex-trafficking victims are girls, the population of boy victims is not insignificant. *See* Megan Anitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV. 1, 11–12 (2011). Statistics indicate that approximately 25 percent of the child victims of commercial sex exploitation are boys. *Id.* Boys face special problems in the commercial sex industry due to their gender. *See, e.g.*, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 9 (June 2008), *available at* <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm>. Because the majority of victims are girls, however, this Comment will refer to sex-trafficking victims using female gender pronouns.

13. PHELPS & MIYASAKI, *supra* note 3, at 10.

14. *Id.* at 15.

15. *Id.* at 10.

16. *See Human Trafficking Conference*, DEP’T OF JUSTICE, <http://www.justice.gov/usao/wie/events/HTC-2013.html> (last visited Nov. 21, 2013).

17. The Wisconsin Office of Justice Assistance formed the statewide Human Trafficking Committee; the United States Department of Justice formed the Human Trafficking Task Force of Greater Milwaukee. *See* WIS. COAL. AGAINST SEXUAL ASSAULT, WISCONSIN HUMAN TRAFFICKING RESOURCES 1, *available at* http://www.wcasa.org/file_open.php?id=37; WIS. OFFICE OF JUSTICE ASSISTANCE, WISCONSIN HUMAN TRAFFICKING PROTOCOL AND RESOURCE MANUAL 6 (2012), *available at* <http://wcadv.org/sites/default/files/resources/Wisconsin%20Human%20Trafficking%20Protocol%20and%20Resource%20Manual.pdf>; *Human Trafficking Task Force of Greater Milwaukee*, CITY MILWAUKEE HEALTH DEP’T, <http://city.milwaukee.gov/staysafe/HTTFGM> (last visited Nov. 16, 2013).

awareness among professionals that encounter sex-trafficking victims and the general public for several years.¹⁸

The Wisconsin legislature has responded to this growing awareness of child trafficking by passing laws that prosecute traffickers and prevent convictions of victims.¹⁹ A person who “knowingly recruits, entices, provides, obtains, or harbors . . . any child for the purpose of commercial sex acts . . . or sexually explicit performance is guilty of a Class C felony,”²⁰ which is punishable by up to forty years in prison.²¹ A “commercial sex act” is defined as “sexual contact for which anything of value is given to, promised, or received, directly or indirectly, by any person.”²² Human trafficking—labor and sex trafficking—is a Class D felony that is punishable by up to twenty-five years in prison.²³ Wisconsin also has an affirmative defense that trafficked individuals may use to excuse “any offense committed as a direct result of” being trafficked.²⁴

This Comment considers the routes by which a minor sex- trafficking victim may enter a “safe harbor” (services provided in a secure environment), makes the case that Child Protective Services is a better response than the juvenile justice system, and suggests changes to the prostitution statute and Children’s Code.²⁵ First, the legislature should create a presumption that a child found to violate the prostitution statute is a child in need of protection or services. Second, the legislature should add a new jurisdictional ground to the Children’s Code for child

18. See, e.g., *About Us*, SLAVE FREE MADISON, <http://slavefreemadison.squarespace.com/about-us/> (last visited Oct. 28, 2013).

19. See, e.g., WIS. STAT. § 939.46(1m) (2011–12); WIS. STAT. § 948.051 (2011–12).

20. § 948.051.

21. § 939.50(3)(c).

22. WIS. STAT. § 940.302(1)(a) (2011–12).

23. § 939.50(3)(d). Wisconsin’s human trafficking statute punishes whoever knowingly engages in labor or sex trafficking by any of the following means: “causing or threatening to cause bodily harm to any individual;” “causing or threatening to cause financial harm to any individual;” “restraining or threatening to restrain any individual;” “violating or threatening to violate a law;” “destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual;” “extortion;” “fraud or deception;” “debt bondage;” “controlling any individual’s access to an addictive controlled substance;” or “using any scheme or pattern to cause an individual to believe that any individual would suffer bodily harm, financial harm, restraint, or other harm.” § 940.302(2)(a).

24. § 939.46(1m).

25. Currently the Wisconsin legislature is considering providing minor sex-trafficking victims specialized, residential services through Child Protective Services. See Assemb. B. 192, 2013–14 Leg., Reg. Sess. (Wis. 2013); Sen. B. 209, 2013–14 Leg., Reg. Sess. (Wis. 2013).

trafficking victims and allow victims to use an alternative process that may better suit victims of non-familial abuse.

Part I of this Comment explains how children are recruited into sex trafficking, the difficulty of identifying sex-trafficking victims, and the traditional law enforcement response to such victims. Part I also surveys the current landscape of state safe harbor legislation. Part II explains the necessity of residential services for victims and addresses the state systems through which children may enter such a shelter. Wisconsin's affirmative defense for sex-trafficking victims recognizes that the juvenile justice system provides an inappropriate response.²⁶ The child welfare system is better suited to respond to minors in the commercial sex industry as victims. The child in need of protection or services (CHIPS) process can potentially place children in out-of-home placements.²⁷ This process, however, may not be the best fit for victims whose abuser is not a parent. Thus, this Comment suggests using an alternative process modeled on the Wisconsin Mental Health Act.²⁸ Section 51.13, which facilitates the admission of minors into inpatient mental health facilities,²⁹ focuses on the child's need rather than the parent's behavior. Adding a separate jurisdictional ground for child trafficking victims would help implement this alternative process, as well as make other necessary changes to the custody and report investigation provisions.

I. SEX-TRAFFICKING VICTIMS: VULNERABILITIES AND RESPONSES

This Part examines how minors become involved in the commercial sex industry and are rescued from it. Law enforcement must establish custody over victims, and often officers use their authority under criminal laws to do so. Several states have responded to the treatment of victims as criminals and their need for services. These laws, called safe harbor laws, have taken different approaches including decriminalization, diversion, and affirmative defenses.

A. Sex-Trafficking Victims, the Commercial Sex Industry, and Law Enforcement Responses

Victims are rarely taken hostage or physically forced into the commercial sex industry.³⁰ Traffickers may be family members³¹ or

26. § 939.46(1m); *see infra* Part II.B.1.

27. *See* WIS. STAT. § 48.345(3) (2011–12).

28. WIS. STAT. § 51.13 (2011–12).

29. *Id.*

30. *See* Annitto, *supra* note 12, at 13–14.

“pimps” who recruited victims based on their vulnerabilities.³² Victims form attachments to traffickers and often do not recognize that they are being exploited.³³

This lack of self-identification is only exacerbated by law enforcement and other service providers’ failure to identify victims. Victims often were not rescued; they were arrested.³⁴ A promising alternative method of identification is proactively identifying sex-trafficking victims based on risk factors. Once a victim is identified, law enforcement must have a way of taking the victim into custody and ultimately providing the victim with a secure place to live.

1. HOW MINORS BECOME SEX-TRAFFICKING VICTIMS

Traffickers recruit highly vulnerable individuals into the commercial sex industry.³⁵ Sex-trafficking victims are recruited at a young age: the average age of entry into the commercial sex industry is between twelve and fourteen.³⁶ Children that young are not fully able to understand the consequences of their decisions or realize that they are being exploited.³⁷ Additionally, victims have likely been previously exposed to physical and sexual abuse.³⁸ This exposure causes them to

31. See PHELPS & MIYASAKI, *supra* note 3, at 8–9; LINDA A. SMITH ET AL., SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 32–34 (2009), available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf. The Dane County Needs Assessment report relates the story of one girl who was sold by her mom for crack. PHELPS & MIYASAKI, *supra* note 3, at 13.

32. See *infra* notes 35–54 and accompanying text.

33. See *infra* notes 60–64 and accompanying text.

34. See *infra* note 66 and accompanying text.

35. See SMITH ET AL., *supra* note 31, at 31–36.

36. Annitto, *supra* note 12, at 9; see also *Domestic Minor Sex Trafficking Hearing*, *supra* note 3, at 144 (the average age of entry for boys is eleven to thirteen).

37. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (“[A] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993))); Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 104 (2008); Suzanne Meiners-Levy, *Challenging the Prosecution of Young “Sex Offenders”*: How Developmental Psychology and the Lessons of *Roper* Should Inform Daily Practice, 79 TEMP. L. REV. 499, 507 (2006); Kate Brittle, Note, *Child Abuse by Another Name: Why the Child Welfare System Is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution*, 36 HOFSTRA L. REV. 1339, 1353 (2008).

38. FRANCINE T. SHERMAN, ANNIE E. CASEY FOUND., 13 PATHWAYS TO JUVENILE DETENTION REFORM: DETENTION REFORM AND GIRLS: CHALLENGES AND SOLUTIONS 21 (2005), available at http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf (describing a study of girls in juvenile detention that found “[a]n

misunderstand abuse as normal behavior.³⁹ Finally, victims often have unmet needs for love and affection that a trafficker easily exploits.⁴⁰

A 2002 study estimated that 250,000 individuals were at high risk of being trafficked in a single year.⁴¹ The study analyzed risk factors of entry into the commercial sex industry: runaway or throwaway status, homelessness, prior sexual and physical abuse, poverty, membership in gangs, and drug addictions.⁴² Trafficking may be part of a “continuum of abuse” in the life of previously abused children.⁴³ Children that run away from home run into exploitation on the streets: runaway status is a major risk factor of becoming sex trafficked.⁴⁴ Runaways may also enter the commercial sex industry by bartering sex to meet their survival needs.⁴⁵

Traffickers may be individual crime entrepreneurs or members of complex criminal organizations.⁴⁶ Gangs may get involved in sex trafficking because it is profitable and less risky than selling drugs.⁴⁷

overwhelming 92 percent of girls . . . had suffered some form of abuse—88 percent suffered emotional abuse, 81 percent reported physical abuse, and 56 percent reported one or more form of sexual abuse . . .”); SMITH ET AL., *supra* note 31, at 31–32 (citing one study that found that 93 to 95 percent of sex-trafficked minors were abused physically or sexually).

39. See, e.g., Meiners-Levy, *supra* note 37, at 507 (specifically noting the effects of prior sexual abuse on a juvenile’s ability to “realize the inappropriateness or illegality of their sexual behavior”).

40. See, e.g., Cheryl Hanna, *Somebody’s Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1, 3 (2002) (stating that girls who enter the commercial sex industry are “lured by love”).

41. RICHARD J. ESTES & NEIL ALAN WEINER, UNIV. OF PA. SCH. OF SOC. WORK, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 143–44 (2002), available at http://www.sp2.upenn.edu/restes/CSEC_Files/Complete_CSEC_020220.pdf.

42. *Id.* at 140–44; cf. PHELPS & MIYASAKI, *supra* note 3, at 5–6 (indicating risk factors including: runaway status, history of sexual abuse, physical abuse, poverty, gang membership, and drug use). In fact, many children who are trafficked have already been through the child welfare system. See SMITH ET AL., *supra* note 31, at 35. Pimps may target locations such as group homes and foster homes as a source of vulnerable children to recruit into trafficking. *Id.*

43. ESTES & WEINER, *supra* note 41, at 45.

44. See *Domestic Minor Sex Trafficking Hearing*, *supra* note 3, at 146–48; SMITH ET AL., *supra* note 31, at 33–34.

45. See PHELPS & MIYASAKI, *supra* note 3, at 5; Adelson, *supra* note 37, at 103.

46. See, e.g., *Domestic Minor Sex Trafficking Hearing*, *supra* note 3, at 144; ESTES & WEINER, *supra* note 41, at 60 (Twenty percent of the children interviewed in the study were trafficked nationally by “organized criminal units using well established prostitution tracks.”).

47. See, e.g., U.S. DEP’T OF STATE, *supra*, note 12, at 34 (The International Labor Organization estimates profits of sex trafficking as \$23,000 a year per victim.); Annitto, *supra* note 12, at 16–17.

Many traffickers are known by their street name: “pimp.”⁴⁸ Nearly all minors involved in prostitution have a pimp—someone who manages and profits from their commercial sex activities.⁴⁹

Traffickers often recruit rather than force victims into the commercial sex industry.⁵⁰ Traffickers may locate vulnerable individuals at places such as malls, bus stations, residential shelters, and on the Internet.⁵¹ Traffickers may also use “peer recruiters”—classmates or friends—who present the commercial sex industry as a way to gain money, security, and protection.⁵² Traffickers identify a victim’s needs and vulnerabilities and present themselves as the solution.⁵³ Pimps often take on the role of the victim’s “boyfriend.”⁵⁴

Recruiting and managing a victim involves a system of manipulation.⁵⁵ The trafficker uses tools such as physical and sexual violence, isolation, coercion and threats, and economic dependence.⁵⁶ Traffickers make victims depend on them and cause victims to be isolated from—and fearful of—anybody they may turn to for help.⁵⁷ They emotionally manipulate victims by withdrawing affections or favoring one girl over another.⁵⁸ Or they may use a “bottom” to enforce rules and physically punish the other girls.⁵⁹

Through this process victims do not realize the full extent of the exploitation they are under: victims frequently do not self-identify as victims.⁶⁰ Victims may believe they deserve to be treated badly;⁶¹ they may view the trafficker as their protector and provider.⁶² Victims become

48. SMITH ET AL., *supra* note 31, at 7.

49. *Id.*

50. *Id.* at 37–39.

51. *See* Annitto, *supra* note 12, at 13.

52. ESTES & WEINER, *supra* note 41, at 58.

53. SMITH ET AL., *supra* note 31, at 38; Brittle, *supra* note 37, at 1358.

54. SMITH ET AL., *supra* note 31, at 8; Annitto, *supra* note 12, at 13; *see also* Nicholas D. Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES, Mar. 18, 2012, at SR1, available at http://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html?_r=0 (describing a trafficked minor whose relationship with her trafficker started out romantically and who stayed with him partly because of the romantic bond).

55. SMITH ET AL., *supra* note 31, at 37.

56. *Id.*

57. *Id.*

58. *Id.* at 39–40; Hanna, *supra* note 40, at 21.

59. SMITH ET AL., *supra* note 31, at 24.

60. *Id.* at 41; *see also* BASELINE ASSESSMENT, *supra* note 2, at 17 (describing how victims are led to believe they are part of a “family”).

61. SMITH ET AL., *supra* note 31, at 69.

62. *See id.* at 33; Brittle, *supra* note 37, at 1359.

attached to traffickers; these attachments, called “trauma bonds,”⁶³ have been compared to Stockholm syndrome.⁶⁴

2. VICTIM IDENTIFICATION

Law enforcement and service providers frequently misidentify or fail to identify victims.⁶⁵ A common law enforcement response to many sex-trafficking victims has been arrest and prosecution.⁶⁶ Officers often did not understand the complex victimization that “child prostitutes” went through.⁶⁷ Despite improvements made over the past ten years, one Dane County Sheriff explained that a “gap” still exists: “I still think that the majority of law enforcement sees prostitution as a choice, even when thinking about children or juveniles”⁶⁸

A promising trend in victim identification is the use of proactive methods of identifying and locating victims based on common risk factors.⁶⁹ The Dallas Police Department developed this approach in 2005, when it formed the High Risk Victims Trafficking Unit.⁷⁰ The Unit analyzed risk factors of child trafficking, such as repeat runaway incidents.⁷¹ The officers then identified specific individuals as “high risk victims” of trafficking and entered their names into a database.⁷² The Unit established a protocol by which those individuals and any individual suspected of being a child prostitute were referred to the Unit if located by police.⁷³ In 2007, for example, the Unit identified 189 high-risk

63. SMITH ET AL., *supra* note 31, at 41–45.

64. *Id.* at 44.

65. *See, e.g.*, WIS. DEP’T OF JUSTICE, *supra* note 4, at 12 (describing the difficulties of proper victim identification). The Estes and Weiner study identified law enforcement negative attitudes toward children involved in prostitution as a factor that led to lax enforcement of laws prohibiting commercial sexual exploitation. ESTES & WEINER, *supra* note 41, at 43.

66. *See* PHELPS & MIYASAKI, *supra* note 3, at 9; SMITH ET AL., *supra* note 31, at 50–53; Annitto, *supra* note 12, at 18–20.

67. *See* Annitto, *supra* note 12, at 19–20.

68. *See* PHELPS & MIYASAKI, *supra* note 3, at 18.

69. Cathy de la Paz, a detective with the Dallas Police Department, presented the Dallas model at a recent human trafficking conference in Wisconsin. Cathy de la Paz, Detective, Dall. Police Dep’t, Presentation at “Not for Sale”: Wisconsin’s Response to Human Trafficking Conference (Feb. 26, 2013).

70. Rami S. Badawy, *Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution*, 22 NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE UPDATE 1, 1 (2010).

71. *Id.*

72. *Id.*

73. *Id.* at 2.

victims and found that 119 of those individuals were involved in the commercial sex industry.⁷⁴

3. CUSTODY OVER SEX-TRAFFICKING VICTIMS

Victims are prone to reenter the commercial sex industry if they are simply released back to the streets or their parents.⁷⁵ To prevent this, law enforcement officers have used their authority under the criminal code to establish and maintain custody over victims.⁷⁶ The Juvenile Justice Code provides authority to law enforcement officers to take custody of a child when they have reasonable grounds to believe the child has committed a crime, is a runaway, or “is suffering from . . . injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.”⁷⁷ The juvenile justice system, however, cannot maintain custody over a victim without a delinquency adjudication.

Delinquency has been used to prevent victims from returning to traffickers.⁷⁸ A Milwaukee County judge saw twelve children involved in human trafficking come before her in nine months.⁷⁹ The judge stated that she resorted in some cases to placing the child in detention to keep her safe from the trafficker.⁸⁰ The Children’s Code provides alternative grounds for establishing custody⁸¹ and placement of a child through the

74. *Id.*

75. HEATHER J. CLAWSON & LISA GOLDBLATT GRACE, FINDING A PATH TO RECOVERY: RESIDENTIAL FACILITIES FOR MINOR VICTIMS OF DOMESTIC SEX TRAFFICKING 3, available at <http://aspe.hhs.gov/hsp/07/humantrafficking/ResFac/ib.pdf>; SMITH ET AL., *supra* note 31, at 58, 67; BASELINE ASSESSMENT, *supra* note 2, at 12. In Kansas, law enforcement placed victims under mental health holds to prevent them from returning to the commercial sex industry. SMITH ET AL., *supra* note 31, at 6.

76. See PHELPS & MIYASAKI, *supra* note 3, at 8, 18; SMITH ET AL., *supra* note 31, at 67.

77. WIS. STAT. § 939.19(d) (2011–12).

78. See PHELPS & MIYASAKI, *supra* note 3, at 18; see also Brooke Grona-Robb, *Prosecuting Human Traffickers*, THE PROSECUTOR, Sept.–Oct. 2010, at 1, 3, available at <http://www.tdcaa.com/node/7370> (quoting a prosecutor as saying, “[The sex-trafficking victim’s] arrest or incarceration—sadly, it’s usually for prostitution—allows us to locate her and assist her in stabilizing her life and for her to get away from life on the streets and the negative consequences of the lifestyle”).

79. Ashley Luthern, *Potential Cost Slows Bill to Help Exploited Children*, MILWAUKEE J. SENTINEL, Aug. 28, 2013, <http://www.jsonline.com/news/statepolitics/potential-cost-stalls-bill-that-would-help-exploited-children-b9985819z1-221538661.html>.

80. *Id.*

81. WIS. STAT. § 48.19(d) (2011–12).

CHIPS process,⁸² but Child Protective Services currently does not investigate most of these cases.⁸³

B. Legislative Responses to Sex-Trafficking Victims

States have responded to the plight of sex-trafficking victims by passing “safe harbor” laws.⁸⁴ The Polaris Project, a leading anti-trafficking organization, credited eighteen states with passing partial or full “safe harbor” laws.⁸⁵ Safe harbor laws generally have two goals: (1) removing victims from the criminal justice system as defendants and

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

83. PHELPS & MIYASAKI, *supra* note 3, at 13.

84. Laws that direct victims out of the criminal justice system and provide services have generally come to be known as “safe harbor” laws. See, e.g., POLARIS PROJECT, 2013 ANALYSIS OF STATE HUMAN TRAFFICKING LAWS 33 (2013); Angela L. Bergman, *For Their Own Good? Exploring Legislative Responses to the Commercial Sexual Exploitation of Children and the Illinois Safe Children Act*, 65 VAND. L. REV. 1361, 1369 (2012).

Laws that expunge or vacate a conviction are also remedial in nature and address victims’ predicament in the criminal justice system. See, e.g., HAW. REV. STAT. ANN. § 712-1209.6 (LexisNexis 2012); 725 ILL. COMP. STAT. ANN. 5/116-2.1 (West 2010); NEV. REV. STAT. ANN. § 176.515(5)(b) (LexisNexis 2012); N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2012 & Supp. 2013); WASH. REV. CODE ANN. § 9.96.060(3) (LexisNexis 2009). These laws help a victim avoid the collateral consequences of a conviction. See, e.g., *People v. G.M.*, 922 N.Y.S.2d 761 (N.Y. Crim. Ct. 2011). In order to prove their victim status, defendants may bring official documentation from a government agency, see, e.g., N.Y. CRIM. PROC. LAW § 440.10(1)(i)(i)–(ii); sworn statements from individuals such as service providers or attorneys, see, e.g., 725 ILL. COMP. STAT. ANN. 5/116-2.1(b)(3); or other evidence of victimization, including the victim’s own testimony, see, e.g., *People v. Gonzalez*, 927 N.Y.S.2d 567 (N.Y. Crim. Ct. 2011). The Milwaukee County Human Trafficking Task Force’s legislative team has proposed an expungement law for sex-trafficking victims in Wisconsin. MILWAUKEE COUNTY HUMAN TRAFFICKING TASK FORCE, FINAL REPORT 2012: RECOMMENDATIONS 5 (2013), available at <http://city.milwaukee.gov/ImageLibrary/Groups/healthAuthors/MCDVSA/MCHTTFFinalReport.pdf>.

A final category of laws passed on behalf of sex-trafficking victims gives them a civil remedy by creating a cause of action in tort against their traffickers. See, e.g., CONN. GEN. STAT. ANN. § 52-571i (West 2013); MASS. ANN. LAWS. ch. 260 § 4D (LexisNexis 2010 & Supp. 2013); MINN. STAT. ANN. § 609.284(2) (West 2009 & Supp. 2013); VT. STAT. ANN. tit. 13, § 2662 (2012 & Supp. 2013).

85. POLARIS PROJECT, *supra* note 84, at 2, 34. The states credited by the Polaris Project are Arkansas, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Washington. *Id.* Michigan’s revised prostitution statute interestingly was passed before New York’s Safe Harbor Law. Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL’Y BRIEF 66, 87 (2012), available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1038&context=lpb>.

(2) providing them with services.⁸⁶ The laws seek to accomplish the first goal by decriminalizing prostitution for minors, creating a presumption or diversion program for minors, or giving defendants an affirmative defense.⁸⁷

The genesis of safe harbor laws may be traced back to the passage of the federal Trafficking Victims Protection Act (TVPA) in 2000.⁸⁸ The TVPA defined minors involved in commercial sex trafficking as victims of a “severe form[] of trafficking in persons” even if no “force, fraud, or coercion” was involved.⁸⁹ This redefining of “teen prostitutes” to victims of a “severe form of trafficking” led many commentators to push states to treat “child prostitutes” differently in their criminal justice systems.⁹⁰

86. See, e.g., POLARIS PROJECT, *supra* note 84, at 1, 33.

87. See *infra* notes 95–107 and accompanying text.

88. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000). When the TVPA was first introduced in Congress, it was met with skepticism. 157 CONG. REC. E2112-02 (daily ed. Nov. 22, 2011) (statement of Rep. Christopher H. Smith). Most legislators understood trafficking as a problem involving drugs and weapons. *Id.* The law represented a shift in awareness of human trafficking; it was ultimately passed with bipartisan support. *Id.* The purposes of the bill were 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.” Victims of Trafficking and Violence Protection Act § 102, 114 Stat. 1466. The bill focused on foreign-born victims of trafficking with provisions such as a specialized visa (the T visa) and foster-care program for foreign-born victims. Adelson, *supra* note 37, at 99–101. The plight of domestic victims, however, was also on some legislators’ minds. *Id.* at 101. Representative Christopher H. Smith stated: “Even in the United States . . . American citizens and nationals who are trafficked domestically, often from one State to another, are still viewed through the lens of juvenile delinquency, rather than as victims of crime, worthy of compassion and assistance.” 151 CONG. REC. H11574 (daily ed. Dec. 14, 2005) (statement of Rep. Christopher H. Smith).

89. 22 U.S.C. § 7102(8)(A) (2006).

90. Academics have argued that trafficked minors should not be liable for prostitution because they are under the age of consent as defined in state statutory rape laws or because state enforcement of prostitution laws conflicts with federal law, namely the TVPA. Adelson, *supra* note 37, at 96; Annitto, *supra* note 12, at 5; Tamar R. Birkhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1056 (2011); Brittle, *supra* note 37, at 1341; Susan Crile, Comment, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws against Minors*, 61 AM. U. L. REV. 1783, 1786–87 (2012); Moira Heiges, Note, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 429 (2009). Much of the literature focuses on safe harbor laws as a solution to the prosecution of minors for prostitution. See, e.g., Bergman, *supra* note 84, at 1369; Cheryl Nelson Butler, *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Minors?*, 45 AKRON L. REV. 843, 846 (2011–12); Geist, *supra* note 85, at 72. This Comment adds to this discussion by addressing how current Child Protective Services processes may be adjusted to accommodate the unique concerns child sex-trafficking victims raise.

Fueling the argument in favor of decriminalization was the fact that many of these children were too young to consent under the states' applicable statutory rape laws.⁹¹

A New York lawyer appealed the prostitution conviction of a twelve-year-old girl on the basis that the girl was unable to consent under the state's statutory rape laws.⁹² The appellate court affirmed the conviction, stating that consent was "irrelevant to the issue of whether she was properly found to have committed an act, which if committed by an adult, would constitute the crime of prostitution."⁹³ This controversial decision led to New York passing the first safe harbor law to direct victims into services in 2008.⁹⁴

Some states have decriminalized prostitution for some or all minors.⁹⁵ For example, Illinois made all those under eighteen immune to prosecution for prostitution.⁹⁶ Michigan revised its prostitution statute to make it only applicable to those sixteen or older.⁹⁷ Connecticut utilized a tiered approach, decriminalizing prostitution for those aged fifteen and under and creating a presumption that a person aged sixteen or seventeen was coerced into prostitution.⁹⁸

91. See, e.g., Annitto, *supra* note 12, at 30–32; Birkhead, *supra* note 90, at 1095–97; Geist, *supra* note 85, at 82–84.

92. See *In re Nicolette R.*, 779 N.Y.S.2d 487 (N.Y. App. Div. 2004); Thomas Adcock, *Nicolette's Story*, N.Y. L.J. (Oct. 3, 2008), <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202424988298&slretrun=1>.

93. *In re Nicolette R.*, 779 N.Y.S.2d at 488. The appeals court did, however, find error in the trial court's dispositional order that placed her in juvenile detention rather than giving her "specialized services." *Id.* at 488–89; Adcock, *supra* note 92.

94. Services for Exploited Children, 2008 N.Y. Sess. Laws 1461–64 (McKinney); Annitto, *supra* note 12, at 46.

95. CONN. GEN. STAT. ANN. § 53a-82 (West 2012); 720 ILL. COMP. STAT. ANN. 5/11-14(d) (West 2010); KY. REV. STAT. ANN. § 529.120(1) (2013); MICH. COMP. LAWS ANN. § 750.448 (West 2004 & Supp. 2013); N.J. STAT. ANN. § 2C:34-1(e) (West 2005 & Supp. 2013); TENN. CODE ANN. § 39-13-513(d) (2010 & Supp. 2013); VT. STAT. ANN. tit. 13, § 2652 (2012 & Supp. 2013). Texas decriminalized prostitution for minors under age fourteen by case law. *In re B.W.*, 313 S.W.3d 818, 822 (Tex. 2010). A couple of states decriminalized prostitution for minors but did not address victims' needs for services. See, e.g., TENN. CODE ANN. § 39-13-513(d) (directing a law enforcement officer to give a person arrested for prostitution the number to a national human trafficking hotline and return her to her home); POLARIS PROJECT, *supra* note 84, at 3, 35 (stating that Michigan's law reflects the "bare minimum" in merely decriminalizing prostitution for some minors).

96. 725 ILL. COMP. STAT. ANN. 5/11-14(d).

97. MICH. COMP. LAWS ANN. § 750.448.

98. CONN. GEN. STAT. ANN. § 53a-82. New Jersey and Tennessee have also decriminalized prostitution. N.J. STAT. ANN. § 2C:34-1(e); TENN. CODE ANN. § 39-13-513(d).

Instead of decriminalization, other states have created diversion programs or presumptions that offenders were in need of services.⁹⁹ For example, the first safe harbor law passed in New York created a presumption that a minor arrested for prostitution was a victim of sex trafficking.¹⁰⁰ It directed the state to replace the delinquency petition with a petition alleging that the defendant is a person in need of supervision, unless a judge found that certain exceptions were met.¹⁰¹ Washington requires a prosecutor to divert a prostitution case when the defendant is a juvenile and she has no prior offenses.¹⁰² Diversion programs may allow reinstatement of charges if the child fails to complete the mandated services.¹⁰³

Some states have afforded sex-trafficking victims an affirmative defense.¹⁰⁴ The affirmative defense negates criminal culpability when the defendant successfully asserts that she committed prostitution due to being trafficked.¹⁰⁵ For example, Georgia's affirmative defense states that a person is not guilty of a sex crime "if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude . . ."¹⁰⁶ Wisconsin's affirmative defense excuses *any offense* committed as a direct result of being trafficked.¹⁰⁷

Most states have also addressed sex-trafficking victims' need for services in safe harbor legislation.¹⁰⁸ For example, states have created a presumption that children found in the commercial sex industry are in

99. See, e.g., LA. CHILD. CODE ANN. art. 839(D) (2013); MASS. GEN. LAWS ch. 119, § 39L (2012); N.Y. FAM. CT. ACT § 311.4 (McKinney 2008 & Supp. 2013); OHIO REV. CODE ANN. § 2152.021(F) (2012); WASH. REV. CODE § 13.40.070 (2012).

100. N.Y. FAM. CT. ACT § 311.4(3).

101. *Id.*

102. WASH. REV. CODE § 13.40.070. Several states have explicitly provided greater relief or consideration for sex-trafficking victims if it is their first offense. See, e.g., LA. CHILD. CODE ANN. art. 839(D); N.Y. FAM. CT. ACT § 311.4(3).

103. See, e.g., MASS. ANN. LAWS ch. 119, § 39L(c) (LexisNexis 2010 & Supp. 2013); OHIO REV. CODE ANN. § 2152.021(F)(5).

104. CONN. GEN. STAT. ANN. § 53a-82(b) (West 2012); GA. CODE ANN. § 16-3-6 (2011); N.J. STAT. ANN. § 2C:34-1(e) (West 2005 & Supp. 2013); TENN. CODE ANN. § 39-13-513(e) (Supp. 2013); VT. STAT. ANN. tit. 13, § 2652(c)(2) (Supp. 2013).

105. See, e.g., N.J. STAT. ANN. § 2C:34-1(e) ("It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking . . .").

106. GA. CODE ANN. § 16-3-6(b).

107. WIS. STAT. § 939.46(1m) (2011-12).

108. See, e.g., ARK. CODE ANN. § 9-27-323(k) (Supp. 2013); FLA. STAT. ANN. § 39.401(2)(b) (West Supp. 2013); KY. REV. STAT. ANN. § 529.120 (LexisNexis Supp. 2013); LA. CHILD. CODE ANN. art. 839 (2013); VT. STAT. ANN. tit. 13, § 2652(c)(1)(B); WASH. REV. CODE § 13.32A.270 (2012); see also *infra* note 109 and accompanying text.

need of services provided through the child welfare system.¹⁰⁹ In Kansas, an officer who takes custody of a suspected victim of trafficking must contact the department of children and families, which will respond with a “rapid response” team to determine appropriate placement for the child.¹¹⁰ States have also increased fines on “johns”—commercial sex buyers¹¹¹—and allocated that money to services for victims.¹¹²

II. REACHING SAFE HARBOR

The Wisconsin legislature should enable minor sex-trafficking victims to *reach safe harbor*. This Comment defines “safe harbor” as services provided in a secure environment for sex-trafficking victims.¹¹³ This Comment analyzes *how* a victim is placed in such services, making comparisons between available systems and processes.¹¹⁴ Victims should not be treated as criminals through the juvenile justice system, even if that is one route to placement in a shelter.¹¹⁵ Therefore, this Comment advocates for a presumption that minors found violating the prostitution statute are in need of services through the child welfare system.¹¹⁶ This Comment then analyzes Child Protective Services’ current response to abused and neglected children.¹¹⁷ The current CHIPS process is in some ways inappropriate for situations where the primary abuser is not a

109. 725 ILL. COMP. STAT. ANN. 5/11-14(d) (West Supp. 2013); MASS. ANN. LAWS ch. 119, § 39L(a) (LexisNexis 2010 & Supp. 2013); N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2008 & Supp. 2013).

110. KAN. STAT. ANN. § 38-2287(b) (2013) (statute effective Jan. 1, 2014). The Kansas legislature provided specific grounds in the children’s code for officers to take custody of suspected human trafficking victims. KAN. STAT. ANN. § 38-2231(b)(3).

111. See, e.g., Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 295–97 (2012).

112. See, e.g., ARK. CODE ANN. § 19-5-1249 (creating the “Safe Harbor Fund for Sexually Exploited Children”); FLA. STAT. ANN. § 796.07(6); KY. REV. STAT. ANN. § 529.140; LA. REV. STAT. ANN. § 539.2 (2013); WASH. REV. CODE § 43.63A.740.

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

114. Most references to “systems” in this Comment refer to agencies and court systems, such as the adult criminal system, the juvenile justice system, and the child welfare system, or Child Protective Services. Most references to “processes” in this Comment refer to adjudicative process, such as the current CHIPS process by which a child enters foster care, etc.

This Comment does not discuss a third process, which exists for juveniles in need of protection or services (JIPS). See WIS. STAT. § 938.13 (2011–12). This process is for juveniles who do not fall squarely within Child Protective Services or juvenile delinquency. See *id.* For example, JIPS can be initiated for a child that is a dropout, habitually truant, or “uncontrollable.” *Id.*

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

116. See *infra* Part II.B.2.

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

family member. Thus, this Comment suggests making an alternate process available that focuses exclusively on the child's needs.¹¹⁸

A. Services: The Safe Harbor

Victims need a secure place where they can rebuild their lives in safety from their traffickers.¹¹⁹ Few facilities exist that adequately meet this unique population's needs.¹²⁰ Runaway shelters for youth can only provide shelter for up to three weeks.¹²¹ A "safe harbor" for sex-trafficking victims in Wisconsin must be secure, responsive to victims' needs, and most importantly, funded.¹²²

1. THE SERVICES NEEDED

The primary way a shelter can serve sex-trafficking victims is by providing them a secure environment separate from their traffickers.¹²³ Shelters can create environments that reduce the risk of residents being picked up or running away.¹²⁴ Shelters have done this through location and security. The shelter may be located in an environment that is geographically distant from locations that have a concentrated commercial sex industry.¹²⁵ Shelters also establish security through systems, such as cameras or alarms, and by having a high ratio of staff to residents (called a "staff-secure shelter").¹²⁶ The Letot Center, a staff-secure shelter in Dallas, Texas, reported that only three youths ran away out of 350 placed in the shelter in one year.¹²⁷

Services must also address the needs of sex-trafficking victims.¹²⁸ Services should include case management, medical care, counseling and mental health treatment, job and life skills training, and educational

118. See *infra* Part III.D.2.

119. See SMITH ET AL., *supra* note 31, at 67; CLAWSON & GRACE, *supra* note 75, at 3.

120. See SMITH ET AL., *supra* note 31, at 67; Birkhead, *supra* note 90, at 1110–11; CLAWSON & GRACE, *supra* note 75, at 3.

121. See 42 U.S.C. § 5711(a)(2)(B)(i) (2006 & Supp. 2010).

122. See, e.g., CLAWSON & GRACE, *supra* note 75, at 9 (describing how one shelter had to close its doors due to lack of funding).

123. *Id.* at 5; see also SMITH ET AL., *supra* note 31, at 67.

124. See SMITH ET AL., *supra* note 31, at 67. In fact, a level of security akin to juvenile detention could be counterproductive because victims may not be ready to receive help or may resent the authority being exerted over them. See SMITH ET AL., *supra* note 31, at 68; CLAWSON & GRACE, *supra* note 75, at 4.

125. SMITH ET AL., *supra* note 31, at 67.

126. *Id.*; CLAWSON & GRACE, *supra* note 75, at 5.

127. SMITH ET AL., *supra* note 31, at 68.

128. See PHELPS & MIYASAKI, *supra* note 3, at 8.

support.¹²⁹ Service providers help victims rebuild their lives through first helping victims realize that they did not deserve their abuse—that they are victims.¹³⁰ Providers treat victims’ trauma; many victims display symptoms of post-traumatic stress disorder.¹³¹ Providers identify the reasons victims became vulnerable to trafficking and provide them with healthy ways to meet those needs.¹³² Through this process, victims become empowered to take control over their lives.¹³³

2. FUNDING

A safe harbor law should address not only delivery but also funding of services. The easy option is to pass the buck to local governments. For example, New York’s safe harbor law created a new class of people in need of services provided by local governments.¹³⁴ The state government, however, did not specially allocate funds.¹³⁵ Instead, it directed local governments to make plans for how they would address these victims’ needs and “*to the extent that funds are available specifically therefor ensure that a short-term safe house or another short-term safe placement . . . to serve sexually exploited children is available to children residing in such district.*”¹³⁶

Similarly, local governments in Wisconsin are ill-equipped to sustain the burden of providing services for a newly classified group of children in need of protective services.¹³⁷ The cost of a bed in a specialized center for sex-trafficking victims may run up to \$100,000 per year.¹³⁸ Some of this money can come from crime victim funds and federal grants or can potentially be diverted from unused juvenile

129. CLAWSON & GRACE, *supra* note 75, at 6–8.

130. SMITH ET AL., *supra* note 31, at 69. Often the best people to treat victims are former victims. *See* CLAWSON & GRACE, *supra* note 75, at 6. Survivors are best able to establish credibility with victim; they share similar experiences and understand the street culture. *Id.*

131. SMITH ET AL., *supra* note 31, at 69–70. Sex-trafficking victims are severely traumatized. CLAWSON & GRACE, *supra* note 75, at 2 (quoting one service provider as stating: “Their level of trauma is much greater and their level of damage, severe”); Brittle, *supra* note 37, at 1371.

132. SMITH ET AL., *supra* note 31, at 70.

133. *Id.* at 71.

134. N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2012).

135. N.Y. SOC. SERV. LAW § 447-b(1) (McKinney 2010).

136. *Id.* (emphasis added).

137. *See* CHRISTINE DURKIN ET AL., OPTIONS FOR ALLOCATING STATE CHILD WELFARE DOLLARS TO WISCONSIN COUNTIES 4–6 (2011), available at <http://www.lafollette.wisc.edu/publications/workshops/2011/child.pdf> (describing the current finance structure of the state child welfare system and the financial difficulties faced by local, county-level agencies).

138. Anitto, *supra* note 12, at 68.

detention beds.¹³⁹ The state, however, must also take responsibility for ensuring that a safe harbor does not exist only in the Wisconsin Statutes.

*B. Sex-Trafficking Victims Should Not Have to Reach Safe Harbor
through the Juvenile Delinquency System*

Adjudicating sex-trafficking victims delinquent for acts that resulted from their victimization is unjust. It does not comport with Wisconsin's affirmative defense for trafficking victims¹⁴⁰ and it violates the policies underlying Wisconsin's age of consent and the federal definition of a sex-trafficking victim.¹⁴¹ This Comment therefore recommends creating a presumption in the prostitution statute that a minor is a child in need of protection or services.¹⁴² This will alert law enforcement to direct victims into services and avoid re-victimizing sex-trafficking victims through the criminal justice system.¹⁴³

I. SEX-TRAFFICKING VICTIMS ARE ONLY VICTIMS

In Wisconsin—and many other states—a sex-trafficking victim is classified under different statutes as a victim¹⁴⁴ and a criminal.¹⁴⁵ Wisconsin, however, has an affirmative defense that excuses any crime that directly resulted from being trafficked.¹⁴⁶ Thus, under Wisconsin law, a victim is only a victim. An affirmative defense, once raised by the evidence, becomes an element that a prosecutor must disprove beyond a

139. *Id.* States have also increased fines on “johns” and dedicated that money to funds for human trafficking victims. *See supra* note 112 and accompanying text.

140. WIS. STAT. § 939.46(1m) (2011–12).

141. Wisconsin's age of consent and the federal definition of a sex-trafficking victim indicate that a minor involved in sexual relations with an adult or induced to perform commercial sex acts is a victim despite her consent. *See infra* notes 149–60 and accompanying text. These policies are violated when the state criminalizes the very behavior that makes a person a victim.

142. *See infra* Part II.B.2.

143. *See* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 14 (June 2012) [hereinafter TRAFFICKING IN PERSONS REPORT], available at <http://www.state.gov/documents/organization/192587.pdf> (stating that treating victims as criminals “undermine[s] the goals of a victim-centered response and constrain[s] law enforcement efforts to bring traffickers to justice”).

144. *Compare* WIS. STAT. § 948.085 (2011–12), with WIS. STAT. § 940.225 (2011–12); *see also* WIS. STAT. § 48.02(1)(d) (2011–12) (defining a form of abuse as “permitting, allowing or encouraging” a child to commit prostitution).

145. WIS. STAT. § 944.30 (2011–12); WIS. STAT. § 947.02(3) (2011–12) (“Any of the following are vagrants and are guilty of a Class C misdemeanor: . . . A prostitute who loiters on the streets . . . , or a person who, in public, solicits another to commit a crime against sexual morality . . .”).

146. WIS. STAT. § 939.46(1m) (2011–12).

reasonable doubt.¹⁴⁷ Practically, an affirmative defense prevents prosecutors from initiating cases against known trafficking victims because they are unable to prove the absence of the affirmative defense.¹⁴⁸

Wisconsin's age of consent—eighteen years old¹⁴⁹—also supports the argument that child “prostitutes” are better understood as victims. The age of consent is defined in statutory rape laws as the age under which *consent* of a minor to sexual relations with an adult is not a defense to the act's illegality.¹⁵⁰ Statutory rape laws delineate when a minor's consensual sexual contact with an adult is *per se* coercive,¹⁵¹ thus protecting minors from sexual exploitation.¹⁵²

The exchange of money should not convert a person under the age of consent from a victim to a criminal.¹⁵³ Some children voluntarily prostitute; for example, runaway children may sell sex to meet their basic survival needs.¹⁵⁴ Some victims have been in “the life” so long that it has become part of their identity.¹⁵⁵ Even minors that voluntarily prostitute, however, may still lack the maturity to understand the consequences of

147. 21 AM. JUR. 2D *Criminal Law* § 182 (2008).

148. Interview with Ben Kempinen, Clinical Professor of Law, Univ. of Wis. Law Sch., in Madison, Wis. (Sept. 16, 2013).

149. See WIS. STAT. § 948.09 (making it a misdemeanor to have sexual intercourse with a child age sixteen or older). Child is defined as a person who is not yet eighteen years old. § 948.01(1). These two provisions, read together, indicate that a person could be criminally liable for having sex with a person under age eighteen even with the minor's consent. See also § 948.02(2) (A person who has sexual contact or sexual intercourse with a child under age sixteen is guilty of a Class C felony.). Contrast this provision with section 940.225, which makes lack of consent an element of most sexual assaults. WIS. STAT. § 940.225 (2011–12).

150. See Annitto, *supra* note 12, at 31–32.

151. Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFF. L. REV. 703, 756–58 (2000).

152. *Id.* at 737–38. Statutory rape laws originally protected a father's interest in preserving his daughter's virginity until she married. *Id.* at 756–58. In the 1970s, the feminist movement rejected the patriarchal underpinnings of the laws. *Id.* at 757. Yet the laws remained popular as they increasingly were justified by the reasoning that sex between a minor and an adult was inherently coercive. *Id.*

153. Sergeant Fassett of the Dallas Police Department aptly stated: “If a 45-year-old man had sex with a 14-year-old girl and no money changed hands, she was likely to get counseling and he was likely to get jail time for statutory rape If the same man left \$80 on the table after having sex with her, she would probably be locked up for prostitution and he would probably go home with a fine as a john.” Ian Urbina, *For Runaways, Sex Buys Survival*, N.Y. TIMES, Oct. 27, 2009, at A1.

154. PHELPS & MIYASAKI, *supra* note 5, at 5. Survival sex occurs when sex is bartered for a necessity such as food or shelter. See Adelson, *supra* note 37, at 103.

155. SMITH ET AL., *supra* note 31, at 44; BASELINE ASSESSMENT, *supra* note 2, at 17.

their actions.¹⁵⁶ Likewise, they are still being exploited by customers in the commercial sex industry.¹⁵⁷

The TVPA's definition of a victim of severe trafficking in persons lends further support for the argument that consent does not matter for minors.¹⁵⁸ Under the TVPA, a minor who is induced to perform commercial sex acts is a victim of a form of "severe trafficking in persons."¹⁵⁹ Unlike adults, the minor does not need to show that she performed the acts as a result of "force, fraud, or coercion" in order to receive the benefits of the law.¹⁶⁰

Wisconsin's affirmative defense and age of consent laws express an affirmative legislative policy that any minor found violating the prostitution statute should not be prosecuted. The juvenile justice system is unable to provide victims with needed services.¹⁶¹ A delinquency adjudication reinforces the lie that the victim is a criminal.¹⁶² Juvenile criminal records, while not public, are still accessed by law enforcement, schools, social welfare agencies, and criminal courts.¹⁶³ Victims who are seventeen years old go to the adult criminal system, where they would receive a permanent, public criminal record if found guilty.¹⁶⁴

2. A PRESUMPTION THAT MINORS ARE NOT GUILTY OF PROSTITUTION

The Wisconsin legislature should create a presumption under the prostitution statute that directs minors out of the juvenile delinquency system. The presumption could be stated in the following way:

156. See Adelson, *supra* note 37, at 104; Oberman, *supra* note 151, at 709–10.

157. See Adelson, *supra* note 37, at 103–04. Chris Swecker, Assistant Director in the Criminal Investigation Division of the FBI, stated, "Children can never consent to prostitution. It is always exploitation." POLARIS PROJECT, *supra* note 84, at 33–34.

158. 22 U.S.C. § 7102(8)(A) (2006).

159. *Id.*

160. *Id.*; see also 22 U.S.C. § 7105(b) (2006) (describing the eligibility of victims for benefits under the law). Minors in the commercial sex industry are also categorically defined as victims under international law. See TRAFFICKING IN PERSONS REPORT, *supra* note 143, at 14 ("According to the Palermo Protocol, however, all prostituted minors are considered victims of trafficking in persons. Without domestic laws consistent with this international standard nor proper efforts to screen for victims—such as training the law enforcement and justice officials likely to encounter these individuals—they can be swept into a system that views all persons in prostitution or undocumented immigrants as criminals and treats them accordingly.")

161. See SMITH ET AL., *supra* note 31, at v.

162. *Id.* at 38.

163. See WIS. STAT. § 939.396(1) (2011–12).

164. See WIS. STAT. § 48.02(2) (2011–12).

The court shall presume that a person under the age of 18 alleged to violate this section is a child in need of protection or services. Unless the presumption is overcome by clear and convincing evidence that the person is not in need of protection or services, a petition alleging the child is in need of protection or services shall be filed, and the delinquency petition or complaint shall be dismissed.

This presumption will remove the victim from the juvenile delinquency system and trigger a response from Child Protective Services. The presumption would also apply to juveniles aged seventeen years old by dismissing the complaint from the adult criminal system.

Ways in which the presumption can be overcome do not need to be statutorily defined but can be interpreted in practice. Statutory limitations may arbitrarily deprive deserving victims of services. For example, in New York, if a victim is initially unwilling to comply with services, the court can restore a delinquency petition.¹⁶⁵ Many victims, however, are distrustful of law enforcement and resistant to help.¹⁶⁶ The focus should be on whether the child is in need of protection or services, and not on how she behaves or whether she previously violated the prostitution statute.

A presumption achieves decriminalization for victims while avoiding some of the problems associated with full decriminalization. First, a presumption would protect minor sex-trafficking victims from prosecution: a prosecutor would have great difficulty proving with clear and convincing evidence that a “child prostitute” *is not* a child in need of protection or services. Second, a presumption avoids decriminalizing prostitution for “johns.” Wisconsin’s prostitution statute criminalizes both selling and buying sex.¹⁶⁷ Any person who intentionally “has or offers to have or *requests to have* nonmarital sexual intercourse for anything of value” is guilty of prostitution.¹⁶⁸ Thus, if any person under a certain age were immune from prosecution for prostitution, then juvenile “johns” would also not be guilty.

Finally, decriminalization tends to attract a lot of attention during the legislative process, at the expense of the real issue, which is victim identification.¹⁶⁹ Immunization from prosecution for prostitution may not

165. N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2012).

166. See Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1610 (2012) (discussing how these provisions are likely to be perceived by sex-trafficking victims as coercive, not compassionate).

167. WIS. STAT. § 944.30 (2011–12).

168. *Id.* (emphasis added).

169. See, e.g., Annitto, *supra* note 12, at 46–48 (discussing how decriminalization became the central debate in the passage of New York’s safe harbor

be entirely effective in helping victims avoid the criminal justice system because victims are frequently not charged with prostitution as a first criminal offense.¹⁷⁰ Victims may be involved in a range of criminal activity.¹⁷¹ The offenses may be minor, such as truancy or curfew violations.¹⁷² Proper victim identification could lead to prosecutors exercising their discretion to not charge these minor crimes and instead direct the victim to services.

C. Addressing Instances of Non-Familial Abuse under the Current Children's Code

Child Protective Services has authority to investigate and file petitions on behalf of child sex-trafficking victims. This authority, however, is discretionary in cases of “non-caregiver” abuse.¹⁷³ Many local child welfare departments screen such reports out as a matter of policy.¹⁷⁴ Additionally, the Children's Code's focus on problems in *the family*—both parents and child¹⁷⁵—may not be appropriate when the parents are not the primary abuser.

1. CHILD PROTECTIVE SERVICES JURISDICTION

Child Protective Services has jurisdiction under the current statutory framework to investigate and bring CHIPS petitions on behalf of minor sex-trafficking victims. The court has jurisdiction over a child that (1) is “alleged to be in need of protection or services which can be ordered by the court” and (2) meets one of the individual grounds.¹⁷⁶ In practice, this first section is interpreted to require that the parent *is not* providing the

law); *see also* Bergman, *supra* note 84, at 1390–94 (describing difficulties of identifying victims).

170. JODY RAPHAEL & DEBORAH L. SHAPIRO, CTR. FOR IMPACT RESEARCH, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 28 (2002), *available at* <http://www.impactresearch.org/documents/sisterssspeakout.pdf>.

171. PHELPS & MIYASAKI, *supra* note 3, at 18.

172. SMITH ET AL., *supra* note 31, at 50–51.

173. *See* WIS. STAT. § 48.981(3)(c)(1)(a) (2011–12); *see also* 2005 Wis. Sess. Laws 908–13 (differentiating between caregiver and non-caregiver abuse situations, making investigation of the former mandatory and the latter discretionary).

174. *See* PHELPS & MIYASAKI, *supra* note 3, at 13; *see also* WIS. DEP'T OF HEALTH & FAMILY SERVS., CHILD PROTECTIVE SERVICES ACCESS AND INITIAL ASSESSMENT STANDARDS 24 (2007) [hereinafter ACCESS AND INITIAL ASSESSMENT STANDARDS], *available at* http://dcf.wisconsin.gov/memos/num_memos/2007/2007-11Standards.pdf (describing process for screening out reports of non-caregiver abuse); Telephone Interview with Wendy Klicko, Corp. Counsel, Sauk Cnty. (Oct. 7, 2013).

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

176. WIS. STAT. § 48.13 (2011–12).

protection or services.¹⁷⁷ For example, if a parent's live-in girlfriend or boyfriend abuses a child and the parent throws the abuser out, then the parent has taken the necessary protective actions, and the state will not bring a CHIPS action. Thus, an element of parental neglect is implied into the court's jurisdiction.¹⁷⁸

A person could petition for jurisdiction on behalf of a child sex-trafficking victim under a current individual ground. For example, the ground for abuse gives jurisdiction over a child "who has been the victim of abuse . . . including injury that is self-inflicted or inflicted by another . . ." ¹⁷⁹ One form of abuse is "permitting, allowing or encouraging a child to violate" the prostitution statute.¹⁸⁰ A parent does not need to be the one that inflicts the abuse.¹⁸¹

Two additional grounds allow either the parent or the minor (a child twelve or older) to voluntarily petition the court's jurisdiction.¹⁸² A parent may request jurisdiction on the basis that he or she "is unable or needs assistance to care for or provide necessary special treatment or care for the child."¹⁸³ A child who is twelve or older may request jurisdiction if the child can show that he or she "is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide."¹⁸⁴ The statute, therefore, reveals no legal obstacle to the court's jurisdiction over cases of non-familial abuse other than the implied element of parental neglect.¹⁸⁵

The section on reports and investigations supports the argument that such jurisdiction exists.¹⁸⁶ Counties have discretionary authority to investigate reports of abuse by non-caregivers.¹⁸⁷ The code states that if

177. Telephone Interview with Wendy Klicko, *supra* note 174; Interview with Gretchen Viney, Dir. of Lawyering Skills Program, Univ. of Wis. Law Sch., Madison, Wis. (Oct. 4, 2013). Viney has served as a guardian ad litem in CHIPS cases for almost twenty years and is recognized for her expertise as a guardian ad litem. Resume of Gretchen Viney, Univ. of Wis. Law School, https://media.law.wisc.edu/m/wd2zw/gretchen_viney_cv.pdf (last visited Nov. 3, 2013).

178. Telephone Interview with Wendy Klicko, *supra* note 174; Interview with Gretchen Viney, *supra* note 177.

179. § 48.13(3).

180. § 48.02(1).

181. § 48.13(3). The focus is on *what* happened to the child, and not on *who* did it. Interview with Gretchen Viney, *supra* note 177.

182. § 48.13(4), (9).

183. § 48.13(4).

184. § 48.13(9).

185. *See* § 48.13.

186. *See* § 48.981(3)(c)(1)(a).

187. *Id.* Caregivers are defined in the statute as parents, guardians, legal custodians, persons who live with the child, employees of a residential facility where the

an agency “determines that a person who is not a caregiver is suspected of abuse or of threatened abuse, the agency *may*, in accordance with that authority, initiate a diligent investigation to determine if the child is in need of [sic] protection or services.”¹⁸⁸ This discretionary authority, however, contrasts with the mandatory duty that local child protective services agencies have to investigate abuse by caregivers.¹⁸⁹

2. THE CHIPS PROCESS IS ILL-SUITED TO DEALING WITH INSTANCES OF NON-FAMILIAL ABUSE

The Children’s Code’s purpose and many of its provisions focus on the parents as part of the solution, and thus, by implication, as part of the problem. The Code’s stated purposes imply that preserving the unity of the family is second only to realizing what is in the best interest of the child.¹⁹⁰ Thus, programs must help parents fulfill their parental responsibilities and change unsafe circumstances in the home.¹⁹¹ This focus on parents *and* children is also reflected in the CHIPS adjudication process.

If a child is taken into custody, an officer or intake worker must make all reasonable efforts to notify parents¹⁹² and return the child to the family.¹⁹³ The child may only stay in custody under certain statutory criteria, such as presence of an injury.¹⁹⁴ A hearing to review the custody decision is held within forty-eight hours.¹⁹⁵ The judge must find why continued placement in the child’s home would be contrary to the

child is placed, a person who provides care for a child, certain relatives, and “any other person who exercises or has exercised temporary or permanent” control or supervision over the child. § 48.981(1)(am). An argument could be made that pimps would qualify under the residual category of “any other person” who exercises control or supervision of the child. Brittle, *supra* note 37, at 1365–66. The Wisconsin legislature only recently distinguished between reports of abuse by caregivers and non-caregivers and made the latter discretionary. *See* 2005 Wis. Sess. Laws 908–13.

188. § 48.981(3)(c) (emphasis added); *see also* ACCESS AND INITIAL ASSESSMENT STANDARDS, *supra* note 174, at 59. The authority referenced in the statute is that given to the state and county departments of child welfare to investigate CHIPS cases and make reasonable efforts to secure for them the benefits of the law. § 48.48(17)(a)(1); § 48.57(1)(a).

189. § 48.981(3)(c)(1)(a). Even though the departments must investigate, they are not required to file a CHIPS petition even if a parent refuses offered services. § 48.981(3)(c)(3).

190. *See* § 48.01.

191. *Id.* The legislative purpose also recognizes, however, that children are not always meant to be reunited with their families. *Id.*

192. § 48.19(2).

193. § 48.20(2)(ag).

194. § 48.205(1).

195. § 48.21(1).

welfare of the child and whether the intake worker “made reasonable efforts to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns.”¹⁹⁶

The *reasonable efforts* intake workers must make are defined in the Children’s Code.¹⁹⁷ The court considers whether the agency made a comprehensive assessment of the family’s situation, whether available financial assistance was offered, whether a variety of services were offered to the family, and whether the agency considered other ways to address the family’s needs.¹⁹⁸ In only the most extreme situations are reasonable efforts not required.¹⁹⁹

The formal procedures used in the CHIPS process imply that the parents are the primary parties whose behavior the court seeks to address. The district attorney or corporation counsel files a petition.²⁰⁰ A plea hearing is held to give parents an opportunity to consent to or contest the petition.²⁰¹ If the petition is contested, then a “fact-finding hearing” (trial) is held.²⁰² At the fact-finding hearing, a judge or jury determines whether the allegations as contained in the petition are proved by clear and convincing evidence.²⁰³ The formality of the process reflects the due process concerns involved; parents have a right to the custody, care, and protection of their children.²⁰⁴

196. § 48.21(5).

197. § 48.355(2c).

198. *Id.*

199. One such situation, for example, is if the parent killed a sibling of the child. § 48.355(2d)(b)(2).

200. § 48.25(1). The district attorney or corporation counsel most often files the petition, but other parties, such as the parents or child, are also authorized. *Id.*

201. § 48.30(1).

202. § 48.30(7).

203. § 48.31(1). The Wisconsin legislature is currently considering a bill that would eliminate jury trials in CHIPS and termination of parental rights (TPR) cases. See ASSEMB. B. 151, 2013–14 Leg., 100th Reg. Sess. (Wis. 2013), available at <https://docs.legis.wisconsin.gov/2013/related/proposals/ab151.pdf>. For more information about this proposal and the advisability of eliminating jury trials in termination of parental rights cases, see Cary Bloodworth, Comment, *Judge or Jury? How Best to Preserve Due Process in Wisconsin Termination of Parental Rights Cases*, 2013 WIS. L. REV. 1039.

204. See *In re J.L.W.*, 102 Wis. 2d 118, 135–36, 306 N.W.2d 46 (1981) (establishing custody as a state and federal constitutional right); see also *State v. Neumann*, 2013 WI 58, ¶ 107, 348 Wis. 2d 455, 832 N.W.2d 560.

It is the right and duty of parents under the law of nature as well as the common law and the statutes of many states to protect their children, to care for them in sickness and in health, and to do whatever may be necessary for their care, maintenance, and preservation, including medical attendance, if necessary.

Id. (quoting *State v. Williquette*, 129 Wis. 2d 239, 255–56, 385 N.W.2d 145 (1986) (quoting 39 AM. JUR. *Parent and Child* § 46 (1976))).

The formal procedures could be counterproductive. Innocent children and non-responsible parents may feel as though they are on trial. For example, the CHIPS process guarantees the appointment of counsel for children;²⁰⁵ the availability of a jury trial;²⁰⁶ discovery of law enforcement reports and witness statements;²⁰⁷ hearing of motions to suppress evidence;²⁰⁸ and the right to present, subpoena, and cross-examine witnesses.²⁰⁹

Dispositional orders must place the child in the least restrictive placement possible and often have conditions the parents must meet for the family to be reunited.²¹⁰ Such conditions may not be appropriate if the parent is not the abuser. Additionally, parents may be required to pay legal fees²¹¹ and child support if the child is placed out of home.²¹² Residential centers are the most restrictive placements under the statute,²¹³ but such placements are necessary in the case of sex-trafficking victims.²¹⁴

D. Recommendations for Protecting Child Trafficking Victims in the Child Welfare System

This Comment makes two proposals. First, the legislature should create a separate jurisdictional ground for child sex-trafficking victims in the Children's Code. This will facilitate additional changes: the legislature should require counties to investigate child trafficking reports

205. § 48.23(1g), (1m).

206. See § 48.30(2); *supra* note 203.

207. § 48.293(1).

208. § 48.297(3).

209. § 48.243(1)(d).

210. The Children's Code directs courts to make dispositions that reflect the following intent:

The disposition shall employ those means necessary to maintain and protect the well-being of the child . . . which are the least restrictive of the rights of the parent and child, . . . and which assure the care, treatment or rehabilitation of the child and the family . . . consistent with the protection of the public. When appropriate, and . . . when it is consistent with the best interest of the child . . . in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent . . . only when there is no less drastic alternative.

§ 48.355(1); see also Telephone Interview with Wendy Klicko, *supra* note 174 (explaining that dispositional orders often contain requirements for the parents); Interview with Gretchen Viney, *supra* note 177 (also explaining that dispositional orders contain requirements for the parents).

211. § 48.275(2).

212. § 48.36(1).

213. § 48.345(3).

214. See *supra* notes 123–27 and accompanying text.

and provide a separate basis for law enforcement to take custody of child trafficking victims. Second, the legislature should create an alternate process by which minors can enter residential services. A model for this alternate process can be found in Wisconsin's Mental Health Act.

1. NEW JURISDICTIONAL GROUND

The legislature should create a separate jurisdictional ground for child trafficking victims. This will provide a clear basis for providing services to child trafficking victims and provide a point of reference for changes made to other sections of the Children's Code. A separate ground can state: "the court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and"²¹⁵ . . .

who performed acts that violate s. 944.30 [prostitution];²¹⁶ or is a victim, or is at high risk of being a victim, of s. 948.051 [trafficking of a child]²¹⁷ without regard to whether anyone was prosecuted or convicted for the violation of s. 948.051 [trafficking of a child].

The ground relates to the prostitution statute and also applies to victims who are found through trafficking investigations or proactive identification methods. The proposed ground, like Wisconsin's affirmative defense,²¹⁸ establishes that a prosecution or conviction of a trafficker is not required to establish that an individual is a victim.

Second, the legislature should require local Child Protective Services entities to investigate reports of victims that qualify under that ground. The Wisconsin legislature is currently considering this proposal.²¹⁹ Wisconsin should follow other states that have already mandated a child protective services response.²²⁰

Finally, the legislature should allow law enforcement to establish custody of children explicitly under this ground. The Children's Code provides authority to take and hold a child in custody if law enforcement officers have a reasonable belief that the child has run away or if "[t]he

215. § 48.13.

216. WIS. STAT. § 944.30 (2011–12).

217. WIS. STAT. § 948.051 (2011–12).

218. WIS. STAT. § 939.46(1m) (2011–12).

219. See Assemb. B. 192, 2013–14 Leg., Reg. Sess. (Wis. 2013); Sen. B. 209 2013–14 Leg., Reg. Sess. (Wis. 2013).

220. See, e.g., FLA. STAT. ANN. § 39.524(1) (West Supp. 2013); KY. REV. STAT. ANN. § 529.120(3) (West 2013).

child is suffering from illness or injury or is in immediate danger.”²²¹ While these grounds are sufficient in many cases, a separate ground for custody of child trafficking victims would provide even greater clarity to law enforcement’s authority.

2. AN ALTERNATE PROCESS

The legislature should also create an alternative to the current CHIPS process that focuses on the minor’s need for treatment rather than on the parents’ behavior. In Chapter 51, a process exists by which a minor can enter an inpatient mental health facility.²²² This process can thus serve as a model for an alternative to the current process. The process, however, should only be an alternative; in some instances the state may still want to use the current, more formal process. For example, the state may want to use the current process if the parent trafficked the child, was neglectful in preventing the child’s trafficking, or issues in the family are serious enough to warrant formal adjudication.

Under Chapter 51, a minor can be admitted to an inpatient mental health facility with or without the consent of a parent.²²³ If the minor does not have consent of a parent, the court has a hearing.²²⁴ If the minor is age fourteen or older, the court can grant the application if it finds that the parent’s consent was unreasonably withheld.²²⁵ If the minor is under age fourteen, the court can only grant the application without the parent’s consent if the parent cannot be found or if there is no parent with legal custody.²²⁶

The court reviews all admissions of a minor into a treatment facility.²²⁷ The director of the facility writes a petition that states facts substantiating the minor’s need for services, the appropriateness of services provided in an inpatient facility, and whether inpatient care is the least restrictive treatment consistent with the minor’s needs.²²⁸ The court approves the petition without a hearing if the minor and parent consent, and the petition makes a prima facie showing of the minor’s need, the appropriateness of the treatment facility, and that inpatient care is the least restrictive means of meeting the minor’s needs.²²⁹ If any of

221. WIS. STAT. § 48.19(1)(d) (2011–12).

222. WIS. STAT. § 51.13 (2011–12).

223. § 51.13(1).

224. § 51.13(c). The court can temporarily approve the minor’s application until the hearing is held. § 51.13(c)(3).

225. § 51.13(1)(c)(1).

226. § 51.13(1)(c)(2).

227. See § 51.13(4)(a).

228. *Id.*

229. § 51.13(4)(d).

these conditions are not met, the court holds a hearing within seven days.²³⁰ Notice of the hearing is given to the parents and minor.²³¹ At the hearing, the minor is given representation, the rules of evidence apply, and a record is created.²³² The court makes its findings on a “clear and convincing” standard of proof.²³³

Chapter 51 provides a model upon which an alternate process for child trafficking victims can be based. First, the process protects the rights of minors and parents without employing formalities akin to a criminal adjudication. An in-court hearing may not even be necessary if both the minor and parent consent. Most important, the process focuses on the minor’s need for services. It removes the potential for the parent to feel like the target.

In many situations, an alternate process based on Chapter 51 will be preferable to a juvenile adjudication or the current CHIPS process. Unlike a delinquency adjudication, it comports with the child’s status as a victim. Unlike the current process, it focuses solely on the needs of the minor and can potentially eliminate the need for court appearances. Addressing broader family issues through the current formal process may be preferable in some situations. An alternate process, however, would best fit those situations where the only true culprit is the trafficker.

CONCLUSION

The Wisconsin legislature is currently considering a proposal to provide sex-trafficking victims a safe refuge to a life of exploitation on the streets. This legislation—and the funding necessary to make it happen—is a worthy legislative pursuit. Handling the cases of sex-trafficking victims through the juvenile delinquency system is counterintuitive and unjust. The child welfare system is a much better approach.

Likewise, the process by which minor sex-trafficking victims reach safe harbor is also important. The current CHIPS process is an awkward fit for situations where the abuser is not a family member. The Wisconsin legislature should consider adopting an alternative process that focuses solely on the victim’s need. Most important, counties should not have the discretion to *not* investigate these cases. If a child is in need of protection or services, it should not matter at whose hand he or she was abused.

230. *Id.*

231. § 51.13(4)(e).

232. § 51.13(4)(d), (f).

233. § 51.13(4)(f).